Issue Papers
2014 Legislative Session

Department of Legislative Services 2013

Issue Papers

2014 Legislative Session

Presentation to the

Maryland General Assembly

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

December 2013

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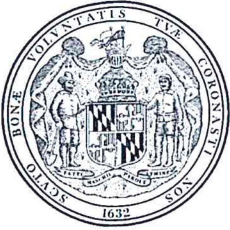

Department of Legislative Services
Office of Policy Analysis
Maryland General Assembly

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Executive Director

Warren G. Deschenaux
Director

December 2013

Members of the General Assembly:

Prior to each session, staff of the Department of Legislative Services, Office of Policy Analysis, prepare an information report on issues. This document is a compilation of the issue papers arranged by major topic. The information reflects the status of the items as of December 2, 2013.

Following each paper is an identification of the staff who worked on a particular topic. If you should need additional information, please do not hesitate to contact the appropriate staff person.

We trust this information will be of assistance to members of the General Assembly.

Sincerely,

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Operating Budget

Economic and Revenue Outlook

Economic growth in Maryland has been tepid throughout calendar 2013 as federal budget cuts weigh on the State's economy. The 16-day federal government shutdown in early October was a further hit to the State's economy. General fund revenues in fiscal 2013 underperformed, and the estimate for fiscal 2014 was revised down by $62 million.

Economic Outlook

The recession that began in December 2007 officially ended in June 2009. Lasting 18 months, the recession was the longest and deepest of the post World War II period. Since bottoming out in February 2010, U.S. employment has increased by 6.8 million jobs, or 5.3%, but remains 2.1 million jobs short of the pre-recession peak. Private sector jobs are up 7.5 million since the trough, or 7.0%, but government jobs are down 2.8%, or about 640,000 jobs. Personal income has grown 3.1% in the first 8 months of calendar 2013, while growth in wages was up 3.2%.

Most economists were already projecting weaker growth in calendar 2013 compared to calendar 2012, even before the 16-day federal government shutdown in early October. This was due, in part, to the impact of the federal sequestration budget cuts that went into effect earlier in the year as well as the expiration of the payroll tax cut at the end of calendar 2012. Both Moody's Analytics and IHS Global Insight estimate that the shutdown will shave 0.6 percentage points off of U.S. real gross domestic product growth in the fourth quarter of calendar 2013.

Maryland is particularly vulnerable to actions at the federal level given the outsized role that the national government plays in the economy. In calendar 2012, federal jobs in Maryland (civilian and military) were about 8.4% of all jobs and totaled almost 226,000. By comparison, for the United States as a whole, the federal government accounted for about 3.5% of all jobs. After falling throughout the 1990s, federal employment in Maryland increased in the 2000s. This was due, in part, to a post-9/11 expansion and the Base Realignment and Closure (BRAC) process, which brought thousands of jobs to the State. Between calendar 2008 and 2012, federal employment increased in Maryland by close to 10%, or 20,000 jobs. These job figures do not count the thousands of Marylanders who work for the federal government in Virginia and Washington, DC. Because federal salaries tend to be above average, wages for federal jobs in Maryland accounted for about 13.0% of total wages in calendar 2012. Beyond direct employment, the federal government also spends a substantial amount in the State through contracts. In federal fiscal 2012, the government spent a little over $27 billion on contracts in Maryland, equivalent to about 10.6% of the State's private sector economy.

In September, the Board of Revenue Estimates (BRE) issued a revised economic forecast for Maryland, its first since December 2012 (**Exhibit 1**). BRE revised the economic outlook largely in line with recent performance. Employment growth for calendar 2013 was revised up from 0.9 to 1.2% reflecting job growth in the first eight months of the year. However, BRE set its estimate below the year-to-date growth of 1.5% anticipating future downward revisions. The projection for personal income growth was lowered for calendar 2013 in part due to a downward revision to the estimate of wage and salary income. In the first half of calendar 2013, wage and salary income in Maryland grew just under 2.0% compared to the first half of calendar 2012.

Exhibit 1
Maryland Economic Outlook
Year-over-year Percentage Change

Calendar	Employment		Personal Income	
Year	Dec. 2012	Sep. 2013	Dec. 2012	Sep. 2013
2010	-0.2%	-0.2%	3.5%	2.7%
2011	1.1%	1.1%	5.0%	5.6%
2012	1.2%	1.2%	4.1%	3.5%
2013E	0.9%	1.2%	2.8%	2.1%
2014E	1.5%	1.5%	4.9%	4.3%
2015E	1.8%	1.8%	5.2%	4.3%
2016E	1.8%	1.8%	5.2%	4.6%

Note: The figures for 2012 under the Dec. 2012 columns are estimates.
Source: Board of Revenue Estimates

Revenue Outlook

Fiscal 2013 general fund revenues were below the estimate by $71.2 million. General fund revenues (including revenues transferred to the Budget Restoration Fund) totaled $14.9 billion in fiscal 2013, an increase of 4.4% over fiscal 2012. The share of the corporate income tax going to the Transportation Trust Fund (TTF) was lowered from 24% in fiscal 2012 (excluding the first 15.15%) to 9.5% in fiscal 2013. Adjusted for this distribution change, baseline general fund growth in fiscal 2013 was 3.5%.

The biggest source of underattainment was the corporate income tax. General fund corporate income tax revenues were under the estimate by almost $55 million and grew 26.6% (baseline growth of 8.5%). Personal income tax revenues were right on target; but the largest component, withholding, was well below the estimate, growing 2.5% rather than the forecasted 4.0%. However, non-withholding payments were above the estimate, and refunds were well below expectations. Lottery revenues met the estimate, but general fund revenues fell in

fiscal 2013 by almost 2.0%. Weak wage growth along with competition from the casinos resulted in a decline in net lottery sales of 2.2% in fiscal 2013, the first drop in 15 years.

Fiscal 2014 general fund revenue collections through September are up 3.2% from last year. Corporate income tax revenues are down 22.5%, partly reflecting the share of collections going to the TTF increasing to 19.5%. Baseline corporate income tax revenues are down 14.1%. Personal income tax revenues are up 7.5% in the first quarter of fiscal 2014 as non-withholding payments continue to grow strongly, while refunds continue to be below year-ago levels. Withholding payments grew 3.3% in the first three months of fiscal 2014, a slight acceleration from the 2.5% growth in fiscal 2013. The lottery continues to struggle with net sales down 1.7% in the first quarter and general fund revenues down 0.9%.

In September, BRE lowered its estimate for fiscal 2014 general fund revenues by $61.9 million in line with the underattainment in fiscal 2013 (**Exhibit 2**). The personal income tax estimate was revised up by $114.0 million. The withholding estimate was revised down substantially, but non-withholding payments were revised up based on attainment in fiscal 2013 and new projections for capital gains income, while the refund estimate was revised down. The corporate income tax, sales tax, and lottery revenues were all revised down due to their weak performance in fiscal 2013. General fund revenues are projected to grow 3.0% in fiscal 2014 and 3.5% in fiscal 2015. Lottery revenues are projected to decline by 5.2% in fiscal 2015 due to continuing competition from the casinos as the Baltimore City casino opens, an increase in lottery agent commissions when that facility opens, and a new distribution of $20.0 million to the Stadium Authority required by the Baltimore City Public Schools Construction and Revitalization Act of 2013 (Chapter 647).

Exhibit 2

Maryland General Fund Revenue Forecast

($ in Millions)

	Fiscal 2014				Fiscal 2015	
	BRE Mar. 2013	**BRE Sep. 2013**	**$ Diff.**	**% Change 2014/2013**	**BRE Sep. 2013**	**% Change 2015/2014**
Personal Income Tax	$7,959	$8,073	$114	5.0%	$8,447	4.6%
Sales and Use Tax	4,224	4,193	-31	3.1%	4,353	3.8%
Corporate Income Tax	823	756	-67	-7.7%	825	9.2%
Lottery	528	508	-20	-3.4%	482	-5.2%
Other	1,861	1,803	-58	1.2%	1,756	-2.6%
Total	**$15,394**	**$15,332**	**-$62**	**3.0%**	**$15,862**	**3.5%**

Source: Board of Revenue Estimates (BRE)

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Operating Budget

Budget Outlook

In the 2013 legislative session, the General Assembly approved a budget that was structurally balanced by fiscal 2017. Since the budget was adopted, the fiscal position has worsened slightly. Deficiencies, such as a Medicaid provider rate increase for managed care organizations and a court decision to require public defenders at initial bail hearings before District Court commissioners, have added to State costs. Revenue forecasts have also been revised downward, primarily due to slowing corporate income and sales taxes. Slowing revenues and increased costs carry forward so that there is a structural gap exceeding $200 million in the out-years.

Background

Fiscal 2013 closed with a general fund balance of $501.9 million. General fund revenues totaled $14.9 billion, an increase of 4.4% over fiscal 2012. Although revenues increased, they did not increase as much as anticipated. As seen in **Exhibit 1**, an underattainment (-$54.7 million) in the corporate income tax accounted for a large share of the shortfall. This was largely due to lower than expected final payments, most likely reflecting carryover of net operating losses from the recession. The sales and use tax also finished slightly lower, as consumer prices continued to rise while wage and employment levels continued to stagnate. Other decreases were seen in taxes on insurance companies and miscellaneous revenues.

Exhibit 1

Fiscal 2013 Estimated vs. Actual General Fund Revenue Performance

($ in Millions)

	Fiscal 2013 Estimated	Fiscal 2013 Actual	Change
Personal Income Tax	$7,686.1	$7,691.4	$5.3
Corporate Income Tax	872.9	818.2	-54.7
State Lottery	526.2	526.0	-0.2
Sales and Use Tax	4,074.5	4,067.8	-6.7
Other	1,796.5	1,781.6	-14.8
Total	**$14,956.2**	**$14,885.0**	**-$71.2**

Source: Department of Legislative Services

Fiscal 2014 Activity

Exhibit 2 shows that fiscal 2014 is projected to end with a general fund balance of -$87.6 million, which is $381.5 million lower than expected when the budget was enacted at the 2013 session. This lower balance is largely the result of estimated deficiencies totaling $264.0 million to address shortfalls for Medicaid, foster care, public defender representation, student assessment costs, public safety operational costs, and smaller shortfalls across various agencies. General fund revenues are also lower by $133.1 million, as fiscal 2013 closed with $71.2 million less in revenue, and in September 2013, the Board of Revenue Estimates revised its fiscal 2014 projection downward by $61.9 million.

Exhibit 2
Evolution of the Fiscal 2014 General Fund Balance
($ in Millions)

		Fiscal 2014
Estimated Closing Balance (July 2013)		**$293.9**
Revenue		
Fiscal 2013 Closeout	-$71.2	
September 2013 BRE Revenue Revision	-61.9	
Transfers		
Net Change in Tax Credit, Budget Restoration Fund, and Other Transfers	1.4	
Spending		
Fiscal 2013 Closeout Reversions	14.0	
DLS Estimated Fiscal 2014 Deficiencies	-264.0	
Revised Closing Balance (October 2013)		**-$87.6**

BRE: Board of Revenue Estimates
DLS: Department of Legislative Services

Source: Department of Legislative Services

Fiscal 2015 to 2019 Forecast

Exhibit 3 provides the Department of Legislative Services general fund forecast through fiscal 2019. Relative to the forecast prepared following the 2013 session, the fiscal outlook has worsened in the short term. Revenues were revised downward, and spending is slightly higher than anticipated. Two of the main drivers of additional spending include a provider rate increase for Medicaid Managed Care Organizations and a Court of Appeals decision to require public defender representation by counsel at initial bail hearings before District Court commissioners. Spending growth is offset by the assumption of bond premiums in fiscal 2014 and 2015.

The fiscal picture is projected to improve over the fiscal 2016 to 2019 timeframe. Ongoing revenues are expected to grow by an average of 4.4% per year, compared to 4.1% annual average growth in ongoing spending. Spending growth is tempered by the continued phase-in of video lottery terminals, which support K-12 education funding. Based on these assumptions, the ongoing structural deficit decreases from approximately $400 million in fiscal 2015 to around $250 million per year on average in fiscal 2017 and beyond.

The forecast does not currently reflect the effects of the October 2013 federal government shutdown on fiscal 2014 general fund revenue, and continued reductions in federal spending due to annual sequestration targets may have larger impacts on State revenues than expected. Accounting adjustments between the State and local share of income tax distributions may also have a negative impact on the forecast, though any such adjustments are not known at this time. Finally, one of the main drivers of growth in the general fund budget continues to be debt service. The Administration has again requested an increase in general obligation debt authorization levels. While additional debt fits within the context of capital debt affordability limitations, it ultimately requires significantly higher annual debt service payments. Since property tax revenue is not expected to keep pace with debt service growth, additional general funds will be needed in the out-years.

Exhibit 3
General Fund Projections
Fiscal 2014-2019
($ in Millions)

	Working 2014	Baseline 2015	Estimate 2016	Estimate 2017	Estimate 2018	Estimate 2019	Avg. Annual Change 2015-19
Revenues							
Opening Fund Balance	$502	$0	$0	$0	$0	$0	
Transfers	14	211	24	29	28	34	
One-time Revenues/Legislation	0	0	0	0	0	0	
Subtotal One-time Revenue	***$516***	***$211***	***$24***	***$29***	***$28***	***$34***	***-36.6%***
Ongoing Revenues	$15,336	$15,888	$16,616	$17,389	$18,182	$18,883	
Subtotal Ongoing Revenue	***$15,336***	***$15,888***	***$16,616***	***$17,389***	***$18,182***	***$18,883***	***4.4%***
Total Revenues and Fund Balance	**$15,852**	**$16,099**	**$16,640**	**$17,418**	**$17,210**	**$18,917**	**4.1%**
Ongoing Spending							
Operating Spending	$16,184	$16,841	$17,648	$18,309	$19,100	$19,873	
Education Trust Fund*	-350	-550	-607	-676	-705	-734	
Multiyear Commitments	10	0	0	0	0	0	
Subtotal Ongoing Spending	***$15,844***	***$16,291***	***$17,041***	***$17,633***	***$18,395***	***$19,139***	***4.1%***
One-time Spending							
PAYGO Capital	$40	$1	$1	$1	$1	$1	
Appropriation to Reserve Fund	55	228	50	50	50	50	
Subtotal One-time Spending	***$95***	***$230***	***$51***	***$51***	***$51***	***$51***	***-31.3%***
Total Spending	**$15,939**	**$16,520**	**$17,092**	**$17,684**	**$18,446**	**$19,190**	**3.8%**
Ending Balance	**-$87**	**-$421**	**-$452**	**-$267**	**-$236**	**-$273**	
Rainy Day Fund Balance	$765	$793	$832	$870	$910	$945	
Balance Over 5% of General Fund Revenues	-2	0	1	1	1	1	
As % of General Fund Revenues	4.99%	5.00%	5.01%	5.00%	5.01%	5.01%	
Structural Balance	**-$508**	**-$402**	**-$425**	**-$245**	**-$213**	**-$256**	

PAYGO: pay-as-you-go

*Includes revenues from video lottery terminals (VLT), table games, and savings from shifting responsibility for ownership or leasing of VLTs to facility operators.

Source: Department of Legislative Services

Conclusion

Since the 2013 session forecast, the State's fiscal picture has slightly worsened. This is due, in part, to unanticipated spending deficiencies, underperformance of the corporate income and sales taxes, and other spending pressures such as court ordered public defender representation at initial appearances. The effects of the federal government shutdown and continued sequestration represent a downside risk to general fund revenues in current and future years. Other risks to the forecast include the issuance of additional general obligation bonds and accounting requirements related to the local income tax. Without reflecting these risks, the forecast shows a structural imbalance in the range of $400 million. Revenue growth and gaming proceeds to the education trust fund grow faster than ongoing spending, yielding an ongoing shortfall of about $250 million per year.

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Operating Budget

Transportation Trust Fund Overview

The Transportation Trust Fund closed fiscal 2013 with a higher than expected fund balance due to capital spending being less than estimated. The Department of Legislative Services estimates that the fiscal 2014 to 2019 *Consolidated Transportation Program* could total approximately $13.9 billion, which is approximately $400 million less than the Maryland Department of Transportation's estimate. The lower capital program is attributable to higher operating budget spending and lower revenue estimates.

Fiscal 2013 Closeout

The Transportation Trust Fund (TTF) ended fiscal 2013 with a fund balance of $218 million, $118 million higher than the $100 million projected. The higher fund balance is attributable to spending being $135 million less than projected and revenues coming in $17 million less than expected.

Capital budget expenditures were $122 million less than estimated due to cash flow changes in projects and the State Highway Administration spending federal funds before special funds. Minor changes in operating budget spending and debt service resulted in a net decrease of $13 million.

Tax and fee revenues were $5 million higher than expected. Motor fuel tax revenues were $8 million higher than expected, and titling tax revenues were $3 million higher than expected. Corporate income tax revenues were $7 million less than estimated. The major change in revenues occurred in other receipts and adjustments, which increased by $63 million. This is largely due to capital reimbursements coming in higher than expected. Due to the decline in capital spending, the department reduced the size of its bond sale by $85 million.

Fiscal 2014-2019 TTF Forecast

Exhibit 1 shows the fiscal 2014 to 2019 TTF forecast by the Department of Legislative Services (DLS). The forecast details the expected trends in revenue attainment, debt issuance, and expenditures. Compared to the Maryland Department of Transportation's (MDOT) forecast, DLS assumes slightly less revenue growth; higher operating budget spending for employee compensation, transit services, and winter maintenance; and slightly higher bond sales to try to maintain capital spending. As such, DLS projects a special fund capital program that is approximately $400 million less than MDOT's plan over the six-year period.

Exhibit 1
Transportation Trust Fund Forecast
Fiscal 2014-2019
($ in Millions)

	Est. 2014	Est. 2015	Est. 2016	Est. 2017	Est. 2018	Est. 2019	Total 2014-2019
Opening Fund Balance	**$218**	**$100**	**$100**	**$125**	**$125**	**$125**	
Closing Fund Balance	**$100**	**$100**	**$125**	**$125**	**$125**	**$150**	
Net Revenues							
Taxes and Fees	$2,182	$2,320	$2,651	$2,819	$2,888	$2,963	$15,823
Operating and Miscellaneous	497	518	530	564	573	568	$3,250
Net Revenues Subtotal	***$2,679***	***$2,838***	***$3,181***	***$3,383***	***$3,461***	***$3,531***	***$19,073***
Bonds Sold	490	760	580	450	725	470	$3,475
Total Revenues	**$3,169**	**$3,599**	**$3,761**	**$3,833**	**$4,186**	**$4,001**	**$22,549**
Expenditures							
Debt Service	$204	$257	$286	$320	$355	$370	$1,794
Operating Budget	1,668	1,861	1,935	2,014	2,093	2,178	$11,749
State Capital	1,413	1,526	1,581	1,586	1,837	1,529	$9,472
Total Expenditures	**$3,285**	**$3,646**	**$3,803**	**$3,919**	**$4,286**	**$4,077**	**$23,015**
Debt							
Debt Outstanding	$1,759	$2,372	$2,794	$3,061	$3,589	$3,868	
Debt Coverage – Net Income	3.2	3.5	3.0	3.4	3.1	2.8	
Local Highway User Revenue	**$166**	**$171**	**$175**	**$177**	**$179**	**$181**	**$1,049**
Capital Summary							
State Capital	$1,413	$1,526	$1,581	$1,586	$1,837	$1,529	$9,472
Net Federal Capital (Cash Flow)	849	741	744	637	658	798	$4,427
Subtotal Capital Expenditures	***$2,262***	***$2,267***	***$2,325***	***$2,223***	***$2,495***	***$2,327***	***$13,899***
GARVEE Debt Service	87	87	87	87	87	87	$525

GARVEE: Grant Anticipation Revenue Vehicle

Revenues

Over the six-year period, DLS estimates that gross tax and fee revenue will total $15.8 billion with an annual average growth rate of 6.3%. This higher level of revenue growth reflects the various motor fuel excise tax and wholesale sales tax equivalent rate increases that

are to occur in the coming years. Motor fuel tax revenues are estimated to be $102 million higher over the six-year period due to higher fuel price estimates and the amount of gallons sold as compared to MDOT's forecast. DLS estimates that titling tax revenues will have an average growth rate of 2.8% over the six-year period. Due to less robust growth than estimated by MDOT, DLS assumes $249 million less in titling tax revenue over the six-year period. Miscellaneous Motor Vehicle Administration (MVA) fees are $90 million less than MDOT's estimate because current law prohibits revenues from exceeding 100.0% of eligible MVA expenditures (which MDOT did not assume in its estimate).

Operating and Debt Service Expenditures

Operating and debt service expenditures are the first draw on TTF revenues. Over the six-year period, operating and debt service expenditures are estimated to total $13.5 billion. Operating budget expenditures are expected to grow by 5.5% annually, which is more than the 3.9% estimated by MDOT. As a result, operating budget expenditures are $312 million higher than the MDOT estimate. As previously indicated, higher operating budget growth is due to estimates for the transit-related expenditures, winter maintenance, and employee compensation.

Debt Financing

Debt issued by MDOT supports the capital program. Debt issuances are limited by a total debt outstanding cap of $4.5 billion and two coverage tests that require the prior year's pledged taxes and net income to be at least two times greater than the maximum debt service in a given fiscal year. DLS assumes the net income coverage ratio will be 2.5 times through fiscal 2023, while MDOT assumes a net income coverage ratio of 2.5 times through fiscal 2020. Even with lower estimates of revenue and higher operating budget spending, DLS assumes a slightly higher level of debt issuances to support capital spending due to the additional revenue in the coming years. It should be noted that the total amount of debt to be issued over the six years is $3.48 billion, an increase of $1.65 billion over the prior six-year period.

Capital Expenditures

DLS estimates that the total special and federal fund capital budget will total $13.9 billion, approximately $400 million less than MDOT's estimate in the draft 2014-2019 *Consolidated Transportation Program*. As previously discussed, the smaller capital program is attributable to lower revenue estimates and higher estimates for operating expenses. It should be noted, however, that the $400 million is spread out over six years and represents less than 5% of the total special fund six-year capital program.

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Operating Budget

Federal Funds Outlook

In fiscal 2014, budgeted federal funds total $9.8 billion. The extent to which federal funding levels change over the next year is unclear. To date, none of the federal spending bills have been enacted. In fact, the government was partially shut down in October 2013 until the U.S. Congress enacted a Continuing Resolution (CR) to fund the federal government through January 15, 2014. This CR does not alter the provisions in the Budget Control Act, which is limiting federal spending.

State Fiscal 2014 Appropriations of Federal Funds

The fiscal 2014 federal fund legislative appropriation totals $9.8 billion. **Exhibit 1** shows the distribution of the federal funds by department/service area.

Exhibit 1
Federal Funds in Fiscal 2014 Legislative Appropriation
($ in Millions)

Department/Service Area	Fiscal 2014 Legislative Appropriation
Judicial and Legal Review	$7.4
Executive and Administrative Control	227.4
Budgetary and Personnel Administration	20.2
General Services	1.2
Transportation	1,010.5
Department of Natural Resources	31.8
Agriculture	5.5
Health and Mental Hygiene	5,127.4
Human Resources	1,801.6
Labor, Licensing, and Regulation	163.4
Public Safety and Correctional Services	25.8
Public Education	988.3
Housing and Community Development	270.5
Business and Economic Development	1.8
Environment	78.3
Juvenile Services	7.4
State Police	0.5
Public Debt	12.4
Total Federal Funds	**$9,781.4**

Source: *Fiscal Digest of the State of Maryland for the Fiscal Year 2014*

Federal Fiscal 2014 Budget

Congress failed to pass any of the 12 appropriation bills or a Continuing Resolution (CR) prior to the October 1, 2013 start of federal fiscal 2014. As a result, the federal government shut down for 16 days. On October 16, 2013, Congress passed – and on October 17, 2013, the President signed – a CR (House Resolution (H.R.) 2775) providing appropriations until January 15, 2014, at final fiscal 2013 post-sequestration levels. Although not part of the legislation, the House and Senate also agreed to create a conference committee to attempt to develop a broad budget agreement by December 13, 2013.

The Department of Legislative Services (DLS) examined a sample (appropriations of $10.0 million or more) of federal grants in the State fiscal 2014 budget totaling $9.0 billion. Of this, $7.4 billion (82.2%) did not expect to feel any effects of the shutdown, $858.0 million (9.6%) did not expect to be affected by a short shutdown, $662.0 million (7.4%) expected delays in the receipt of funds but no loss of funds, and $78.7 million (0.9%) expected limited impacts. The conclusion is that while the shutdown may be disruptive for many sectors of the economy, the effect on State spending was probably limited.

Short-term Program Extensions

H.R. 2775 also extended the authorizations for several programs that expired on September 30, 2013. These are:

- the Appalachian Regional Commission and associated grant programs;
- programs in the nutrition title of the federal fiscal 2008 farm bill including the Supplemental Nutrition Assistance Program; and
- Temporary Assistance for Needy Families (TANF) programs including the TANF block grant, healthy marriage promotion and responsible fatherhood grants, and the mandatory/matching portion of the Child Care Development Fund.

Budget Control Act of 2011 Sequester

H.R. 2775 does not alter any of the provisions of the Budget Control Act of 2011 (BCA) which imposes the sequester process on discretionary funding if appropriations exceed annual caps imposed in the legislation. Nondefense discretionary spending would not be subject to fiscal 2014 sequestration at the level of the current CR as these levels are below the cap imposed by the BCA. Defense discretionary spending would be reduced by approximately $21 billion from the CR levels if the sequester provisions are triggered. The House and Senate committees could potentially recommend spending levels for fiscal 2014 that are within the BCA caps or recommend amending the BCA to alter or eliminate the sequester. Recent events suggest that development of such agreements may be difficult to achieve. Previous estimates prepared by

DLS expected that federal fiscal 2013 spending in the Maryland budget would be reduced by $118 million through sequestration. Out-year federal grants are expected to grow but at a slower rate than was expected prior to sequestration.

Impact of Long-term Liabilities on the State Budget

The State's two significant long-term liabilities, debt service and pension cost, are increasing at a greater rate than the revenues that support them. Since pension costs are mandated, controlling debt service impact on the general fund is the key variable.

State Budget Includes Debt Service and Pension Payments That Are Long-term Liabilities

The State budget supports two substantial long-term liabilities: a large capital construction program and pension benefits for State employees and local teachers. State capital construction projects are supported by various bonds, including general obligation (GO), transportation, stadium authority, and bay restoration bonds. These bonds are long-term liabilities that require debt service payments for up to 15 years.

In recent years, the State has been expanding the GO bond program. The State's expansion began in 2001. From fiscal 2000 to 2015, GO bond authorizations increased from $460 million to $1,060 million. Debt service costs have increased from $459 million to $1,044 million. Total debt outstanding has increased from $3,349 million to $8,730 million.

GO bond debt service costs are supported by the Annuity Bond Fund (ABF). The fund's largest revenue sources include State property tax revenues and proceeds from bond sale premiums. Other revenue sources include interest and penalties on property taxes and repayments for local bonds. When the ABF has not generated sufficient revenues to fully support debt service, general funds have subsidized debt service payments. Until fiscal 2014, the fund was able to support debt service costs. The fiscal 2014 appropriation includes $83 million in general fund appropriations. This amount is expected to increase to $557 million by fiscal 2019. Over the period, debt service costs increase by 6.1% annually, while revenues increase by 0.5% annually.

The State also provides a defined benefit pension plan for State employees and local teachers. By offering these plans, the State is required to make annual payments that represent the normal cost (the cost of the annual increase in benefits earned by employees) and a share of the unfunded liability. These pension payments also are a long-term liability.

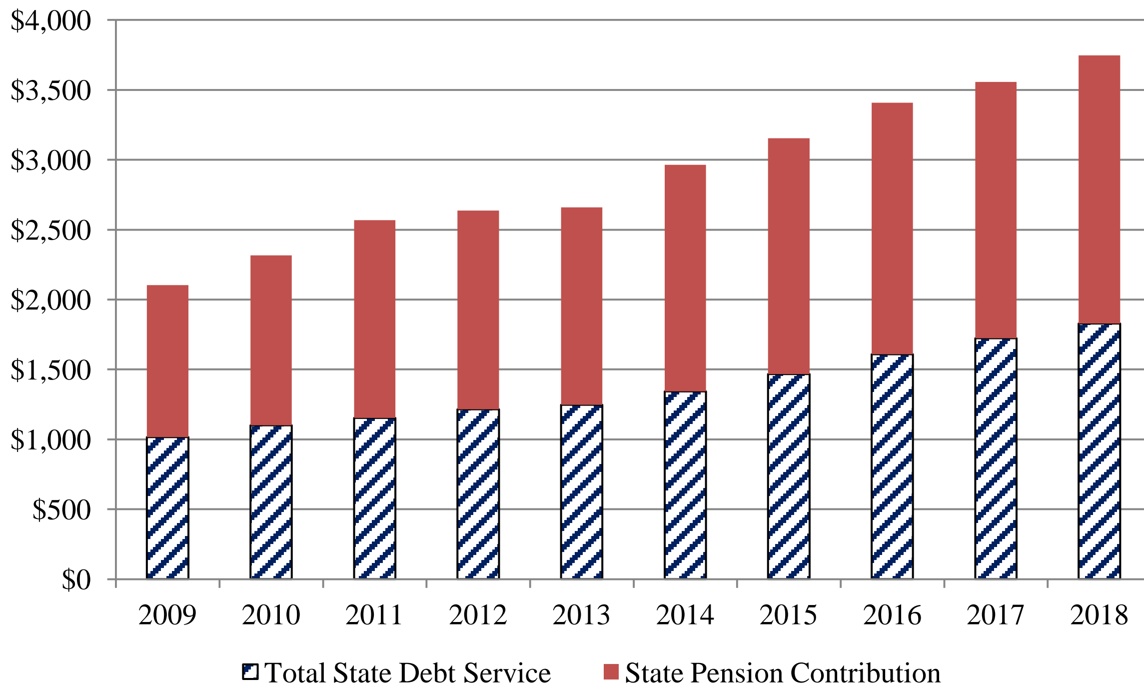
State pension costs have also increased in recent years. The primary reason for the increased costs are market losses suffered in fiscal 2008 and 2009, when the fund lost 5.4% and 20.0%, respectively. This reduced the funded ratio from 80.4% at the beginning of fiscal 2008 to 65.0% at the end of fiscal 2009. To reduce the unfunded liability, the State is now required to appropriate additional funds each year. The amount that the State appropriates each year is determined by the actuarial funding method. It is State policy for the Governor to propose and

the General Assembly to appropriate the amount certified by the State Retirement and Pension System board.

Debt and Pension Costs Are Expected to Continue Increasing

Exhibit 1 shows that total debt service and pension costs are expected to increase from $2.76 billion in fiscal 2013 to $3.75 billion in fiscal 2018. This is an annual increase of 7.2%.

Exhibit 1
Cumulative Debt Service and Pension Costs
Fiscal 2009-2018
($ in Millions)

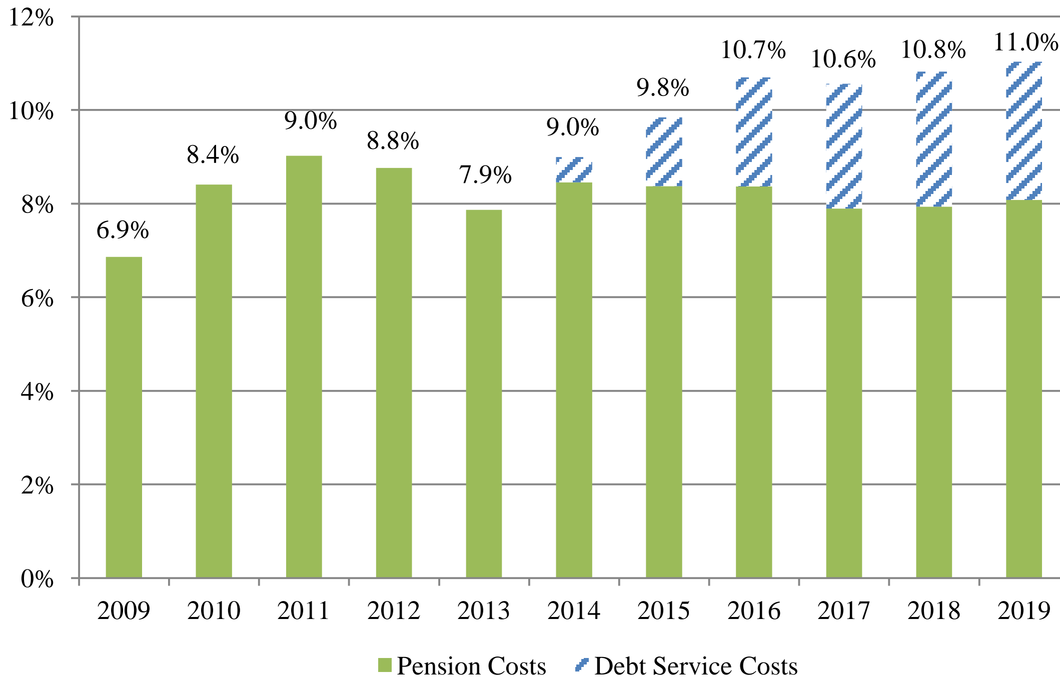


Note: Total State debt service includes transportation, bay restoration, capital leases, and stadium authority debt. State pension contribution excludes local teacher pension cost sharing.

Source: Gabriel Roeder Smith and Company, State Treasurer's Office, Department of Legislative Services, September 2013

Moreover, these costs require an increasing share of general fund revenues. **Exhibit 2** shows that costs increase from 7.9% in fiscal 2013 to 11.0% of general fund revenues in fiscal 2019.

Exhibit 2
General Fund Debt Service and Pension Costs
As a Percentage of General Fund Revenues
Fiscal 2009-2019



Source: Gabriel Roeder Smith and Company, State Treasurer's Office, Department of Legislative Services, September 2013

Conclusion

Bond and pension liabilities are long-term financial commitments that are placing an increasing burden on the State budget, particularly the general fund. Since pension liabilities are mandated, the only levers available to provide relief from this ongoing fiscal squeeze is through moderation of the burden of debt service or reduction to the funding of pensions. Debt service reduction can be accomplished through CDAC or the Spending Affordability Committee by constraining, rather than increasing, the level of debt to be incurred, or through the Board of Public Works by increasing the property tax. Pension cost reductions would require legislation to reduce required contributions, perhaps to the amounts required to meet the actuarially required funding with the effect of extending the time required to achieve the 80% funding level.

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Capital Budget

Debt Affordability

The Capital Debt Affordability Committee recommended a general obligation bond debt limit totaling $1.16 billion for fiscal 2015. This is $75 million more than was recommended for fiscal 2015. This level of capital spending keeps debt service payments below 8% of revenues. The Treasurer's Office estimates that total tax-supported debt service will be $1.5 billion in fiscal 2015. General obligation bond debt service is projected to total $1.0 billion in fiscal 2015. Total State debt outstanding is projected to be $12.4 billion at the end of fiscal 2015, of which $8.7 billion is general obligation bond debt.

Capital Debt Affordability Process

State law requires the Capital Debt Affordability Committee (CDAC) to review the size and condition of all tax-supported debt to ensure that the State's tax-supported debt burden remains affordable. The committee is composed of the Treasurer, the Comptroller, the Secretary of the Maryland Department of Transportation (MDOT), the Secretary of the Department of Budget and Management (DBM), and a public member. Chapter 445 of 2005 added, as nonvoting members, the chairs of the Capital Budget Subcommittees for the Senate Budget and Taxation Committee and the House Appropriations Committee.

Tax-supported debt consists of general obligation (GO) debt, transportation debt, Grant Anticipation Revenue Vehicles (GARVEE), bay restoration bonds, capital leases, Stadium Authority debt, and bond or revenue anticipation notes. The committee makes annual, nonbinding recommendations to the Governor and the General Assembly on the appropriate level of new GO and academic revenue debt for each fiscal year. The committee does not make individual recommendations on the levels of capital leases, transportation debt, bay restoration bonds, or Stadium Authority debt but does incorporate the anticipated levels of these types of debt in its analysis of total debt affordability.

Affordability Criteria and Ratios

CDAC began evaluating State debt in 1979. In consultation with rating agencies, investment bankers, and its financial advisor, CDAC has adopted policies to limit State debt outstanding to 4% of personal income and State debt service to 8% of State revenues. **Exhibit 1** shows CDAC's State debt affordability analysis. The analysis assumes similar estimates for GO bonds, transportation debt, GARVEEs, bay restoration bonds, and Stadium Authority debt issuances.

Exhibit 1
Affordability Ratios
Fiscal 2014-2023

Fiscal Year	Projected Debt Outstanding As a Percent of Personal Income	Projected Debt Service As a Percent of Revenues
2014	3.53%	6.79%
2015	3.66%	7.07%
2016	3.72%	7.38%
2017	3.69%	7.55%
2018	3.73%	7.70%
2019	3.69%	7.67%
2020	3.68%	7.63%
2021	3.63%	7.65%
2022	3.55%	7.73%
2023	2.46%	7.85%

Source: State Treasurer's Office, September 2013

Increasing New Debt Authorizations

On September 25, 2013, the committee recommended that fiscal 2015 GO debt authorizations be limited to $1.16 billion. This is an increase of $75 million over the planned fiscal 2015 authorization. This increase was proposed by DBM. The department asserted that it is affordable based on State criteria. The department also proposed to increase fiscal 2016 to 2019 authorizations by $75 million annually, resulting in $375 million in additional authorizations over the five-year period. DBM noted that the Transportation Infrastructure Investment Act of 2013 requires $395 million in general fund or GO bond spending. DBM also noted that $1.0 million in construction spending supports eight jobs. Total GO debt is projected to be $8.73 billion at the end of fiscal 2015. GO bond debt service payments are projected to total $1.045 billion in fiscal 2015.

Transportation bonds are limited obligation instruments, the proceeds of which fund highway and other transportation-related projects. Debt service on these bonds is funded from the Transportation Trust Fund (TTF), which is supported by motor vehicle fuel taxes, titling and registration fees, a portion of the corporate income tax, and other MDOT revenues. The Transportation Infrastructure Investment Act of 2013 provided additional transportation revenues for the TTF. The Act also increased the gross outstanding aggregate principal amount of Consolidated Transportation Bonds limit to $4.5 billion. CDAC projects that total outstanding transportation debt is projected to reach $2.6 billion in fiscal 2015. Transportation bond debt service is projected to be $253 million in fiscal 2015. The department also issued GARVEE bonds in fiscal 2008 and 2009. Chapters 471 and 472 of 2005 limit the total amount of GARVEEs that may be issued at $750 million. The State pledges anticipated federal revenues to

support the GARVEE debt service, and statute specifies that the bonds are considered tax-supported debt. GARVEE debt outstanding is projected to be $349 million at the end of fiscal 2015. GARVEE debt service costs are estimated to be $87 million.

The Bay Restoration Fund was created by Chapter 428 of 2004 to provide grants for enhanced nutrient removal pollution reduction upgrades at the State's major wastewater treatment plants. The fund has several revenue sources and expends funds for both operating and capital program purposes. In fiscal 2008, the first $50 million in bay bonds was issued. The Maryland Department of the Environment indicates that the estimated issuance stream is $90 million, $140 million, $140 million, $80 million, and $30 million in fiscal 2014 through 2018, respectively. The department estimates that $260 million in bonds will be outstanding at the end of fiscal 2015. Debt service costs are projected to be $9 million in fiscal 2015.

Capital leases for real property and equipment are also considered State debt if the revenues supporting the debt are State tax revenues. Examples of capital leases include the St. Mary's County Multi-service Center, the MDOT Headquarters Office Building, and the Prince George's County Justice Center. Debt outstanding for leases is expected to be $263 million at the end of fiscal 2015. Capital lease payments are estimated to be $40 million in fiscal 2015.

The final category of State debt is Stadium Authority debt. Stadium Authority debt is also limited obligation debt and represents bonds sold for the construction of the Camden Yards baseball and football stadiums, the Baltimore and Ocean City convention centers, the Hippodrome Theater, and the Montgomery County Conference Center. The facilities' debt service is supported by lottery revenues and other general fund sources. Stadium Authority debt outstanding is expected to be $145 million at the end of fiscal 2015. Debt service payments are projected to be $31 million in fiscal 2015.

The University System of Maryland (USM), Morgan State University, and St. Mary's College of Maryland have the authority to issue debt for academic facilities, as well as auxiliary facilities. Unlike the other authorizations, Academic Revenue Bonds are not considered to be State debt; instead, they are a debt of the institutions. Proceeds from academic debt issues are used for facilities that have an education-related function, such as classrooms. Debt service for these bonds is paid with tuition and fee revenues. For fiscal 2015, CDAC recommends $32 million for academic facilities on USM campuses. This is the same level that was recommended in fiscal 2014.

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Capital Budget

Capital Budget Outlook

In September 2013, the Capital Debt Affordability Committee recommended to increase the proposed general obligation (GO) bond authorization by $75 million annually for five years, beginning in fiscal 2015. The increase is designated to assist the State Highway Administration with infrastructure improvements required under the Watershed Implementation Plan.

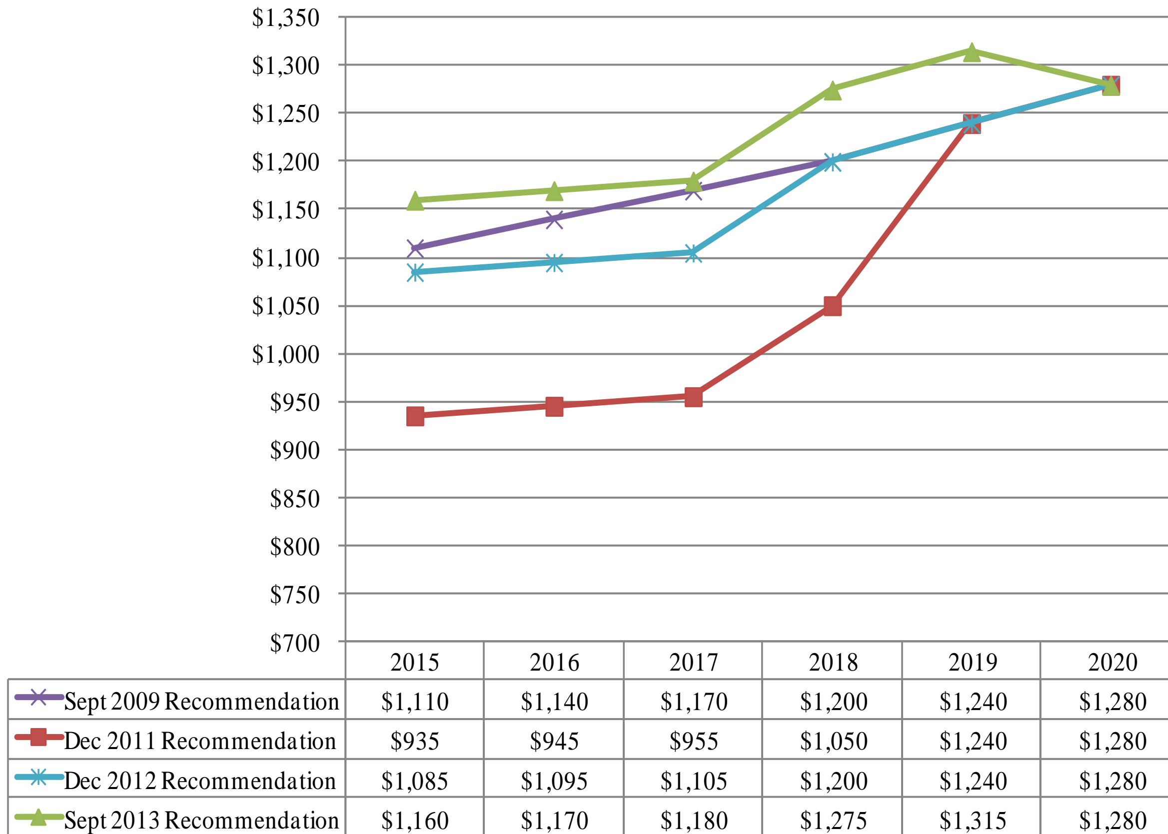
The Capital Debt Affordability Committee (CDAC) voted to increase the amount of new general obligation (GO) bond authorizations through the five-year capital planning period. CDAC's recommendation increases annual new GO bond authorizations by $75 million for the 2014 through 2018 sessions, for a total increase of $375 million. The increase is principally intended to cover additional GO authorizations required in the Transportation Infrastructure Act of 2013 (Chapter 429 of 2013). The Act mandates $395 million in capital spending over the next five years to assist the State Highway Administration's (SHA) compliance with the Watershed Implementation Plan (WIP) as part of the State's bay cleanup process. Although the increase is affordable under the State's debt affordability criteria, which limits State tax-supported debt outstanding to no more than 4% of State personal income and debt service to no more than 8% of revenues, it comes just one year after the State increased GO bond authorizations by $750 million over the 2013 through 2017 sessions.

The most recent and proposed authorization increases are intended to assist the State with funding projects already programmed in the five-year *Capital Improvement Program* (CIP) while also accommodating funding for the WIP. However, much of last year's and all of this year's increase is earmarked as a source of GO bond replacement for transfers to the general fund and use by SHA for WIP expenditures, both of which divert GO bonds away from other more traditional GO bond funded capital infrastructure investments, such as schools and prisons. Furthermore, the increase will further stress the State's ability to fund GO bond debt service, which is increasing at a higher rate than State property tax revenues supporting debt service. Current projections require general fund subsidies to support debt service.

Recent Increased Levels of GO Bond Authorizations

Exhibit 1 illustrates recent CDAC recommended GO bond authorization levels. The 2012 recommendation, adopted by the Spending Affordability Committee and used to establish the current five-year CIP, essentially restored $750 million of the $890 million taken out of CDAC's 2010 and 2011 forecast due to the impact that the recession had on the State's debt

Exhibit 1
Effect of New Policy on General Obligation Bond Authorizations
Fiscal 2015-2020
($ in Millions)



	2015	2016	2017	2018	2019	2020
Sept 2009 Recommendation	$1,110	$1,140	$1,170	$1,200	$1,240	$1,280
Dec 2011 Recommendation	$935	$945	$955	$1,050	$1,240	$1,280
Dec 2012 Recommendation	$1,085	$1,095	$1,105	$1,200	$1,240	$1,280
Sept 2013 Recommendation	$1,160	$1,170	$1,180	$1,275	$1,315	$1,280

Source: *Report of the Capital Debt Affordability Committee on Recommended Debt Authorizations*, 2009 through 2013.

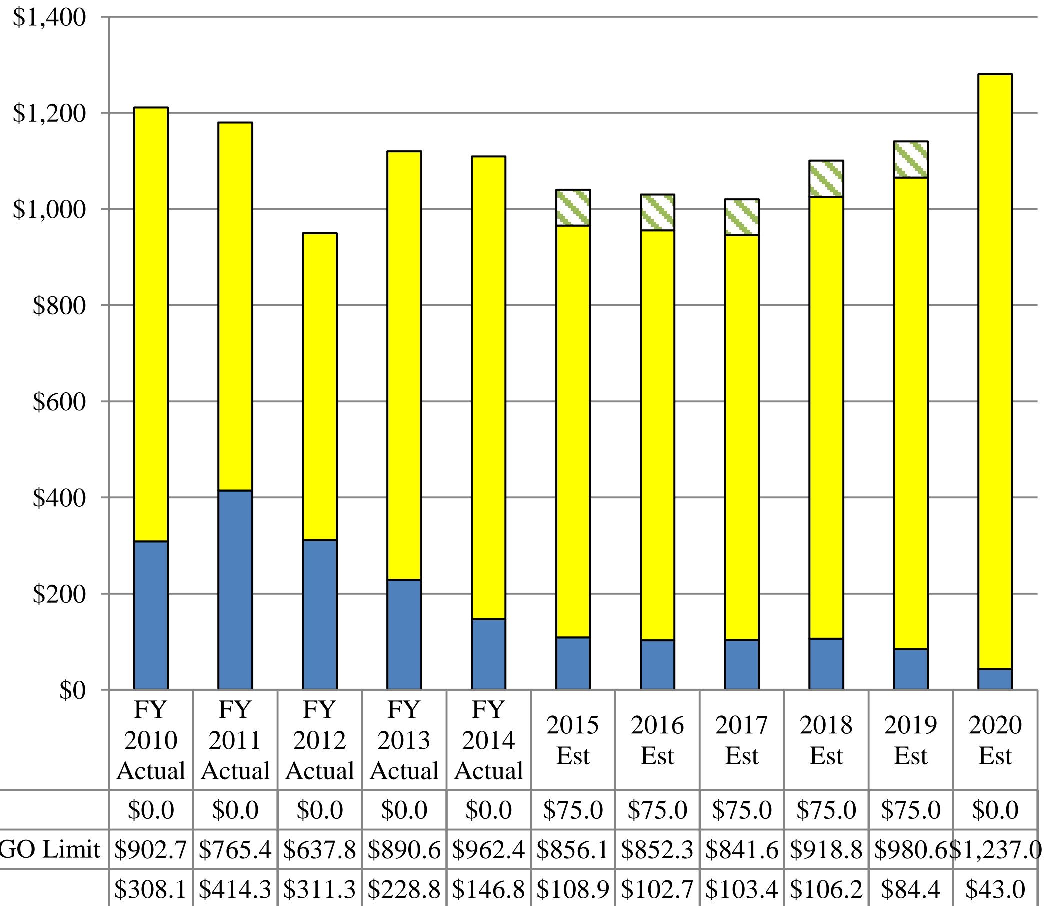
affordability ratios. While the 2012 increase was predicated upon using the additional authorizations to expand the capital program to pre-recession levels, a large portion of the funding was not programmed for capital program expansion but rather used as a source of replacement funding for transfer tax revenues diverted to the general fund in the Budget Reconciliation and Financing Act (BRFA) of 2013. The current proposed increase would expand the capital program for the $395 million in capital spending mandated over the next five years to assist SHA with WIP compliance, thereby avoiding the need to delay or defer projects already programmed in the CIP.

Use of GO Bonds as a Source of Replacement Funds for Transfers and State Highway Administration WIP Expenses

Although $750 million of increased GO bond authorizations that was proposed prior to the 2013 session was presented as a means to support capital projects deferred as a result of the pre-2010 session write-down, a significant portion was instead programmed in the five-year CIP as a source of replacement funding for a multi-year transfer plan of the transfer tax included in the BRFA of 2013. This multi-year transfer and GO bond replacement plan includes the pre-authorization of $405 million of GO bond funds in aggregate through fiscal 2020, representing utilization of 54% of the additional funds for something other than expansion of the capital program. Similarly, the current proposed $375 million increase over the next five fiscal years would add to capital program capital spending that SHA would have had to undertake as part of the Administration's compliance requirements under the WIP. The shifting of this cost burden was an integral part of the Transportation Infrastructure Act of 2013.

Exhibit 2 shows the degree to which GO bonds have been used as a budget balancing instrument. For fiscal 2010 through 2014, approximately $1.409 billion, representing 25% of the total GO bond authorizations, have been allocated to replace the transfer of special funds such as the transfer tax and Bay Restoration funds to the general fund. Moreover, because the GO bond replacement of prior transfers is scheduled over multiple fiscal years, another $944 million of GO authorizations are proposed to be used as a source of bond replacement. Consequently, while the additional authorizations approved last year and under consideration this year will assist the State with budget priorities apart from the traditional capital program, specifically a source for bond replacement for funds transfers and other relief for the operating budget and a source of alternative financing for transportation related capital program expenses, much of it will clearly not be used to expand the capital program.

Exhibit 2
Use of GO Bonds for Operating Budget Relief
Fiscal 2010-2014 Actual and Fiscal 2015-2020 Estimated
($ in Millions)



	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	2015 Est	2016 Est	2017 Est	2018 Est	2019 Est	2020 Est
Additional Authorizations	$0.0	$0.0	$0.0	$0.0	$0.0	$75.0	$75.0	$75.0	$75.0	$75.0	$0.0
Program Funding Current GO Limit	$902.7	$765.4	$637.8	$890.6	$962.4	$856.1	$852.3	$841.6	$918.8	$980.6	$1,237.0
Operating Relief	$308.1	$414.3	$311.3	$228.8	$146.8	$108.9	$102.7	$103.4	$106.2	$84.4	$43.0

GO: general obligation
MDOT: Maryland Department of Transportation
WIP: Watershed Implementation Plan

Source: Department of Legislative Services

Status of Baltimore City School Renovation and Public-private Partnerships

In 2013, legislation expanding the capital program through innovative financing was enacted. The State authorized the Maryland Stadium Authority to issue bonds to support new construction and renovation at the Baltimore City school system. The bonds are not a State debt. Legislation establishing policies on public-private partnerships (P3) was also enacted. The first P3 project, the Purple Line transit project in Montgomery and Prince George's counties, has been proposed, and the presolicitation report has been submitted.

Baltimore City School Renovation Financing

The Baltimore City Public School Construction and Revitalization Act (Chapter 647 of 2013) established a new partnership between the State, Baltimore City, and Baltimore City Public Schools (BCPS) to fund up to $1.1 billion in public school facility improvements through revenue bonds issued by the Maryland Stadium Authority (MSA).

Purpose

The partnership was formed to address the poor condition of BCPS schools cited in a 2012 report released by Jacobs Project Management. According to the Jacobs report, the total cost of building deficiencies was $2.4 billion over 10 years, of which $1.4 billion represents current facility deficiencies, and $1.0 billion represents 10-year life cycle deficiencies. In response to the Jacobs report findings, BCPS developed a 10-year plan, with Phase I of the plan intended to address the bulk of the $1.4 billion current needs. Based on MSA projections of the estimated cost of construction and renovation and bond sale proceeds, a total of 30 to 35 new and renovated schools will be constructed under Phase I of the plan.

Financing

Chapter 674 created a unique financing mechanism for public school improvements. With respect to the partnership created with Baltimore City, MSA will use annual revenue contributions of $20.0 million each from the State, Baltimore City, and BCPS to issue revenue bonds in support of the project. Based on preliminary market projections performed by MSA, $60.0 million annually can support up to $1.1 billion in bonds. The revenue sources are outlined in more detail below and include:

- all revenue generated by the Baltimore City beverage container tax subject to minimum guarantee and comptroller revenue intercept;

- all of Baltimore City's proceeds from table games at the video lottery facility located in Baltimore City that are dedicated to school construction and 10% of the participation rent paid by the video lottery facility operator in Baltimore City subject to minimum guarantee and comptroller revenue intercept;

- $10.0 million in State education aid due to BCPS from recurring retiree health care costs shifted from Baltimore City to BCPS, beginning July 1, 2013;

- $10.0 million diverted from State education aid to BPCS in fiscal 2016 and $20.0 million annually thereafter; and

- $20.0 million in annual proceeds from the lottery, beginning July 1, 2014.

MSA anticipates that the first series of bonds will be sold in summer/fall 2015, with all projects completed by summer 2020.

MSA Bonds Are Not Debt of the State

A key component of the entire plan is that any debt issued by MSA to finance construction or improvements of BCPS facilities is not considered a debt of the State. As a result, MSA debt will not be counted in the annual calculation of State-supported debt. Underpinning this determination is the treatment of the lottery revenues, which entails MSA entering into an agreement with the Comptroller whereby the Comptroller agrees to deposit the $20 million of lottery proceeds with a trustee that would otherwise remit to the State. Essentially, the lottery proceeds are transferred by the Comptroller to MSA prior to the proceeds ever being reflected as State revenues. This process is considered arms length enough to keep the $20 million State contribution from being counted as debt service payments on MSA-issued bonds. Furthermore, the financing plan includes additional security on the revenues from the Baltimore City beverage container tax and gaming revenues such that if the revenues deposited into the MSA Financing Fund established under Chapter 647 are not sufficient, the Comptroller must withhold local income tax revenue from Baltimore City in the amount necessary to cover the difference. The State does not pledge any security nor offer its full faith and credit.

Public-private Partnerships Overview

The Public-private Partnership Act (Chapter 5 of 2013) establishes a State policy on the use of public-private partnerships (P3) in Maryland and excludes P3s from most provisions of State procurement law. To ensure adequate State oversight, this legislation also establishes a notification and review process – including legislative review at multiple stages – that must be followed before the Board of Public Works (BPW) may approve a P3 agreement. This process involves the following steps:

- An agency wishing to procure a project using a P3 submits a presolicitation report explaining and justifying the decision to procure a project using a P3 to the budget committees, the Comptroller, the State Treasurer, and the Department of Legislative Services (DLS) for review and comment.

- After the review and comment period, the reporting agency obtains an official designation from BPW that the project will be procured as a P3.

- The reporting agency follows a process it has established by regulation to select a P3 partner and negotiate an agreement for project delivery.

- The reporting agency submits the P3 agreement simultaneously to the budget committees, the Comptroller, the State Treasurer, and DLS for review and comment.

  - The Treasurer is required, in coordination with the Comptroller, to analyze the impact on the State's capital debt affordability limits of the proposed P3 agreement and to submit that analysis to the budget committees and to DLS.

  - The review period is limited to 30 days from the date the agreement is submitted.

- Following the 30-day review and comment period, BPW approves or disapproves the P3 agreement.

P3s are subject to provisions of procurement law related to collusion, falsification of material facts, policies and procedures for exempt units, nondiscrimination, security on construction contracts, retainage, and prevailing and living wage requirements. They are also subject to the State's Minority Business Enterprise program for three years (through June 30, 2016).

Executive Order on Public-private Partnerships

In August 2013, Executive Order 01.01.2013.03 relating to P3 oversight was issued. It established a Maryland Subcabinet for P3s to coordinate efforts related to and supportive of the use of P3s in Maryland. Membership of the subcabinet comprises representatives of the reporting agencies defined in the P3 legislation, along with representatives from the Office of the Lieutenant Governor, the Secretary of the Department of Budget and Management, the Governor's Office of Minority Affairs, and MSA. The executive order requires the subcabinet to issue reports:

- analyzing the State's two capital improvement plans to assist reporting agencies in determining which capital projects should be considered P3s;

- exploring the advantages and disadvantages of establishing a formal Office of Public-private Partnerships and/or Innovative Financing Office; and

- describing possible uses of availability payments and their applicability in Maryland.

The executive order also requires the subcabinet to maintain a website to provide information on State P3 policies, processes, projects, and best practices.

Status of P3 Efforts

The Maryland Department of Transportation (MDOT) is proposing to procure the Purple Line Light Rail Transit project as a P3. The proposed Purple Line is a 16-mile light rail transit line extending from Bethesda in Montgomery County to New Carrollton in Prince George's County with 21 stations – 10 in Montgomery County and 11 in Prince George's County.

MDOT has developed and promulgated the required regulations describing the procurement process that it will use for P3 projects. In September 2013, it submitted, as required by statute, a presolicitation report to the Comptroller, the State Treasurer, the budget committees, and DLS. The presolicitation report provides the justification for procuring the Purple Line as a P3. MDOT has asked BPW to officially designate the Purple Line as a P3. **Exhibit 1** shows the major solicitation steps with the anticipated date for each step.

Exhibit 1

Purple Line P3 Solicitation Process and Schedule

Solicitation Milestone	Date
Request for Qualifications Issued	Mid-fall 2013
Shortlist of Qualified Proposers Determined	Winter 2013
Draft Request for Proposals Issued to Shortlisted Proposers	Winter 2013
Final Request for Proposals Issued to Shortlisted Proposers	Spring 2014
Final Proposals Due	Fall 2014
Selected Proposer Announced and P3 Agreement Finalized	Winter 2014/2015
Final P3 Agreement Submitted to the Comptroller, State Treasurer, Budget Committees, and DLS for Review	Winter 2014/2015
Final P3 Agreement Submitted to BPW	Winter 2014/2015
Financial Close	Spring 2015

BPW: Board of Public Works
DLS: Department of Legislative Services
P3: Public-private Partnership

Source: Maryland Department of Transportation

Comparative Tax and Revenue Rankings

Based on data compiled by the U.S. Census Bureau, Maryland's overall revenue and spending levels in fiscal 2011 continued to be moderate compared to other states. Maryland still remains uniquely reliant on tax revenues, however, with a strong dependence on the income tax.

State and Local Government Revenues and Spending

As reflected in **Exhibit 1**, total State and local government revenues and spending in Maryland are not generally high compared to other states. When comparing all states and the District of Columbia using fiscal 2011 data, Maryland ranks twentieth and twenty-first, respectively, in total state and local government revenues and spending measured on a per-capita basis and forty-eighth and forty-ninth, respectively, in revenues and spending as a percentage of personal income of residents. However, Maryland relies more on tax revenues and less on nontax revenue sources than most states.

Exhibit 1
Maryland State and Local Government
Revenues and Spending
2010-2011

	Maryland Rank Percent of Total	Maryland Rank Percentage of Personal Income	Maryland Rank Revenue Per Capita
Total Revenues	n/a	48	20
Total Spending	n/a	49	21
Revenues			
Taxes	3	29	11
Intergovernmental from Federal Government	28	43	24
Charges and Utilities[1]	46	50	48
Miscellaneous[2]	35	49	33

[1]Charges include higher education tuition fees and auxiliary revenues, public hospital revenues, sewer and trash collection, highway tolls, and other user charges and fees. Utilities include gross receipts of publicly owned utilities (water, gas, electric, and transit).

[2]Miscellaneous revenues include interest earnings, net lottery revenues, liquor store revenues, rents, royalties, fines and forfeitures, special assessments, sale of property, and other.

Note: For the rankings, 1 indicates the highest and 51 the lowest.

Source: Annual Survey of State & Local Government Finance, U.S. Census Bureau; Population from the U.S. Census Bureau; Personal income data from the U.S. Bureau of Economic Analysis

State and Local Tax Revenues Compared to Neighboring States

Exhibits 2 and **3** compare Maryland's State and local tax revenues in fiscal 2011 to other states in the region. Maryland's reliance on the income tax is high (third on both a percentage of income basis and a per-capita basis) compared to other states, primarily reflecting the statewide local income tax. Maryland ranks twenty-ninth among all states in overall state and local tax revenues as a percentage of personal income and eleventh in overall tax revenues on a per-capita basis. Generally, Maryland ranks in the bottom half of all states with respect to property taxes and sales taxes measured on a percentage of income basis. Maryland ranks eighteenth in property taxes, twenty-second for corporate income taxes, and thirty-seventh on sales taxes measured on a per-capita basis. These comparisons only incorporate the impact of changes made to taxes in Maryland and other states through fiscal 2011.

Exhibit 2

Maryland State and Local Tax Revenues

2010-2011 Tax Revenue as a Percentage of Personal Income
Comparison to Selected States

	Property Tax	Personal Income Tax	Corporate Income Tax	Sales & Selective Taxes [1]	License Fees	Other Taxes [2]	All Taxes
Delaware							
Percent	1.8%	3.3%	0.9%	1.3%	3.2%	0.3%	10.8%
Rank	49	5	4	50	1	13	16
District of Columbia							
Percent	3.9%	2.9%	0.8%	3.1%	0.3%	0.8%	11.8%
Rank	12	11	5	39	44	6	7
Maryland							
Percent	**2.9%**	**3.6%**	**0.3%**	**2.5%**	**0.3%**	**0.3%**	**9.8%**
Rank	**33**	**3**	**29**	**44**	**42**	**14**	**29**
New Jersey							
Percent	5.5%	2.3%	0.5%	2.6%	0.4%	0.2%	11.5%
Rank	1	21	11	43	36	23	8
North Carolina							
Percent	2.5%	2.8%	0.3%	3.5%	0.5%	0.0%	9.7%
Rank	40	13	27	27	28	49	33
Pennsylvania							
Percent	3.1%	2.6%	0.4%	3.3%	0.6%	0.3%	10.3%
Rank	26	17	13	29	16	12	18
Virginia							
Percent	3.0%	2.6%	0.2%	2.2%	0.5%	0.2%	8.6%
Rank	30	18	34	45	29	25	46
West Virginia							
Percent	2.3%	2.7%	0.5%	4.2%	0.5%	1.0%	11.3%
Rank	41	15	10	12	23	4	12
United States Average	**3.4%**	**2.2%**	**0.4%**	**3.6%**	**0.5%**	**0.3%**	**10.3%**

[1]Includes the general sales tax along with selective taxes such as excise taxes on alcohol and tobacco products, motor fuel taxes, titling taxes, admissions and amusement taxes, insurance premiums taxes, public utility gross receipts taxes, and others.

[2]Includes death and gift taxes, documentary and stock transfer taxes, severance taxes, and other taxes.

Note: For the rankings, 1 indicates the highest. Rankings are out of 51 except for the personal income tax (out of 44) and the corporate income tax (out of 47).

Source: Annual Survey of State & Local Government Finance, U.S. Census Bureau; Population from the U.S. Census Bureau; Personal income data from the U.S. Bureau of Economic Analysis.

Exhibit 3
Maryland State and Local Tax Revenues
2010-2011 Tax Revenues Per Capita
Comparison to Selected States

	Property Tax	Personal Income Tax	Corporate Income Tax	Sales & Selective Taxes [1]	License Fees	Other Taxes [2]	All Taxes
Delaware							
Amount	$734	$1,354	$382	$557	$1,326	$132	$4,484
Rank	46	8	5	49	1	14	18
District of Columbia							
Amount	$2,839	$2,118	$617	$2,276	$226	$598	$8,673
Rank	2	2	2	3	21	4	2
Maryland							
Amount	**$1,443**	**$1,815**	**$133**	**$1,261**	**$165**	**$156**	**$4,972**
Rank	**18**	**3**	**22**	**37**	**36**	**12**	**11**
New Jersey							
Amount	$2,888	$1,202	$251	$1,366	$200	$110	$6,016
Rank	1	10	8	31	27	18	7
North Carolina							
Amount	$895	$1,023	$113	$1,272	$177	$13	$3,493
Rank	40	17	26	34	35	50	35
Pennsylvania							
Amount	$1,303	$1,093	$179	$1,409	$252	$140	$4,376
Rank	27	14	13	23	14	13	19
Virginia							
Amount	$1,370	$1,176	$99	$1,018	$218	$87	$3,967
Rank	22	11	30	45	23	25	26
West Virginia							
Amount	$770	$898	$166	$1,407	$180	$339	$3,760
Rank	45	24	16	24	32	5	28
United States Average	**$1,423**	**$914**	**$156**	**$1,479**	**$213**	**$111**	**$4,296**

[1] Includes the general sales tax along with selective taxes such as excise taxes on alcohol and tobacco products, motor fuel taxes, titling taxes, admissions and amusement taxes, insurance premiums taxes, public utility gross receipts taxes, and others.

[2] Includes death and gift taxes, documentary and stock transfer taxes, severance taxes, and other taxes.

Note: For the rankings, 1 indicates the highest. Rankings are out of 51 except for the personal income tax (out of 44) and the corporate income tax (out of 47).

Source: Annual Survey of State & Local Government Finance, U.S. Census Bureau; Population from the U.S. Census Bureau; Personal income data from the U.S. Bureau of Economic Analysis.

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Video Lottery Terminals and Table Games

The Video Lottery Facility Location Commission has awarded the five video lottery operation licenses authorized by constitutional amendment in 2008. Facilities in Allegany, Anne Arundel, Cecil, and Worcester counties are currently operating, with the Baltimore City facility scheduled to open in 2014. A sixth license in Prince George's County and table games at all video lottery terminal facilities were authorized by voters in 2012. The Video Lottery Facility Location Commission plans to award the Prince George's County license by the end of 2013.

Implementation of Video Lottery Terminals and Table Games

The Video Lottery Facility Location Commission (Location Commission) has awarded video lottery operation licenses for the five video lottery terminal (VLT) facility locations in Baltimore City and Allegany, Anne Arundel, Cecil, and Worcester counties, as authorized by the voters by constitutional amendment in 2008.

During the Second Special Session of 2012, the General Assembly passed comprehensive gaming legislation (Chapter 1) that allowed table games at all facilities and a sixth facility in Prince George's County, subject to voter approval. This expansion of gaming was approved by voters in November 2012.

Cecil County

Penn Cecil Maryland Inc. (Penn Cecil) was awarded a license to operate a VLT facility with 1,500 VLTs in Perryville in Cecil County. The facility opened to the public with 1,500 VLTs in September 2010 and debuted 20 table games in March 2013. As of September 30, 2013, Penn Cecil has 1,158 VLTs and 22 table games.

Worcester County

Ocean Enterprise 589, LLC (Ocean Downs) was awarded a license to operate a facility with 800 VLTs at Ocean Downs Racetrack in Worcester County. The facility opened with 750 VLTs in January 2011, and currently has in operation its full complement of 800 VLTs. Ocean Downs recently announced plans to debut 10 table games in the near future.

Anne Arundel County

PPE Casino Resorts, LLC was awarded a license to operate a facility with 4,750 VLTs adjacent to the Arundel Mills Mall in Anne Arundel County. In June 2012, the Maryland Live!

facility opened with 3,171 VLTs and reached its full complement of 4,750 VLTs in October 2012. The facility debuted 122 table games in April 2013 and a 52-table poker room in August 2013. As of September 30, 2013, Maryland Live! has 4,341 VLTs and 174 table games.

Allegany County

Evitts Resort, LLC was awarded a license to operate a video lottery facility at the Rocky Gap Lodge and Resort. The facility opened in May 2013 in the lodge's existing conference center space with 554 VLTs and 10 table games. It has since added 4 additional VLTs, for a total of 558 VLTs.

Baltimore City

In July 2012, CBAC Gaming, LLC was awarded a license to operate a video lottery facility with 3,750 VLTs in Baltimore City. However, CBAC Gaming was subsequently granted approval to open with 2,500 VLTs and 130 table games. The Baltimore City facility is scheduled to open in summer 2014 (fiscal 2015).

Prince George's County

The Location Commission is authorized to award a license for a facility with table games and up to 3,000 VLTs in Prince George's County within a geographic radius that encompasses both National Harbor and Rosecroft Raceway. Three companies – Penn National Gaming, MGM Resorts, and Greenwood Racing – placed bids for the license, and the Location Commission plans to award the license by the end of calendar 2013.

VLT and Table Game Revenues

Actual fiscal 2013 and estimated fiscal 2014 VLT and table game revenues are summarized by fund in **Exhibit 1.**

Exhibit 1
VLT and Table Game Revenues by Fund
Fiscal 2013 and 2014
($ in Millions)

	2013	2014 (Est.)
VLTs		
Education Trust Fund	$274.7	$296.9
State Lottery	11.2	12.3
Purse Dedication	39.1	42.3
Racetrack Renewal	10.8	10.4
Local Impact Grants	30.7	33.4
Small, Minority, & Women-owned Business	8.4	9.1
Casino Operators	185.4	212.2
Total Gross	**$560.3**	**$616.6**
Table Games		
Education Trust Fund	$9.6	$25.4
Casino Operators	38.4	101.5
Total Gross	**$48.0**	**$126.9**

VLT: Video Lottery Terminal

Source: State Lottery and Gaming Control Commission; Department of Legislative Services

Gaming in Surrounding States

The implementation of additional gaming in Maryland, particularly with the introduction of table games, has contributed to a recent decline in gaming revenue at facilities in Delaware, Pennsylvania, and West Virginia.

Delaware

Delaware's total fiscal 2013 VLT revenues declined by 2.5% from the prior year while table game revenues declined by 11.0%. Facing declining revenues and increased competition, Delaware agreed to give its casinos $8 million in fiscal 2014 to help those facilities cover anticipated increases in slot machine vendor fees.

Pennsylvania

Pennsylvania's overall gaming revenues have fared better than in Delaware and West Virginia, as Pennsylvania's table game revenues increased by 7.2% from fiscal 2012 to 2013, and VLT revenues only decreased by 1.9%. However, VLT revenues decreased at all three Philadelphia area casinos, and table game revenues decreased at two of those casinos in fiscal 2013.

West Virginia

West Virginia's fiscal 2013 table game revenues decreased by $22.5 million from the prior year, a 10.1% year-over-year decrease, while fiscal 2013 VLT revenues decreased by 14.6%. VLT and table game revenues at the Charles Town casino decreased by 15.7% and 4.2%, respectively, in fiscal 2013.

Revenues and Taxes

Online Gaming

A recent interpretation of law by the U.S. Department of Justice allows states to license intrastate online gaming, provide lottery games over the Internet, or compact with other states to provide interstate gaming. Three states are moving forward and will begin offering online gaming beginning this year, and seven states currently allow some form of online lottery ticket sales.

Recent Federal Developments

In 2006, U.S. Congress adopted the Unlawful Internet Gambling Enforcement Act (UIGEA), which prohibits financial transactions in support of illegal online gaming. The UIGEA contains an exclusion for online gaming conducted solely within the boundaries of a state. This exclusion implies that states have the power to authorize online gaming.

In 2009, officials from New York and Illinois sought clarification from the U.S. Department of Justice (DOJ) regarding proposals in those states to establish Internet-based lottery sales platforms using out-of-state transaction processors and whether their respective in-state Internet lottery programs would violate the Interstate Wire Act of 1961 (Wire Act) and the UIGEA. New York's proposal involved the sale of virtual lottery tickets to adults that would be delivered over the Internet to computers or mobile phones within the state. Illinois sought to implement a similar program to sell lottery tickets over the Internet with intrastate sales restricted by geolocation technology.

In a September 2011 memorandum opinion, DOJ determined that the Wire Act only applies to sports-related gaming activities in interstate commerce. Previous to that memorandum opinion, DOJ had long maintained that, despite the reference to "sporting event or contest," the Wire Act effectively prohibited any telecommunicated wager placed or received by a person located in the United States. The recent interpretation means that DOJ will no longer contend that states cannot license intrastate Internet gaming, provide lottery games over the Internet, or compact with each other to provide interstate gaming.

Legislation has been introduced in the U.S. Congress to regulate online gaming, but no action has been taken. Three states recently passed legislation to authorize online gaming and will begin to allow online gaming within their borders this year.

Recent State Developments

Nevada, Delaware, and New Jersey have all enacted legislation authorizing online gaming. In May 2013, online poker became available in Nevada. Delaware and New Jersey expect to launch full-scale online gaming operations in fall 2013. Online gaming will initially be available only to residents within each state, although the law in all three states leaves open the possibility of combining online markets through the use of interstate compacts. Interstate compacts allow states to share player pools through partnerships with other states that authorize online gaming.

Delaware offers a public-based gaming model that authorizes the state lottery and the three racetrack casinos it regulates to offer full-scale online gaming. Nevada and New Jersey follow a private-sector model allowing anyone that partners with a licensed brick and mortar casino to offer online gaming. Delaware and Nevada impose the same tax rate on online gaming as is imposed on casino gaming. New Jersey taxes online gaming at 15% of gross gaming revenue, higher than the 8% rate imposed on casino gaming.

According to the National Conference of State Legislatures, California, Hawaii, Illinois, Iowa, Massachusetts, Mississippi, Pennsylvania, and Texas all considered but did not approve legislation to authorize online gaming in 2013. The Maryland General Assembly has not considered legislation that would allow for online gaming in the State. In addition, it is unclear if online gaming would be considered an "additional form or expansion of commercial gaming" that would require voter approval by referendum under Section 1 of Article XIX of the Maryland Constitution.

Online Sales of Maryland Lottery Games

Only 3 of the 44 states with a state lottery – Georgia, Illinois, and Minnesota – offer the direct sale of lottery tickets over the Internet. New Hampshire, New York, North Dakota, and Virginia allow their residents to purchase a subscription plan to draw games over the Internet; in Maryland, residents must mail in subscription orders.

In a September 2012 report to the General Assembly, the State Lottery and Gaming Control Agency (SLGCA) outlined its objective to provide an e-commerce platform, or "iLottery," to allow for the purchase of traditional Maryland lottery games through personal computers and mobile devices. Under the proposal, customers would sign up for an account, fund their "digital wallet," and browse and purchase same-day games and subscriptions. The iLottery would also allow account holders to track their transactions and play history, as well as claim winnings online. SLGCA envisions offering draw games, monitor games, and electronic instant tickets, some of which would mimic traditional scratch-off tickets. The agency would employ secure software to verify the age of online lottery players (18 and over) as well as their presence within Maryland and would also adopt practices aimed at assuring that individuals using iLottery features comply with relevant rules and regulations.

The fiscal 2013 State budget assumed $2.2 million in general fund revenue from iLottery sales, but since iLottery has not been set up in the State, that revenue was not realized. The fiscal 2013 allowance included $167,119 in special funds for three additional positions under regular lottery operations to design the parameters of a new program to sell traditional lottery games over the Internet. However, after reviewing the September 2012 report, the General Assembly's budget committees declined to authorize the release of funds that would allow the agency to proceed with the development of the program.

During the 2013 legislative session, the General Assembly considered Senate Bill 272, which would have prohibited SLGCA from offering iLottery. The Governor's proposed fiscal 2014 budget included special fund expenditures of $366,000 for the purpose of procuring consulting services to design an iLottery website. The Senate passed Senate Bill 272, but the House did not take action on the bill. However, budget language was adopted restricting the use of funds for iLottery purposes. This language restricts the use of funds until SLGCA submits a report on its plans to develop the sale of traditional lottery games over the Internet. The language also prohibits the agency from pursuing a plan to develop sales over the Internet until the Legislative Policy Committee has an opportunity to review and comment on the plan.

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Overview of Maryland's Corporate Income Tax

Maryland currently imposes a corporate income tax rate of 8.25%. Numerous legislative proposals in recent years have sought to reduce the corporate income tax rate or eliminate the tax entirely. While Maryland relies less on the corporate income tax than most neighboring states, corporate income tax revenues are estimated at almost $1.1 billion in fiscal 2014 and provide funding for the Higher Education Investment Fund, the Transportation Trust Fund, and the general fund.

Corporate Income Tax

Imposition and Calculation

Every corporation that conducts business within Maryland, including public service companies and financial institutions, is required to pay the corporate income tax. The tax base is the portion of federal taxable income that is allocable to Maryland and adjusted for certain Maryland addition and subtraction modifications and credits. The Maryland taxable income of a corporation that operates wholly within the State is equal to its Maryland modified income. Corporations engaged in multistate operations are required to determine the portion of their modified income attributable to Maryland based on the amount of their trade or business carried out in Maryland.

Multistate corporations are generally required to use a three-factor apportionment formula of payroll, property, and sales, with sales double weighted or, in the case of a manufacturing corporation, a single sales factor formula. The apportionment factor is then multiplied by the corporation's modified income to determine Maryland taxable income. The Maryland tax liability of a corporation equals the Maryland taxable income multiplied by the tax rate, less any tax credits. Maryland currently applies a tax rate of 8.25% to a corporation's Maryland taxable income, which was increased from 7.0% beginning in tax year 2008. Local jurisdictions are prohibited from imposing corporate income taxes.

Statistics

According to U.S. Census Bureau data, corporate income tax revenues represented approximately 5.2% of Maryland's total tax revenues in calendar 2012. This figure is lower than that of all neighboring states except Virginia and West Virginia, as Maryland relies on personal income and sales taxes as its primary revenue sources. In tax year 2010, approximately 59,500 corporate income tax returns were filed; of those returns, approximately 23,200, or 39.0% of the total, had net corporate income tax liability. The predominant industries subject to corporate income tax liability are (1) manufacturing; (2) retail trade; (3) finance and insurance;

and (4) professional, scientific, and technical services. Combined, these four industries accounted for more than 62.0% of net corporate income tax liabilities in tax year 2010.

Revenue Allocation

Corporate income tax revenues, which can be volatile from year to year, are allocated to the general fund, the Higher Education Investment Fund (HEIF), and the Transportation Trust Fund (TTF). The allocation is a two step process. First, 6.0% of the total revenue is allocated to HEIF and 9.15% is allocated to the general fund. Second, of the remaining revenue, a percentage is allocated to TTF, and the remaining balance is again allocated to the general fund. The percentage allocated to TTF has often varied from year to year but is 19.5% for fiscal 2014 through 2016 and 17.2% for fiscal 2017 and 2018. On average, about three quarters of corporate income tax revenue in any given year is allocated to the general fund. Net corporate income tax revenues are projected to total almost $1.1 billion in fiscal 2014. Of this amount, $844.7 million is general fund revenues, $180.5 million is TTF revenues, and $65.4 million is HEIF revenues.

Corporate Income Taxes in Other Jurisdictions

Corporate income tax structures vary among jurisdictions, making comparisons difficult. For example, some jurisdictions (including Maryland) do not impose the corporate income tax on limited liability corporations or other types of businesses known as pass-through entities; taxable income from these entities is instead subject to the individual income tax. Various factors are used when a business apportions the taxable income attributable to a particular jurisdiction. The 1975 Uniform Division of Income for Tax Purposes Act "established a three-factor apportionment method based on the company's sales, property, and payroll." Since then, some states have increased the apportionment weight given to sales, and other states have adopted single sales factor apportionment for some or all corporations. Further, while most states impose a single corporate income tax rate on taxable income, graduated corporate income tax rates are imposed in a handful of states. Lastly, a jurisdiction may provide incentives to certain types of corporations that are not offered in other jurisdictions. These variations between corporate income tax structures make it difficult to compare the impacts of changes considered in one jurisdiction to another jurisdiction.

Exhibit 1 shows the corporate income tax rates imposed in Maryland and its neighboring states.

Exhibit 1
Corporate Income Tax Rates in Maryland and Neighboring States
Tax Year 2013

State	Tax Rate
Pennsylvania	9.99%
District of Columbia	9.975%
Delaware	8.7%
Maryland	**8.25%**
West Virginia	7.0% *
Virginia	6.0%

*The tax rate in West Virginia is scheduled to decrease to 6.5% in 2014.

Source: National Conference of State Legislatures

Recent Legislation

In recent years, numerous bills to reduce the corporate income tax rate or eliminate the tax entirely have been introduced. During the 2013 session, House Bills 181, 261, 533, 850, and 904 and Senate Bills 34, 411, 669, and 670 all sought a reduction in the tax rate or complete elimination of the tax. Also in 2013, House Bills 1158 and 1246 and Senate Bill 469 aimed to implement combined reporting. Combined reporting, currently used in over half of the states with a corporate income tax, attempts to level the playing field for a corporation wholly located within a single state versus a corporation with multistate operations. None of these corporate income tax or combined reporting bills were passed into law.

In October 2013, the Department of Legislative Services (DLS) issued a report examining the economic and fiscal impacts of reducing the corporate income tax rate from 8.25% to 7.25%. Using the Regional Economic Models, Inc. (REMI) model, DLS analyzed the net effect on Maryland's economy of reducing the corporate income tax rate from 8.25% to 7.25%, effective beginning in tax year 2014. DLS found that a rate reduction of this magnitude would have positive effects on both employment and income. However, focusing only on the benefits which might be derived would be misleading in light of the State's balanced budget requirement. Unless the budget is in structural surplus, any sizeable tax revenue reduction would need to be offset by some mix of ongoing spending reductions or additional revenue. When these factors are taken into account, DLS determined that the economic benefits of the corporate income tax rate reduction are attenuated.

The full report may be found at http://mgaleg.maryland.gov/Pubs/BudgetFiscal/2013-Corporate-Income-Tax-Analysis-Report.pdf.

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Revenues and Taxes

Communications Tax Reform Commission

The Communications Tax Reform Commission met in 2012 and 2013 to assess the feasibility and fiscal implications of modernizing State and local communications taxes and fees to account for recent changes in the communications industry. While the commission compiled extensive information and reviewed fiscal analyses of several reform proposals offered by the wireless industry, the commission chose to refer its findings to the General Assembly for further consideration and possible legislative action without recommending a particular reform proposal.

Introduction

Chapters 261 and 262 of 2012 created the Communications Tax Reform Commission and charged it with assessing the "feasibility and fiscal implications for the State and local governments of a modernized, competitively neutral communications tax and fee system that eliminates disparate treatment of similar communications service providers" and the "efficacy of tax and other incentives to encourage investment in broadband networks and emerging technologies." The commission, which included legislators, State officials, representatives of the business community, local governments, and the public, compiled extensive information and completed fiscal analyses of several reform proposals offered by the wireless industry. The commission chose to refer its findings to the General Assembly for further consideration and possible legislative action without recommending a particular reform proposal.

Overview of Maryland's Communications Tax and Fee Structure

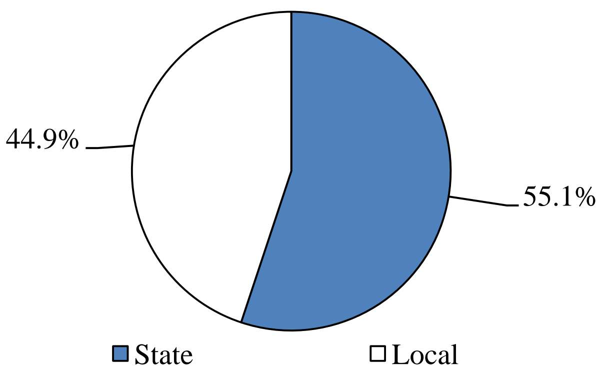
The State's principal communications tax revenue sources are the 6% State sales tax on wireless service and the 2% public service company (PSC) franchise tax on landline telephone service. The State generally does not tax cable or satellite television services. A number of local jurisdictions also collect substantial communications tax and fee revenue. Anne Arundel, Baltimore, Montgomery, and Prince George's counties and Baltimore City impose local telecommunications taxes. In addition, most counties and many municipalities impose franchise fees on communications companies that place cables in the public right of way. Several counties and some municipalities also collect public, educational, and government access channel fees from cable companies. **Exhibit 1** summarizes the communications tax and fee revenue received by the State and local governments in fiscal 2012.

Exhibit 1
State and Local Communications Revenue
Fiscal 2012

Telecommunications Revenue

State	Current Revenue
Public Service Company Franchise Tax (2%)	$34,269,706
Sales Tax on Wireless (6%)	132,791,747
Sales Tax on Ancillary Telecommunications Services (6%)	8,506,354
Sales Tax on Capital Equipment (6%)	28,873,219
Maryland Relay Service ($0.18 per Account per Month)	5,289,855
Telecommunications Property Tax (2.5 Times Higher Tax Rate)	456,480
State 9-1-1 ($0.25 per Account per Month)	13,766,360
Total	**$223,953,720**
Local	
Local Taxes on Telecommunications (Levied by Local Governments)	$136,346,540
Telecommunications Property Tax (2.5 Times Higher Tax Rate)	4,835,265
Local 9-1-1 ($0.75 per Account per Month)	41,299,079
Total	**$182,480,884**

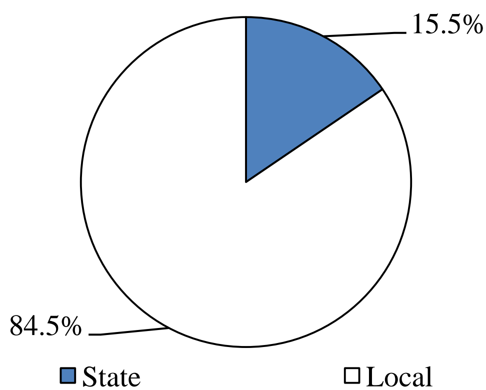
State and Local Government Share of Total Telecommunications Revenues



Pay-Television Revenue

State	Current Revenue
Sales Tax on Capital Equipment (6%)	$3,456,489
Pay-Per-View Boxing and Wrestling Tax (10%)	1,630,672
Sales Tax on Pay-Per-View Services (6%)	11,277,559
Total	**$16,364,719**
Local	
Franchising Fees (Negotiated by Local Governments)	$71,197,029
Public, Governmental, and Educational Fees (Negotiated by Local Governments)	17,800,124
Total	**$88,997,153**

State and Local Government Share of Total Pay-television Revenues



Source: Report of the Maryland Communications Tax Reform Commission, June 2013

Commission Deliberations

In the course of five meetings between October 2012 and June 2013, the commission received briefings by State and local officials and industry experts on a variety of topics, including current taxes and fees on communications services in Maryland; communications reform initiatives in other states; broadband development and incentives; emerging communications technologies; cable television franchise fees; and public, educational, and government access channel fees. Commission staff conducted a comprehensive survey of local governments and communications service providers to compile comprehensive data on communications tax and fee revenue received by the State and local governments in fiscal 2012. This survey data was presented to the commission and enabled commission staff to estimate the fiscal impact on the State, local governments, and communications service providers of several reform proposals put forward by representatives of the wireless industry. The commission submitted its final report in June 2013. The commission's final report, along with all presentations, meeting minutes, expert testimony, and other supporting documents are available on the commission's website, www.ctrc.maryland.gov.

Rationale for Reform

The wireless industry's reform proposals were designed to rectify what the industry views as an outdated communications tax and fee structure in Maryland that does not account for recent changes in the industry and fails to tax similar communications services equitably. The industry identified two major developments that it contends make the need for reform urgent. First, the monopoly of regulated telephone companies has given way to a competitive marketplace for communications services, but some taxes and fees continue to apply only to regulated companies and not their unregulated competitors. Second, communications services are increasingly available from a variety of providers and through a variety of mediums. For example, telephone service is provided through landlines, wireless devices, and Internet connections by phone companies, cable companies, and Voice over Internet Protocol (VOIP) companies. Pay-television service is provided through cable and Internet connections by cable companies, phone companies, and Internet companies (such as Netflix). As a result of these developments, the industry asserted that a communications tax and fee system that applies equally to all communications services and providers would be more fair and rational than the current inconsistent patchwork of taxes and fees that applies to some services and providers but not others.

Reform Proposals

The first wireless industry reform proposal was the most comprehensive. The most significant changes in that proposal would have (1) applied the State sales tax of 6% to all communications services, including landline telephone service, VOIP telephone service, and cable and satellite television service that is not currently subject to the tax; (2) repealed the PSC franchise tax of 2% on landline telephone service; and (3) repealed all local taxes on

telecommunications services and used the new State revenue from the expanded State sales tax on communications services to reimburse local governments for the lost revenue for a period of time. The commission staff estimated that this proposal would have reduced total State and local revenue from communications sources by $73.6 million in fiscal 2012.

The second wireless industry proposal focused only on telecommunications services. The most significant changes in that proposal would have (1) applied the State sales tax of 6% to all telecommunications services, including landline telephone service and VOIP telephone service that is not currently subject to the tax; (2) repealed the PSC franchise tax of 2% on landline telephone service; and (3) repealed all local taxes on telecommunications and used the new State revenue from the expanded State sales tax on telecommunications services to reimburse local governments for the lost revenue for a period of time. The commission staff estimated that this proposal would have reduced total State and local revenue from telecommunications services by $106.3 million in fiscal 2012.

The third wireless industry proposal would have reformed State communications taxes while leaving local communications taxes and fees largely unchanged. The most significant changes in that proposal would have (1) applied the State sales tax at a rate of 4% to all communications services, including landline telephone service, VOIP telephone service, and cable and satellite television service that is not currently subject to the sales tax, while reducing the State sales tax rate on wireless service from 6% to 4%; (2) repealed the PSC franchise tax of 2% on landline telephone service; and (3) provided $16.7 million annually for expansion of broadband service in rural areas. The commission staff estimated that this proposal would have been revenue neutral in fiscal 2012.

Local Government Perspectives

Representatives of local governments, including counties and municipalities, did not make a specific reform proposal but offered general principles for communications tax reform. These included that local government revenue not be reduced, current local authority to tax communications services be maintained, local franchising authority and franchise fees be preserved, the distinction between taxes and fees be recognized, comparable services be taxed equitably, and targeted tax incentives be used to incentivize broadband development.

Local government representatives were particularly concerned with any changes to franchise fees and public, educational, and government access channel fees. Representatives of the cable industry and the wireless industry argued that these fees are similar to taxes and should be addressed as part of any communications tax reform. Representatives of local governments and the satellite television industry argued that these fees are imposed for private use of a public asset (the public right-of-way) and should not be conflated with taxes as part of communications tax reform.

State Retirement and Pension System Investment Performance and Contribution Rates

The pension fund's fiscal 2013 return on investments was 10.6%. This is an improvement over the 0.4% return in fiscal 2012. The system's asset valuation policy smoothes gains and losses over five years. Consequently, the plan recognizes only a small portion of the gains. The plan's funded status increased to 64.6%, compared to 63.5% at the end of fiscal 2012. To improve the system's funded status, the legislature adopted pension reform in the 2011 session. Savings generated from the reform have been reinvested in the pension system to improve its funded status. Legislation phasing out the "corridor" funding method was also enacted.

Investment Performance Rebounds as Domestic and International Stocks Soar

The State Retirement and Pension System's (SRPS) investment return for the year that ended on June 30, 2013, was 10.6%, once again exceeding the system's 7.7% investment return target after falling short the previous year. The strong performance was driven primarily by domestic and international equities; the system's public equity holdings, which made up 42.3% of the portfolio, returned 19.1% for the year. The fund's real estate and private equity holdings also contributed strong performance, returning 12.6 and 11.7%, respectively; all returns are net of fees. By contrast, fixed-income holdings, which made up almost one-sixth of the system's holdings, returned only 1.1%, reflecting the current low-yield environment. In total, the plan substantially outperformed its policy benchmark by 203 basis points. However, the system's investment returns lag those of most comparable large state pension plans due to a relative underweight to public equities, which were the strongest performing asset class in the fiscal year just ended.

Improvements to the System's Financial Condition Driven by Investment Returns and Policy Changes

From fiscal 2012 to 2013, the SRPS's funded status (the ratio of projected actuarial assets to projected actuarial liabilities) improved slightly from 63.5% at the end of fiscal 2012 to 64.6% at the end of fiscal 2013 (these figures exclude funding for local governments that participate in the State plan). Total State liabilities increased from $53.7 billion to $55.7 billion, with the unfunded liability increasing only slightly from $19.6 billion to $19.7 billion due to the corresponding increase in system assets.

The June 30, 2013 valuation was the final year that the system recognized a portion of the investment losses totaling $10.1 billion incurred in fiscal 2009 as a result of the crisis in financial

markets. Due to the system's policy of spreading out, or "smoothing," recognition of investment gains and losses over five years, the system has recognized more than $860 million in losses from fiscal 2009 alone in each of the last four valuations, including the most recent. Thus, despite the fact that the system has exceeded its actuarial funding target in three of the last four years, the smoothed losses from fiscal 2009 have been a considerable drag on system funding and kept it from showing substantial improvement.

Several combined factors mean that the system is now poised to show accelerated improvement in its funding status, including (1) the final recognition of fiscal 2009 investment losses in the most recent valuation; (2) $770 million in unrecognized investment *gains* due to be recognized in next year's valuation; (3) the ever increasing number of new members entering the system under the reformed benefit structure enacted in 2011, which constrains the growth in system liabilities; and (4) the phase-out of the corridor funding method (discussed below).

Funding Reforms Prompt Increased Contributions

Exhibit 1 shows that the employer contribution rate for teachers will increase from 17.94% in fiscal 2014 to 18.64% in fiscal 2015, and the contribution rate for State employees will increase from 16.84% in fiscal 2014 to 18.30% in fiscal 2015. The aggregate State contribution rate, including contributions for public safety employees and judges, increases from 18.54% in fiscal 2014 to 19.48% in fiscal 2015. On a percentage basis, this represents the smallest increase in employer contributions since fiscal 2009. Based on projected payroll growth and other factors, the SRPS actuary estimates that total employer pension contributions will increase by $117 million (6.5%), from $1.79 billion in fiscal 2014 to $1.91 billion in fiscal 2015.

Employer contribution rates were subject to multiple influences this year, some exerting upward pressure and others downward pressure. For the first time in recent memory, investment returns exerted only minimal upward pressure on contribution rates, as the combination of gains and losses from the last five years largely cancelled out each other. Instead, the two largest influences on contribution rates were statutory changes adopted in the 2011 and 2013 legislative sessions, respectively. Chapters 475 and 476 of 2013 replaced the previous tiered amortization schedule with a single 25-year closed amortization period. By spreading out payment of existing unfunded liabilities over 25 years, Chapters 475 and 476 exerted substantial downward pressure on contribution rates. Conversely, pension reform legislation enacted by Chapter 397 of 2011 requires that $300 million of the total savings generated by the pension benefit reforms be reinvested in the pension system to improve its funded status. This requirement more than counteracted the downward pressure exerted by the change in amortization policy, resulting in an overall increase in contribution rates.

Exhibit 1
State Pension Contributions
Fiscal 2014 and 2015

Plan	2014 Rate	2014 $ in Millions	2015 Rate	2015 $ in Millions
Teachers	17.94%	$1,129	18.64%	$1,193
Employees	16.84%	532	18.30%	583
State Police	71.85%	59	88.06%	74
Judges	50.92%	21	42.74%	18
Law Enforcement Officers	57.72%	51	46.56%	41
Aggregate	**18.54%**	**$1,792**	**19.48%**	**$1,909**

Note: Except for the Teachers' Combined System (TCS), contribution rates and dollar amounts reflect State funds only, excluding municipal contributions. For TCS, they reflect the combined total of State and local contributions. Figures also reflect the required reinvestment of savings generated by the 2011 pension benefit reforms.

Source: Gabriel, Roeder, Smith & Co.

Going forward, another provision of Chapters 475 and 476 will continue to exert mild upward pressure on contribution rates, thereby helping to improve the system's financial condition. In addition to altering the amortization policy, Chapters 475 and 476 phase out the corridor funding method over 10 years, which has restricted the growth of contribution rates for the Teachers' Combined System (TCS) and the Employees' Combined System (ECS), the two largest plans within SRPS. Under the corridor method (adopted during the 2002 legislative session), the employer contributions in the two plans increase by an amount equal to 20% of the difference between the prior year's rate and the "true" rate required to fully fund the systems. By phasing out the corridor method, Chapters 475 and 476 ensure that in each succeeding year the budgeted "corridor" contribution rate will move closer to the higher "true" rate necessary to fully fund the system until they are equal.

One final note – the reinvestment provision of Chapter 397 was intended to begin closing the gap between the lower corridor funding rate and the true actuarial contribution rate as a means of improving the system's financial condition. Due in part to the changes made to the amortization policy, the reinvestment provision has already accomplished that objective. In the absence of the reinvestment, the true actuarial contribution rate for TCS would be 17.42%. Given that the budgeted contribution rate, which includes both the corridor calculation and the reinvested savings, is 18.64%, the TCS rate already exceeds the true actuarial rate by 1.22 percentage points. The same is true for the system as a whole – the budgeted contribution rate of 19.48%, which includes the corridor calculation for TCS and ECS and the reinvested

savings, exceeds the true actuarial rate of 18.91%. However, the reinvested savings remain necessary to achieve the General Assembly's goal of achieving an 80.0% funded ratio by fiscal 2024.

Personnel

State Workforce and Payroll

Since fiscal 2002, the number of State positions has decreased from 81,113 to 79,832. Declines in State agency positions were offset by increases in higher education, judicial, and legislative positions. Personnel costs increased by 59.3% from fiscal 2002 to 2014. Salary costs increased 44.0%, budgeted State health insurance subsidies increased 122.0%, and retirement contributions increased 218.0%.

Budgeted Regular Positions

Regular full-time equivalent (FTE) positions are requested by the Administration and authorized by the General Assembly when the State budget is passed. Section 31 of the fiscal 2014 budget bill limits position growth above that level by allowing the Board of Public Works to authorize no more than 100 additional positions during the 2014 fiscal year, outside of exempted provisions for hardship, manpower, statutes, block grants, new facilities, and/or emergencies. The total does not include higher education institutions, the Maryland Aviation Administration, and the Maryland Port Administration.

Budget spending limits, position caps restricting growth, attrition, and abolitions prompted by budgetary constraints have decreased the nonhigher education Executive Branch workforce from 55,980 positions in fiscal 2002 to 50,436 in the fiscal 2014 legislative appropriation. **Exhibit 1** shows that three major agencies represent almost two thirds of the net decrease: the Department of Human Resources, the Department of Health and Mental Hygiene, and the Maryland Department of Transportation. These reductions, however, have been offset by new positions created in higher education institutions, the Judicial Branch, and the legal agencies (primarily, the Office of Public Defender).

Exhibit 1
Regular Full-time Equivalent Position Changes
Fiscal 2002 Actual to Fiscal 2014 Legislative Appropriation

Department/Service Area	2002 Actual	2014 Legislative Appropriation	2002-2014 Change
Health and Human Services			
Health and Mental Hygiene	8,555	6,406	-2,149
Human Resources	7,364	6,529	-835
Juvenile Services	2,123	2,077	-46
Subtotal	***18,041***	***15,012***	***-3,029***
Public Safety			

Department/Service Area	2002 Actual	2014 Legislative Appropriation	2002-2014 Change
Public Safety and Correctional Services	11,663	11,046	-616
Police and Fire Marshal	2,590	2,414	-176
Subtotal	***14,252***	***13,460***	***-792***
Transportation	**9,538**	**8,774**	**-765**
Other Executive			
Legal (Excluding Judiciary)	1,364	1,503	139
Executive and Administrative Control	1,603	1,633	30
Financial and Revenue Administration	2,151	2,046	-105
Budget and Management	517	441	-76
Retirement	194	205	12
General Services	793	580	-213
Natural Resources	1,618	1,295	-324
Agriculture	480	383	-97
Labor, Licensing, and Regulation	1,706	1,646	-60
MSDE and Other Education	1,956	1,972	16
Housing and Community Development	416	327	-89
Business and Economic Development	324	224	-100
Environment	1,028	937	-91
Subtotal	***14,149***	***13,190***	***-959***
Executive Branch Subtotal	***55,980***	***50,436***	***-5,545***
Higher Education	21,393	25,010	3,617
Executive and Higher Education Subtotal	***77,373***	***75,446***	***-1,927***
Judiciary	3,010	3,639	629
Legislature	730	748	18
Grand Total	**81,113**	**79,832**	**-1,281**

MSDE: Maryland State Department of Education

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

Higher Education

Chapters 239 and 273 of 2004 provided the University of Maryland (USM) and Morgan State University with autonomy from the General Assembly to establish staffing levels absent specific legislative constraints, as did Chapter 401 of 2003 for St. Mary's College of Maryland.

By the end of October 2013, the fiscal 2014 impact of these laws was the addition of 352 FTE positions to higher education facilities, all of which originated in USM.

Regular Position Compensation Expenditures

The budgeted expenditure for salaries totals $4.97 billion in fiscal 2014, a 43.7% total increase from the actual level of salaries in fiscal 2002, as is shown in **Exhibit 2**. Yet, the cost of fringe benefits continues to grow at a much greater pace than that of salaries. The State subsidy for employee and retiree health insurance was the fringe benefit area posting the largest absolute growth since fiscal 2002, as it has increased by $593.6 million, or 122%. Several years of double digit percent increases on the cost side and the exhaustion of previously held balances caused the majority of this growth.

Exhibit 2
Regular Employee Compensation
Fiscal 2002 to 2014 Legislative Appropriation
($ in Millions)

	2002 Actual	2014 Leg. Appr.	2002 to 2014 $ Change	2002 to 2014 % Change
Earnings				
Salary	$3,458.0	$4,969.7	$1,511.7	43.72%
Other Earnings[1]	113.2	126.5	13.4	11.80%
Earnings Subtotal	***$3,571.1***	***$5,096.2***	***$1,525.1***	
Other Compensation				
Health[2]	$486.7	$1,080.3	$593.6	121.98%
Retirement/Pensions[3]	239.9	762.5	522.6	217.84%
Salary-dependent Fringe[4]	258.6	370.6	112.0	43.33%
Agency-related Fringe[5]	99.5	108.4	8.9	8.97%
Other Compensation Subtotal	**$1,084.7**	**$2,321.9**	**$1,237.2**	
Total Compensation	**$4,655.8**	**$7,418.1**	**$2,762.3**	**59.33%**

[1]Overtime and Shift Differentials.
[2]Employee and Retiree Health Insurance.
[3]All Pension/Retirement Systems.
[4]Social Security and Unemployment Compensation.
[5]Other Post Employment Benefits, Deferred Compensation Match, Worker's Compensation, and Tuition Waivers.

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

Retirement contributions made by the State have grown by 217.8% since fiscal 2002, making it the area of employee compensation with the largest percent increase over the time period. The increase is primarily due to investment losses that raise the required employer contribution level and enhancements enacted in 2006 that raised the benefit multiplier. In light of these accelerating long-term liabilities and their associated current expenditure requirement, pension reform adopted in the 2011 session made significant changes to the benefit structure and funding mechanism of the pension system. For more detail on the status of the pension system, see the issue paper titled *State Retirement and Pension System Investment Performance and Contribution Rates*.

Personnel

Employee Health Insurance: The Impacts of the Patient Protection and Affordable Care Act

The State, as an employer, is subject to the employer requirements of the Patient Protection and Affordable Care Act (ACA). The next major milestone for complying with the ACA is the employer mandate where the State is required to provide coverage to 95% of its employees who meet certain criteria including working 30 hours a week. The State will need to decide what course of action to take. Many of the other provisions required of employers in the ACA already have been implemented.

The Patient Protection and Affordable Care Act Impacts

The Patient Protection and Affordable Care Act (ACA), signed by President Barack H. Obama on March 23, 2010, is intended to expand health care coverage, control health care costs, and improve the health care delivery system. The State, as an employer, is subject to the employer-related provisions of the ACA. Following is a summary of the major ACA provisions that affect the State, as an employer. (Additional information on the ACA can be found in the issue paper titled *Implementation of Federal Health Care Reform in Maryland*.)

Employer Mandate

Employers with more than 50 employees that either do not offer insurance or do not offer affordable insurance to their full-time employees will pay a penalty if their lower-income employees purchase coverage and obtain a tax credit through an exchange. This provision was to take effect on January 1, 2014, but was later delayed until January 1, 2015.

While the State does provide insurance to its employees, a full-time employee was defined in the ACA as an individual who works 30 hours a week for at least three consecutive months (or more, depending on the method an employer elects to use for this determination). Under this definition of a full-time employee, the State could be obligated to provide subsidized health care to certain contractual employees. Currently, contractual employees are able to purchase unsubsidized health insurance through the State. Determining which contractual employees are full time is difficult due to how the regulations are written, particularly in the area of higher education, where individuals are not paid on an hourly basis. The Department of Budget and Management (DBM) currently estimates that there are approximately 2,000 contractual employees eligible for subsidized health insurance under the federal definition.

The ACA regulations also state that the State only has to provide coverage to 95% of its eligible employees. DBM indicates that it currently provides coverage to 97% of its employees and that, if it elected not to provide coverage to the approximately 2,000 contractual employees,

it would still meet the 95% requirement. If the Administration elects to provide coverage to contractual employees, it will need to provide coverage that is both adequate and affordable. Current coverage provided by the State meets the adequacy threshold; however, there may be instances where the affordability criterion is not met, depending on an individual's income. If the affordability criterion is not met, the State will pay a penalty of $3,000 for each individual who claims a tax credit because his/her health insurance is too expensive.

As of October 2013, the Administration has not made a decision whether or not to provide contractual employees health insurance. If it is decided to provide health insurance, additional funding will need to be provided for six months of fiscal 2015. The Department of Legislative Services estimates providing coverage to eligible contractual employees would cost the State approximately $11.2 million.

Tax on Expensive Plans (Cadillac Tax)

In an effort to reduce the overuse of insurance by employees and thus reduce overall health care costs, the ACA includes a tax on employer-sponsored health plans that exceed $10,200 for individual coverage or $27,500 for family, beginning in calendar 2018. Currently, the CareFirst BlueCross BlueShield cost for the preferred provider organization plus prescription drugs and the flexible spending amount of $2,500 is $10,622, and for a family, it is $21,601. The tax will be 40% of the value of the plan that exceeds the specified threshold amounts and will be paid by the State. The threshold amounts will increase by the Consumer Price Index, beginning in calendar 2020. At this point, it is not clear if the State's offerings will exceed this threshold in calendar 2018.

Federal Reinsurance Funds

A temporary reinsurance program through January 1, 2014, was created for employers providing insurance coverage to retirees over age 55 who are not yet eligible for Medicare. Approximately $5.0 billion was provided for this purpose nationwide. The State received approximately $9.6 million under this program.

Transitional Reinsurance Fee

To fund a reinsurance pool for insurers that enroll high-cost individuals, the State is required to pay the federal government a $63 fee per covered life in the State employee health plan in fiscal 2014. In fiscal 2014, the fee is expected to cost the State $6.0 million. The fee is only to be in effect through 2016 andwill decline in subsequent years.

Patient-centered Outcomes Research (Comparative Effectiveness) Fee

The State is required to pay the federal government a $1 fee for each member. This amount increases to $2 on January 1, 2014. This fee will be used to help support research that

compares the clinical effectiveness of medical treatments. It is expected that this fee will cost the State approximately $0.5 million in fiscal 2014.

Dependent Care Coverage Age Limit Increased

The age of individuals eligible for dependent care coverage has increased to 26. The State has already implemented this provision for employees that elect to have this coverage.

Elimination of Cost Sharing for Preventive Care Services

The ACA eliminated cost sharing for certain types of preventive care services. Examples of preventive care services now fully covered by the State include in-network well-child examinations, adult physical examinations, annual gynecology examinations, nutritional counseling and health education for chronic conditions, annual screening mammograms, and flu vaccines. The State's health insurance plan has experienced a corresponding increase in preventive care utilization. Long term, this is expected to be a positive trend as it helps to prevent and reduce potentially high-cost health conditions.

Flexible Spending Account Limit Reduced

To help cover the costs of the ACA, the amount of a pre-tax deduction that individuals may claim for a health care flexible spending account was reduced to $2,500 from $3,000.

Automatic Enrollment

Employers with more than 200 employees are required to automatically enroll employees into health insurance plans that it offers. It has not yet been determined when this will take effect or how it will affect the State.

State Education Aid to Increase Modestly

State education aid for public schools is estimated to increase modestly in fiscal 2015 due primarily to a small increase in the State's share of teachers' retirement payments. Small increases in student enrollment and inflation also contribute to the overall increase of $99.1 million or 1.6% in State aid. Net Taxable Income Education grants continue to phase up in fiscal 2015, growing to nearly $20 million. Meanwhile, planning is underway to update the adequacy study that formed the framework for the 2002 Bridge to Excellence in Public Schools legislation and the State's school finance formulas.

Education Aid Projected to Increase by $99.1 Million

Public schools are expected to receive an estimated $6.2 billion in fiscal 2015, representing a $99.1 million (1.6%) increase over 2014. Due largely to recent pension reform and local cost-sharing initiatives, teachers' retirement payments made by the State on behalf of local school boards are expected to increase by a relatively modest $10.3 million, representing 1.2% of the increase. Aid that flows directly to local school boards is projected to grow by $88.8 million (1.7%). The increase in direct aid is driven by an expected rise in the per pupil foundation amount and projected enrollment increases.

Foundation and Most Other Direct Aid Programs Will Increase Slightly

The foundation program is projected to total $2.9 billion in fiscal 2015, an increase of $24.6 million (0.9%) over fiscal 2014, as shown in **Exhibit 1**. The increase is attributable to enrollment growth of an estimated 0.5% (4,300 full-time equivalent students) and a 0.5% increase in the per pupil foundation amount. Fiscal 2015 is the final year in which the inflation rate used to increase the per pupil foundation amount is capped in statute at 1%. The 0.5% increase in the per pupil foundation amount in fiscal 2015 is equivalent to the estimated change in the Implicit Price Deflator for State and Local Government Purchases.

After the foundation program, in fiscal 2015 the compensatory education and limited English proficiency formulas are projected to have the largest dollar increases among the direct aid programs. A portion of the increase in each program is due to projected enrollment growth in students eligible for free and reduced-price meals and English language learners, respectively, and the rest of the increases can be attributed to the increase in the per pupil foundation amount.

Exhibit 1
Estimated State Aid for Education
Fiscal 2014 and 2015
($ in Thousands)

Program	FY 2014	Estimated FY 2015	$ Change	% Change
Foundation Program	$2,850,479	$2,875,092	$24,613	0.9%
Geographic Cost Adjustment	130,790	132,074	1,285	1.0%
Foundation – Special Grants	2,082	0	-2,082	-100%
Supplemental Grant	46,620	46,620	0	0.0%
Net Taxable Income Grants	8,325	19,718	11,393	136.8%
Compensatory Ed Program	1,195,985	1,224,883	28,898	2.4%
Special Education Formula	269,309	272,178	2,869	1.1%
Nonpublic Placements	109,819	112,557	2,738	2.5%
Limited English Proficiency	193,428	210,993	17,565	9.1%
Guaranteed Tax Base	52,317	51,808	-509	-1.0%
Student Transportation	254,528	258,508	3,979	1.6%
Aging Schools	8,109	6,109	-2,000	-24.7%
Other	87,138	87,159	21	0.0%
Direct Aid Subtotal	**$5,208,930**	**$5,297,701**	**$88,771**	**1.7%**
Teachers' Retirement	852,825	863,162	10,336	1.2%
Total	**$6,061,755**	**$6,160,863**	**$99,107**	**1.6%**

Source: Department of Legislative Services

Retirement Costs Grow Slightly Due to Pension Reforms

In an effort to constrain rapidly escalating teachers' retirement costs and reduce the long-term liabilities of the State Retirement and Pension System (SRPS), changes to the State's pension structure have been enacted recently. Chapter 397 of 2011 altered the benefit structure for teachers and other professional school employees (along with the benefits provided to State employees) and required that $300 million of the savings from the reform be reinvested in the system each year beginning in fiscal 2014. Chapter 397 also requires each local school board, along with the community colleges and all State agencies, to share in the administrative costs of the State Retirement Agency (SRA) in proportion to its active membership in SRPS.

Further cost-sharing was approved in Chapter 1 of the First Special Session of 2012. Chapter 1 phased in school board payments of the annual normal cost over four years. The payments required from each school board for fiscal 2013 through 2016 are specified in the legislation, and county maintenance of effort payments to the school boards increase to help support the cost-sharing initiative. After fiscal 2016, each school board is responsible for paying the actual normal costs associated with its employees. In 2013, further statutory and nonstatutory changes were made that are expected to generate significant short- and long-term savings in employer contributions to SRPS.

Largely due to these cost-saving measures, State retirement payments for public school teachers and other professional personnel grow modestly in fiscal 2015. The costs will total an estimated $863.2 million in fiscal 2015, representing a $10.3 million increase (1.2%) from the prior fiscal year. This slight increase in State payments is due to a number of offsetting factors. The State contribution rate increases (from 14.71% to 15.47%), while the required reinvestment of pension reform savings decreases from fiscal 2014 to 2015 by an estimated $322,000. The school salary bases used to calculate the required payments increased 1.8% from $5.6 billion in June 2012 to $5.7 billion in June 2013. In addition to the State's share of teacher pension costs, local school boards will contribute approximately $235.6 million to the payments in fiscal 2015. This represents an increase of $48.8 million over the combined fiscal 2014 local share and includes $173.2 million for the local share of pension contributions and $14.1 million toward SRA administrative costs. To help offset the increased local costs, local school boards are no longer required to reimburse the State for the retirement costs of federally funded teachers beginning in fiscal 2015.

Net Taxable Income Education Grants

Approximately 75% of State aid to public schools is distributed inversely to local wealth, whereby the less affluent school systems receive relatively more State aid. Net Taxable Income (NTI) is one component of calculating local wealth for purposes of State aid for education. Chapter 4 of 2013 provides additional education grants in counties whose formula aid funding amount is higher using NTI data from November as compared to September. Chapter 4 phases in the grant amounts over five years beginning in fiscal 2014. NTI education grants to 18 counties totaled $8.3 million in fiscal 2014 and increase to $19.7 million in fiscal 2015.

Most Counties Meet Maintenance of Effort

As of October 2013, the State Board of Education has certified that the school appropriations of 22 counties have met the fiscal 2014 maintenance of effort (MOE) requirement; Baltimore City and Baltimore County appropriations are pending further action. Overall, MOE appropriations increase by approximately 2% statewide over fiscal 2013, and 12 counties appropriated more than the required MOE amount.

Chapter 6 of 2012 made significant changes to the State's nearly 30-year-old MOE law. Chapter 6 holds counties accountable for meeting minimum school funding levels, while enabling counties to increase their local income tax above locally imposed tax caps for the sole purpose of meeting MOE. In fiscal 2013, Talbot County was the first county to utilize this provision of the law. No counties are using this authority in fiscal 2014. Beginning in fiscal 2015, Chapter 6 requires a county that has an education effort below the five-year statewide average education effort to increase the MOE payment to the school board in years when its local wealth base is increasing. The required increase will be the lesser of the increase in a county's per pupil wealth, the average statewide increase in per pupil local wealth, or 2.5%. Preliminary estimates suggest that statewide per pupil local wealth declines slightly from fiscal 2014 to 2015. Therefore, if this finding holds when actual wealth and enrollment figures pertaining to fiscal 2015 aid are available, no jurisdiction will be required to increase its MOE appropriation in fiscal 2015 under this provision of Chapter 6.

Adequacy Study to Begin in 2014

In 2002, the Maryland General Assembly adopted the Bridge to Excellence in Public Schools Act (Chapter 288), which restructured Maryland's public school finance system and increased State aid to public schools by an estimated $1.3 billion over six fiscal years (fiscal 2003-2008). As a result of this legislation, Maryland adopted a standards-based approach to public school funding, which identified base funding for students without special needs, identified per pupil weights for students with special needs, and analyzed the effect of concentrations of poverty on adequacy targets. The follow up adequacy study was originally scheduled to begin in 2012, 10 years after the initial study was completed. However, Chapter 397 of 2011 delayed the study in order to incorporate the new Common Core State Standards.

The Maryland State Department of Education (MSDE) must contract with a public or private entity to conduct a study of the adequacy of education funding in the State. The study must be conducted in phases, with the first phase beginning no later than June 30, 2014, and the final phase being completed by December 1, 2016. The study must incorporate standards from the common core curriculum adopted by the State board and two years of results from common core assessments to be implemented beginning in the 2014-2015 school year. The adequacy study is estimated to cost approximately $500,000. However, a request for proposals (RFP) has yet to be issued by MSDE for the contract to perform the study. MSDE will be convening a group of stakeholders to advise it on the RFP. The Governor is required to include sufficient funds in the State budget for the study. Chapter 709 of 2012 required school size to be incorporated into the adequacy study. The first phase of the new study must examine county policies and best practices on school size.

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Education

Implementing the Common Core State Standards and Transitioning to the Partnership for Assessment of Readiness for College and Careers

The 2013-2014 school year is a pivotal year, as the new State curriculum aligned with the Common Core State Standards is being fully implemented across the State. In addition, the new assessments aligned with the common core, called the Partnership for Assessment of Readiness for College and Careers (PARCC), will be field tested in spring 2014 as the State prepares to replace the Maryland School Assessment with PARCC in the 2014-2015 school year and most High School Assessments soon thereafter. Despite controversy over the common core and cost of PARCC, implementation of the new curriculum and assessments has gone relatively smoothly in Maryland but has not been without challenge, including the need to request amendments to the State's federal education flexibility waiver.

In 2009, President Obama established the federal Race to the Top (RTTT) competitive grant program to encourage states to adopt specific educational reforms, including adopting the Common Core State Standards (CCSS), administering new assessments aligned with CCSS, and tying teacher and principal evaluations to performance and specifically student growth on the new assessments. Maryland was one of 12 states that applied and was awarded a grant; the State received $250 million in August 2010. As the states have moved to implement RTTT initiatives, the U.S. Department of Education (USDE) offered states flexibility from the No Child Left Behind (NCLB) requirement that 100% of students achieve proficiency by 2014, which no state is able to meet. NCLB is the most recent reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), which has not been reauthorized since 2001. Known as ESEA Flexibility Waivers, USDE incorporated many of the RTTT requirements into the ESEA Flexibility Waivers and continues to use the waivers as a tool to encourage states to implement reforms in exchange for federal education funding. Although they are not federal requirements, linking federal funding to implementation of reforms like CCSS and new assessments has raised concerns around the country that local control of education is being lost to the federal government and/or philanthropic foundations and replaced by standardization. In Maryland, implementation of a new State curriculum based on CCSS and new assessments has gone relatively smoothly but has not been without its challenges.

The Common Core State Standards

CCSS were created through a state-level initiative coordinated by the National Governors Association and the Council of Chief State School Officers in collaboration with education stakeholders from across the country. Forty-five states have adopted CCSS, which are a set of academic standards in two subject areas, English/language arts (ELA) and mathematics, that define the knowledge and skills all students should master by the end of each grade level. The

standards require students and teachers to focus on fewer topics and concepts while emphasizing depth, detail, and critical thinking skills. Maryland adopted CCSS in June 2010 and has since worked to design a State curriculum, the Maryland Common Core State Curriculum (MCCSC), which aligns with the standards.

MCCSC is being fully implemented statewide in the 2013-2014 school year. To aid the transition to the new curriculum, the Maryland State Department of Education (MSDE) has been holding Educator Effectiveness Academies during each summer since 2010, including 11 regional academies during the summer of 2013. The Educator Effectiveness Academies provide professional development on the new curriculum, assessments, and teacher and principal evaluations to teams of educators from each of the State's 1,500 schools. Each school team consists of four representatives that include the principal and teachers of ELA, mathematics, and STEM (science, technology, engineering, and mathematics). Each team is required to develop a transition plan for the school to move to full implementation of MCCSC, and plans were required to be submitted to MSDE by October 2013. MSDE will deploy teams from the Division of Curriculum, Accountability, and Assessment to local education agencies to develop a needs assessment and provide additional support. Information provided at the Educator Effectiveness Academies has been uploaded to MSDE's Blackboard Learn, the department's online professional content management tool, along with updated model units and lessons from mdk12.org.

In addition, MSDE partnered with the University System of Maryland and other education and higher education stakeholders to convene a Teacher Education Summit in October to review the major issues and components of teacher education in Maryland in order to identify common challenges, themes, and priorities to meet the issues presented by CCSS and other changing needs of students and society.

Partnership for Assessment of Readiness for College and Careers

MCCSC will require a new assessment system that can measure the content and skills found in the curriculum. RTTT funding was awarded to two state-run consortiums to develop new assessments aligned with CCSS. In spring 2010, Maryland joined the Partnership for Assessment of Readiness for College and Careers (PARCC), a consortium of 15 states working to develop a common set of assessments aligned to CCSS for ELA and mathematics. Then, in November 2013, Maryland was asked to manage the federal grant for the PARCC consortium and serve as its fiscal agent in place of Florida beginning on January 1, 2014.

The PARCC assessments will measure student progress and track status on a trajectory toward college and career readiness. The goal for the assessments is to be entirely computer-based in order to provide more timely feedback to educators to be used to target or improve instruction during the instructional year. The assessments will have two parts – a midyear performance-based assessment and an end-of-year assessment. According to MSDE, field testing of the PARCC assessments, which are intended to replace the Maryland School

Assessment (MSA) and most of the High School Assessments (HSAs),[1] will take place in spring 2014 in PARCC states. Maryland is the only state that will field test PARCC in nearly every school. The PARCC field test will include both paper-based and computer-based assessments; however, the field test will only include the midyear performance-based assessment. Full implementation of PARCC is planned for the 2014-2015 school year, although the schedule for phasing out HSAs is still under development.

Challenges with Implementing MCCSC and Transitioning to PARCC

The implementation of MCCSC has not been without challenge. A survey of 745 teachers conducted in November 2013 by the Maryland State Education Association (MSEA) indicated that 64.9% of the teachers surveyed did not feel adequately prepared to implement MCCSC. In addition, 86.8% of the teachers surveyed responded that there are still significant challenges to understanding and implementing MCCSC.

In order to provide more information to parents and the public about implementation of MCCSC and to address concerns with CCSS, the State Board of Education, in partnership with the Maryland Parent Teacher Association, held public forums around the State during fall 2013, noting specifically that CCSS is a set of learning goals, not a curriculum. Maryland developed its own curriculum based on State-specific standards aligned with CCSS. Although none has yet been introduced in Maryland, legislation was introduced in at least 10 states in 2013 to pull out of CCSS or prohibit funding to implement CCSS; to date, Indiana is the only state that has passed legislation to "pause" CCSS implementation.

The transition to PARCC is also not without challenge. Maryland has requested an amendment to its ESEA Flexibility Waiver to allow the PARCC field test to meet the federal requirement that all students be assessed annually in grades three through eight and high school in specific subjects. Otherwise, students participating in the PARCC field test would also have to take the MSA in spring 2014, which would result in double testing of those students. MSDE anticipates that, with a few exceptions, one classroom in each elementary and middle school will take PARCC in reading or math and the MSA in the other area; one class in each high school will take PARCC in a non-HSA reading or math course. The 2013-2014 school year is the last year that MSAs are expected to be administered. Some have argued that the MSAs should not be given this school year, since they are not aligned with MCCSC. However, since Title I of ESEA requires the annual assessments and that the results be made publicly available, Maryland could be found out of compliance with the law and risk losing a portion of the approximately $190 million in federal Title I funds received in 2012-2013 and potentially other federal funds targeting at risk students. In response to a California law enacted in October, USDE notified California that it risked losing up to $3.5 billion in federal funds if it does not administer state assessments this year. California recently applied to USDE for an ESEA waiver from double

[1] The Government HSA will continue to be required for graduation and the Biology HSA will be replaced with the Next Generation Science Assessment currently under development by PARCC.

testing and wants to give only the common core field tests to all primary school students in spring 2014.

Student test scores are expected to drop as PARCC is implemented since the tests are more rigorous and tied to college and career readiness. Stakeholders have expressed concerns that the anticipated drop in test scores may shake confidence in MCCSC and the new assessments. Already student proficiency scores have declined slightly in Maryland, as the MSA scores from spring 2013 in elementary school reading and mathematics and middle school mathematics reflect the transition to MCCSC in many school systems during the 2012-2013 school year. This misalignment between the curriculum and assessments will continue during this school year and is also expected to affect spring 2014 MSA scores. MSDE has implemented a PARCC Transition Committee to address the concurrent implementation of PARCC and the phasing out of MSA and HSAs. One of the transition committee's key tasks is preparing a public communication plan to describe the implementation of PARCC, the phase out of HSAs, the anticipated score results of PARCC assessments and their implications, and the college- and career-ready cut scores to the various stakeholders.

Finally, the full cost to administer PARCC is still unknown. In July 2013, PARCC announced that the summative math and reading tests would cost $29.50 per student. This is a little less than the $32 per student Maryland currently spends on assessments, but it does not reflect several other formative tests PARCC is developing that Maryland may select or the technology infrastructure required in every school to handle the capacity and network requirements to administer the computer-based assessments. Many schools do not have sufficient technology infrastructure to meet these requirements. MSDE is in the process of assessing the technology readiness of Maryland's schools. Several states, most recently Georgia and Oklahoma, have recently left the PARCC consortium over cost concerns. There are also long-term budget implications for maintenance and operational costs of assessment administration upon the termination of federal RTTT grant funds to the State and to PARCC.

A related challenge to implementing MCCSC and transitioning to PARCC involves using the student growth component, a large part of which is based on test results, in a teacher's or principal's evaluation. The MSEA survey found that 82.69% of the teachers surveyed responded there are still significant challenges to understanding and implementing the new teacher evaluation systems. Maryland's current ESEA Flexibility Waiver states that personnel decisions will be informed by the evaluation system based on student growth in the 2014-2015 school year; however, MSDE has requested a one-year delay of this requirement until the 2015-2016 school year in order to be respectful and responsive to the complexity and change inherent in new standards, new curricula, and applying test scores that may not yet be perfectly aligned to hiring and firing decisions. Further, MSDE states that allowing for additional time will both elevate teacher and principal confidence in MCCSC and give local school systems and the State more time to validate that component measures are performing as planned and that the combined measurements of performance correctly reflect educator performance and the concomitant professional development of each educator.

Education

School Construction

House Bill 860 from the 2013 legislative session established a partnership between the State and Baltimore City to address the condition of public schools in Baltimore City. A memorandum of understanding has been approved by all the parties and the Board of Public Works. Plans on school maintenance and utilization must be submitted by December 2013. HB 860 stated legislative intent that the Interagency Committee on School Construction consider the HB 860 funds and ongoing needs in Baltimore City when making recommendations to allocate school construction funds in the capital budget, which is projected to include $250 million for public school construction in fiscal 2015. Meanwhile, the State-local cost-share formula for school construction capital projects is being updated for use beginning in fiscal 2016.

2013 Legislation

Chapter 647 of 2013 (HB 860 – Baltimore City Public Schools Construction and Revitalization Act) established a new partnership among the State, Baltimore City, and the Baltimore City Public Schools (BCPS) to fund up to $1.1 billion in public school facility improvements through revenue bonds to be issued by the Maryland Stadium Authority (MSA). The law required the four parties – MSA, the Interagency Committee on School Construction (IAC), Baltimore City, and BCPS – to enter into a memorandum of understanding (MOU) by October 1, 2013; the Board of Public Works (BPW) must approve the MOU before it may take effect and before MSA can issue any bonds for the program. The MOU has been approved by the governing bodies of the four parties and was approved by BPW on October 16, 2013.

Baltimore City Public Schools has the oldest school buildings in the State, with an average age of 33 years old. A 2012 assessment of the condition of BCPS school facilities by a consultant hired by the Baltimore City Board of School Commissioners (BCPS Board) estimated a cost of $2.4 billion to address the educational adequacy, condition, and life-cycle needs of the facilities. In response to this critical need for public school facility improvements in Baltimore City, HB 860 created a unique financing mechanism for public school improvements. Relying on annual revenue contributions of $20 million each from the State, Baltimore City, and BCPS, MSA will issue revenue bonds to support the public school improvement projects. Based on market projections, $60 million can support debt service on up to $1.1 billion in bonds.

The projects to be undertaken are contained in the BCPS Board's 10-year Plan. Phase I of the plan prioritizes 63 schools that should be replaced or renovated; the BCPS Board has also identified 26 schools that will be closed due to their condition and/or under-enrollment. Based on MSA projections of the estimated cost of the construction and renovations and the proceeds from bond sales, a total of 30-35 new and renovated schools will be constructed under the

HB 860 program. The current schedule assumes the first bonds will be sold in summer/fall 2015, with all of the projects to be completed by summer 2020.

Memorandum of Understanding

The MOU sets out the roles and responsibilities of the four parties to implement the facility improvement program. An executive committee consisting of a member from each party will oversee implementation of the MOU and will meet at least quarterly. MSA will be responsible for managing the new construction/replacement schools and BCPS will manage renovations of existing schools. MSA is responsible for the financing of all of the projects, and therefore, plays a role in overseeing project management at existing schools as well as new schools. All of the projects are subject to IAC approval and will follow regular State procurement rules, including competitive bidding, minority business participation (MBE), and prevailing wage requirements. Among other things, HB 860 required the MOU to address 16 specific items; those of particular interest to the General Assembly are highlighted below. Overall, the MOU meets the law's requirements. It contains provisions that hold the parties accountable for achieving the goals set out in HB 860. The key to a successful program will be the parties, particularly MSA and IAC, utilizing the accountability tools they have in the MOU to ensure that the commitments made in the MOU are kept.

School Utilization

Increasing the utilization rate of BCPS' schools is one of the key goals of the HB 860 program. BCPS must submit intermediate and final school system utilization rate targets to IAC for approval by December 31, 2013. IAC may withhold future project approvals if projected utilization rates do not meet the targets. BCPS currently has a utilization rate of approximately 76% systemwide based on State Rated Capacity.

School Maintenance

BCPS must submit a Comprehensive Maintenance Plan (CMP) by December 15, 2013, to IAC for approval that includes adequate maintenance for all new and existing schools, as well as sufficient resources to implement the plan. The CMP must be updated annually. MSA may withhold construction funds if the annual CMP does not demonstrate progress in achieving performance metrics acceptable to IAC. IAC has indicated that the $16 million BCPS currently budgets systemwide for school maintenance is not sufficient. IAC also notified BCPS in September that maintenance inspections in 2011 and 2012 revealed several concerns relevant to additional State investments in BCPS school facilities and that school maintenance will be a major consideration when IAC is making its recommendations for capital school construction allocations.

School Closures

The MOU includes a list of the 26 school buildings identified to be closed in BCPS' 10-year Plan and the anticipated date of closure. Release of construction funds for projects not already under construction will be contingent on BCPS closing each school on schedule or substituting another school acceptable to MSA. The MOU also includes a process for BCPS to amend the 10-year Plan, including the schools to be closed, provided that at least 26 buildings of similar size are closed. On November 12, 2013, BCPS announced several proposed changes to the 10-year Plan as part of its annual review of education programs and facilities. The changes include closing three additional schools in 2017 as well as completely vacating the former Walbrook High School campus, all of which were due to be renovated, and keeping one school previously identified for closure, Excel Academy at Francis M. Wood High School. The changes also involve moving two major renovations up from year eight to year two. This will likely affect the timeline for project completion, since planning was not yet underway for the projects. The BCPS board will hold several public hearings in December and vote on December 17, 2013, on the changes. If approved, there will be eight amendments to the 10-year Plan.

Capital Funding and School Construction Cost-share Formula

The fiscal 2014 Capital Improvement Program projected $250 million in capital funds for public school construction in fiscal 2015, which would mark the tenth year in a row that State funding has met or exceeded the $250 million annual funding goal (which technically expired in fiscal 2013). HB 860 stated legislative intent that IAC consider the HB 860 funds and ongoing needs when making its recommendations for Baltimore City school construction capital allocations to BPW. The Governor is required to provide a preliminary fiscal 2015 school construction allocation by November 1; on November 14, the Governor announced a preliminary allocation of $250 million. By December 31, IAC will recommend 75% of the preliminary funding total for allocation, to be approved by BPW in January 2014.

The State-local cost-share formula for school construction capital projects is updated every three years. It is currently being updated for use beginning in fiscal 2016. The updated formula will be reviewed and approved by IAC and then must go to BPW for approval. Past practice has phased in decreases in the State share of more than five percentage points over a period of up to three years. The Department of Legislative Services, working with IAC, has led the updating process three times since its initiation, but the process is more suited to be under the purview of the Maryland State Department of Education permanently.

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Education

Prekindergarten for All?

Maryland has required school systems to make half-day prekindergarten available to economically disadvantaged four-year-olds since the 2007-2008 school year. The State provides funding to school systems for prekindergarten through the State compensatory education formula – in fiscal 2014 this amount is an estimated $83.7 million. Expanding prekindergarten to more or all four-year-olds has been proposed, most recently by Maryland gubernatorial candidates. Expanding prekindergarten to full-day for disadvantaged four-year-olds and half-day for all four-year-olds has been estimated to cost $120 million to $150 million annually. Reliably estimating the potential impact of proposals that expand eligibility based on income is difficult.

Public Prekindergarten Available to Disadvantaged Four-year-olds

The Bridge to Excellence in Public Schools Act (Chapter 288 of 2002) has required each local school system to make publicly funded prekindergarten available to all economically disadvantaged or homeless four-year-old children in the State since the 2007-2008 school year. To qualify as economically disadvantaged, a child must be from a family whose income is at or below 185% of the Federal Poverty Guidelines (FPG), which is the income eligibility criterion for the federal free and reduced-price meal (FRPM) program. After the initial enrollment of eligible children, local school systems may fill any vacancies with children who lack certain skills or exhibit a lack of readiness for kindergarten. State regulations require local school systems to provide prekindergarten for a minimum of 2.5 hours per day using certified early education teachers.

In the 2012-2013 school year, 26,402 four-year-olds were enrolled in prekindergarten programs offered by the local school systems. Prince George's County and Baltimore City have the highest prekindergarten enrollments in the State. Most school systems offer half-day prekindergarten, but about 25% of the students are enrolled in full-day prekindergarten. Baltimore City and Kent and Garrett counties offer full-day prekindergarten exclusively, while another seven counties offer both half- and full-day programs.

Prekindergarten students are not included in the annual September 30 enrollment counts for State education aid. Instead, since the State mandates that local school systems make prekindergarten available only to disadvantaged four-year-olds, State funding is provided through the compensatory education formula established in the Bridge to Excellence Act. Specifically, the compensatory aid formula uses a per pupil cost that is 0.97 times the per pupil funding level established in the foundation program for each FRPM-eligible student. Of the .97 compensatory add-on or weight, approximately .07 is provided by the State to fund prekindergarten. In fiscal 2014, this equates to $83.7 million in State funds and an additional

$83.7 million in local funds to match the 50/50 program. This is a statewide total; the amount provided to each school system varies.

In addition to prekindergarten, there are a variety of publicly funded programs available to provide high-quality early education services to economically disadvantaged children from birth to age five. These programs include the Judith P. Hoyer Early Child Care and Family Education Program, including Judy Centers and federally funded Head Start and Early Head Start programs. The State provides $10.6 million annually for the Hoyer Program and a $1.8 million subsidy for the Head Start program.

School Readiness

Publicly funded prekindergarten is part of the State's initiative that all children enter kindergarten ready to learn. In 2012-2013, 82% of children entered kindergarten fully ready to learn, compared to only 49% of children when data was first collected in 2001-2002. Children enrolled in public prekindergarten programs the year prior to kindergarten outperform their peers at the same income level in school readiness. Specifically, 83% of children who were enrolled in public prekindergarten programs the year prior to starting kindergarten in the 2012-2013 school year were fully ready, compared to only 76% of all low-income kindergarteners. Children who were enrolled in publicly funded prekindergarten are also better prepared than children in home or informal care, Head Start, family child care, or a child care center.

Kindergarten readiness has been measured using the Maryland Model for School Readiness (MMSR) assessment, a standardized assessment with seven domains: personal and social development; language and literacy; mathematical thinking; scientific thinking; social studies; the arts; and physical development. Teachers evaluate and rate student performance during the first eight weeks of school according to a checklist of 30 indicators. If a student is rated "fully ready," it means that the skills, behaviors, and abilities needed to meet kindergarten expectations are consistently demonstrated. The MMSR assessment is being revised to align with the new Maryland Common Core Standards. The revised assessment will also be able to be administered using a technology platform, with linkage to a reporting database and to online resources for teachers. The project is being done in collaboration with the state of Ohio.

Maryland's Preschool for All Business Plan

The Task Force on Universal Education (Chapter 498 of 2006) was established to develop a framework and specific recommendations on how to extend publicly funded prekindergarten to a greater number of children. In addition to setting goals relating to the implementation of a universal preschool program in the State, the task force charged the Maryland State Department of Education (MSDE) with developing a business plan that would explain what the costs would be for expanding the existing prekindergarten program. The task force collectively called these goals and initiatives Preschool for All.

Submitted in December 2009, MSDE's "Maryland's Preschool for All Business Plan" proposed to gradually increase the number of four-year-old children who are eligible for publically funded prekindergarten in the State over a period of five years. The first phase would expand eligibility for prekindergarten to families whose income is at or below 300% of the FPG. The second phase would expand eligibility for prekindergarten to families whose income is at or below the State median income. The last phase would expand eligibility to all four-year-old children in the State. According to the business plan, when fully phased in, Preschool for All would add approximately $121 million to the State's current annual prekindergarten expenditure and would add more than double the current number of students. Additionally, under the business plan, local jurisdictions would be required to contribute 30% of the total cost of implementation. MSDE plans to update the business plan in the near future.

In order to pilot the Preschool for All proposal, MSDE identified State funds to establish eight pilot sites around the State to expand prekindergarten to full-day and eligibility to 300% of the FPG. A portion of Maryland's $50 million federal Race to the Top Early Learning Challenge grant is being used to establish five additional Preschool for All sites in Title 1 attendance areas. MSDE provides $100,000 to fund 20 full-day slots at each of the total of 13 sites. The grant funds expire in 2015, after which funding must be indentified to sustain the additional slots.

Recent Proposals to Expand Prekindergarten

The majority of states offer prekindergarten programs to targeted populations of children. The National Institute for Early Education Research reports that nine states and the District of Columbia have "universal" prekindergarten programs open to all four-year-old children. Legislation has been introduced in Maryland during the last several sessions proposing either to require the State to fund prekindergarten for all four-year-old children, regardless of income level, or to increase the number of children in high-quality early learning programs.

Senate Bill 878/House Bill 1241 (2012) proposed to require local school systems to make publicly funded prekindergarten available to all four-year-old children by the 2015-2016 school year. The bill generally implemented the Preschool for All plan, with full-day prekindergarten available for economically disadvantaged children and half-day programs required for all other children. The fiscal and policy note for the bill estimated that the proposed universal prekindergarten program would cost the State approximately $151 million annually when fully implemented. Local funding was estimated to increase by up to $160 million. Senate Bill 572/House Bill 925 (2013), also known as Race to the Tots, proposed to increase the number of children in quality early learning programs by establishing a grant program that would support a number of enhancement programs.

Most recently in 2013, President Obama, Maryland gubernatorial candidates, and others have suggested various proposals to expand publicly funded prekindergarten. Common themes of the proposals include increasing the income eligibility criteria and/or offering full-day prekindergarten (rather than half-day) to some or all eligible four-year-olds (and disadvantaged three-year-olds), as well as phasing in the program over several years. Many of the proposals

suggest increasing the income eligibility criteria to children from families whose income is at or below 300% of the FPG or to all four-year-old children regardless of income level.

Estimating the Cost of Expanding Prekindergarten

The cost of expanding publicly funded prekindergarten to four-year-olds depends on the cost for each additional classroom, the number of additional children who enroll, and whether the program will be half-day or full-day. Based on MSDE's experience with Preschool for All pilot sites, it is estimated that each additional classroom (20 students for full day or 40 students for half day) will cost approximately $100,000. However, there are data challenges in estimating the number of four-year-olds who are eligible for prekindergarten at different income levels.

The U.S. Census Bureau estimates there were approximately 75,000 four-year-olds in Maryland in 2012. Reliable data on the family income of four-year-olds is harder to ascertain. MSDE and Current Population Survey data estimate that about 21,000-22,000 four-year-olds in the State are from families who are at or below 185% FPG. However, based on the number of four-year-olds enrolled in Medicaid in September 2013, 33,893 four-year-olds in the State are from families who are at or below 185% FPG. Using the percentage of kindergarteners eligible for FRPM, 46% in 2012-2013 (up 8% from the prior year), an estimated 35,000 four-year-olds are eligible for public prekindergarten.

The wide range in the number of four-year-olds who are currently eligible for publicly funded prekindergarten makes it difficult to estimate the impact of expanding eligibility. Reliably estimating the number of four-year-olds whose families are below 300% FPG, for example, requires having a reliable estimate of those currently eligible at 185% FPG. Assuming all of the current 26,400 four-year-olds in prekindergarten are income eligible (which is unlikely), approximately 8,500 additional four-year-olds may be eligible to participate in the half-day program. At least an additional $21.3 million in State funds would be necessary if all of those children were to enroll in the current publicly funded half-day prekindergarten. If the program is expanded to a full day, it is reasonable to assume that some portion of these children who are not currently participating would enroll in a full-day program. The Department of Legislative Services is working with MSDE and other entities to refine the population estimates and develop reliable fiscal estimates for prekindergarten expansion proposals.

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Higher Education

College and Career Readiness and College Completion

Comprehensive legislation enacted in 2013 aims to better prepare Maryland students for college and careers and improve college completion. The College and Career Readiness and College Completion Act of 2013 (Chapter 533) contains ambitious timelines for several initiatives and reports to be commenced or completed. While significant progress has been made since May, most notably in the area of dual enrollment of high school students in college credit courses, several initiatives and reports have been delayed.

Comprehensive legislation was enacted in 2013 to better prepare Maryland students for college and careers. Chapter 533 (Senate Bill 740), The College and Career Readiness and College Completion Act of 2013, also codified the State goal that by 2025, at least 55% of the State's residents age 25 to 64 will hold at least an associate's degree, and made significant strides toward achieving the goal. A coordinated effort aligned along the P-20 continuum (prekindergarten, primary, secondary, and postsecondary education; college completion; and career attainment) will be necessary to achieve the Act's purposes. The preparation of students to succeed in college and career includes, among other things, the alignment of curricular requirements in high school with college and career expectations, including requiring four years of mathematics; the availability and accessibility of college-level courses to high school students; the facilitation of credit transfer between community colleges and four-year institutions of higher education; and the encouragement of students who nearly completed their degrees to return to institutions of higher education.

Requiring Four Years of Mathematics

Beginning with the ninth grade class of 2014, the Act requires each student to enroll in a mathematics course during each year that the student attends high school. It is the goal that all students achieve mathematics competency in at least Algebra II by the time they graduate. These courses may include math-related career and technology program courses or credit-bearing mathematics transition courses as discussed below, but a transition course may not fulfill the mathematics requirement to the exclusion of other credit-bearing courses that are required for graduation.

On October 30, 2013, the Maryland State Department of Education (MSDE) presented to the State Board of Education (State board) draft emergency regulations that would align mathematics curricular requirements with the requirements of the Common Core State Standards and the College and Career Readiness and College Completion Act. The draft regulations create grade bands for prekindergarten through fifth grade, sixth through eighth grade, and high school and include enumerated domains and coursework. High school coursework may include

Algebra II, Pre-Calculus, Discrete Mathematics, Linear Algebra, Probability and Statistics, Computer Science, and Calculus. The State board will consider whether to move forward with publication of the regulations at its December 2013 meeting.

Transition Courses

As part of aligning the curricular requirements of high school with college and career expectations, the Act requires that beginning with the 2015-2016 school year, all students must be assessed using acceptable college placement cut scores no later than grade 11 to determine whether they are college and career ready specifically relating to English language arts, literacy, and mathematics. By the 2016-2017 school year, transition courses or other instructional opportunities must be delivered to students in grade 12 who have been found not to be college and career ready.

Before implementation of these transition course requirements, MSDE, in collaboration with county boards of education, the Maryland Higher Education Commission (MHEC), and other interested stakeholders, must study these types of courses and report its findings. The intent of the study is to ensure that transition courses align with the Common Core State Curriculum; to determine whether these courses should be credit-bearing and considered to meet requirements for graduation; to identify the appropriate assessment to be used to determine college and career readiness; and to address how college and career readiness will be reflected on a high school transcript.

Over the course of the late summer and early fall, representatives from both the secondary and postsecondary education sectors have worked on this study. In July, a team of high school educators attended the Southern Regional Education Board (SREB) training being offered regarding transition courses that have been developed by SREB. Following this training, the team indicated that the SREB modules would not be sufficient for Maryland. Since then, surveys have been sent to local school systems and community colleges regarding their capacity and need to provide transition courses; representatives have attended the Educator Leader Cadre in Chicago where they worked with colleagues from Kentucky who have developed transition courses for Kentucky; and MSDE and the University System of Maryland (USM) have applied for a $400,000 grant to the Institute for Education Sciences, the research arm of the U.S. Department of Education, to fund a deepening of the partnership across education segments necessary for this study, as well as to enhance transition course development and implementation, particularly in mathematics. The grant would last for up to two years.

Although findings were anticipated by December 15, 2013, in light of the pending grant application and upcoming workgroups convened for the purpose of further exploring this issue, the report likely will be delayed.

Dual Enrollment

In order to increase the availability and accessibility of college-level courses to high school students, the Act alters the tuition payment schedule and requirements for a student who is dually enrolled in courses in both a high school in the State and a public institution of higher education. Beginning with the fall 2013 semester, a public institution of higher education may no longer charge tuition to the student. Instead, each local school system must pay the institution a percentage of the institution's tuition based on how many courses the student takes, and the local school system may charge the student a fee to cover these costs. However, the local school system may not charge a fee to students who are eligible to receive free and reduced-price meals (FRPM) and a student's ability to pay must be taken into account when setting fees.

All of the community colleges have executed a memorandum of understanding (MOU) with the local school systems in their jurisdictions, are continuing their prior practice relating to dually enrolled students that meets the requirements of the Act, or are conducting ongoing conversations and negotiations with the local school systems. Information provided by the Maryland Association of Community Colleges on dual enrollment agreements shows that at least three colleges have not yet reached an MOU, and five school systems are charging students less than authorized by the Act. Many community colleges are acting as the billing agent for the local school system and collecting fees from the parents of dually enrolled students directly, with the appropriate adjustments being made for the school system to pay for FRPM students while maintaining the confidentiality of students' FRPM status. USM has communicated with all of its admissions directors and bursars regarding the need to examine and in some cases redesign the billing mechanisms so that students are not charged tuition. The Attorney General's Office has been assisting with the interpretation of the Act relating to dual enrollment. For example, the Attorney General's bill review letter concluded that the dual enrollment provisions of the Act do not apply to summer sessions. Additional requests for advice regarding how to treat winter sessions and online course offerings have been made.

In furtherance of dual enrollment, though not directly related to the Act, the Governor and the General Assembly created the Early College Innovation Fund to support efforts to increase access to postsecondary education while in high school. Instead of students individually deciding to dually enroll on a course-by-course basis, early and middle college programs are designed to provide students with both a high school degree and a postsecondary credential, usually 60 college credits or an associate's degree, upon high school graduation. Six partnerships between local school systems and institutions of higher education will receive a total of $2 million in fiscal 2014 for programs that target students seeking science, technology, engineering, and math (STEM) courses of study or STEM-related career and technical education. One of these grant recipients, the Academy of Health Sciences at Prince George's Community College, which is operated in partnership with the Prince George's County Public School System and will award its students both a high school diploma and an Associate of Arts degree upon completion, reports that the dual enrollment provisions of the Act have been a boon in terms of promoting, encouraging, and guiding funding discussions relating to its dually enrolled students.

Statewide Transfer Agreements and Other Articulation

MHEC, in collaboration with the public institutions of higher education, is required under the Act to develop and implement agreements that facilitate statewide transfer (from community colleges to four-year institutions) and reverse transfer (from four-year institutions to community colleges) by July 1, 2016. Maryland's online articulation data system (ARTSYS), which currently communicates the transferability of courses among the segments of higher education, is operated and owned by USM. During the 2013 session, questions arose regarding the transparency and user-friendly functionality of ARTSYS, as well as whether there are alternative articulation data systems available, and if so, what would be the cost and schedule of implementation. By December 31, 2013, the Segmental Advisory Council (SAC) of MHEC is required to report regarding potential improvements to ARTSYS, a review of other articulation data systems, an analysis of gaps or deficiencies in the articulation of academic course equivalencies amongst the segments of higher education, and recommendations on establishing a transparent and user-friendly system and how to maximize degree credit transferability in a cost- and time-efficient manner.

Since passage of the legislation, under the auspices of the Student Transfer Advisory Council (STAC) of MHEC, which includes representatives from all of the segments, a workgroup has conducted focus groups to identify areas for improvement; held discussions and disseminated surveys to provosts, registrars, transfer advisors, and other administrators, faculty, and students regarding functionality and usability of ARTSYS; reviewed articulation software systems in five other states; redesigned the ARTSYS portal and templates; and vetted the redesigned portal and templates with stakeholders. STAC is expected to present its findings and recommendations to SAC in November of 2013.

Statewide Communication Plan for Near Completers

MHEC, in collaboration with institutions of higher education, must create a statewide communication campaign to identify individuals who have completed some college credits but did not earn a degree and no longer attend an institution of higher education. The campaign must make use of a variety of marketing media, including billboards, brochures, and electronic resources; provide a centralized contact point for near completers to get information about and assistance with reenrollment; make readily available contact information for each public institution of higher education in the State; and focus on those individuals who earned a minimum grade point average of 2.0 on a scale of 4.0 while in college and earned at least 45 credits at a community college or at least 90 credits at a four-year institution. Further, MHEC must develop and implement a plan that would provide an incentive for a near completer to reenroll and for a college to identify and graduate near completers. By December 1, 2013, MHEC must report regarding the campaign and the incentive plan and must include a timeline for implementation of the campaign and plan.

Several grant-funded initiatives for near completers already existed at the time of the passage of the Act. In 2011, the Governor and the legislature authorized MHEC to establish a competitive grant program called One Step Away, which provides seed money to four-year institutions to identify, contact, reenroll, and graduate near completer students. Eight institutions participate in this program and have received awards between $25,000 and $60,000, depending upon the scope of the project. Additionally, USM has used some of the money to provide financial assistance to near completers. For community colleges, Maryland has been the recipient of the Completion Innovation Challenge Grant supported by Complete College America. Under this grant, recipients of MHEC's Associate Degree Award for Pre-degree Transfer Students (ADAPTS) program may apply for $5,000 awards to promote and support reverse transfer at their institutions.

Although there has been reported success from these and other grant programs, MHEC has not yet organized and centralized a statewide campaign to identify and attract near completers back to higher education and attainment of a degree. MHEC reports that focus groups are planned and a feasibility and cost analysis will be conducted for the statewide plan; however, currently the near completer campaign remains housed at each individual institution.

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Higher Education

College Affordability

State funding for the largest need-based student aid program has grown about 10% since fiscal 2010, while the number of applicants has increased nearly 30%. This has resulted in almost 30,000 students on the waitlist for State need-based financial aid in fiscal 2014 before additional awards were made in late November 2013. While 2014 saw the first decrease in the waitlist in at least six years, many students continue to demonstrate growing financial need due to the recent recession and tightening restrictions on federal financial aid.

Despite Modest Tuition Growth, Student Need for Financial Aid Remains High

Maryland had the second smallest tuition increase in the nation from fiscal 2009 to 2014, according to a 2013 College Board report, ranking behind only Missouri. Because of this, Maryland now ranks as the twenty-eighth most expensive state for public four-year institutions, compared to seventh in fiscal 2005.

Despite this progress, due in part to Maryland's in-state tuition freeze from fiscal 2007 to 2010 and tuition buy-downs to 3% increases since fiscal 2011, financial aid still has a significant impact on the affordability of higher education for many Maryland students. Funding for the State's largest need-based financial aid program, Educational Excellence Awards (EEA) has remained level funded at approximately $75 million annually from fiscal 2009 to 2012. A deficiency appropriation of $6.5 million for fiscal 2013 represented the first significant increase in EEA funding since fiscal 2007. EEA funding is first given to all students eligible for a Guaranteed Access (GA) grant, and the remainder goes to students eligible for Educational Assistance (EA) grants. GA awards are intended to meet 100% of financial need for students from low-income households, while EA awards are intended to meet up to 40% of financial need for students from low- to middle-income households. In fiscal 2014, assuming funds restricted to need-based aid are transferred by budget amendment to the Maryland Higher Education Commission (MHEC), total EEA funding increases by 1.3%, less than the 3% tuition increase seen at most public four-year institutions. Total State support for all need-based student financial assistance offered by MHEC is about $90.2 million in fiscal 2014, or 5.1% of total higher education spending in fiscal 2014.

Exhibit 1 shows trends in EEA appropriations and awards from fiscal 2010 to 2014. While fiscal 2014 marks the first time in at least six years that the number of applications and waitlisted students has declined for EEA, overall, student need grew significantly from fiscal 2010 to 2014. The number of EEA applicants increased nearly 30%, and those applying demonstrated greater financial need. This can be measured by the Expected Family Contribution (EFC) of students receiving State awards. In general, a lower EFC means a student has greater financial need, and MHEC makes EEA awards beginning with the students who qualify with the

lowest EFC. Between fiscal 2010 and 2014, the "EFC awarded" level fell about 57%. To date, MHEC has awarded fiscal 2014 EEA grants to students with EFCs up to $2,164, while students with EFCs up to $10,300 were awarded grants as recently as fiscal 2009.

Exhibit 1

Educational Excellence Awards

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014*	2010-2014 % Change
EEA Appropriations	$76,459,474	$75,933,546	$75,124,624	$82,896,170	$83,963,593	9.8%
EA – Total Applicants (On-time FAFSAs)	103,765	117,447	134,305	139,983	134,603	29.7%
Initial EFC Awarded (EA Only)	5,000	2,500	1,125	1,000	2,164	-56.7%
Waitlist as of May 1 (EA Only)	11,333	18,504	31,000	35,795	29,157	157.3%
Amount to Fund Initial Waitlist (EA Only)	$23,763,183	$39,767,903	$63,912,409	$75,504,020	-	

* As of October 22, 2013; includes $5 million available to be transferred into the program by budget amendment.
EEA: Educational Excellence Awards
EA: Educational Assistance Grant
FAFSA: Free Application for Federal Student Aid

Source: Maryland Higher Education Commission, Office of Student Financial Assistance

As a result of growing demand and level funding, the EEA waitlist has grown by nearly 18,000 students, or about 157%, between fiscal 2010 and 2014. The amount of funding necessary to cover all waitlisted students in the last fiscal year, $75.5 million, would have been comparable to the legislative appropriation for the entire EEA program (before the deficiency appropriation). The waitlist includes all Maryland residents who file a Free Application for Federal Student Aid (FAFSA) and have any financial need, regardless of how high their EFC. The fiscal 2014 waitlist includes students with EFCs of up to $65,000. Some students on the waitlist do receive aid from declined awards. In fiscal 2012 only about 2,000 moved off the waitlist, while in fiscal 2013, MHEC was able to make awards to an additional 6,700 students. Declined awards make up the majority of financial aid funding that is not spent each year and carried forward to the next year.

The Need-Based Student Financial Assistance Fund (NBSFAF) is a special fund that was created in 2011 to better account for these unused financial aid funds. However, as a just-released legislative audit notes, MHEC has not been efficiently using the funds to make need-based awards, and large balances have continued to accrue. MHEC reports that only $1.25 million of the total $10.5 million fiscal 2013 special fund appropriation was expended, leaving a NSBFAF balance of approximately $17.2 million at the end of fiscal 2013, despite the large waitlist for aid. The legislative audit report estimates that an additional 7,800 awards could have been made to students in fiscal 2013 using the fund balance. At its November 20 meeting, MHEC announced that it was making 18,937 additional awards for the fall 2013 and spring 2014 semesters using unspent fiscal 2014 appropriations and the entire NSBFAF balance. Historically, the student acceptance rate has been about 50%, which could leave the fund with about $8.0 million that could be reawarded in 2014.

Federal Financial Aid

While federal sequestration decreased support to Supplemental Educational Opportunity Grants and Federal Work-Study, there was no impact to the largest federal grant program, the Pell grant, nor to the U.S. military's largest aid program, the Tuition Assistance program. Because State need-based programs such as EEA are applied to student need after the federal Pell grant is considered, federal funding for the Pell grant program has a significant impact on how far State need-based financial aid will stretch. After not changing for three years, the maximum Pell award for academic year 2013-2014 rose to $5,645, an increase of $95 or 1.7%. Given that tuition generally increases every year, this small increase in the Pell grant, on top of restrictive eligibility changes that went into effect in the 2012-2013 academic year, means the Pell program is providing much less financial support to students today than before the economic recession.

In 2011, the U.S. Department of Education tightened eligibility for Parent PLUS loans, generally taken out when a student exceeds the per-year cap on other federal student loans. Previously, loans were denied to parents with financial delinquencies in the past 90 days. This window of scrutiny was extended to five years and has had a disparate impact upon Historically Black Colleges and Universities (HBCUs). Under a further change made in 2013, if a student's parent is denied a PLUS loan, the student is automatically eligible to borrow more Stafford loans, as long as the student does not exceed the lifetime cap on such loans.

Minority serving institutions that generally work with more financially sensitive student populations, such as Maryland's community colleges and four HBCUs, are concerned that these changes to the Pell grant and PLUS loans will lead many students to drop out of higher education. Across all Maryland public four-year institutions, about one third of all students receive Pell grants. However, at HBCUs, Pell recipients make up between 45% and 60% of the student body, and up to 60% at some community colleges. These federal financial aid changes may have contributed to enrollment declines at minority serving institutions beginning in the 2012-2013 school year.

Higher Education

Performance-based Funding for Higher Education Institutions

The Maryland Higher Education Commission approved a framework for allocating a percentage of State funds to public higher education institutions based on the institutions' performance on certain metrics. The appropriate percentage of State funds that should be subject to performance-based funding has not been determined. Following that determination, the framework must be modeled to ensure validity, which raises the question of whether and how performance funding may be incorporated in the fiscal 2015 budget.

Maryland Higher Education Commission Approves Performance-based Funding Framework

On September 25, 2013, after two years of study, the Maryland Higher Education Commission (MHEC) approved a framework for incorporating performance-based funding (PBF) into the annual appropriation for public higher education institutions. The study began at the request of the budget committees during the 2012 legislative session. In response to the request, MHEC decided that the PBF framework should fit within the current funding structure and achieve State education goals by fairly rewarding colleges and universities for improving performance on metrics that embody these goals. The framework has two parts: what metrics to use, and what "pot" of money will be subject to the performance of those metrics. Within the first part, MHEC established separate metrics for the four-year and the two-year institutions. Within the second part, MHEC evaluated two funding options, "outside-base" and "within-base," but ultimately endorsed the use of within-base funding.

The Performance Component of Performance-based Funding

Four-year Institutions

The MHEC framework includes three distinct categories of metrics: degree completion, student progression, and mission metrics. Each institution will be measured on a total of six metrics, all of which are based on a three-year rolling average. The degree completion metric is mandatory for all institutions and measures the percent increase in the number of bachelor's degrees awarded. The student progression metric is also mandatory and measures the increase in the percentage of students that earn critical credit milestones that typically delineate sophomore, junior, and senior status. The progression from freshman status to sophomore status is given more weight as this is when students are more likely to drop out of school. Additionally, for both the degree completion and the student progression metric, students who are eligible for a

Pell grant receive extra weight in recognition that it takes more effort for an institution to help these students be successful.

The third group of metrics was established to recognize that the four-year institutions have varying missions and fulfill varying purposes for the State. Subject to the approval of MHEC, an institution must choose four out of eight mission specific metrics. The eight metrics are:

- reduce the graduation rate gap between certain ethnicities;
- reduce the graduation rate gap between genders;
- increase the number of students that transfer from a community college to a four-year institution with at least 12 credits;
- increase the number of students that successfully complete remedial math and the first credit bearing math course;
- increase the share of extramural research that an institution receives as compared to its peers;
- increase the number of bachelor's degrees awarded in Science, Technology, Engineering, and Math-related (STEM) degree programs;
- increase the number of bachelor's degrees awarded to nontraditionally aged students; and
- increase the number of graduate degrees awarded.

Community Colleges

Unlike the metrics for the four-year institutions, there are no mission-specific metrics in the community college framework. Each community college will be subject to the same six metrics, which are also measured on a three-year rolling average. Similar to the four-year framework, students eligible for a Pell grant will be given extra weight for completion and progression. The six metrics are:

- improve student progression using 15, 30, and 45 credits as the milestones;
- increase the number of certificates and degrees awarded;
- increase the number of students transferring to a four-year institution with at least 12 credits;
- increase the number of STEM degrees awarded;
- increase the percentage of students that successfully complete remedial English and the first credit bearing course; and
- increase the percentage of students that successfully complete remedial math and the first credit bearing course.

The Funding Component of Performance-based Funding

Although MHEC discussed two ways of funding PBF, it endorsed a framework that uses a within-base approach, which means that a certain percent of the total State appropriation will be allocated based on performance. For the four-year institutions the performance allocation will be divided among the three components: at least 20% for degree completion, 25% for student progression, and up to 55% for mission metrics. If an institution fails to either improve or maintain on either the degree completion or the student progression metric, the funds will remain in the respective category and be distributed to the successful institutions accordingly. However, if an institution fails to improve or maintain on a mission metric, those funds will instead be added to the funds designated for degree completion.

The performance allocation for the community colleges will be divided among the six metrics, with 30% allotted to the progression metric, 20% to the completion metric, and 12.5% to each of the remaining four metrics. Unlike the framework for the four-year institutions, if a community college does not improve or maintain on a certain metric, the funds are not re-allotted to the other metrics but are distributed to the institutions that are successful in that metric.

In both the four-year and the community college frameworks, performance scores will be calculated for each metric, and funds will be awarded based on an institution's ability to improve over its prior year's performance or maintain its performance on that metric. It should be noted, however, that the awarded amount is adjusted to account for the difference in an institution's relative size and budget in order to maintain equity among the large variance in the State's institutions of higher education.

Next Steps

One of the purposes of a PBF or outcome-based system is to incentivize a change in the "usual" way of doing business and reward success in achieving goals that are important to the State. In order to accomplish this, an appropriate amount of funds must be subject to the performance calculation: too little and there is no incentive, too much and institutions would be reluctant to participate. Although the report is silent as to what the appropriate performance allocation should be, leading national experts on PBF have recommended that at least 5% of funds be subject to performance-based allocation. Other states that have initiated a PBF system have ranged from 3% to 100% of the higher education budget. Once this performance allocation is determined for Maryland, the next phase, as required by the 2013 *Joint Chairmen's Report*, is to test the PBF framework in order to establish a baseline, evaluate the metrics to ensure they are reasonable, and determine whether the data is available, reliable, and valid. Given this, it is unclear whether and how PBF may be incorporated into the fiscal 2015 budget.

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Coppin State University Reforms Underway

A Special Review Committee appointed by the Board of Regents of the University System of Maryland found numerous deficiencies in the management of Coppin State University, including a structural operating budget deficit. An implementation plan has been developed to align expenditures with revenues and revamp Coppin State University's academic focus, programs, and recruitment.

Special Review Committee

While Coppin State University (CSU) has received significant State support in both the operating and capital budgets and offers some successful academic programs such as nursing, criminal justice, and applied psychology, it continues to struggle with poor student performance and a declining enrollment. Given these issues, coupled with a change in leadership, the University System of Maryland (USM) Board of Regents (BOR) decided it was an appropriate time to take actions to address the various issues affecting CSU's overall performance. Accordingly, in December 2012, USM BOR appointed a Special Review Committee comprised of 14 members representing CSU's various stakeholders to conduct a comprehensive review of CSU and recommend strategies and actions to improve overall performance.

Findings of the Committee

The committee, chaired by University of Maryland, Baltimore County President Freeman Hrabowski, presented its findings to the BOR on May 15, 2013. Overall, the committee found that across campus there is a lack of strong leadership, ineffective and inefficient use of resources, and a lack of accountability. Other findings included:

- Transfer and older nontraditional students graduate at higher rates than traditional first-time, full-time students and in fiscal 2012 accounted for 65% of the bachelor's degrees.

- Despite an enrollment decline of 3% between 2002 and 2012, 20 new academic programs were added, and the number of faculty grew 49%, while professional and staff positions increased 92% and 14%, respectively.

- Student services are not well integrated, timely, or adequately focused to ensure that students receive needed assistance to maximize academic success

- Student center services were inadequate, recreational programs were insufficient, and access to the new sports complex for recreational use was limited.

- Poor customer service at various student support offices, including financial aid, bursar, registrar, and admissions, reflects a lack of culture of support and commitment to student service and success.

- While, on average, the faculty teaching load is the highest among USM comprehensive institutions, CSU faculty generate the lowest number of student credit hours, which is attributed to a large number of programs being offered to a small number of students.

Continuing Budget Shortfall

The committee also learned that "in spite of its high per-student funding, CSU has been struggling with an ongoing operating budget deficit" and had concerns regarding budget planning, expenditure controls, implementation of PeopleSoft, and audit reviews. While legislators and legislative staff were aware of CSU's current budget shortfall, they were not previously aware of how long CSU has been operating at a deficit. As shown in **Exhibit 1,** since fiscal 2008, CSU had an operating deficit in all but one year – fiscal 2009. The deficit in fiscal 2008 can be attributed to a write-off of $4.0 million in accumulated unpaid tuition and fees and transferring an additional $1.3 million to collections. Growth in spending on faculty and institutional support (*e.g.*, executive management, fiscal operations, and general administration) coupled with relatively flat revenues (excluding auxiliary) since 2010 contributed to the structural operating deficit, which is consistent with the committee's findings. Transfers from the fund balance and auxiliary revenues were used to balance the operating budget.

Exhibit 1
Coppin State University's Operating Budget Surplus/(Deficit)
Fiscal 2008-2012

2008	2009	2010	2011	2012
$(4,499,701)	$650,000	$(542,790)	$(2,118,014)	$(4,550,977)

Note: Excludes auxiliary revenues and expenditures.

Source: Department of Legislative Services; University System of Maryland

USM and CSU took actions in fiscal 2013 to align expenditures with revenues. CSU states that it closed fiscal 2013 with a surplus of approximately $0.5 million. However, final closeout data is not yet available. CSU has assured USM BOR that it will operate within a balanced budget each year and has stated that the fiscal 2014 budget is on track to close with a small surplus.

Recommendations and Implementation Plan

The committee emphasized that the overriding priority is the academic success of the students, and to that end the recommendations fall under three goals: (1) improve student retention and graduation and increase enrollment; (2) strengthen academic programs and faculty; and (3) improve administrative operations and shared governance practices. An implementation plan was developed establishing a definitive, detailed plan with timelines for the recommended actions to be completed along with accountability measures. USM BOR appointed Interim President Mortimer Neufville as President of CSU for two years, through June 30, 2015, to provide consistency and accountability in implementing the plan. An implementation team was established to provide oversight, guidance, and feedback on carrying out the recommendations. Overall, 51 targeted actions were identified to address and take corrective actions to achieve efficiencies in the academic enterprise, improve operations, and change and improve the processes.

Actions in the implementation plan were assigned completion timeframes from immediate (staring on June 30, 2013) to long-term (over the next five years), with most being completed within 12 to 18 months. Some of the accomplishments to date include:

- restructuring the academic enterprise by reorganizing six schools to four colleges, and consolidating academic departments/programs from 17 to 12, resulting in the elimination of two deans and five department chair positions;
- completion of an enrollment management plan;
- implementation of intensive faculty advising in which every student has been assigned a faculty advisor;
- appointment of a STEM coordinator;
- expansion of recruitment with new marketing material; and
- opening of a child care center.

Furthermore, the committee expressed expectations that there will be regular reporting on progress toward completing the actions. CSU will be reporting bi-monthly to USM and every six months to the BOR and the Maryland General Assembly.

Higher Education

U.S. District Court Decision Regarding Desegregation of Maryland's System of Higher Education

After a lengthy process of failed mediation and a six-week trial, the U.S. District Court has found that the State of Maryland violated federal civil rights laws by approving unnecessary duplication of programs at historically black colleges and universities (HBCUs) and traditionally white institutions (TWIs). The court found in favor of the State on two other claims related to institutional missions and operating funding. However, the court has yet to enter a judgment. Instead, the State and the plaintiffs, a coalition of current and former HBCU students, are entering into mediation to attempt to determine appropriate remedies. Meanwhile, a study of HBCUs required by the fiscal 2014 budget bill is getting underway.

Litigating the Desegregation of Maryland's System of Higher Education

In October 2006, The Coalition for Equity and Excellence in Maryland Higher Education, which is a group of former, current, and prospective students of Maryland's historically black colleges and universities (HBCUs),[1] filed suit against the Maryland Higher Education Commission (MHEC) alleging violations of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, which protect against discrimination on the basis of race, color, or national origin. The lawsuit was filed in Baltimore City; however, the case was removed to the U.S. District Court a few weeks after the initial filing. The State of Maryland was added as a defendant in 2010. After attempts at mediation failed and after a long process of discovery, a six-week bench trial was held in January and February 2012 and closing oral arguments occurred in October 2012. On October 7, 2013, the U.S. District Court issued a memorandum of its findings of fact and conclusions of law. In its current form, the memorandum is not a final decision of the court.

The parties do not dispute that Maryland operated a *de jure* (as a matter of law) system of segregated public higher education before 1969, when the U.S. Department of Education's Office for Civil Rights (OCR) found the State in violation of Title VI of the Civil Rights Act of 1964. In *United States v. Fordice*, 505 U.S. 717 (1991), the Supreme Court established the following legal framework for evaluating a state's efforts at desegregating its formerly *de jure* system of segregation in higher education: (1) the plaintiff must show that a policy or practice is traceable to prior *de jure* segregation; (2) if the plaintiff shows that a policy or practice is traceable to prior *de jure* segregation, the state has the burden to prove that it has dismantled its prior *de jure* system and that the policies or practices do not have continuing segregative effects; and (3) if the state fails to show that policies traceable to prior *de jure* segregation do not have

[1] Maryland's HBCUs are Morgan State University, Bowie State University, Coppin State University, and the University of Maryland Eastern Shore.

continuing segregative effects, the state must show that those policies have a sound educational justification and cannot be practicably eliminated. To show that a policy cannot be practicably eliminated, the State must show that the educational goals could not have been accomplished through less segregative means.

Summary of the U.S. District Court Decision

In the coalition's lawsuit, three policies of the Maryland system of higher education allegedly traceable to the prior *de jure* system were at issue: (1) limited institutional missions; (2) operational funding deficiencies; and (3) unnecessary program duplication. The court did not find that mission-related policies or practices or current operational funding were traceable to the *de jure* era; however, the court did find that the State has failed to eliminate unnecessary program duplication for Maryland's HBCUs and that this policy is traceable to the *de jure* era.

Limited Institutional Missions

Although the court noted that the institutional missions of HBCUs are linked to the *de jure* era, the court held that the coalition failed to demonstrate that the State is responsible for limiting, perpetuating, or imposing missions on HBCUs. First, the coalition argued that HBCUs have been limited by the State in their attempts to expand their historical missions; however, the court found that each institution develops its own mission statement, and the State plays only a minor role in setting the mission. Second, the coalition argued that based on actual offerings and capacity, HBCUs are functionally limited in their mission; however, the court stated that it could not find any current mission-related policy or practice that is traceable to the *de jure* era. Third, the coalition argued that mission expansions at nearby TWIs are evidence that the State continues to undermine the competitiveness of HBCUs; however, the court rejected this argument. On this point, the court did note that program offerings as they relate to missions, in terms of demand and uniqueness, would be better addressed under the analysis of unnecessary duplication. Finally, the court recognized that the HBCU's "dual mission" to educate both adequately prepared and underprepared college students has roots in the *de jure* era; however, quoting Justice Thomas' concurrence in *Fordice*, the court found that "it is not a state's constitutional obligation – nor should it be – to erase a school's history or actively take steps to undermine an institution's own commitment to maintaining its legacy within the community."

Operational Funding Deficiencies

Similarly, the court rejected the coalition's allegation that operational funding deficiencies at Maryland's HBCUs were entrenched in or a continuation of funding practices that were segregative and traceable from the *de jure* era. Maryland's current funding framework is structurally different than prior funding policies and practices. In fact, the court found that under Maryland's current funding system, HBCUs are not underfunded by the State, relative to TWIs, but rather Maryland appropriates slightly more per full-time-equivalent (FTE) student at HBCUs than at TWIs. Further, the court found that Maryland's HBCUs are funded at or above their

peer-based funding targets. While the court noted that HBCUs struggle financially because of factors such as lower tuition revenue, insufficient fundraising capacity, and difficulty in attaining external grants, the court found that these factors are outside of State control. The court held that additional funding, in excess of what the State has already provided HBCUs in enhancement funding, is not required. (The court had previously ruled in summary judgment that another of the coalition's claims related to capital funding deficiencies was not proved and, therefore, that claim did not proceed to trial.)

Unnecessary Program Duplication

Conversely, the court concluded that the coalition proved that unnecessary program duplication continues and is a policy traceable to prior *de jure* segregation in Maryland higher education. The court, applying the law established by the Supreme Court in *Fordice*, defined unnecessary duplication as the offering by two or more institutions of the same nonessential or noncore programs; nonbasic liberal arts and sciences course work at the bachelor's level; and all duplication at the master's level and above. The court cited MHEC's decision to approve a joint University of Baltimore (UB)/Towson University (Towson) Masters of Business Administration program (MBA), despite the objections of Morgan State University (Morgan) in 2005 as an example of how the State has failed to prevent additional unnecessary duplication. The court found that the State's "sound educational justification" for program duplication consisted of justifications for the approval of the MBA program at UB/Towson rather than a thorough and thoughtful assessment and analysis of whether the same goals could be accomplished with less segregative results, such as offering Morgan additional funding for its MBA program or establishing a program at another HBCU instead of a TWI. The court also found that, in addition to failing to disapprove *new* duplicative high-demand programs at TWIs within close proximity to HBCUs, MHEC also failed to analyze and eliminate *existing* high-demand programs that are duplicated at TWIs and HBCUs.

The court rejected the State's argument that programs offered by institutions have a very limited impact on which institution a student chooses to attend and instead noted that unique, high-demand programs in other states have a significant impact on where a white student will attend. According to testimony provided to the court by the coalition's expert, Maryland's HBCUs offer an average of 3 nonduplicated, high-demand, noncore programs per HBCU compared with 17 per TWI. The court found that the coalition "convincingly demonstrated that duplication does have a palpable effect on student choice, [therefore] the State is under an obligation to eliminate it."

During the 1960s and 1970s, when Maryland's HBCUs offered unique, high-demand programs, the court observed that HBCUs attracted significant numbers of white students. However, duplication of unique HBCU programs at newly created public institutions that were in close proximity to existing HBCUs resulted in a decline in enrollment in the HBCU programs.

The strong collaborative partnership between the University of Maryland Eastern Shore (UMES) and Salisbury University that currently exists demonstrated to the court that unnecessary program duplication can be minimized. The court found that only 9% of HBCU

programs are unnecessarily duplicated on the Eastern Shore while 38% are unnecessarily duplicated in the Baltimore area. In 2009, UMES had a 13.3% white student population, which is significantly more desegregated than the 1% to 4% white student population at HBCUs in the Baltimore area, which the court attributed to the lack of unnecessary duplication at UMES and Salisbury as one factor in UMES' success in attracting white students.

Next Steps

Despite the findings of fact and conclusions of law included in the memorandum, the court has deferred entry of judgment pending mediation or further proceedings, if necessary, to establish a remedy. The case was referred back for mediation and a status report is due to the court by January 3, 2014. As a "promising" starting point, the court suggests that each HBCU "should develop programmatic niches of areas or areas of excellence in at least two high-demand clusters within the next three to four years." The niche areas identified by the court include Green Sustainability Studies, Computer Sciences, Aging Studies, and Health Care Facilities Management. Additionally, the court said it is likely that transfers or merging of programs will be necessary. If mediation is unsuccessful, then one or more of the parties may request an immediate appeal under the Federal Rules of Civil Procedure.

The fiscal 2014 budget bill requires MHEC to take an additional next step regarding the State's HBCUs. In consultation with the Department of Budget and Management, MHEC must undertake a study of the State's HBCUs, which will serve as a basis for developing a plan to ensure the long-term stability and success of HBCUs. The study must include an analysis of and recommendations that address eight areas, including institutional resource needs, adequacy of State funding, affordability, college readiness of students, and duplication of academic programs. A preliminary report is due by December 31, 2013, and a final report is due by December 31, 2014. MHEC has issued a request for proposals to hire a consultant to conduct this study. The fiscal 2014 budget also includes additional enhancement funding for HBCUs. A total of $3.3 million is included to convert contractual faculty positions to regular positions, and a total of $1.6 million is included for additional need-based financial aid.

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Health and Health Insurance

Implementation of Federal Health Care Reform in Maryland

The individual mandate under the federal Patient Protection and Affordable Care Act (ACA) takes effect on January 1, 2014. On the same day, Medicaid coverage is significantly expanded. Although Maryland has been in the forefront among the states in embracing the ACA and moving forward with implementation, technical difficulties with the online insurance exchange have hampered efforts to enroll individuals in health care coverage.

Implementation Overview

Under the ACA, most Americans are required to have health care coverage or face a tax penalty. Individuals have until March 31, 2014, to enroll in coverage without penalty. Maryland has been in the forefront among the states in embracing the ACA and moving forward with implementation. However, initial efforts to enroll individuals into coverage through the Maryland Health Connection have been marked by technology failure.

Since the ACA was signed into law in March 2010, the State established the Maryland Health Care Reform Coordinating Council and the Governor's Office of Health Care Reform to oversee and coordinate health care reform in the State, brought the State's insurance laws into compliance with new federal consumer protections, standardized health insurance premium rate review and approval, created a temporary federal high-risk pool within the Maryland Health Insurance Plan (MHIP) and provided for the transition of MHIP members to coverage under Medicaid or private health insurance, established the Maryland Health Benefit Exchange (MHBE) to develop and operate the Individual Exchange and Small Business Health Options Program (SHOP) Exchange, and expanded Medicaid coverage for low-income individuals. (The effect of the ACA on the State Employee and Retiree Health and Welfare Benefits program is discussed in a separate issue paper.)

Maryland Health Benefit Exchange

Established in 2011 as an independent unit of State government, MHBE's mission is to help individuals and small employers and their employees shop for affordable health insurance. MHBE's enrollment system will also be used to enroll most, but not all, Medicaid recipients. MHBE expects to enroll 147,135 individuals in fiscal 2014 and 235,907 individuals by fiscal 2018 into qualified health plans through its electronic system, the Maryland Health Connection. Over 3,000 consumer assistance workers have been trained to help individuals seeking coverage.

On July 26, 2013, the Maryland Insurance Administration (MIA) released the approved rates for qualified health plans to be sold on the Maryland Health Connection for coverage

beginning January 1, 2014. MIA approved submissions from nine carriers, including one new co-op plan, Evergreen. For all submissions, MIA approved rates that were lower than those the carrier had requested, with some rates reduced by as much as 33%. The rate reduction prompted three carriers – all under the Aetna umbrella – to drop out of the market. While rates are higher than they were in 2013, the doubling of rates that some had anticipated did not materialize. An "apples to apples" comparison of 2013 and 2014 rates is hindered by new requirements for health insurance plans in 2014, including required coverage of 10 essential health benefits and limits on consumer out-of-pocket costs. According to the Kaiser Family Foundation, the $228 monthly premium in Baltimore is the twelfth lowest among the major cities in each of the 50 states and the District of Columbia for a single 40-year-old purchasing the second-lowest-cost silver plan. Federal tax credits will further reduce premiums for individuals with income below 400% of the federal poverty level ($45,960 for a single individual; $94,200 for a family of four). Phasing out MHIP over a period of years, instead of terminating it as of January 1, 2014, has helped to keep premiums relatively low in the State, by keeping most of the high-risk MHIP enrollees out of the private health insurance risk pool.

The Maryland Health Connection went live on October 1, 2013, for individuals seeking coverage through the Individual Exchange and, almost immediately, problems arose that prevented consumers from creating accounts and enrolling in coverage. Similar to the problems experienced in the federally facilitated exchanges in other states, a combination of unexpectedly high volume and software malfunctions was to blame. As of late October, consumers are advised to contact MHBE call center or a regional Connector Entity for assistance in enrolling. As of October 23, 2013, more than 3,100 households have enrolled in coverage through the Maryland Health Connection.

In April 2013, MHBE announced that enrollment of small business employees in qualified health plans through the SHOP Exchange would be delayed until January 2014 for coverage beginning in March 2014. MIA has reviewed and approved rates submitted by 13 carriers for small employer plans offered through the SHOP Exchange. According to MIA, the rates range from 4.9% lower to 14.6% higher than the rates for similar plans in 2013. Thus far, no carrier has withdrawn from the market.

Medicaid

Chapter 159 of 2013 expanded Medicaid eligibility to individuals with family income below 133% of the poverty level. The ACA provides for income disregards that effectively push the income threshold up to 138% of the poverty level ($15,856 for a single individual; $32,499 for a family of four). Chapter 159 also expanded Medicaid eligibility for former foster care adolescents under the age of 26. The expansion provided under Chapter 159 is anticipated to add 93,255 individuals to Medicaid in fiscal 2014, rising to 135,736 in fiscal 2018. Approximately 83,000 of these individuals will transfer automatically from the Primary Adult Care Program, which provides a limited set of health benefits, to full Medicaid eligibility.

Maryland Health Insurance Plan

MHIP is the State's insurer of last resort for individuals who do not have access to health insurance through an employer or who have been turned down in the private health insurance market due to a preexisting condition. The State subsidizes enrollee-paid premiums for MHIP coverage with revenue from an assessment on hospitals, expected to yield $157.2 million in fiscal 2014. MHIP also administers the federal high-risk pool, which terminates on December 31, 2013. In fiscal 2013, MHIP had 21,753 enrollees, including 1,456 enrollees in the federal high-risk pool.

Chapter 159 closed MHIP to new enrollment as of December 31, 2013. The law also required MHIP board, in consultation with MHBE, to determine the appropriate date – no later than January 1, 2020 – on which the plan must decline to re-enroll existing plan members. Phasing out the plan over a period of years is intended to reduce the impact of MHIP high-risk enrollees on the private insurance market. To carry out the law, MHIP board approved the termination of the MHIP+ plan on December 31, 2013. The MHIP+ plan provides deeply discounted premiums to individuals with income below 300% of the poverty level. These individuals will qualify for Medicaid or federal tax credits through MHBE. As a result of the poor functionality of the Maryland Health Connection, MHIP board voted on November 5, 2013, to continue MHIP+ plan until March 31, 2014, giving enrollees additional time to make the transition to Medicaid or a subsidized plan through MHBE. In August 2013, 6,260 individuals were enrolled in MHIP+.

Financing

To date, and over the next several years, health care reform is financed largely with federal funds. The Medicaid expansion is supported by 100% federal funding through the first half of fiscal 2017, when the federal share of the expansion begins to decline until it reaches 90% in fiscal 2020.

MHBE also has been financed largely with federal funds, but this financing pattern will change in January 2015, when the ACA requires the state exchanges to be self-sufficient. Only about 17% of MHBE's $84.9 million fiscal 2014 budget comes from general funds, which support the navigator program and the State share of Medicaid financing for the Maryland Health Connection. Chapter 159 provides for MHBE to be supported with special funds from the insurance premium tax when federal grant funds terminate in 2015. (Funding for the Medicaid share of Maryland Health Connection expenses will continue to be provided from a combination of State and federal funds, however.)

Anticipating the termination of the MHIP+ plan, Chapter 159 authorized MHIP board to transfer money not needed for MHIP to the MHBE Fund for the purpose of funding a new State Reinsurance Program. The purpose of the State Reinsurance Program is to mitigate the impact of high-risk individuals on rates in the individual insurance market inside and outside the

exchange. Although Chapter 159 authorized the State Reinsurance Program to begin on January 1, 2014, there are no plans for the program to get underway. MHIP intends to hire a consultant to model options for the program, presumably for implementation in 2015. Health insurance carriers will begin in January 2014 to develop their rate and form filings for plan year 2015. Carriers will need to know by the end of 2013 whether their rate and form filings should take into account a State Reinsurance Program. MHIP projects a surplus of $153.2 million at the end of fiscal 2014. After setting aside funds for reserves, the surplus drops to $88.1 million.

Continuing Legal Challenges

Cases challenging provisions of the ACA and the implementing regulations are continuing to be brought in federal courts. The U.S. Supreme Court has been asked to consider two of the cases during its 2013-2014 term: *Liberty University v. Lew* and *Hobby Lobby, Inc. v. Sebelius*. The opinions of the federal circuit courts of appeals in those cases are summarized below. The Supreme Court has yet to issue decisions regarding the requests.

On July 11, 2013, a panel of the U.S. Court of Appeals for the Fourth Circuit rejected the plaintiffs' challenge in *Liberty University v. Lew*. The panel rejected the plaintiffs' claims that the employer mandate violates the Commerce Clause and that the penalty for noncompliance violates the Taxing and Spending Clause, determined that the employer and individual mandates do not violate the plaintiffs' free exercise rights under the First Amendment and the Religious Freedom Restoration Act (RFRA), and upheld the religious exemptions in the ACA.

On June 27, 2103, a panel of the U.S. Court of Appeals for the Tenth Circuit found that the plaintiffs in *Hobby Lobby v. Sebelius* were likely to succeed in challenging the regulatory contraceptive coverage requirement. The provision requires employers, beginning on July 1, 2013, to provide certain contraceptive services as part of their employer-sponsored health insurance plans. The panel determined that the requirement violates the RFRA and Free Exercise Clause of the First Amendment in requiring the businesses to cover contraceptive methods that they believe result in abortions in violation of their religious beliefs, found that the requirement substantially burdens the plaintiffs' religious exercise, and determined that the government lacked a narrowly tailored compelling government interest that would counteract the substantial burden.

On the Horizon for the 2014 Session

While Chapter 159 completed the legislation needed to implement health care reform in the State, uncertainty may persist into the 2014 session as to how well the infrastructure constructed over the past four years will work. The software and capacity issues that plagued the initial roll out of the Maryland Health Connection may be resolved by session, but the overall success of health care reform will take considerably longer to evaluate and may prompt

additional legislative intervention. For example, additional discussion may take place during the 2014 session around ways to make coverage affordable, perhaps focusing on (1) changes to the State Reinsurance Program and (2) interagency collaboration to assure that reductions in hospital uncompensated care resulting from the ACA are reflected in both hospital rates and health insurance premiums.

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Health and Health Insurance

Medicaid Population and Financing Trends

Use of Medical Assistance Programs is expected to continue to grow rapidly in fiscal 2014 and 2015, largely due to the expansion of Medicaid under the federal Patient Protection and Affordable Care Act. However, most of the added cost in the program will be borne by the federal government.

Overview

Maryland's Medical Assistance Programs (Medicaid, Maryland Children's Health Program (MCHP), Primary Adult Care (PAC), Employed Individuals with Disabilities, etc.) provide eligible low-income individuals with comprehensive health care coverage. Funding is derived from both federal and State sources with a federal fund participation rate of 50% for Medicaid and 65% for the MCHP. The fiscal 2015 Medicaid baseline estimate also includes the annualized impact of the expansion of Medicaid under the federal Patient Protection and Affordable Care Act (ACA) up to 138% of the federal poverty level effective January 1, 2014. Under the ACA, the State avails itself of that opportunity to benefit from an enhanced match rate for certain new coverage groups (100% in the first years). Under the same expansion provisions, PAC coverage ends January 1, 2014.

Fiscal 2014 Outlook

The fiscal 2014 Medical Assistance Programs' working appropriation of over $7.2 billion (just over $2.3 billion in general funds) at this point appears to be insufficient to meet projected need. The fiscal 2015 baseline forecast assumes the need for $123.9 million in general fund deficiencies. Of this amount, $70.0 million is derived from less than anticipated Cigarette Restitution Fund (CRF) revenues in fiscal 2014 as a result of the State suffering an adverse arbitration ruling in the ongoing litigation over the treatment of nonparticipating manufacturers to the Master Settlement Agreement (see the separate Cigarette Restitution Fund issue paper for more detail on this issue). Although the CRF supports a variety of programming beyond Medicaid (including agricultural, other health, as well as education programs), the fiscal 2015 baseline assumes that the reduction will be taken entirely within the Medicaid program.

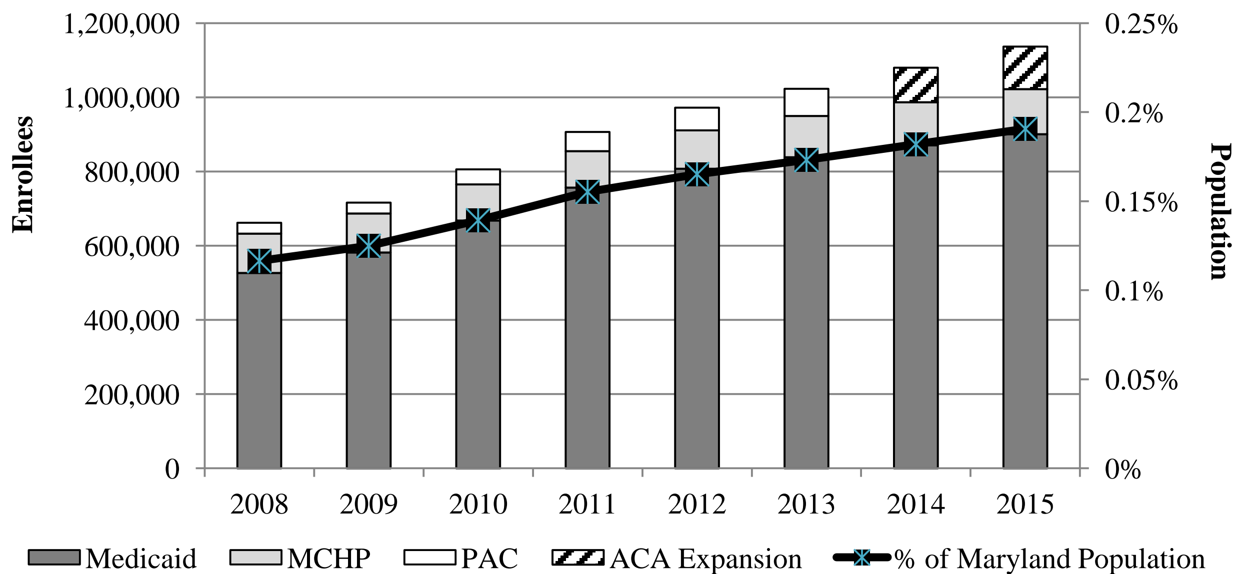
The remaining $53.9 million general fund deficiency is based on current utilization, enrollment, and cost trends across the Medicaid and MCHP programs. In its simplest terms, the deficiency can be attributed to the proposed 6.8% increase in calendar 2014 managed care organization (MCO) rates. This increase includes an allowance of 2% to compensate MCOs for a fee to be levied on health insurers under the ACA beginning on January 1, 2014, as well as an assumption of $12.0 million to continue a rural access incentive payment.

Fiscal 2015 Forecast

In fiscal 2015, expenditures for the Medical Assistance Programs are estimated to be just over $8.1 billion, a $913 million (12.6%) increase over the fiscal 2014 legislative appropriation. The principal driver of this growth is the annualization of costs associated with the expansion of Medicaid under the ACA. Costs for this expansion are anticipated to increase by almost $535 million in fiscal 2015. However, for fiscal 2015, all of these costs are supported with federal funds.

In terms of other budget growth, the fiscal 2015 baseline forecast includes an estimate of enrollment growth outside of the ACA expansion of 3.9%. This enrollment growth includes an assumption of some woodwork impact on the existing Medicaid program as a result of renewed efforts to enroll individuals under the new ACA Medicaid expansion eligibility criteria or to provide access to insurance coverage through the Maryland Health Benefit Exchange. Total enrollment growth, including the ACA expansion group, is estimated at 5.2%. As shown in **Exhibit 1**, based on current population estimates, 19.0% of the State's population will access health care through Medicaid and the MCHP in fiscal 2015.

Exhibit 1
Medicaid and MCHP Enrollment
Fiscal 2008-2015



ACA: Patient Protection and Affordable Care Act
MCHP: Maryland Children's Health Program
PAC: Primary Adult Care

Source: Department of Legislative Services

The fiscal 2015 baseline forecast includes the full impact of the proposed calendar 2014 MCO rate increase, a more modest MCO rate increase in calendar 2015, similarly modest increases for other medical expenses, rate increases for waiver services as established through regulation, and ongoing cost containment for nursing home services.

Fiscal 2015 general fund need is expected to grow by $201 million (8.6%) over the fiscal 2014 legislative appropriation. Special fund support in fiscal 2015 is expected to grow to $929 million. CRF support is anticipated to return to the original fiscal 2014 appropriation level ($72 million); revenues continue to be anticipated from a variety of provider assessments; and revenue into the Rate Stabilization Fund and available to Medicaid is anticipated to increase as a result of higher premium income for MCOs due to the ACA Medicaid expansion.

As shown in **Exhibit 2**, per capita costs are expected to fall slightly between fiscal 2013 and 2014 before increasing in fiscal 2015. Per capita cost growth for the regular Medicaid population (excluding ACA expansion) is expected to increase more slowly than when combined with the ACA expansion population. This primarily reflects the fact that the fiscal 2014 estimate only includes six months of costs for the ACA population as well as the assumption that this population will, at least initially, have above average health care costs.

Exhibit 2
Enrollment and Service Year Expenditures*
Fiscal 2013-2015

	2013 Actual	2014 Estimate	2015 Estimate	2014-2015 % Change
Enrollment by Category				
Medicaid	838,958	870,622	900,450	3.43%
Maryland Children's Health Program	111,132	116,472	121,389	4.22%
ACA Medicaid Expansion		93,255	114,863	23.17%
Total	**950,090**	**1,080,349**	**1,136,703**	**5.22%**
Cost Per Enrollee	**$7,120**	**$6,726**	**$7,154**	**6.37%**
Cost Per Enrollee Excluding ACA Expansion		**$6,988**	**$7,071**	**1.18%**
Total Funds ($ in Millions)	**$6,765**	**$7,266**	**$8,132**	**11.92%**

ACA: Patient Protection and Affordable Care Act

* Expenditures by fiscal year are based on the cost of providing services during that fiscal year rather than the year that the bills were actually paid. Cases and funding associated with the Maryland Primary Adult Care Program and the Kidney Disease Program are excluded from the chart. Cost estimates are based on provider reimbursements and expenditures in programs MQ0103 and MQ0107 only. Expenditures cited in the main body of the text may be different from those noted in the chart based on these exclusions and that the text references the fiscal 2014 legislative appropriation versus the actual estimate of spending shown in the exhibit. Fiscal 2014 average cost per enrollee is artificially lowered due to ACA expansion halfway through fiscal 2014. For purposes of comparison, the exhibit includes per capita cost data with and without ACA expansion enrollment and expenditures.

Source: Department of Legislative Services

Health and Health Insurance

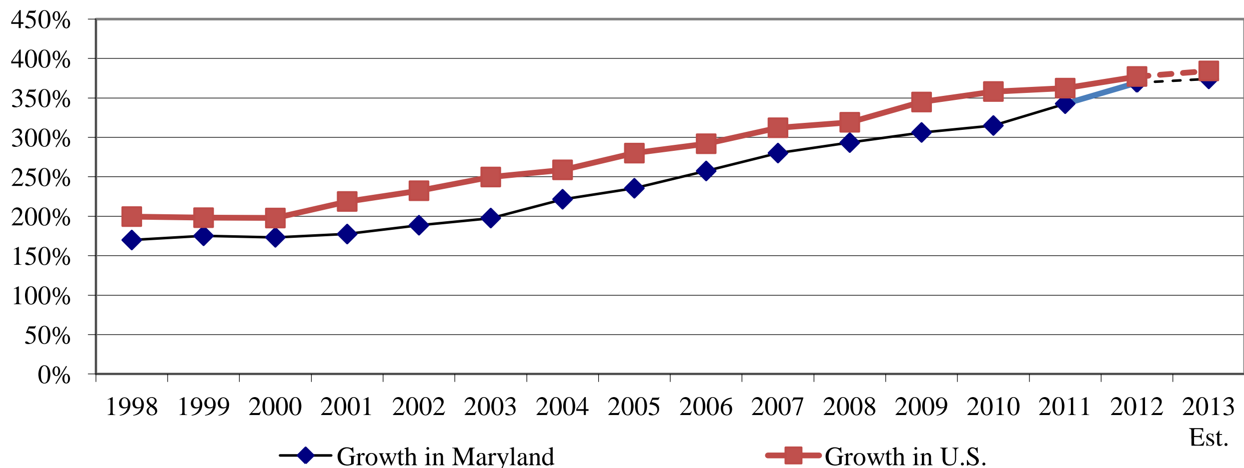
Modernization of Maryland's Medicare "All-payor" Waiver

Maryland's hospital rate-setting system operates under a federal Medicare waiver. The current waiver test constrains efforts to reform health care delivery. The State recently submitted a model design waiver proposal, including new waiver tests, to transform hospital financing in Maryland effective January 1, 2014.

Maryland's "All-payor" Medicare Waiver

Maryland is the only state with an all-payor, rate-regulated hospital financing system. The authority of the Health Services Cost Review Commission (HSCRC) to standardize rates for all payors, including Medicare and Medicaid, was established in 1980 by federal legislation. To maintain the waiver, the cumulative rate of growth in Medicare inpatient per admission costs at Maryland hospitals from 1981 to the present must remain no greater than the cumulative rate of growth in Medicare inpatient per admission costs at hospitals nationally over the same time period. **Exhibit 1** illustrates the growth of Medicare inpatient per admission spending between fiscal 1998 and 2013. As of June 2012, the most recent data available, the cumulative growth of Maryland Medicare inpatient per admission costs has been 369.36%, compared to national growth of 377.13%. Estimates for fiscal 2013 project further narrowing of this gap.

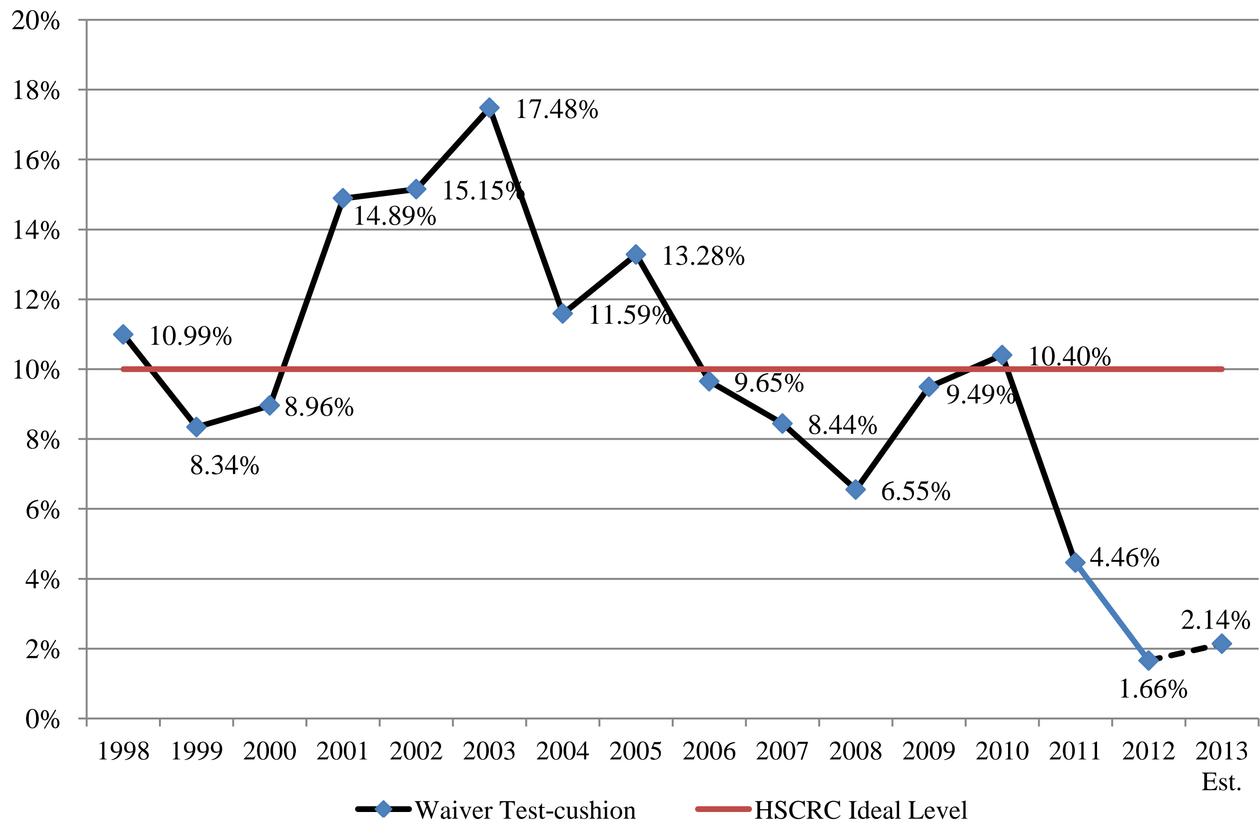
Exhibit 1
Medicare Inpatient Per Admission Cost Growth
Maryland vs. National Average
Fiscal 1998-2013



Source: Department of Health and Mental Hygiene

HSCRC measures Maryland's waiver performance using the "waiver cushion" test. This represents the amount that Medicare inpatient per admission costs in Maryland could grow, assuming zero national growth, before the State failed to meet its waiver requirements. HSCRC has determined that 10.0% is the ideal level for the cushion. The larger the cushion, the more flexibility HSCRC has to adjust rates while simultaneously weathering Medicare payment trends. **Exhibit 2** displays Maryland's performance on the waiver cushion since fiscal 1998. While the cushion has fluctuated below and above 10.0% over the past decade, in fiscal 2012, the cushion fell to 1.66%. While estimates indicate that it may increase slightly to 2.14% in fiscal 2013, it remains well below the ideal level.

Exhibit 2
Medicare Waiver Cushion
Fiscal 1998-2013



HSCRC: Health Services Cost Review Commission

Source: Department of Health and Mental Hygiene

Current Waiver Test Constrains Reform of Maryland's Health Care System

According to HSCRC, the drive for efficiency in health care has shifted from seeking to reduce resource use within an individual hospital stay to managing episodes of care across multiple settings and additional focus on prevention and population health. HSCRC has adopted rate-setting methodologies to encourage improved provision of services across settings by reducing preventable readmissions and providing capped revenue for hospital services to encourage provision of care at lower levels of acuity. Unfortunately, these methodologies, while promoting best practices, work at cross purposes in terms of the waiver test and its focus on Medicare per admission costs.

Thus, since 2012, HSCRC has worked with payors, the Department of Health and Mental Hygiene (DHMH), and hospitals to modernize the waiver to align the incentives in the State's hospital financing system with improved quality, improved population health, and lower growth in the cost of care. Based on these discussions, HSCRC prepared a model design proposal for the federal Centers for Medicare and Medicaid Services' Center for Medicare and Medicaid Innovation (CMMI).

Initial Design Proposal for Waiver Modernization

DHMH submitted an initial model proposal to CMMI in March 2013. The initial proposal was based on accountability for the total cost of care on a per-capita basis. Over the first five years, the State would commit to limiting inpatient and outpatient hospital costs for all payors to a trend based on the State's long-term gross State product (GSP). To constrain per-capita cost growth, the State would accelerate a broad range of delivery reform efforts including gain sharing between hospitals and physicians. To encourage savings below a guaranteed expenditure ceiling, the initial model introduced the concept of a "shared savings lockbox" under which a portion of savings from reform efforts would be set aside to lower overall expenditures.

Following release of the initial model proposal, stakeholders expressed concern over the significant shift in policy envisioned and whether sufficient time had been allocated to thoroughly review the proposal. DHMH engaged in numerous meetings with stakeholders and worked to refine the proposal. In September 2013, a revised draft was published for public comment, and a final proposal was submitted to CMMI in October 2013. The final proposal does not include the shared savings lockbox concept and provides greater detail on how a new model waiver will be implemented. Major stakeholder groups have expressed support for the proposal, including the Maryland Hospital Association (MHA), commercial payors, the Maryland State Medical Society, the Health Facilities Association of Maryland, and the Maryland Community Health System.

The Maryland All-payor Model

Under the final model proposal, the Maryland All-payor Model, Maryland would transition from the current waiver to a new five-year demonstration model beginning January 1, 2014. The model includes the following major components:

- **All-payor Total Hospital Cost Growth Ceiling:** Maryland will limit inpatient and outpatient hospital cost growth for all payors to a trend based on the State's 10-year compound annual GSP (3.58% for the first 3 years of the demonstration).

- **Medicare Total Hospital Cost Growth Ceiling:** Maryland will limit Medicare per beneficiary total hospital cost growth, setting a per beneficiary spending target sufficient to produce $330.0 million in cumulative Medicare savings over five years beginning with an estimated $49.5 million in savings in 2015.

- **Population-based Revenue:** Hospital reimbursement will shift from a per case system to a population-based system, with at least 80.0% of hospital revenues shifted to global budgeting over the five-year period.

- **Reduction of Hospital Readmissions:** Maryland will commit to reducing its Medicare readmission rate over five years.

- **Reduction of Hospital Acquired Conditions:** Maryland will achieve an annual aggregate reduction of 6.89% in potentially preventable conditions measures through the current Hospital Acquired Conditions Program for a cumulative reduction of 30.0% over five years.

Per the final model application, the demonstration will be deemed successful if Maryland can meet the hospital cost and quality targets without inappropriately shifting costs to nonhospital settings *and* if there is a measurable improvement in quality of care. DHMH anticipates that the model will produce net savings for the federal government, the State, and private payors, while providing stability and predictability for Maryland.

The final model proposal must be approved by CMMI. In the meantime, implementation activities have already begun for a proposed start date of January 1, 2014. An advisory council has been convened to provide broad input on guiding principles to consider in implementing new payment systems. Work groups will be convened on specific methodological issues and policy questions to provide advice on long-term policy changes. As the State transitions to the new model, a bridge process (managed by HSCRC) will be used to implement short-term changes and interim solutions.

Where Do Hospitals Stand?

Though initially opposed to the initial waiver proposal, MHA supports the Maryland All-payor Model, though it notes that a number of the goals have never been tried or tested on a scale contemplated by the proposal. Indeed, as the State prepares to transition to a new hospital financing system, the financial condition of Maryland hospitals is hardly robust. According to MHA, hospital operating margins have declined in recent years as the result of four years of update factors that were less than factor inflation. The most recent update factor provided to hospitals (for the period July 1 through December 31, 2013) was 1.36%. As HSCRC prepares to implement the pending model waiver proposal, an update factor for the period January 1 through June 30, 2014, will be set in December 2013.

Health and Health Insurance

Developmental Disabilities Administration

Financial control and budget concerns continue to beset the Developmental Disabilities Administration over two years after the lack of financial oversight at the agency was initially reported.

Federal Audit Highlights Lack of Internal Controls

In an audit report released in September 2013, the Office of Inspector General (OIG) at the U.S. Department of Health and Human Services documented an over-claiming of funds by the Developmental Disabilities Administration (DDA) of the Department of Health and Mental Hygiene (DHMH), resulting in a recommendation that the State refund $20.6 million to the federal government.

Unallowable Costs for Room and Board Claimed under Waiver Program

The Community Pathways waiver program provides home- and community-based services (including residential habilitation services) to developmentally disabled individuals in group homes, alternative living units, or individual family care homes. Although providers may collect up to $375 per month from beneficiaries to cover room and board costs, such costs are not covered under the waiver by Medicaid.

In response to allegations that DDA claimed unallowable costs for residential habilitation services under the waiver, OIG conducted a review and found that DDA had erroneously claimed at least $20.6 million in unallowable costs. OIG accordingly recommended that DDA refund $20.6 million to the federal government. In addition, OIG recommended that DDA claim only actual expenditures for allowable costs.

Department's Efforts to Address Findings

DHMH concurred with OIG's recommendations and advises that it has taken appropriate steps to address the report's findings, which DHMH has attributed to inadequate controls between the Maryland Medicaid Information System (MMIS) and DDA's Provider Consumer Information System II (PCIS II). Specifically, DHMH advises that it has completed edits in the MMIS and PCIS II systems to reduce claims for federal reimbursement. In addition, DHMH advises that DDA will issue additional guidance to providers and that DHMH will actively monitor and review the effectiveness of these additional changes and guidance in order to ensure the ongoing appropriateness of claims submitted for federal reimbursement.

Agency's Inability to Accurately Budget Persists

In addition to the $20.6 million owed by DDA to the federal government, DDA has reported a general fund deficiency of $5.4 million for fiscal 2013 in the Community Services Program and has projected a general fund deficiency of $15.1 million for the program in fiscal 2014. DHMH identified a number of reasons for these deficits including (1) unbudgeted requests for service changes that resulted in higher-than-projected costs; (2) federal fund attainment that fell short of expectations; (3) DHMH's efforts to transition individuals who are receiving entirely State-funded services to the Medicaid waiver (in order to take advantage of the availability of federal matching funds) resulted in less general fund savings than anticipated; and (4) expected savings attributed to contribution to care (*i.e.*, a requirement for providers to supplement funds for room and board with private pay) were deemed to be not feasible and DHMH has advised that it will provide additional guidance regarding contribution to care in the near future.

DDA's overspending (and, in recent prior fiscal years, *under*spending) of its budget results from its inability to accurately forecast and monitor expenditures. According to DHMH, DDA has pursued an enhanced budget projection methodology that it is continuing to refine throughout the development of the fiscal 2015 budget. DHMH has also executed a contract with a national firm specializing in turnaround and interim management services in order to address operational challenges facing DDA. Furthermore, DHMH advises that DDA will develop a new approach to rate setting. Despite these and other efforts, however, DDA's budgeting issues are likely to remain unresolved until weaknesses in the current provider payment system are addressed, as discussed below.

Compliance and Accountability Issues Continue

The Office of Legislative Audits (OLA) recently determined, in an October 2013 report, that DDA's accountability and compliance level was unsatisfactory. Included among OLA's 13 findings were that DDA failed to take certain actions to maximize the recovery of federal funds, including ensuring that providers submitted required claims information, processing requests for federal reimbursement in a timely manner, and investigating certain claims that were rejected by eligibility edits. Other audit findings related to operations, compliance, and service delivery.

With regard to federal fund attainment, DHMH advises that it has strengthened collaboration between DDA and the Maryland Medical Assistance program (Medicaid) and has instituted processes to (1) ensure that all eligible claims are submitted; (2) reduce the number of rejected federal claims; and (3) resolve rejected claims so that they can be resubmitted. DHMH further advises that DDA will, beginning in fall 2013, pursue a strategy focused on improving waiver utilization. According to DHMH, this strategy will include a review of State-only services provided to individuals under the waiver and will also focus on keeping individuals on the waiver and eligible for federal reimbursement. DHMH further advises that, before the end of

calendar 2013, DDA will alter its existing invoicing processes to ensure that all eligible claims are submitted in a timely manner.

With regard to other difficulties faced by DDA, DHMH reports that it has taken a number of corrective actions, including improving its reconciliation process; streamlining its service funding plan approval process, clarifying eligibility determination letters; standardizing approval criteria for emergency requests for service changes; and filling key internal vacancies. In addition, DHMH advises that DDA will, within the next 12 months, further improve its request for service change process, clarify its policy on discharges, and develop recommendations to create a new organizational structure.

Underlying Weaknesses in DDA's Payment System Remain Unaddressed

It has been over two years since the inadequacy of financial oversight at DDA was first reported. However, the agency's budgeting issues remain unresolved. A contributing factor remains the inherent weaknesses in DDA's provider payment system.

DDA's current payment system, adopted in 1987 and codified in 1994, is prospective in nature; that is, the system works by estimating the costs that a provider will incur in the coming fiscal year to serve its clients. DDA pays these costs to providers upfront (before the services are actually provided). Providers then submit documentation of their expenses and, at the end of the year, providers and DDA use audited cost reports to reconcile actual costs with the prospective payments. If actual costs were less than the prospective payments, a provider must reimburse DDA; conversely, if actual costs were greater than the prospective payments, DDA must reimburse the provider.

The prospective nature of DDA's provider payment process makes budget forecasting more difficult. Because payments are issued one quarter in advance, payments may differ from actual expenses. Inevitably, DDA will have overpaid or underpaid providers at the close of each year. It is not surprising that since the current system was adopted, DDA has encountered significant budgeting difficulties – resulting in significant surpluses (and, correspondingly, the reversion and/or cancellation of funds) as well as significant deficits.

To date, DHMH's efforts to address DDA's numerous difficulties have focused mainly on stabilizing operations. However, the underlying weakness of DDA's provider payment system must be addressed if DDA's budgeting issues are to be properly resolved. DHMH has advised that it will provide, by December 1, 2013, recommendations regarding the future of its payment system and how the new system will address those weaknesses.

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Health and Health Insurance

Cigarette Restitution Fund

States have been in a lengthy legal dispute with the tobacco companies that are party to the landmark Master Settlement Agreement (MSA) concerning how the states enforce requirements on companies that are not party to the MSA. For Maryland, a recent arbitration ruling in this dispute could result in a loss of $70 million in Cigarette Restitution Fund funding in fiscal 2014.

Background

The Cigarette Restitution Fund (CRF) was established by Chapters 172 and 173 of 1999 and is supported by payments made under the Master Settlement Agreement (MSA). Through the MSA, the settling manufacturers pay the litigating parties – 46 states (Florida, Minnesota, Mississippi, and Texas had previously settled litigation), five territories, and the District of Columbia – substantial annual payments in perpetuity as well as conform to a number of restrictions on marketing to youth and the general public.

The distribution of MSA funds among the states is determined by formula, with Maryland receiving 2.26% of MSA monies, which are adjusted for inflation, volume, and prior settlements. In addition, the State collects 3.3% of monies from the Strategic Contribution Fund, distributed according to each state's contribution toward resolution of the state lawsuits against the major tobacco manufacturers.

The use of the CRF is restricted by statute. Activities funded through the CRF in fiscal 2014 include the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; substance abuse treatment and prevention; the Breast and Cervical Cancer Program; Medicaid; tobacco production alternatives; legal activities; and nonpublic school textbooks.

The Nonparticipating Manufacturer Adjustment

One of the conditions of the MSA was that the states take steps toward creating a more "level playing field" between participating manufacturers (PMs) to the MSA (and, thus, subject to annual payments and other restrictions) and manufacturers not participating in the agreement (NPMs). This condition is enforced through another adjustment to the states' annual payments, the NPM Adjustment. The PMs have long contended that the NPMs have avoided or exploited loopholes in state laws that give them a competitive advantage in the pricing of their products. If certain conditions are met, the MSA provides a downward adjustment to the contribution made by PMs based on their MSA-defined Market Share Loss multiplied by three. This adjustment is known as an NPM adjustment. The agreement also allows PMs to pursue this adjustment on an annual basis.

Under the MSA, PMs have to show three things in order to prevail and reduce their MSA payments:

- a demonstrable loss of market share of over approximately 2%;
- that the MSA was a significant factor contributing to that loss of market share; and
- a state was not diligently enforcing its qualifying statute.

The qualifying statute is intended to create a more level the playing field with regard to price between the PMs and the NPMs. Originally included in the MSA as a model statute, Maryland enacted its qualifying statute in Chapter 169 of 1999, with subsequent revisions in the 2001 and 2004 sessions.

As shown in **Exhibit 1**, litigation on the NPM adjustment started in 2005, beginning with the NPM Adjustment for sales year 2003. An arbitration on the "diligent enforcement" issue for 2003 commenced in July 2010. As further shown in the exhibit, Maryland was 1 of 15 states that did not settle with the PMs during the arbitration process and was 1 of 6 states that were found in September 2013 to have not diligently enforced its qualifying statute. Among the findings made by the arbitration panel were that Maryland lacked dedicated and trained personnel to conduct enforcement efforts and that the Comptroller's Office, in particular, failed to meaningfully participate in enforcement efforts. As noted in the exhibit, Maryland not only forfeits $16 million that the PMs placed in escrow for the 2003 sales year, but under the MSA arbitration framework, also may see its fiscal 2014 payment reduced by $70 million. This creates a $70 million general fund deficiency in the current fiscal year budget. Maryland has a petition to vacate an arbitration order regarding the states that settled pending before the Baltimore City Circuit Court. The outcome of that litigation could result in a reduction of Maryland's 2003 NPM Adjustment liability.

Beyond the 2003 Sales Year

The NPM Adjustment is in dispute for future years; thus, unless it is settled or Maryland's diligence is not contested, there will be future arbitrations assessing Maryland's diligence for future years. It is worth noting that although the arbitration ruling found that Maryland was not diligent in enforcing its qualifying statute in the 2003 sales year, the ruling also notes that the State did take actions to position it "well for diligent enforcement in 2004." Data regarding the extent of noncompliant packs of cigarettes, NPM escrowing and enforcement efforts support this comment not only for the 2004 sales year but also subsequent years.

Those states that did settle with the PMs saw a one-time cash windfall with the release of funds from disputed payments escrow accounts for sales years 2003 through 2012. However, under the terms of the settlement, the PMs were given credit for future payments from those states (*i.e.*, reducing the payments to those states), and those states need to enact new legislation and will be held to an enhanced standard in NPM Adjustment disputes starting in 2015.

Exhibit 1
Nonparticipating Manufacturer Litigation Timeline

Date	Item
April 2004	PMs give notice to state attorneys general that they were pursuing an NPM adjustment with respect to a loss of market share in sales year 2003. A similar adjustment is sought for subsequent sales years. The PMs may place that portion of their annual payments they believe should be reduced under this process into an escrow account. Some PMs elect to do this, reducing the funding available to the states in any given year.
March 2006	An economic firm rules for PMs that MSA participation was a significant factor in the PMs' Market Share Loss which had previously been calculated by the MSA Independent Auditor. Similar rulings were made for subsequent sales years.
April 2006	Additional PMs place disputed payments related to 2003 NPM Adjustment into escrow account.
Calendar 2006-2009	Maryland (like many other states) argues that the issue of whether it diligently enforced its Qualifying Statute should be made in State courts. The PMs prevail that the diligent enforcement issue is subject to the MSA's arbitration clause.
January 2009	Most states sign an agreement to enter into arbitration. The agreement includes a 20% refund of the liability of each joining state that is eventually determined to not have diligently enforced.
July 2010	Arbitration proceedings begin for 46 states, the District of Columbia, and various territories.
November 2011	PMs file statements of contest against all but 15 states in the arbitration.
March-June 2013	Twenty other states and the District of Columbia enter into a settlement agreement with the PMs leaving 15 states, including Maryland, proceeding with arbitration.
September 2013	Six states (Indiana, Kentucky, Maryland, Missouri, New Mexico, and Pennsylvania) are determined to have not diligently enforced their qualifying statute for sales year 2003. These states not only lose payments from PMs that have been held in escrow for that sales year, they will also see a reduction in their future MSA payments for the states that are found to have diligently enforced their qualifying statutes. In addition to the $16 million placed in escrow for that sales year, and after the 20% refund resulting from entering into arbitration, Maryland would see a reduction in its April 2014 MSA payment of $70 million.

MSA: Master Settlement Agreement
PM: participating manufacturer
NPM: nonparticipating manufacturer

Source: Office of the Attorney General; 2003 NPM Adjustment Arbitration Ruling, September 2013; Department of Legislative Services

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Health and Health Insurance

Continuity of Care for Persons with Mental Illness

In the 2013 interim, the Department of Health and Mental Hygiene convened an advisory group to review continuity of care for seriously mentally ill individuals. The final recommendations of this panel are due in December 2013. Some of the proposals being discussed by the panel would require legislation and a number are contentious.

Continuity of Care Advisory Panel

In the wake of recent mass shootings, Governor Martin O'Malley directed the Department of Health and Mental Hygiene to convene an advisory panel to explore ways to address the lack of continuity of care in the treatment of seriously mentally ill individuals. The advisory panel is chaired by the Deputy Secretary for Behavioral Health and Disabilities and includes State and national experts.

Due to time constraints, the advisory panel mainly focused on persistently and severely mentally ill adults. Workgroups consisting of members of the advisory panel, members of the public, and representatives from advocacy organizations, looked at one of four types of barriers to treatment: economic, clinical, legal, and social. Each workgroup made recommendations and, if the workgroup was unable to reach a consensus on an issue, raised the issue as needing further discussion. A fifth workgroup worked on gathering data and identifying areas in which there is a lack of data. The recommendations and issues raised were wide ranging and addressed areas such as access to housing, enhanced services for specific populations, workforce availability and training, and involuntary commitment and treatment. The advisory panel is scheduled to release its recommendations on December 2, 2013.

Possible Legislative Recommendations

Legislative changes would be required to address several issues that were raised by the workgroups. They include (1) altering the statute regarding the confidentiality of mental health medical records to allow for easier access by different types of health care providers in different settings; (2) altering the circumstances under which a mental health treatment advance directive may be rescinded if the individual is incompetent; and (3) altering the processes available for establishing guardianship over seriously mentally ill individuals. The majority of discussion and debate regarding legislative issues, however, focused on whether to (1) adopt an outpatient civil commitment statute; (2) modify the standard for involuntary inpatient commitment; and (3) modify the standard for forcibly medicating individuals in mental health facilities. These issues are discussed more fully below.

Outpatient Civil Commitment

Outpatient civil commitment (OCC) involves providing court-ordered community-based services, including medication, to adults with severe mental illness who are nonadherent to treatment. It is, in essence, the community treatment version of traditional inpatient commitment. According to the Treatment Advocacy Center, 45 states permit OCC. Many states that allow OCC have not, however, implemented it because it is perceived as too costly. Much of the discussion has revolved around Kendra's Law in New York which authorized a form of OCC, termed "assisted outpatient treatment" (AOT), for persons with serious mental illness who were deemed at risk of failing to live safely in the community and unlikely to participate in voluntary services. An initial court order may have a maximum duration of one year and specify treatment that includes an array of intensive services. Failure to comply with treatment may result in involuntary inpatient hospitalization. In authorizing AOT, New York significantly increased funding to support the program and expand outpatient services for all consumers.

While there is debate about the strength of the evidence, studies have found that New York's AOT program has resulted in overall cost savings; greater engagement in outpatient services; and declines in hospitalization rates, the use of psychiatric emergency and crisis services, clinician visits, and criminal justice involvement. Proponents of OCC contend that for individuals who refuse treatment, the practice, among other things, can increase treatment exposure and medication adherence, reduce acts of violence, lead to less inpatient confinement and incarceration, and improve quality of life. Opponents of OCC contend, however, that the practice, among other things, is overly coercive, anti-therapeutic, disempowering, stigmatizing, violative of civil rights, and implemented in a racially discriminatory manner. Critics assert, moreover, that OCC fails to address the challenge of underfunded systems of care and inadequate services.

Modifying the Standard for Involuntary Inpatient Commitment

Under current law, an individual with a mental disorder must present a danger to the life or safety of the individual or others to be ordered to undergo an emergency evaluation and be involuntarily admitted to a hospital or psychiatric facility. The dangerousness standard has been criticized by some as being too narrow and denying necessary involuntary evaluation, hospitalization, and treatment for individuals who are seriously ill but do not present an imminent danger to themselves or others. Some advocates for reform propose that this standard be modified to allow involuntary evaluation, admission, and treatment for individuals who are *gravely disabled*, meaning that (1) the individual is unlikely, without the supervision and assistance of others, to satisfy the individual's need for nourishment, personal or medical care, shelter, or self-protection and safety and (2) without adequate treatment, the individual will suffer substantial bodily harm, significant psychiatric deterioration or debilitation, or serious illness. Advocates for reform also propose modifying the standard by allowing involuntary evaluation, admission, and treatment if the individual is *reasonably expected in the foreseeable future* to present a danger to the life or safety of the individual or others. Opponents of the modified standard contend that it is overly broad and will result in the commitment of

individuals who should receive community-based services. Other opponents maintain that reform is unnecessary as the current standard is interpreted broadly by administrative law judges and already authorizes commitment of individuals who meet the gravely disabled criteria.

Modifying the Standard for Forcibly Medicating Individuals in Mental Health Facilities

Statute allows a mentally ill individual receiving inpatient treatment in a mental health facility to be forcibly medicated in a nonemergency situation when (1) the individual is hospitalized involuntarily or committed for treatment by a court order and (2) the medication is approved by a clinical review panel (CRP). When determining whether to approve forced medication, the CRP must consider whether the individual without the medication is a danger to the individual or others because of the mental illness. In 2007, the Court of Appeals in *Dep't of Health and Mental Hygiene v. Kelly*, 397 Md. 399 (2007), ruled that the CRP must look at whether the individual is dangerous within the facility, not whether the individual poses a danger to the community if released. Some advocates believe that the definition of "dangerousness" should be broadened so that the CRP may consider whether the patient would pose a danger to the community if released. These advocates argue that broadening the definition would allow for better treatment of seriously mentally ill individuals who lack insight into their condition and result in earlier release. However, opponents of the change argue that (1) the State's interest in changing the standard does not override an individual's right to bodily integrity and (2) individuals who have been forcibly medicated are less likely to voluntarily seek treatment in the community.

Health and Health Insurance

Telemedicine and Telehealth

The Maryland General Assembly and Department of Health and Mental Hygiene have taken steps to expand coverage and reimbursement of telemedicine services by public and private payors and to simplify hospital credentialing and privileging of telemedicine providers. However, potential opportunities for wider deployment of telemedicine remain, and a task force has reconvened to study the broader use of telehealth in the State.

Background

Telemedicine is the use of medical information exchanged from one site to another via electronic communications to improve a patient's health status. Under Maryland law, "telemedicine" is defined as the use of interactive audio, video, or other telecommunications or electronic technology by a licensed health care provider to deliver a health care service at a site other than the site at which the patient is located. As the applications for telemedicine have grown, State policies have evolved, particularly regarding payment for telemedicine services and the reduction of barriers to the use of telemedicine.

Telemedicine Task Force

In June 2010, the Maryland Health Quality and Cost Council convened the Telemedicine Task Force to identify challenges and develop solutions to advance telemedicine in the State. In a final report issued in December 2011, the task force made the following recommendations: (1) State-regulated payors should reimburse for telemedicine services to the same extent as health care services provided face-to-face, regardless of the location; (2) the State should establish a centralized telemedicine network built on existing industry standards; and (3) the State should implement changes in licensure, credentialing, and privileging of providers to facilitate the adoption of telemedicine. The report also recommended that Medicaid more fully consider the financial impact of supporting telemedicine and propose a reasonable adoption strategy relating to telemedicine services.

Legislative and Regulatory Developments

Commercial Insurance Coverage of and Reimbursement for Telemedicine

In response to the task force recommendations, Chapters 579 and 580 of 2012 required commercial insurers to cover and reimburse for health care services delivered through telemedicine. Carriers may perform utilization review, including pre-authorization, to determine the appropriateness of any health care service, whether delivered in person or through telemedicine, provided that the appropriateness of the service is determined in the same manner. A health insurance policy or contract may not distinguish between patients in rural or urban locations in providing coverage for health care services delivered through telemedicine.

Medicaid Coverage of Telemedicine

Required Study and Recommendation

Chapters 579 and 580 also required the Department of Health and Mental Hygiene (DHMH) to study other state Medicaid agencies' telemedicine policies and the potential fiscal effect of Medicaid coverage of telemedicine. In December 2012, DHMH submitted a report recommending that Medicaid cover medically necessary services that can reasonably be provided through "hub-and-spoke" telemedicine, in which a patient in a remote location (spoke) interacts with a physician at a larger health facility (hub). DHMH indicated, however, that such coverage should be limited to rural geographic areas to ensure that telemedicine is used to address access-to-care issues stemming from specialists being located a long distance from patients and not as a replacement for in-person care. More specifically, the originating spoke provider must be located in one of the following counties: Allegany, Calvert, Caroline, Cecil, Charles, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, or Worcester, while the hub provider may be located anywhere in the State.

Coverage for Emergency Treatment of Cardiovascular Disease and Stroke

Chapter 280 of 2013 required Medicaid to reimburse for services delivered through telemedicine in the same manner as the same service is reimbursed when delivered in person. Reimbursement is required only for a health care service that is medically necessary and provided (1) for the treatment of cardiovascular disease or stroke; (2) in an emergency department setting; and (3) when an appropriate specialist is not available.

Regulations Adopted for Medicaid Telemedicine Programs

To implement Chapter 280 and to cover services recommended in its 2012 report, DHMH adopted regulations for a Cardiovascular Disease and Stroke Telemedicine Program, as well as a Rural Access Telemedicine Program. These regulations took effect September 30, 2013. Through the Cardiovascular Disease and Stroke Telemedicine Program,

approved providers may render services in emergency departments where no specialist is available to provide timely consultation and diagnostic evaluation for cardiovascular disease or stroke care. Under the Rural Access Telemedicine Program, DHMH must cover medically necessary services rendered by an originating site (spoke) provider located in a designated rural geographic area that are distinct from the telemedicine services provided by a consulting provider. DHMH must also cover medically necessary consultation services rendered by a provider at a distant site (hub) that can be delivered using technology-assisted communication, as well as an originating site facility fee.

Simplified Hospital Credentialing and Privileging of Telemedicine Providers

Chapter 324 of 2013 addressed a barrier for hospitals in implementing telemedicine by simplifying provider credentialing and privileging processes. Specifically, Chapter 324 authorizes a hospital, in its credentialing and privileging process for a physician who provides medical services to patients at the hospital only by telemedicine from a distant-site hospital or telemedicine entity, to rely on the credentialing and privileging decisions made for the physician by the distant-site hospital or telemedicine entity, as authorized under federal regulations. A hospital may do so only if (1) the physician holds a license to practice medicine in Maryland and (2) the medical staff of the hospital approves and recommends the credentialing and privileging decisions to the hospital's governing body.

Remaining Issues for Consideration

Although telemedicine is well established, additional technology and policy challenges may need to be addressed to realize its full potential. While some of the recommendations of the Telemedicine Task Force have been implemented (*e.g.*, requiring commercial insurance reimbursement and coverage, expanding coverage under Medicaid, and simplifying credentialing and privileging of telemedicine providers), other recommendations have not. For example, the State has not established a centralized telemedicine network built on existing industry standards, nor have any changes been made to licensure requirements that would mitigate challenges faced by out-of-state physicians who would like to provide telemedicine services to patients located in the State. Under current regulations, an out-of-state physician must be licensed to practice in Maryland if the patient is located in the State. Options identified by the Telemedicine Task Force to lessen the challenges of licensure included issuing licenses to out-of-state physicians that are limited to providing telemedicine services, establishing reciprocity agreements with other states, and supporting federal licensure for physicians who provide telemedicine services in multiple states.

Telemedicine Task Force Reconvened to Study Telehealth

Chapters 319 and 320 of 2013 reconvened the Telemedicine Task Force to study the use of telehealth throughout the State, identify opportunities to use telehealth to improve health status and health care delivery, and identify strategies for telehealth deployment in rural areas of the State. While telemedicine generally refers to direct medical interaction through telecommunications, telehealth is a broader term that encompasses the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, and public health. Technologies include videoconferencing, streaming media, and terrestrial and wireless communications. An interim report is required by January 1, 2014, and a final report by December 1, 2014.

Among other issues being addressed by the task force this interim are uses of telemedicine that incorporate electronic medical records and the State health information exchange, the role of telemedicine in advanced primary care delivery models, and innovative service models for diverse care settings. The task force's finance and business model advisory group will begin meeting in early 2014 to consider issues to include innovative payment models and public and private grant funding.

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Health and Health Insurance

Regulation of Cardiac Services

Proposed regulations adopted following legislation enacted in 2012 changing the regulation of cardiac services have not stopped heated debate over the delivery of these services.

Long-standing Controversy Over Certificate of Need for Cardiac Services

Regulation of cardiac services, including open heart surgery and percutaneous coronary intervention (also known as angioplasty), at Maryland hospitals has generated controversy for many years. Until 2012, services were regulated under the certificate of need (CON) program administered by the Maryland Health Care Commission (MHCC). Historically, hospitals seeking to provide cardiac services – the "have not" hospitals – opposed the CON requirement, while hospitals already holding a CON and providing cardiac services – the "have" hospitals – opposed attempts to change the CON requirement.

New Regulatory Structure under Chapter 418 of 2012

Chapter 418 of 2012 made fundamental changes to the regulation of cardiac services. The law required, beginning July 1, 2012, an acute general hospital, except under specified circumstances, to obtain a certificate of conformance from MHCC before establishing emergency or elective percutaneous coronary intervention (PCI) services. The law also required an acute general hospital to obtain and maintain a certificate of ongoing performance to continue to provide cardiac surgery services or emergency or elective PCI services. MHCC was required to adopt regulations to implement the law and establish a clinical advisory group to recommend standards for inclusion in the regulations. The law required MHCC to submit its proposed regulations to the Senate Finance Committee and the House Health and Government Operations Committee by September 30, 2013, for a 60-day review and comment period. MHCC requested additional time to submit its proposed regulations and, as of late October 2013, the regulations had not yet been submitted. Draft regulations were posted on the MHCC website in September 2013 for informal comment.

Controversy Continues under Draft Regulations

Based on the draft regulations and implementation of Chapter 418 to date, several areas remain controversial. The draft regulations pave the way for hospitals seeking to expand their existing cardiac services. Some hospitals that only provide emergency PCI are seeking to also provide elective PCI. Other hospitals that provide both emergency and elective PCI would like

to also provide cardiac surgery. The requirements established by Chapter 418, as well as the regulatory process under current law, provide for a deliberative process that some hospitals consider unnecessarily long and bureaucratic. The General Assembly and MHCC will need to weigh some hospitals' desire to move forward quickly with other hospitals' desire to slow down the process.

The draft regulations state that applications for new cardiac surgery programs will not be considered until MHCC makes a finding that the new hospital rate setting system is adequately stable for an evaluation of a new program. The new rate setting system (not yet approved by the federal government as of late October 2013) caps spending growth on hospital services, largely by reducing patient volume. While MHCC staff assumed that hospitals would want to be cautious about establishing new cardiac surgery programs, hospitals have objected to any moratorium on new programs.

The draft regulations would require an application for an adult cardiac surgery program to demonstrate the ability to meet a projected volume of 250 cardiac surgery cases annually, although the program would be required to attain a volume of only 200 cardiac surgery cases annually. Hospitals have questioned the inconsistency, and MHCC staff has indicated a willingness to revisit the higher projected volume requirement.

The draft regulations would establish four health planning regions for cardiac services: Eastern, Western, Baltimore/Upper Shore, and Metropolitan Washington (which includes the District of Columbia). An applicant for a new cardiac surgery program would be required to demonstrate that its proposed new program would not negatively affect cardiac surgery programs in the same health planning region or an adjacent health planning region. Concern has been raised about the boundaries of the regions and the need to protect cardiac surgery programs in an adjacent health planning region, particularly marginal programs and programs outside of the State.

The draft regulations establish requirements for hospitals with existing cardiac services programs to obtain a certificate of ongoing performance. The requirements for cardiac surgery include maintaining an annual volume of at least 200 cases. A cardiac surgery program that fails to reach an annual target volume of 100 cardiac surgery cases may be subject to a focused review and submission of a plan of correction. If a hospital does not successfully complete its plan of correction, the hospital must agree to close its program. The cardiac surgery program at Prince George's Hospital has operated at low volume for many years, and most county residents go outside the county for cardiac surgery. Under a 2011 memorandum of understanding among the State, Prince George's County, Dimensions Health System, the University of Maryland Medical System (UMMS), and the University System of Maryland, a new hospital in Largo would be constructed to replace the existing facility. The State and Prince George's County have each pledged $200 million toward the cost of construction. It remains to be seen whether a cardiac surgery program, operated in partnership with UMMS at a new hospital, would be able to meet the new annual volume requirement.

MHCC staff has indicated that the regulations will undergo changes before they are submitted to the legislative committees. If past is prologue, regulation of cardiac services may continue as a topic of discussion during the 2014 session.

Social Programs

Public Assistance Population and Financing Trends

In fiscal 2013, the Temporary Cash Assistance average monthly caseloads began to fall. That trend is expected to continue in fiscal 2014 and 2015, bringing some general fund budget relief. The number of Marylanders on food stamps continues to grow but at a much slower pace.

Background

The 2007 to 2009 economic recession led to dramatic increases in caseloads for public assistance programs, notably the Temporary Cash Assistance (TCA) and the Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps. The TCA provides monthly cash grants to needy children and their parents or caretaker relatives. The TCA is funded with general funds, federal Temporary Assistance for Needy Families (TANF) block grant dollars, and certain child support collections. The SNAP helps low-income people buy the food they need for good health. Benefits under the SNAP are provided entirely with federal funds.

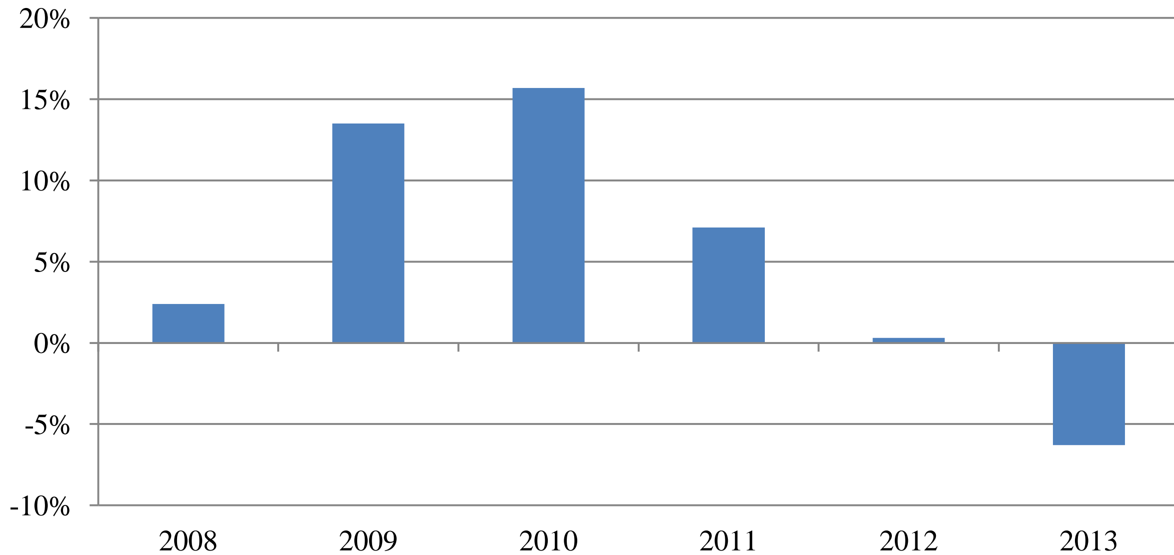
Temporary Cash Assistance Caseload and Funding Trends

As shown in **Exhibit 1**, in fiscal 2013, the TCA average monthly caseload declined compared to the previous fiscal year, the first time since fiscal 2008. Year-over-year increases peaked at 15.7% in fiscal 2010, reflecting the depth of the recent recession. The weak recovery, especially as it relates to unemployment, meant continued if slowing caseload growth through fiscal 2012, when the caseload peaked.

As shown in **Exhibit 2**, the Department of Legislative Services (DLS) is projecting that the average monthly TCA caseload will continue to decrease in fiscal 2014 and 2015 at a monthly average rate of 0.7%, which equates to an annual decrease of 7.6% in fiscal 2014 and 8.1% in fiscal 2015. From December 2012 through August 2013, the caseload decreased at an average rate of 0.6% per month.

The fiscal 2015 average monthly grant amount includes a 1% increase to ensure that the TCA benefit, in combination with the SNAP benefit, equals at least 61% of the Maryland Minimum Living Level, as required by statute.

Exhibit 1
Temporary Cash Assistance Average Monthly Caseload
Year-over-year Growth
Fiscal 2008-2013



Source: Department of Human Resources; Department of Legislative Services

Exhibit 2
Temporary Cash Assistance Enrollment and Funding Trends
Fiscal 2013-2015

	2013 Actual	**2014 Estimate**	**2015 Estimate**	**2014-2015 % Change**
Average Monthly Enrollment	67,876	62,717	57,647	-8.1%
Average Monthly Grant	$174.82	$181.64	$183.00	0.7%
Budgeted Funds in Millions				
General Funds	$37.9	$30.0	$14.6	-51.2%
Total Funds	**$142.4**	**$136.7**	**$126.6**	**-7.4%**

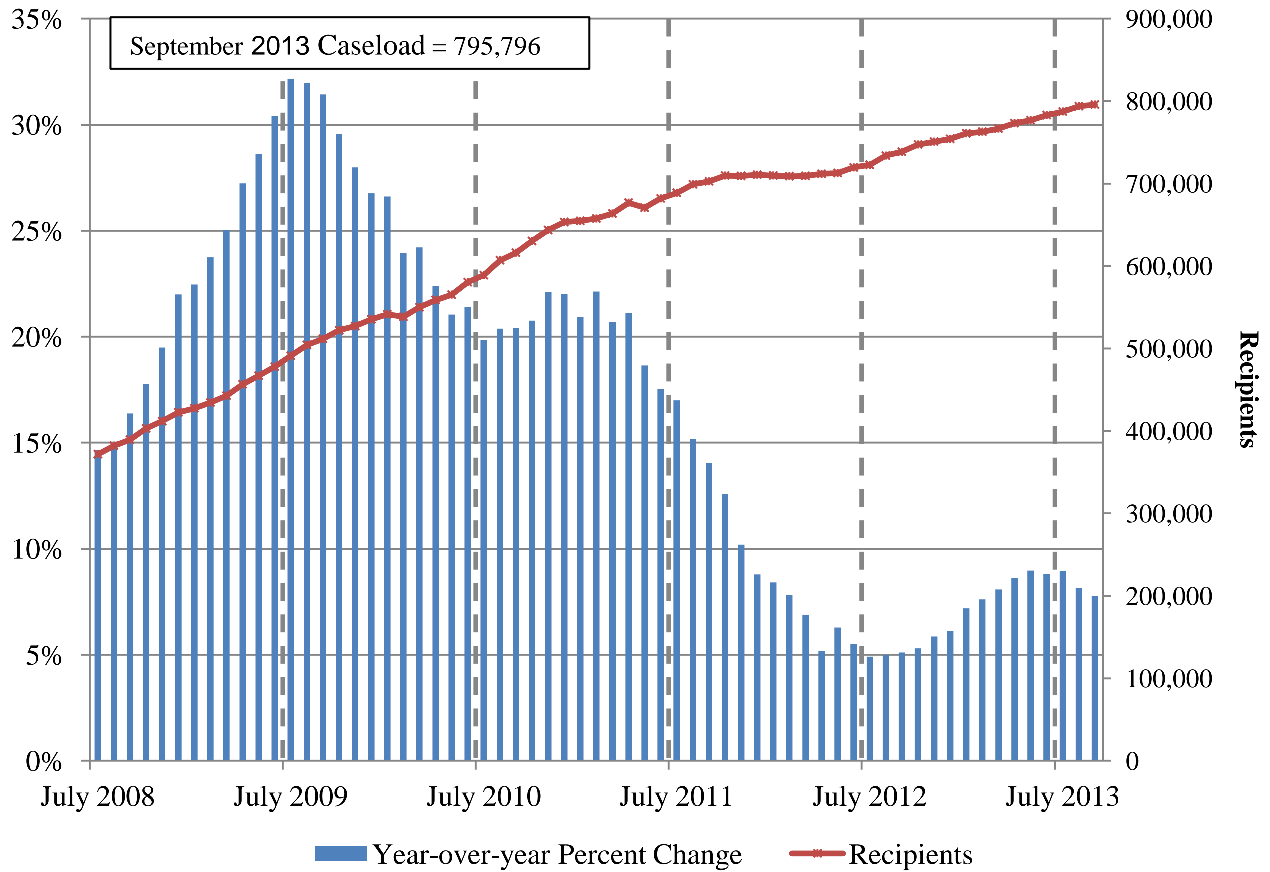
Source: Department of Human Resources; Department of Legislative Services

DLS is projecting a surplus of $5.3 million in TCA funding in fiscal 2014 since the budget assumes a slower caseload decline than has been experienced for the past six months. In fiscal 2015, the smaller projected caseload will allow a reduction in general fund support as the TANF once again covers the bulk of the program spending.

Supplemental Nutrition Assistance Program Caseload Trends

The weak economy, combined with increased outreach efforts, has led to steady increases in the number of SNAP recipients since the beginning of fiscal 2007. As shown in **Exhibit 3**, the caseload grew at an increasing rate through July 2009 and has continued to grow, though at slower rates. In July 2008, there were 371,682 people receiving food stamp assistance. By September 2013, that number had grown to 795,796. The SNAP is a 100% federally funded benefit that resulted in nearly $1.2 billion in spending in fiscal 2013.

Exhibit 3
Supplemental Nutrition Assistance Program Caseload
July 2008 through September 2013



Source: Department of Human Resources; Department of Legislative Services

Social Programs

Federal Changes to Public Assistance Programs

The federal government's two major social welfare programs are currently overdue for re-authorization. Potential funding and administrative changes to those programs could result in changes to the way Maryland operates its public assistance programs.

Background

Temporary Assistance for Needy Families (TANF) and Supplemental Nutritional Assistance Program (SNAP) are the federal government's two main social welfare programs. TANF, a federal block grant, primarily funds Maryland's Temporary Cash Assistance program to help needy families with dependent children when available resources do not fully address the families' needs. SNAP, known as the Food Supplement Program in Maryland, assists low-income households with the purchase of food.

Both programs are overdue for re-authorization by the federal government. TANF's authorization expired on September 30, 2010. Since then, the program has remained funded through continuing resolutions. SNAP, meanwhile, is a part of the Farm Bill (Agricultural Reform, Food, and Jobs Act of 2013), which is currently in conference committee as the House and Senate work out their differences.

TANF Update

TANF block grant and related programs are mandatory programs that must be re-authorized upon occasion. The last re-authorization, in the Deficit Reduction Act of 2005, expired on September 30, 2010. Since that time, TANF and the related programs have continued under temporary extensions. The last of six temporary extensions expired with the federal fiscal 2013 continuing resolution on September 30, 2013.

Although operating during the federal shutdown, TANF was not authorized during the 16 days of federal government shutdown. States, including Maryland, continued to operate the program using either carryover funds or state general funds. Maryland, having no carryover funds, used State general funds during this period. TANF was temporarily extended through January 15, 2014, in the continuing resolution that ended the federal government shutdown. The State will receive federal block grant funds to replace the general funds spent during the shutdown. The extension and continuing resolution generally was retroactive to the end of the previous continuing resolution. The current extension included no apparent changes to the program; previous extensions have not provided for supplemental grant funds and added requirements to limit locations where electronic benefit transfer transactions may be used.

SNAP Update

SNAP is authorized through Farm Bill legislation, which is currently in conference committee in Congress. Though the House and Senate versions differ significantly in their plans for SNAP, both houses approved reductions in spending ($40 billion over 10 years in the House, $4 billion in the Senate).

The House's version of the Farm Bill actually does not include SNAP – the program was instead removed from that legislation and passed as the Nutrition Reform and Work Opportunity Act of 2013. This legislation includes administrative and programmatic changes:

- Restricts the use of categorical eligibility to other cash assistance programs – Categorical eligibility allows states to enroll people into SNAP if they already receive other forms of assistance. The most common is heating assistance, and the House legislation increases the minimum a person may receive in heating assistance from $1 to $20 to be categorically eligible for SNAP. States, including Maryland, use categorical eligibility to increase SNAP participation and reduce the administrative cost of SNAP eligibility checks.

- Stricter work requirements – Recipients must work or participate in job training for at least 20 hours a week.

- Stricter time limits for jobless adults with no children – An existing rule states that adults with no children may not receive SNAP benefits longer than a total of three months out of every three-year period. Previously, regions with high unemployment were exempt from this requirement. The House legislation eliminates that exemption.

- The elimination of State incentive payments (which Maryland has received for low error rates), training incentive funds, nutrition education programs, and the ability of the U.S. Department of Agriculture to promote or advertise SNAP.

The Senate version of the Farm Bill includes the SNAP program with a different set of primarily administrative changes:

- an alteration of categorical eligibility – increases to $10 the minimum amount a person must receive in heating assistance to be automatically eligible for SNAP;

- limitations on how states can spend incentive payments; and

- a loss of eligibility if a recipient wins a lottery jackpot.

As noted above, at the time of writing, the Farm Bill is in conference committee. Assuming agreement can be reached between the two chambers, the resulting program will likely be funded at a level in the middle of the two houses' changes (*i.e.*, with reductions of $40 billion

and $4 billion over 10 years. It remains to be seen what programmatic or administrative changes will remain.

Expiration of SNAP Stimulus Spending

Unrelated to the Farm Bill debate in Congress is a reduction to SNAP as a result of the expiration of a temporary boost to SNAP allotments included as part of the 2009 American Reinvestment and Recovery Act, commonly known as the government's economic stimulus package. A recipient's reduction will depend on family size and income, but an average family of four will have its monthly benefit reduced by $36. The Pew Charitable Trusts estimates that the impact to Maryland is $82 million in lower SNAP payments affecting nearly 58% of the State's 774,000 SNAP recipients.

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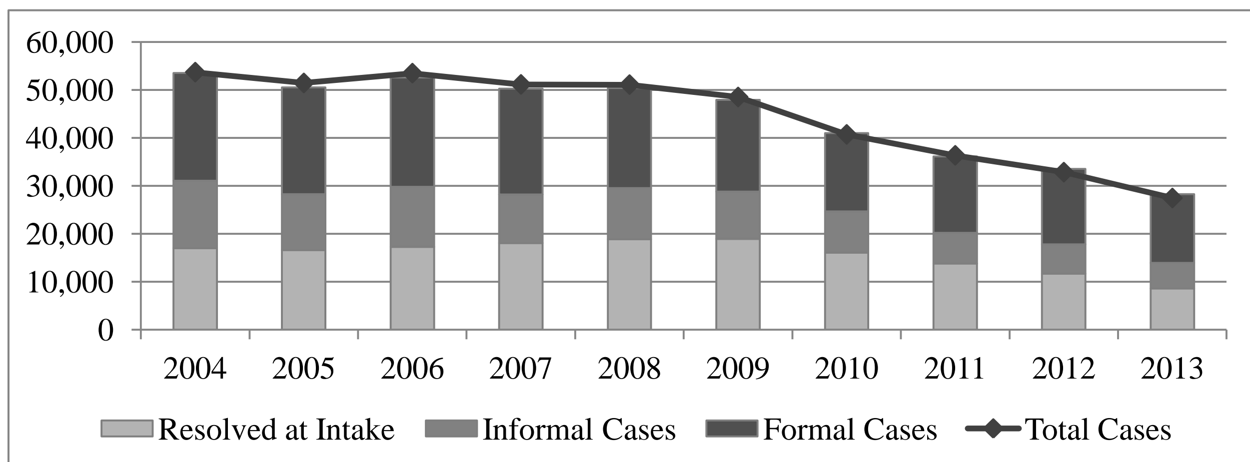
DJS Population Trends and Facility Issues

The number of youth being served by the Department of Juvenile Services continues to fall in most programmatic areas. An exception is committed placements. The department is also moving forward with a number of new facility projects.

General Population Trends

Exhibit 1 details the total number of complaints received by the Department of Juvenile Services (DJS) in recent years, as well as complaint disposition.

Exhibit 1
Juvenile Complaints and Complaint Dispositions
Fiscal 2004-2013



Note: Total complaints typically are 1% to 2% higher than the sum of those resolved at intake and the informal and formal caseload. The difference relates to jurisdictional issues or cases in which a decision is not recorded.

Source: Department of Juvenile Services; Department of Legislative Services

- The total number of complaints has declined significantly in the past five years. In fiscal 2013 DJS handled less than 30,000 complaints for the first time in over a decade. Between fiscal 2004 and 2009, total complaints consistently exceeded 50,000; since fiscal 2009, the number of complaints received by the department has fallen 43%. The nearly 27,500 complaints in fiscal 2013 reflect a 16% reduction compared with

fiscal 2012. This is consistent with the downward trend in juvenile crime experienced nationwide.

- All types of complaint dispositions continued to decline in fiscal 2013 as a result of fewer total complaints referred to the department. Cases resolved at intake and those that require some form of intervention, but do not rise to the level of court intervention (the informal caseload), fell by 22% and 12%, respectively. Cases resolved at intake continue to account for a smaller proportion of the total caseload, representing 31% of total complaint dispositions in fiscal 2013, compared with 36% in fiscal 2012. Informal cases consistently account for approximately 19% of total complaints.

- Formal caseloads, those where DJS believes court intervention is required, declined by 9% in fiscal 2013. Formal cases as a percentage of the total case load continues to increase, with more than half (52%) of complaints being formalized for court intervention.

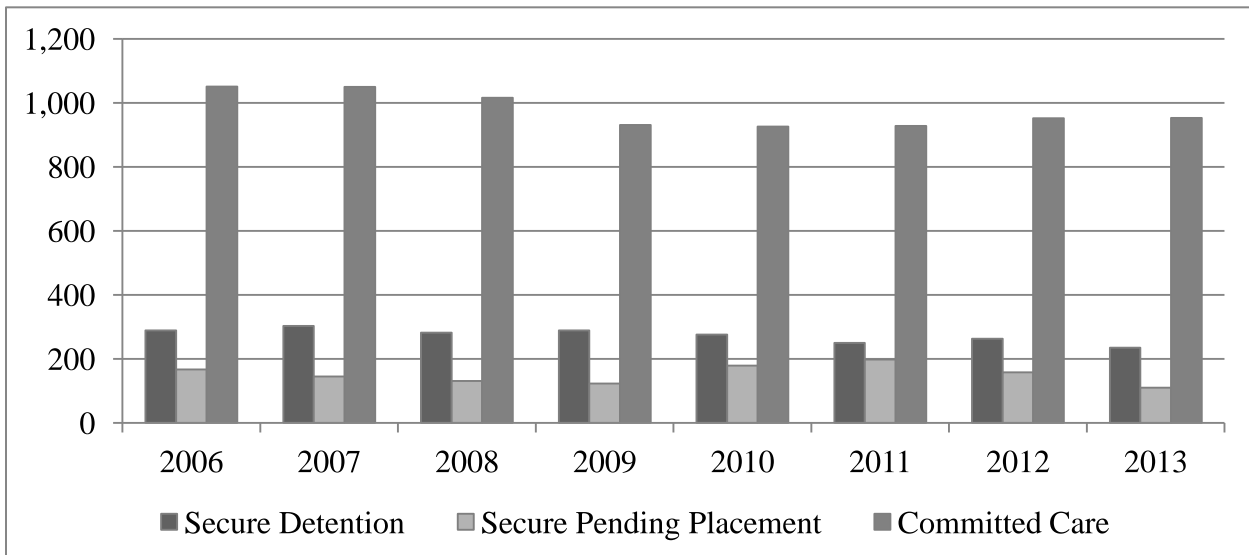
In terms of youth requiring out-of-home placements, **Exhibit 2** illustrates trends for certain pre- and post-disposition residential placements.

Exhibit 2

Selected Average Daily Population Trends

Department of Juvenile Services

Fiscal 2006-2013



Source: Department of Juvenile Services; Department of Legislative Services

- Overall, the population of youth held in secure detention facilities continued its recent downward trend, declining 18% in fiscal 2013. This is primarily attributable to a 30% reduction in the number of post-disposition youth held in secure detention facilities pending a permanent residential placement. The average population in fiscal 2013 was 110 youth pending placement, compared to 158 youth pending placement in fiscal 2012. The reduction in the pending placement population is largely the result of legislation adopted during the 2012 legislative session to allow for the easier placement of youth in a different committed program following an unsuccessful placement.

- The utilization of secure detention facilities for pre-disposition youth also declined by 11% in fiscal 2013, to an average daily population of 235 youth. The department's statewide evaluation of the use of secure detention, completed in July 2013, identified significant populations of youth in secure detention who may be better managed in the community. If the solutions proposed in the report are effectively implemented, it is possible the secure detention population could continue to decline.

- Despite reductions in the number of complaints and the population of youth held in secure detention and pending placement, the average daily population of youth in committed residential placement held steady at 953 youth. According to DJS, this trend indicates that the department is doing a better job throughout the system of identifying youth for whom DJS intervention is most appropriate. For the second year, approximately 13% of the committed care population, or an average daily population of 121 youth, was in out-of-state residential placements.

Capital Program

The Maryland Consolidated Capital Bond Loan of 2013 included $23.0 million in general obligation bond funding for two new DJS detention facilities and restrictive language on a prior authorization for a new treatment facility.

Cheltenham Detention Facility

DJS is in the process of constructing a new $58.8 million detention center on the grounds of the Cheltenham Youth facility. The new 72-bed facility will serve pre-adjudicated and pending-placement male youth primarily from the Metro Region (Prince George's and Montgomery counties). Approximately $25.6 million has been authorized for the project to date. DJS is nearing completion of the design phase for the project and anticipates awarding a construction contract in December 2013. The project has an anticipated completion date of December 2015.

New Waxter Detention Facility for Female Youth

The General Assembly approved nearly $1.7 million in general obligation bond funding in fiscal 2014 to begin design of a new $49.7 million detention center for female youth. The 48-bed facility will be constructed on the site of the former O'Farrell Center in Carroll County. O'Farrell Center previously housed a committed program for male youth, but the program ceased operations in 2008. This project was accelerated in the department's capital program due to interest in using the grounds of the existing Waxter facility as a future site for a Southern Region male detention center. DJS is still formulating the program plan for the project, which requires approval from the Department of Budget and Management (DBM) before the design process can commence. The Department of General Services is currently engaged in a two- to four-month technical review of the program plan and the site utility infrastructure. After the review is complete, the program will be submitted to DBM for approval, and DJS can begin the Architectural/Engineering selection process. Once the design contract is awarded, it is estimated that the project will require 18 months to complete design and 24 months for construction.

Baltimore Regional Treatment Center

Restrictive language was added to a $3.0 million authorization for site acquisition for a 48-bed treatment facility in Baltimore City during the 2013 legislative session. The language required DJS to substantially negotiate the purchase of a site for the facility by October 1, 2013, or the authorization would be repurposed to begin design of a treatment facility at Cheltenham.

To date, DJS and Baltimore City have committed to identifying a 6- to 12-acre parcel of land within a larger 82-acre tract located at 6101 Bowleys Lane, which is north and east of downtown, for a treatment facility. The 82-acre site is surrounded by residential property to the north, south, and west. The Harbor Tunnel Throughway (895) borders the property to the east. The existing site houses the Baltimore City Department of Public Works Eastern Sanitation Yard, a citizen drop-off center for recyclable materials.

The specific site for the Baltimore Regional Treatment Center has not been agreed upon. DJS has notified Baltimore City of its preference for a sub-parcel that is different from the sub-parcel suggested by the city. The Department of General Services Office of Real Estate is negotiating with the city to acquire the DJS preferred site and is also coordinating an environmental assessment of the property. Portions of the 82-acre property were previously used as a repository for fly ash, meaning soil contamination, and other environmental hazards could pose a problem. DGS estimates that negotiating with the city and receiving environmental approval from the Maryland Department of the Environment will require at least six months to complete. After identifying a suitable parcel, DJS anticipates needing up to one year to complete the acquisition process, including appraisals, contract negotiations, Board of Public Works approval, and settlement.

The budget committees released the restricted funds for the department to continue its pursuit of the Bowleys Lane site in October 2013; however, concerns regarding the potential environmental hazards and lack of a definitive timeline for completing the acquisition were raised. DJS was asked to submit progress reports to the budget committees on January 3 and April 4, 2014.

Social Programs

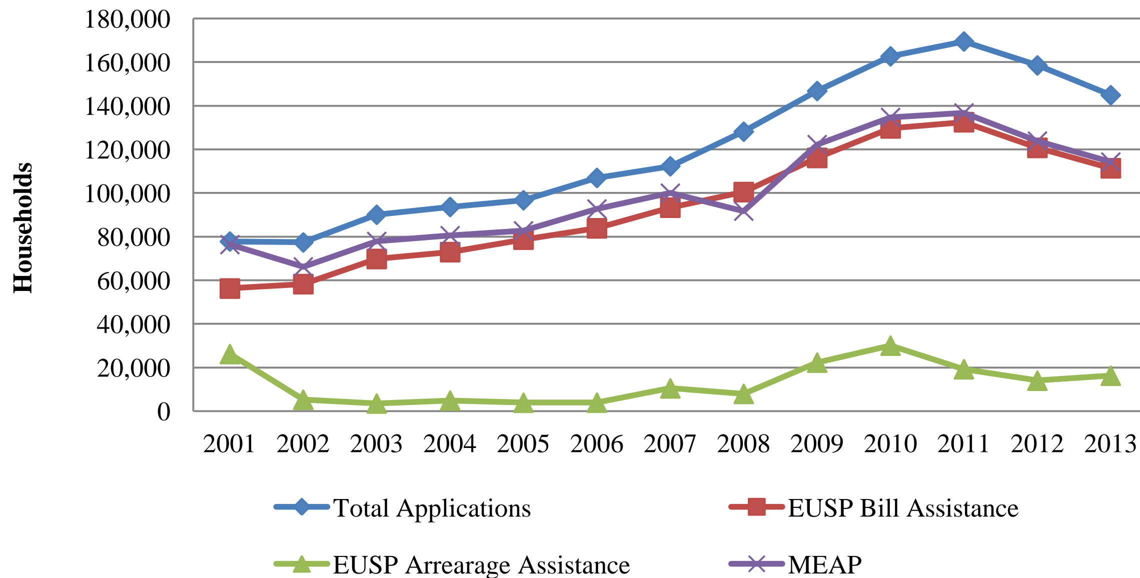
Funding of Home Energy Programs

Although, funding for State home energy programs increased in fiscal 2014, funding is still below the levels seen in fiscal 2009 to 2011, and there is some concern that traditional funding sources for these programs may not be entirely stable.

Background

The Department of Human Resources operates two energy assistance programs through the Office of Home Energy Programs (OHEP). The Maryland Energy Assistance Program (MEAP) operates with funds from the federal Low Income Home Energy Assistance Program (LIHEAP) and provides bill payment, crisis assistance, and furnace repair/replacements for a variety of energy sources. The Electric Universal Service Program (EUSP) is funded through a surcharge on the bills of electric customers, and the Strategic Energy Investment Fund (SEIF) provides bill payment and arrearage assistance to customers. The SEIF is primarily funded through proceeds from quarterly Regional Greenhouse Gas Initiative (RGGI) carbon dioxide emission allowance auctions. These programs serve households with incomes at or below 175% of the federal poverty level. Arrearage assistance is available to households only once every seven years. **Exhibit 1** provides information on the number of applications and households receiving benefits since fiscal 2001.

Exhibit 1
Application and Benefit Provision History
Fiscal 2001-2012



EUSP: Electric Universal Services Program
MEAP: Maryland Energy Assistance Program

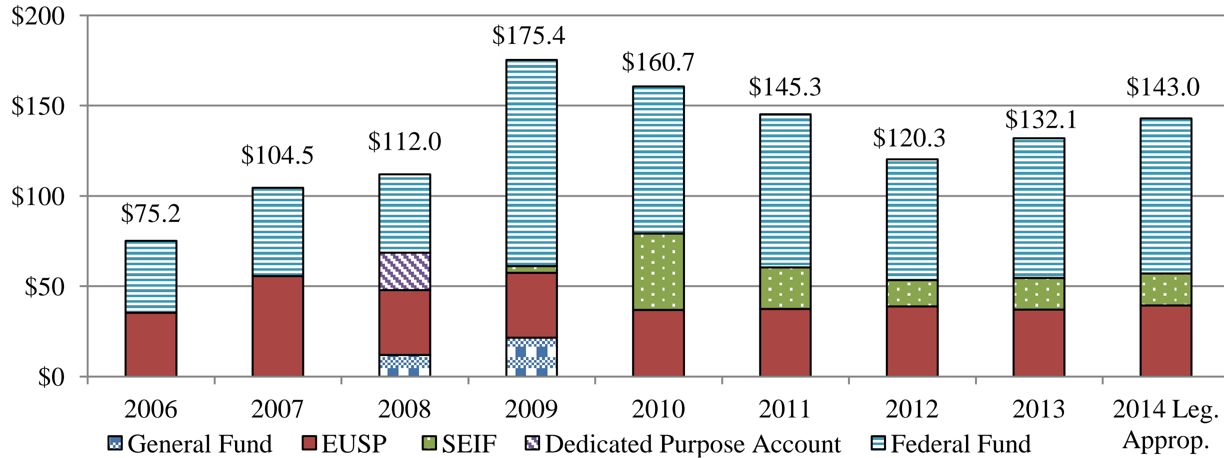
Note: Fiscal 2013 numbers are preliminary and subject to adjustment.

Source: Department of Human Resources

Funding Trends

As shown in **Exhibit 2**, expenditures of OHEP peaked in fiscal 2009 due to a confluence of additional funding sources and demand. In that year, the LIHEAP was funded at $5.1 billion nationally, the highest level in program history, which allowed Maryland to ultimately expend $114.3 million of LIHEAP funds. In addition, $21.5 million in general funds, which are not typically available to the program, were made available due to high demand. OHEP also received its first allocation from the SEIF in that year. Following that year, expenditure levels of OHEP began to decrease, primarily due to changes in available funding, although demand played a role in some years as well.

Exhibit 2
Office of Home Energy Programs Funding and Expenditure History
Fiscal 2006-2014
($ in Millions)



EUSP: Electric Universal Service Program
SEIF: Strategic Energy Investment Fund

Source: Government's Budget Books; Fiscal Digest for the State of Maryland for the Fiscal Year 2014; Department of Human Resources

The SEIF

Chapters 127 and 128 of 2008 created an allocation of proceeds into the SEIF from RGGI auctions. The Department of Human Resources was to receive 17% of the proceeds for energy assistance. Subsequently, the allocation was changed to temporarily increase the share of proceeds for energy assistance in several Budget Reconciliation and Financing Acts (BRFA). The allocations, legislation creating the allocations, and time period for which these allocations were in effect, are shown in **Exhibit 3**.

Exhibit 3
SEIF Funding Allocations and Time Period of Use

	Chapters 127 and 128 of 2008	BRFA of 2009 (Chapter 487 of 2009)	BRFA of 2011 (Chapter 397 of 2011)
In Effect for Auction Numbers	1 and 2 (September and December 2008); and beginning with 25 (September 2014)	3-12 (March 2009-June 2011)	13-24 (September 2011-June 2014)
Energy Assistance for the Electric Universal Service Program and Other Electricity Assistance	17.0%	Up to 50.0%	Up to 50.0%
Residential Rate Relief	23.0%	23.0%	0.0%
Energy Efficiency and Conservation (at least one-half for low- and moderate-income programs)	At least 46.0%	At least 17.5%	At least 20.0%
Renewable and Clean Energy Programs; Energy-related Public Education and Outreach; and Climate Change Programs	Up to 10.5%	At least 6.5%	At least 20.0%
Administrative expenses (MEA)	Up to 3.5% but no more than $4.0 million	Up to 3.0% but no more than $4.0 million	Up to 10.0% but no more than $4.0 million

BRFA: Budget Reconciliation and Financing Act
MEA: Maryland Energy Administration

Note: Although the allocation under the BRFA of 2009 was amended by the BRFA of 2010 to extend the allocation until June 30, 2012, the BRFA of 2011 superseded the extension. Following fiscal 2014, the allocation will return to that set by Chapters 127 and 128 of 2008.

Source: Section 9-20B05(g-1) of the State Government Article; Section 9-20B05(g) of the State Government Article; Chapter 397 of 2011

DHR has received 50% of the revenue from the RGGI auctions through the SEIF in nearly all of the auctions. However, the current allocation provided in the BRFA of 2011 expires with auctions held in fiscal 2014. As a result, absent any legislative change, DHR's share of revenue will return to 17% beginning in fiscal 2015.

The funding available to DHR through these allocations has varied widely due to substantial revenue fluctuations. These fluctuations are attributable to lower than expected carbon dioxide emissions, which in turn lowered the demand for allowances and prices. DHR

spent as much as $42.2 million of the SEIF in fiscal 2010, the first full year of revenue and the first year of the higher allocation, and as little as $14.5 million in fiscal 2012.

In 2013, RGGI announced a substantial reduction in the carbon dioxide emission allowance cap beginning in calendar 2014, which had an immediate impact on prices and revenue. As a result, in combination with lower energy assistance demand in fiscal 2013, the SEIF fund balance for energy assistance was approximately $26.0 million at the close of fiscal 2013. The higher revenue of recent auctions may continue, even with the substantial decrease in auctioned allowances, which could cushion the reduction in DHR's allocation of SEIF. The fund balance from fiscal 2013 may further buffer the program from immediate difficulties from the allocation change and is particularly necessary in the event that the lower number of available allowances decreases revenue. However, the consequences of the allocation change bear monitoring, especially in this period of federal funding uncertainty.

The LIHEAP

Considerable funding uncertainty has surrounded the LIHEAP in recent years, as it has for all federally funded programs. After record high funding in fiscal 2009, federal LIHEAP funds to Maryland have decreased due to both changes in allocations between states and overall funding levels. Maryland's federal fiscal 2013 LIHEAP award of $70.4 million was a 36.1% decrease from the level received in federal fiscal 2009. In the years following federal fiscal 2009, OHEP reduced benefit levels to accommodate the growing demand for energy assistance while federal funds fell. In fiscal 2012 and 2013, reduced demand for energy assistance also allowed OHEP to stay within the lower federal allocations and even increase benefits for some fuel sources.

DHR's fiscal 2014 budget assumes $87.8 million of the LIHEAP will be available to Maryland. This level of funding seems unlikely in the current federal fiscal climate, especially given the current continuing resolution which extends until January 15, 2014, and would be expected to provide a similar level of funding as in federal fiscal 2013. The reduced demand in fiscal 2013 allowed OHEP to carry over approximately $7.7 million of fiscal 2013 LIHEAP funding into fiscal 2014. The carryover funds should cushion any impact from sequestration or final federal budget decisions, but again the ability of OHEP to meet the need with available LIHEAP requires continued monitoring.

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Transportation

Status of the Proposed Transit Lines

The Transportation Infrastructure Act of 2013 (Chapter 429) provided the revenue needed to move the Red Line, the Purple Line, and the Corridor Cities Transitway (CCT) into the construction program. While not as much is known about the CCT, the Red Line is expected to be operational in 2022 and the Purple Line in 2020. The availability of federal funds and the use of a public-private partnership could impact the schedule presented.

Background

Over the past several years, the State has committed significant planning and engineering resources to developing the Red Line, the Purple Line, and the Corridor Cities Transitway (CCT) transit projects. The increased revenues resulting from passage of the Transportation Infrastructure Act of 2013 (Chapter 429) has allowed these projects to be moved to the construction program in the draft *Consolidated Transportation Program: Fiscal 2014-2019* (draft CTP). **Exhibit 1** summarizes the project status for each of the transit lines. Additional information is provided below in project specific sections.

Exhibit 1
Transit Project Status

	Purple Line	Red Line	Corridor Cities Transitway
Estimated Project Cost	$2.2 billion	$2.6 billion	$545.0 million
Construction Start	Calendar 2015	Calendar 2015	n/a
Operations Begin	Calendar 2020	Calendar 2022	n/a
Procurement Method	P3	Conventional/P3	n/a
Federal Funding Anticipated	$927.4 million	$921.8 million	$1.5 million
Local Funding Anticipated	$220.0 million	$250.0 million	n/a

P3: public-private partnership

Source: Maryland Department of Transportation, 2014 draft *Consolidated Transportation Program.*

The Purple Line

The proposed Purple Line is a 16-mile light rail transit line extending from Bethesda in Montgomery County to New Carrollton in Prince George's County with 21 stations – 10 in Montgomery County and 11 in Prince George's County. The Bethesda to Silver Spring segment will include a parallel hiker/biker trail. The Maryland Department of Transportation (MDOT) has elected to use a public-private partnership (P3) to deliver the Purple Line. This will involve selecting a private partner or "concessionaire" to finish the design of and then build, operate, and maintain the transit line. The concession period will be for 35 years – 5 for construction and 30 for operations. The concessionaire will also finance a portion of the construction and receive annual payments from MDOT consisting of equity repayment and operations funding. MDOT has submitted the Purple Line P3 proposal to the Board of Public Works (BPW) seeking to have the project formally designated as a P3 procurement as required by the P3 legislation adopted during the 2013 session (Chapter 5).

Project funding will be a mix of federal, State, local, and private (concessionaire) funds. The bulk of the federal funds are expected from the Federal Transit Administration's New Starts grant program. MDOT hopes that the President's fiscal 2015 budget, to be released in February 2014, will contain a New Starts funding recommendation of $900.0 million for the Purple Line. State funding is projected at $480.5 million and local contributions at $220.0 million, leaving a balance of $572.1 million to be provided by the concessionaire. The State/private funding amounts, however, will be negotiated during the development of the concessionaire agreement and may vary substantially from the assumptions used in the draft CTP.

The Red Line

The proposed Red Line is a 14.1-mile, east-west light rail line with 19 stations and will connect the areas of Woodlawn, Edmondson Village, West Baltimore, downtown Baltimore, Harbor East, Fell's Point, Canton, and the Johns Hopkins Bayview Medical Center campus. Because the project involves extensive tunneling under downtown Baltimore City, MDOT intends to use a hybrid procurement method with the bulk of the project to be delivered conventionally (design, bid, build, or design build) and a small portion delivered as a P3.

The draft CTP shows construction beginning in fiscal 2015; however, the bulk of construction spending is programmed for fiscal 2018 and 2019. Project funding will be a mix of federal, State, local, and private (concessionaire) funds. The federal support is projected at $921.8 million with New Starts funding assumed at $900.0 million. State funding assumed in the draft CTP totals $1,260.3 million, and local contributions are assumed at $250.0 million, leaving a balance of $167.9 million to be provided by the concessionaire for the P3 portion of the project (railcars, systems, and a maintenance facility).

The Corridor Cities Transitway

The proposed CCT is a 16-mile bus rapid transit line with 18 stations extending along a north-south corridor between Shady Grove Metrorail Station and the former COMSAT facility just south of Clarksburg in Montgomery County. As currently envisioned, the CCT will be constructed in two phases. Phase I will be a 9-mile segment between Shady Grove Metrorail Station and the Metropolitan Grove Maryland Area Regional Commuter Station consisting of 14 stations. Phase II will add 4 stations on the 6-mile extension to the COMSAT site.

Full details on the funding and schedule for the CCT have not yet been finalized. The draft CTP does not show construction funding in any of the six years of the program. Federal support beyond $1.5 million already expended for planning is not anticipated in the CTP. State spending for planning, engineering, and right-of-way acquisition total $100.2 million in the CTP with an additional $125.0 million reserved for construction to be provided some time after fiscal 2019. MDOT indicates that discussions with Montgomery County are ongoing to determine how to proceed with this project.

Issues

While the transportation revenue increase has allowed these major transit projects to be moved to the construction program in the draft CTP, the following are potential issues that could affect MDOT's ability to meet the schedule shown in the CTP or that could pose challenges which potentially impact the success of the proposed P3 procurement method:

- **Federal Funding:** The Purple and Red Line projects each assume $900 million in federal New Starts grant funds. While MDOT is hopeful that recommendations for these amounts will be included in the President's federal fiscal 2015 budget to be released in February 2014, the actual commitment of federal funds will not occur until Full Funding Grant Agreements are signed for each project. A reduction in the federal commitment would require a reexamination of how to move forward with these projects.

- **Local Contributions:** The draft CTP assumes local contributions of approximately 10% for both the Purple and Red Line projects. As yet, there are no formal agreements with any of the local governments to provide contributions.

- **Debt Affordability:** For the Purple Line, MDOT is assuming that the portion of the annual payments to the concessionaire that will be used to repay concessionaire debt will be nontraditional MDOT debt and should not be considered a State tax-supported debt. Should the Capital Debt Affordability Committee or the bond rating agencies opine otherwise, Purple Line debt would utilize a portion of the State's debt capacity and could require a delay in other MDOT and/or State debt-supported projects.

- **P3 Procurement on Purple Line Scale Untested:** While MDOT does have experience in using P3s to deliver infrastructure assets, its prior efforts have been on projects much smaller in scale than the Purple Line, and in the case of the warehouse facility at the Port of Baltimore, the State has had to cover debt service payments due to the departure of the tenant for which the facility was built.

Transportation

Overview of the Draft *Consolidated Transportation Program*

The draft 2014-2019 *Consolidated Transportation Program* (CTP) increased by $5.3 billion compared to the 2013-2018 CTP. This increase in spending is attributable to the new revenue from the Transportation Infrastructure Investment Act of 2013 and additional federal funds for the major transit lines. The $4.4 billion in new revenue is spent evenly between highways and transit.

Overview

The *Consolidated Transportation Program* (CTP) is Maryland's six-year capital budget for transportation projects. It is updated annually and includes all major and minor capital projects that the Maryland Department of Transportation, its modal administration, and the Washington Metropolitan Area Transit Authority (WMATA) are undertaking in the current year and over the next five-year planning period. Capital projects for the Maryland Transportation Authority are also included in the CTP but are excluded from this analysis. **Exhibit 1** compares six-year spending contained in the 2013 CTP to the draft 2014 CTP.

Exhibit 1
Comparison of Six-year Capital Spending
Fiscal 2013-2019
($ in Millions)

	2013-2018 CTP	Draft 2014-2019 CTP	Change	Percent Change
Special Funds	$5,759.3	$9,882.2	$4,122.9	71.6%
Federal Funds	3,430.4	4,426.8	996.4	29.0%
Other Funds*	952.1	1,117.0	164.9	17.3%
Total Funds	**$10,141.8**	**$15,426.0**	**$5,284.2**	**52.1%**

CTP: *Consolidated Transportation Program*

*Other funds include funds from customer and passenger facility charges and certain types of federal aid that do not pass through the Transportation Trust Fund.

Source: Maryland Department of Transportation 2013 final CTP, 2014 draft CTP.

The total funding level in the 2014 draft CTP increases by $5.3 billion (52.1%) from the 2013 CTP. This net increase is due to the following:

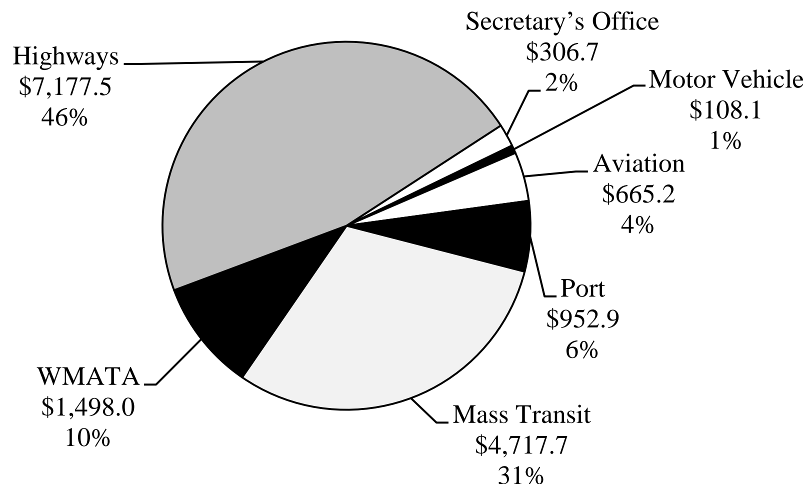
- a $4.1 billion net increase in special funds comprising additions totaling $4,275.0 million due to the programming of revenues available from passage of the Transportation Infrastructure Investment Act of 2013 (Chapter 429) partially offset by decreases totaling $152.1 million due to cash flow changes;

- a $996.4 million increase in federal funds due primarily to the inclusion of expected New Starts funding for the Red and Purple Line transit projects which are moved to the construction program; and

- a $164.9 million increase in other funds comprising increases due to inclusion of local contributions for the Red and Purple Line transit projects and federal funds received directly by WMATA.

Exhibit 2 shows the Maryland Department of Transportation's total capital spending for the entire six-year period by mode. The State Highway Administration (SHA) receives just under half of total capital funding, and transit (including both the Mass Transit Administration and WMATA) receives approximately 41% of the funding.

Exhibit 2
Total Capital Spending by Mode
Fiscal 2014-2019
($ in Millions)



Total Capital Spending: $15.4 Billion

WMATA: Washington Metropolitan Area Transit Authority.

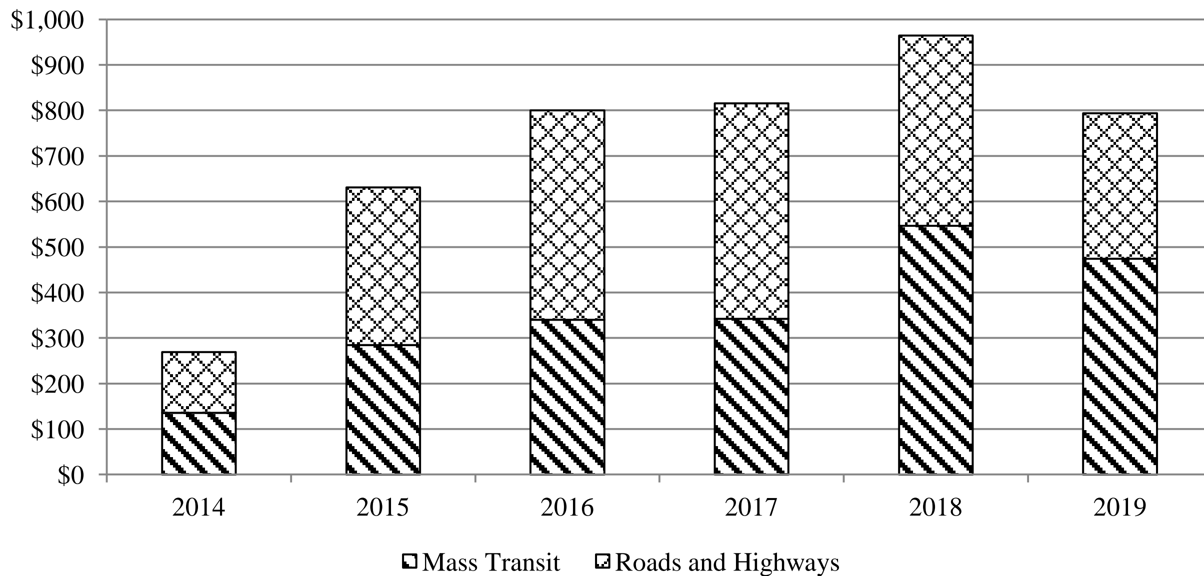
Note: Totals may not sum due to rounding.

Source: Maryland Department of Transportation, 2014 draft *Consolidated Transportation Program.*

Revenue Increase Spending

The draft 2014 CTP includes $4.4 billion in spending made possible by enactment of the Transportation Infrastructure Investment Act of 2013. **Exhibit 3** shows the division of the planned $4.4 billion in additional spending between highways and transit for the six-year period. Spending of the revenue increase is split 50/50 between (1) roads and highways and (2) mass transit. Just over 72% of the programmed transit spending is dedicated to the three major transit projects under development – the Red Line, Purple Line, and Corridor Cities Transitway (CCT).

Exhibit 3
Revenue Increase Spending
Fiscal 2014-2019
($ in Millions)



Note: $125.0 million of the increased revenue is reserved for the Corridor Cities Transitway project but is currently expected to be expended after fiscal 2019.

Source: Maryland Department of Transportation, 2014 draft *Consolidated Transportation Program.*

Major Project Changes

The following is a summary of the major project changes in the 2014 draft CTP.

- In total, $410.2 million worth of construction projects were added to the 2014 draft CTP comprising:

  - $313.7 million for the Metro signal system preservation and replacement project; and

  - $96.5 million for highway projects across the State with more than half of this devoted to bridge projects.

- Twenty-five projects totaling $5,117.5 million were moved from the development and evaluation program to the construction program comprising:

  - the Red Line, the Purple Line, and the CCT transit projects – $3,865.9 million;

  - 21 highway projects – $1,126.6 million; and

  - 1 project at the Baltimore-Washington International Thurgood Marshall Airport – $125.0 million.

- Highway system preservation funding was increased by $512.0 million and funding for Watershed Implementation Plan projects was increased by $427.1 million as a result of passage of the Transportation Infrastructure Investment Act of 2013.

Business Regulation

Workers' Compensation

The workers' compensation system in Maryland continues to be stable with only a minimal increase in workers' compensation insurance premiums for employers in 2014. Nonetheless, discussion continues relating to the State insurer of last resort and physician dispensing of pharmaceuticals and employer retaliation for filing a claim.

Workers' Compensation System Is Relatively Stable

The Maryland Insurance Administration (MIA) recently approved a 1.4% increase in the pure premium rate that employers will pay in 2014 for workers' compensation insurance. As a component of overall premium rates, pure premium rates are set at a level necessary to prefund projected claim loss payments to injured workers. MIA's approval of the National Council on Compensation Insurance (NCCI) pure premium rate filing marks the fifth consecutive increase to the amount that employers in the State pay for workers' compensation insurance. Despite these increases, the cumulative rate change is slight, which indicates a relatively stable market in the State. The State's workers' compensation insurer of last resort, the Chesapeake Employers' Insurance Company (Chesapeake)/Injured Workers' Insurance Fund (IWIF), follows a different ratemaking approval process and reports that its rates on average should remain flat for policies issued or renewed during 2014.

Anticipated 2014 Legislation

Insurer of Last Resort Conversion

During the 2012 session, Senate Bill 745 (Chapter 570) was adopted to convert IWIF into a private, nonprofit and nonstock workers' compensation insurer. Effective October 1, 2013, Chesapeake serves as the workers' compensation insurer of last resort in the State. IWIF continues to exist, employing 321 people who have chosen to remain as IWIF employees. Chesapeake currently employs 96 former IWIF employees.

There may be a desire to clarify the responsibilities of the restructured organization and to eliminate some unintended changes made by the conversion legislation. One change would authorize Chesapeake to issue policies for employer's liability insurance and for insurance under a federal workers' compensation law – authority that IWIF had prior to the conversion. Another change would expand the reasons why Chesapeake may legally cancel or refuse to renew or issue a policy to include failure to reimburse Chesapeake for payments made on a policy that has a deductible arrangement.

Insurer of Last Resort Membership in Rating Organization

IWIF is exempt from Title 11 of the Insurance Article, which requires insurers to (1) file and gain approval of their rates by the Insurance Commissioner and (2) belong to a workers' compensation rating organization. The conversion legislation preserved this exemption but required MIA to study and report whether Chesapeake should be required to join NCCI, which is the designated workers' compensation rating organization. On October 1, 2012, MIA released a study recommending that Chesapeake (1) become subject to Title 11; (2) report its experience to NCCI on a phased-in basis over a five-year period; and (3) develop a merit rating plan to lessen the impact of the transition on insureds.

During the 2013 session, Senate Bill 962/House Bill 1438 (both failed) would have subjected Chesapeake to rate regulation and would have required the company, MIA, and a rating organization to develop a plan to ensure the company's membership in the rating organization by a certain date. Rating continues to be a topic for discussion.

Prescription Drug Cost Management

Physician-dispensing of repackaged pharmaceuticals increases costs for the workers' compensation system because physicians are not bound by state fee schedules and pharmacy cost controls. The Workers' Compensation Research Institute released a study in September 2013 which found that physicians directly dispensed 40% of all medications prescribed to injured workers in Maryland, representing 55% of total spending on pharmaceuticals for workers' compensation claims. These proportions represent increases from 35% of all prescriptions and 43% of total prescription costs just three years earlier. The report indicated that in Maryland from 2008 to 2012, prices paid for physician-dispensed prescriptions increased, while prices paid to pharmacies decreased or changed only slightly. The study concluded that on a per-pill basis, prices paid to physician-dispensers for generic medications were often more than double the prices paid for the same medications dispensed at pharmacies. A number of other studies released during the 2013 interim also address differences in costs and patient outcomes when physicians, instead of pharmacists, dispense prescription drugs.

Regulatory and legislative proposals introduced over the last few years have taken two different approaches to attempt to address the differential cost and patient outcome issues. Under the first approach, the proposals have attempted to restrict or more stringently regulate the practice of physician dispensing. Senate Bill 247/House Bill 174 of 2013 (both failed) would have specified that an employer, or its insurer, may not be required to pay for a prescription drug that is dispensed by a physician unless the prescriptions were dispensed within 72 hours of discovery of the disease or injury and were limited to a 30-day supply of medication. The recently implemented Prescription Drug Monitoring Program (Chapter 166 of 2011), which requires dispensers of prescribed controlled dangerous substances to report information to an electronic database, gives the State new tools to monitor inappropriate dispensing of pain relievers and other prescription drugs frequently subject to misuse. Additionally, recent legislation has altered permitting requirements for physician dispensers by requiring physicians

who dispense from workers' compensation clinics to obtain a dispensing permit (Chapter 184 of 2013) and to comply with other drug recall, packaging, recordkeeping, purchasing, reporting, continuing education, and inspection requirements which were implemented under Chapter 267 of 2012.

Under the second approach, rather than restrict the practice of physician dispensing, some proposals have sought to eliminate the cost differential by requiring the establishment of a uniform reimbursement rate for both physician – and pharmacist-dispensed medications. Senate Bill 914/House Bill 1389 of 2013 (both failed) would have required the Workers' Compensation Commission (WCC) to adopt a pharmaceutical fee schedule in regulation. WCC previously proposed two sets of regulations that would have established a pharmaceutical fee schedule. The Administrative, Executive, and Legislative Review Committee, however, did not approve either set of regulations. The issues of patient outcomes and rising, inflated prescription drug costs continue to generate interest.

Prohibition Against Retaliation by Employers

Maryland law prohibits an employer from discharging a covered employee from employment solely because the covered employee files a claim for workers' compensation benefits. Legislation introduced during the 2013 session (Senate Bill 609/House Bill 595 – both failed) would have expanded employee protections by prohibiting an employer from retaliating *in any way* against a covered employee because the employee files a claim for workers' compensation benefits. In addition to making the existing criminal penalties apply, the bill would have authorized a covered employee who is aggrieved by a violation of the statute to bring a civil action against the employer.

Proponents characterized the proposal as necessary because of the limiting qualities of the statute – the "sole cause" threshold and the protection against discharge, but not other types of employer retaliation. The proponents indicated that most states have broader anti-retaliation statutes. Opponents criticized the proposal for purportedly (1) attempting to merge tort law with workers' compensation law; (2) intruding upon WCC's jurisdiction; (3) causing litigation costs to escalate; and (4) defining "retaliation" in such a vague manner that the statute would prohibit appropriate employment practices. The House Economic Matters Committee referred House Bill 595 to interim study for further examination of the issues raised by the proponents and the opponents.

Workers' Compensation Insurance Benefit and Oversight Committee

The Joint Committee on Workers' Compensation Benefit and Insurance Oversight evaluates and examines the structure for workers' compensation and benefits in Maryland. The committee will meet in mid-December to review and discuss anticipated 2014 legislation, workers' compensation rates for 2014, and the WCC's annual report.

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Business Regulation

Unemployment Insurance

Due to the more favorable employment picture in the State and lower claim activity, the Unemployment Insurance Trust Fund has replenished sufficiently to allow Maryland employers to pay from the lowest tax table in calendar 2014, a position last realized in calendar 2008. As a result of Maryland's 7.0% unemployment rate, Maryland claimants may be eligible for additional federally funded benefits through December 2013. The Joint Committee on Unemployment Insurance Oversight is anticipated to discuss proposed 2014 legislation that brings Maryland into conformity with federal law.

Unemployment insurance (UI) provides temporary, partial wage replacement benefits to persons who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Funding for the program is provided by employers through UI taxes paid to both the federal government for administrative expenses and to the states for deposit in their respective UI trust funds.

The UI Trust Fund and Outlook for Employer Taxes in Calendar 2014

Legislation enacted in Maryland in 2005 altered Maryland's UI charging and taxation system by creating a series of experience tax rate tables that are based on the balance in the Maryland UI trust fund. An employer's unemployment experience determines the rate charged within each table. If the balance of the UI trust fund exceeds 5% of total taxable wages in the State (as measured on September 30 of the current year), the lowest tax rate table (Table A) is used to calculate employer rates for the following calendar year. In Table A, employers pay a minimum of 0.3% (on the first $8,500 of annual wages of each employee) and a maximum of 7.5% ($25.50 to $637.50 per employee). The highest tax table (Table F) is used when the balance of the UI trust fund is not in excess of 3% of the total taxable wages. In Table F, employers pay a minimum of 2.2% and a maximum of 13.5% ($187 to $1,147.50 per employee).

The balance of the UI trust fund has fluctuated over the years, growing in good economic times to over $1 billion in each of calendar 2007 and 2008, and diminishing in bad economic times to a level that required the UI trust fund to borrow $133.8 million from the federal government in February 2010. Despite an infusion of $126.8 million of federal modernization incentive funds in May 2010 and with the repayment of the borrowed funds by December 2010, the balance of the UI trust fund remained at a level that required Maryland employers to pay from the highest tax table from 2010 through 2012. Due to the more favorable employment picture in the State and lower claims activity (resulting in a significantly increased balance of the UI trust fund), employers are paying from Table C in calendar 2013 and will pay from Table A in calendar 2014.

The State's unemployment rate rose from 3.6% at year-end 2007 to 7.6% at year-end 2009, from which it has declined slightly. As of August 2013, Maryland's rate was

7.0%. Initial claims grew from about 222,000 in calendar 2007 (18,500 monthly average) to a high of over 416,000 in calendar 2009 (35,000 monthly average). Initial claims began to fall in calendar 2010. By fiscal 2013 (calendar year data not yet available), initial claims fell to about 307,000, for an approximately 26,000 monthly average.

Exhibit 1 shows the balance of the UI trust fund on September 30 of each year since 1999, the annual payout amounts since 1999, and Maryland's seasonally adjusted unemployment rate each year since 1999. Also shown in Exhibit 1 are the tax tables employers paid from during calendar 2006 to 2013 and will pay from during calendar 2014.

Exhibit 1

Maryland's Unemployment Rate, UI Trust Fund Balance, and Annual Benefit Payouts

Calendar 1999-2014

Calendar Year	Percentage Unemployment Rate at End of Year[1]	UI Trust Fund Balance as of Prior September 30 ($ in Millions)[2]	Tax Rate Table in Effect	Annual Benefit Payouts[3] ($ in Millions)
1999	3.5	$741.6		$265.0
2000	3.5	815.8		261.4
2001	4.5	882.8		394.5
2002	4.4	866.9		498.9
2003	4.3	824.7		512.1
2004	4.3	638.5		430.8
2005	3.8	703.6		384.7
2006	3.7	883.1	B	383.5
2007	3.6	1,032.5	A	433.3
2008	5.8	1,057.8	A	785.2
2009	7.6	895.4	B	1,068.8
2010	7.4	301.7	F	900.7
2011	7.3	273.4	F	716.8
2012	7.2	460.2	F	767.3
2013	7.0	794.5	C	749.0
2014	N/A	954.7	A	N/A

[1]Data is from DOL: unemployment rate for 2013 is as of August 2013.
[2]Data is from DLLR: calendar 2003 includes $142.9 million of Reed Act funds provided by the federal government. Calendar 2010 includes $133.8 million in borrowed funds (February 2010) and $126.8 million in federal modernization funds (May 2010); borrowed funds were repaid in full by December 2010.
[3]Data is from DOL: 2013 payout amount is a fiscal year total.

Note: The historic high unemployment rate for Maryland was 8.3% in August 1982, and the historical low was 3.3% in March 2000.

Source: U.S. Department of Labor (DOL); Department of Labor, Licensing, and Regulation (DLLR)

Federally Funded Benefits

Eligible claimants may receive up to 26 weeks of regular UI benefits from the State UI trust fund. In addition to State UI benefits, in 2008, federal law established emergency unemployment compensation benefits (EUC) for 47 weeks for UI claimants who have exhausted regular UI benefits for a total of 73 weeks of regular and EUC. Under the federal Middle Class Tax Relief and Job Creation Act of 2012, as of June 2012, EUC is comprised of four tiers: Tier 1 – 14 weeks; Tier 2 – 14 weeks if the State unemployment rate is at least 6%; Tier 3 – 9 weeks if State unemployment rate is at least 7%; and Tier 4 – 10 weeks if the State unemployment rate is at least 9%.

As a result of the State's current 7% unemployment rate, Maryland triggered back "on" to Tier 3 EUC as of Sunday, October 6, 2013. Tier 3 EUC provides only 9 weeks of benefits. These weeks are not payable to claimants who have already received 37 weeks of Tiers 1, 2, and 3 EUC but are payable to claimants who received 28 weeks of Tiers 1 and 2 EUC or claimants who are still in EUC claim status and eligible for the 28 weeks. Since the EUC program ends by federal law in December 2013, not all eligible claimants will be able to receive all weeks of EUC unless the program is extended.

Impact of the Federal Government Shutdown

A budget impasse at the federal level in October 2013 led to a shutdown of the federal government that spanned 16 days. Based on the 2012 American Community Survey, approximately 280,000 Maryland residents work full-time for the federal government, not including the uniformed military. During the shutdown, only "essential" employees reported to work leaving thousands of Maryland residents without pay.

According to the Maryland Division of Unemployment Insurance, over the course of the shutdown, over 21,000 UI claims were filed and over 5,000 weeks of benefits were paid. However, the "Federal Employee Retroactive Pay Fairness Act" has ensured that federal employees will be retroactively paid for the period they were furloughed. Maryland statute considers the payment of both unemployment benefits and back payments to be overpayment and requires recovery and repayment of those benefits.

The division has established procedures to recover overpayments including contacting claimants; making repayment schedules; and if necessary, sending collection letters, intercepting tax returns, or offsetting future benefits. Additionally, the federal government will reimburse the UI trust fund for all benefits paid to its employees and receives credit only when and if overpayments are repaid by the claimants. Accordingly, the UI trust fund will be ultimately unaffected by the federal government shutdown.

Joint Committee on Unemployment Insurance Oversight

The Joint Committee on Unemployment Insurance Oversight monitors laws and policies that affect the State UI system, including administrative and federal funding issues, and studies other potential legislative changes to UI benefits. Recent changes to the Maryland statute were implemented due to changes at the federal level. The federal Trade Adjustment and Assistance Extension Act of 2011 requires states to assess penalties in cases where UI overpayments resulted from fraud. As such, the Maryland General Assembly passed House Bill 354 of 2013 (Chapter 103) that authorizes the division to impose monetary penalties equal to 15% of the amount of benefits received as a result of fraud. Similarly, the federal Act requires states to charge employers in cases where they failed to timely or adequately respond to requests for information that led to overpayments. Chapter 121 of 2013 was enacted to comply with the federal directive.

The joint committee anticipates holding a 2013 interim meeting in mid November. In addition to discussing the status of the UI trust fund and unemployment system and federally funded benefits, the joint committee anticipates discussing the following:

- **Work Sharing:** Work sharing, as authorized under federal and Maryland law, is a program designed to help employers avoid layoffs during slower periods. Under approved plans, employees work reduced hours and receive a work sharing benefit which is a percentage of the weekly benefit amount that corresponds to the reduction in hours. The federal standards of the program changed in 2012, and as such, Maryland is required to modify its statutes to conform to the changes.

  Some components of the new federal standard include a requirement that work sharing employers must continue to provide employee health and retirement benefits and employers must certify that the work sharing is being implemented to avoid layoffs.

- **Phase II UI Modernization:** In 2009, the American Recovery and Reinvestment Act made $7 billion available to states to modernize their UI programs. This first phase of funding allowed states to reform their statutes to expand the UI system to additional workers.

The states of Maryland, West Virginia, and Vermont have formed a consortium to begin Phase II of UI modernization which entails conducting a common upgrade to the states' UI tax and benefits information technology systems. Federal funding for the consortium is expected to reach $82.7 million over five years beginning in fiscal 2014.

Business Regulation

Renewable Energy and Related Initiatives

Implementation of the Offshore Wind Energy Act has begun. A task force is studying possible changes to the Renewable Energy Portfolio Standard. Workgroups are considering plans to extend the EmPower Maryland Energy Efficiency Act. A Net Metering Working Group has been meeting to discuss improvements to the program. The Public Service Commission (PSC) must determine whether it is in the public interest to participate in enforcing safety standards for interstate natural gas pipelines. These activities are likely to be discussed during the 2014 legislative session.

Offshore Wind Energy Act of 2013 in Initial Implementation Phase

Chapter 3 of 2013 created a "carve-out" for energy derived from offshore wind in the State Renewable Energy Portfolio Standard (RPS), beginning in 2017, and extending beyond 2022. While an offshore wind farm is not anticipated to be operational for several years, implementation of the Act has already begun in order to facilitate a project's eventual development.

The Act established a Maryland Offshore Wind Business Development Fund and a Maryland Offshore Wind Business Development Advisory Committee in the Maryland Energy Administration (MEA). The stated purposes of the fund are to (1) provide financial assistance, business development assistance, and employee training opportunities to emerging businesses in the State, including minority-owned businesses, in order to prepare them to participate in the emerging offshore wind industry and (2) encourage emerging businesses in the State to participate in that industry.

The advisory committee, which MEA staffs, must provide written recommendations to MEA by December 31, 2013, and updated recommendations by December 31, 2014, on the most effective use of the money in the fund, including information relating to emerging businesses and business activities in the State. The advisory committee terminates after submitting the updated recommendations on December 31, 2014. The committee met in September 2013, and MEA has begun drafting the interim report.

The Act also established two task forces to study college-level clean energy educational programs. The Clean Energy Program Task Force must study the feasibility of establishing a terminal degree or certificate program in clean energy at Bowie State University, Coppin State University, Morgan State University, and the University of Maryland Eastern Shore. Similarly, the Clean Energy Technical Education Task Force must study the programs and course offerings at the State's community colleges in the area of clean energy, with a particular emphasis on wind energy, and identify areas in which the colleges may offer additional programs and courses.

Both task forces have had their first meetings, with additional meetings scheduled in 2014 before findings and recommendations are due to the Governor and General Assembly in July 2014.

Renewable Energy Portfolio Standard

Maryland's RPS requires that renewable sources generate specified percentages of Maryland's electricity supply each year, increasing to 20% by 2022, including 2% from solar power. Maryland's RPS operates on a two-tiered system with carve-outs for solar energy and offshore wind energy and corresponding renewable energy credits (RECs) for each tier. Maryland's Tier 1 RPS obligations have historically been met by "black liquor" (a papermill industrial byproduct), hydroelectric, landfill gas, and wood and waste solids. For compliance year 2011 (the most recent year for which data are available), the State relied heavily on black liquor (33.3%) and hydroelectric (25.5%) sources, and to a lesser extent, wood and waste solids (12.4%) and landfill gas (9.0%). For the first time, wind (14.2%) was a significant source as well. Solar (0.9%) remains one the smallest sources of Tier 1 RECs.

Chapters 322 and 323 of 2013 established a Maryland Thermal Renewable Energy Task Force to study and make recommendations on the incorporation of thermal energy into the State's RPS. MEA staffs the task force, which must report its findings and recommendations to the Governor and the General Assembly by December 31, 2013. The group met first in August 2013 and again in October. The task force discussed methods for incorporating thermal energy in RPS, such as (1) whether to use a "carve out" or an additional tier and (2) how to incorporate black liquor. However, no final recommendations have yet been made.

EmPower Maryland Planning Process Continues

In 2008, the General Assembly passed the EmPower Maryland Energy Efficiency Act, which set a target reduction of 15% in per-capita electricity consumption and demand by 2015 from a 2007 baseline. However, the Act also directed MEA, in consultation with PSC, to determine whether electricity consumption and peak demand reduction targets should be set beyond 2015, and to advise the legislature on the feasibility of setting energy savings targets for natural gas companies. The final report was submitted to the Senate Finance and House Economic Matters committees in December 2012, in which MEA recommended that the EmPower Program be extended beyond 2015. The report also laid out a framework and path forward to provide the information necessary to best set specific EmPower goals beyond 2015.

To facilitate this ongoing planning process MEA has established four sub-workgroups – Avoided Cost, Cost Effectiveness, Market Studies, and Program Design and Development. The first three workgroups met as of October 2013, and the last will likely meet before the end of 2013. From these workgroups, MEA anticipates developing and finalizing detailed programs in the first half of 2014 to coincide with the September 2014 deadline by which the utilities must submit their final EmPower programs to PSC.

Net Metering Program

PSC must report each year on the status of the State's net metering program, including the amount of capacity by type of energy resource from net-metered facilities in the State, and recommend whether the cap on eligible capacity should be altered. Net energy metering is the measurement of the difference between the electricity that is supplied by an electric company and the electricity that is generated by an eligible customer-generator and fed back to the electric company over the eligible customer-generator's billing period. A PSC working group is developing a guidebook and meets intermittently to discuss improvements to the net metering program. In the 2013 report, PSC does not recommend changes to the eligibility cap for net metering. The current eligible limit of 1,500 megawatts far exceeds the level of installed capacity of approximately 100 megawatts. The report notes that there has been an increase in the number of recent installations but that it is unlikely that the current cap would be approached without several years' advance notice.

Previous sessions have seen proposals, including Senate Bill 699/House Bill 1128 of 2013 (failed), to authorize community energy-generating facilities. Analogous to large-scale net-metering, these are facilities that generate electricity from specified renewable sources and credit generated electricity to their subscribers. The concept may again be considered in the 2014 legislative session.

Interstate Natural Gas Pipelines

The Federal Natural Gas Pipeline Safety Act of 1968 requires the Secretary of the U.S. Department of Transportation to establish minimum federal safety standards for the transportation of natural gas and for pipeline facilities. PSC, under certification from U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, assumes safety responsibility over intrastate natural gas facilities and has statutory authority to establish and enforce safety standards for intrastate natural gas facilities.

Chapter 571 of 2013 requires PSC, by December 1, 2013, to (1) evaluate the process and criteria that the U.S. Secretary of Transportation would use to review an application for certification or agreement with the Secretary under federal law over interstate natural gas pipelines located within the State and (2) determine whether it is in the public interest to apply for that certification or agreement. Under Chapter 571, PSC must apply for certification or agreement with the Secretary by January 1, 2014, if it is in the public interest for the commission to act for the Secretary.

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Business Regulation

Reliability of the Electric Distribution System and Gas Infrastructure Improvements

Electric utilities are implementing reliability standards in response to several major electric outage events in recent years. The utilities are installing smart meters to foster more efficient use of electricity. Gas utilities are seeking authorization to include a surcharge on customers' bills as a way to accelerate eligible infrastructure replacement projects. These activities may prompt discussion during the 2014 legislative session.

Reliability Standards Largely Being Met by Utilities

The Maryland Electricity Service Quality and Reliability Act of 2011 (Chapters 167 and 168) required the Public Service Commission (PSC) to adopt regulations implementing service quality and reliability standards for the delivery of electricity to retail customers by electric companies (utilities). In response, PSC initiated an administrative docket, Rulemaking (RM) 43, to implement or modify standards including service interruption, downed wire repair, and service quality standards; vegetation management standards; annual reliability reporting; and availability of penalties for failure to meet the standards.

The first annual reports from Baltimore Gas and Electric Company (BGE), Choptank Electric Cooperative, Inc. (Choptank), Delmarva Power & Light Company (DPL), Potomac Edison Company (PE), Potomac Electric Power Company (Pepco), and Southern Maryland Electric Cooperative, Inc. (SMECO) were due to PSC on April 1, 2013. The total number of outages reported by the utilities for 2012 was 123,533, affecting approximately 5.38 million customers, some of whom experienced multiple outages. The utilities as a whole reported that 81% of affected customers experienced an outage lasting less than 24 hours, 91% less than 48 hours, and 95% less than 72 hours.

In 2012, five of the utilities – BGE, Choptank, PE, Pepco, and SMECO – met the systemwide reliability standards, while DPL was close but ultimately fell short. Vegetation management standards generally require the utilities to trim 15% of their distribution miles by the end of 2013; however, all of the utilities are on course to have well over 30% of their total distribution miles trimmed in that time. Five utilities met the service interruption and downed wire response standards; PE was the only utility that failed to meet the standards. PE submitted a corrective action plan in their annual performance report. Finally, most of the utilities met the customer communications standards. PE fell short of meeting the standards for responding to customer calls within 30 seconds and the customer's abandoned call rate, and BGE fell short of the abandoned call rate standard. Both companies submitted corrective action plans in their annual performance reports.

Smart Meter Installation Opt-outs Ongoing

PSC authorized BGE to deploy smart meters in August 2010 under Case No. 9208. BGE's initiative will install over two million electric meters and gas modules, the majority of which will be installed by 2014. PSC later authorized Pepco to deploy smart meters in September 2010 and DPL in May 2012. SMECO also has a PSC-approved pilot program in part of its service territory. BGE has completed 29% of its installations, while Pepco, at 98%, has nearly completed its work. The utilities report opt-out/deferral rates of 5% and 0.2%, respectively. DPL has also installed a substantial portion of its smart meters and anticipates completing installation in 2014.

In May 2012 PSC issued an interim order (No. 84926) allowing customers to decline smart meter installation until the commission makes a final ruling. In January 2013 PSC required BGE, Pepco, and DPL to submit by July 1, 2013, their proposals regarding the overall additional costs associated with allowing customers to retain their current analog meter, cost recovery proposals, and proposals related to offering either radio frequency (RF)-free or RF-minimizing meter options. PSC held a hearing in August 2013 concerning the proposals of the utilities. PSC advises that it will ultimately issue an order specifying whether an RF-free or RF-minimizing option will be available to customers and the specific costs that will be associated with that option. After PSC determines the nature of the opt-out and its associated costs, all ratepayers will have the opportunity to notify their utilities of their final decision.

Gas Infrastructure Replacement Surcharge Applications Received by PSC

Chapter 161 of 2013 authorizes gas companies to file a plan with PSC requesting authorization to include a surcharge on customer bills for recovering specified costs of proposed eligible infrastructure replacement projects. The Act establishes a limit of $2 a month for the surcharge that may be imposed on each residential gas customer. The surcharge for a nonresidential customer must not be less than the fixed annual surcharge applicable to a residential customer account, but also must be capped. To create a surcharge cap for all customer classes, costs must be allocated to nonresidential and residential customers consistent with the proportions of total distribution revenues that those classes bear in accordance with the most recent base rate proceeding for the gas company. As of October 2013, BGE and Columbia Gas of Maryland have each applied for a surcharge to PSC. PSC must take final action to approve or deny a plan within 180 days after a gas company files a plan. The final decisions on these applications are required by early 2014.

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Business Regulation

Labor Wages

Legislation to increase the State minimum wage and to expand applicability standards for the State prevailing wage law did not pass during the 2013 legislative session. The issues have received attention over the interim and are expected to resurface during the 2014 legislative session.

Minimum Wage

In April 2013, the U.S. Bureau of Labor Statistics released data indicating that in 2012, approximately 25,000 workers in Maryland earned exactly the federal minimum wage of $7.25 per hour and approximately 42,000 earned less than the federal minimum wage. The proportion of workers paid at or below the federal minimum wage – which governs in Maryland – was 5% of all hourly paid workers in the State. This proportion placed Maryland in the middle of all states, which ranged from 1.0% to 7.7% of state workforces. Twenty states and the District of Columbia have adopted minimum wage standards that are higher than the federal standard.

Proponents of increasing the minimum wage rate contend that an increase would encourage individual spending and investment in the economy, reduce economic inequality, and reduce the wage gap that exists for women and minorities. They also indicate that the wage rate reached peak purchasing power in 1968 and has failed to keep up with inflation. Opponents assert that increasing the minimum wage would harm the economy by causing employers to eliminate jobs and reduce work hours and employee benefits. Some businesses have indicated that an increased minimum wage would force them to shut down or relocate.

During the 2013 legislative session, the General Assembly considered legislation that would have increased the State minimum wage to $10 by 2015 and indexed the rate for future years to account for inflation. Although Senate Bill 683/House Bill 1204 failed to pass, public discourse has focused on the issue during the legislative interim. Several gubernatorial candidates have mentioned proposals for the next Administration; other states have increased their respective State minimum wage rates, and several counties in Maryland have suggested establishing local and regional minimum wage rates. The proposals, although similar in some respects, vary based on the amount of the wage and the inclusion or exclusion of a mechanism for automatic annual increases. Debate over the minimum wage will likely continue in the 2014 session.

Prevailing Wage

Prevailing wage laws date back to the Great Depression and so has the controversy over them. Prevailing wage laws generally require that workers on a public work performing a specific job or task are paid an amount per hour that is most common or "prevailing" in a specific geographic area. In addition to specifying wages, these laws include work rules that enforce or maintain labor standards for the benefit of employees. The federal Davis-Bacon Act serves as the model for state prevailing wage laws. Maryland enacted its prevailing wage law in 1969.

The purposes of prevailing wage laws are two-fold. First, the laws are intended to stabilize wages in an area by preventing employers from paying less than the amount commonly paid to workers in a region. Second, the laws prevent "unscrupulous" contractors from undermining local employment by "low bidding" on government contracts and/or importing workers at lower wages than are prevalent in the area of the project.

Although all prevailing wage laws are similar in intent, they vary in the methods used to calculate wages and the circumstances under which the laws take effect. Most laws have a minimum dollar amount or threshold for government contracts. A contract must be above the threshold and entail certain types of construction for the law to apply. The federal threshold is for all construction and maintenance contracts valued in excess of $2,000. Maryland law requires that prevailing wages must be paid on any State construction project valued at $500,000 or more and that is at least 50% State funded.

Prevailing wage laws have been the subject of controversy over the years. Opponents charge that prevailing wage laws:

- increase unemployment and the cost of public works;
- seldom are accurately calculated; and
- tend to favor union contractors.

Proponents of the laws contend that the converse is true; employers do not always pay the wages that prevail, and prevailing wages pay a fair wage, one that yields greater income tax revenue and higher local employment.

In 2000, legislation was enacted to remove a restrictive requirement for the applicability of prevailing wage laws to school construction projects, by requiring that a school construction project receiving 50% or more in State funding is subject to State prevailing wage requirements. School districts could opt out of the requirement by contributing 51% or more of the project's construction costs. For the past several years, legislation has been introduced that would have essentially subjected more school construction projects to Maryland's Prevailing Wage Law by

altering the percentage to 25% or more in State funding. During the 2013 legislative session, House Bill 1098, as introduced, was no different.

What was different regarding House Bill 1098 was that the House of Delegates passed an amended version of the bill that greatly expanded the applicability of the State prevailing wage law to any construction project receiving State funds, regardless of the amount. The Senate rejected the House approach and proposed, ultimately with the concurrence of the House of Delegates, a Task Force to Study the Applicability of the Maryland Prevailing Wage Law (enacted as Chapter 402). The task force has held several meetings during the 2013 interim, mainly focusing on school construction projects because (1) the expansion of the law would most affect those projects and (2) data is readily available to study the effect of expanding the applicability of the prevailing wage law. The task force is expected to report its findings and recommendations by December 31, 2013.

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Business Regulation

Property and Casualty Insurance

A task force is studying the insurance of last resort programs relating to workers' compensation, automobile insurance, and homeowner's insurance for possible statutory changes. Two standing committees are studying the use of anti-concurrent causation clauses in homeowner's insurance. The Maryland Insurance Administration is studying the expansion of limited lines insurance. The rental car industry has proposed shifting the insurance burden from rental car companies to drivers. These activities may prompt discussion during the 2014 legislative session.

Task Force to Study the Last Resort Programs in Maryland

The State of Maryland has four "insurance of last resort programs" that provide a variety of insurance coverages for those who cannot otherwise obtain or afford private-sector plans. Among the programs, consumers are able to purchase and maintain workers' compensation insurance, automobile insurance, homeowner's insurance, and health insurance. Chapter 408 of 2012 (House Bill 1017) established a task force charged with studying and making recommendations regarding the potential costs and benefits to the State from the affiliation of one or more of the State-created insurers of last resort. Final findings and recommendations are required to be reported by December 1, 2014.

Chapters 73 and 74 of 2013 (Senate Bill 749/House Bill 1132) made numerous operational changes to the Maryland Automobile Insurance Fund (MAIF). Changes include decreasing the number of members of the board of trustees while increasing their terms and altering their composition, requiring the board to employ its own attorneys to advise and represent MAIF, removing employees of MAIF from the State Personnel Management System except under specified circumstances, repealing the requirement that MAIF be subject to review by the Office of Legislative Auditors, and exempting MAIF from the State procurement law relating to real estate.

The task force met on October 23, 2013, to discuss progress in the conversion of the Injured Workers Insurance Fund (IWIF) to the private, nonprofit Chesapeake Employers' Insurance Company (Chesapeake). Chesapeake reports the transition is running smoothly, though certain statutory clarification may be needed. It is anticipated that the task force will require IWIF/Chesapeake and MAIF, as similar quasi-governmental agencies, to discuss and report to the legislature on possible costs and benefits for the organizations to share specified resources. At future interim meetings, the task force is anticipated to discuss other operational changes for MAIF, including whether MAIF should be exempt from the open meetings law. Further, the task force is anticipated to discuss the status of the State's homeowner's insurance industry, including an update of the Joint Insurance Association's (JIA) coverages in coastal areas. Lastly, while the task force is interested in options to lower the number of uninsured

drivers in Maryland, it is anticipated that the task force will recommend the creation of a new task force that is solely charged with addressing that issue.

Use of Anti-concurrent Causation Clauses in Homeowner's Insurance

Anti-concurrent causation (ACC) clauses are fairly common aspects of homeowner's insurance policies. The clauses apply when a loss is caused by a combination of covered events and noncovered events. Regardless of the sequence in which the events occurred, an insurer may deny the otherwise covered loss. The exclusion, based on the noncovered event, takes precedence. One of the more common occurrences involves wind or fire damage, which is usually covered in a standard homeowner's insurance policy, concurrent with flood and water damage, which is not ordinarily covered. Since Hurricane Katrina, ACC clauses have routinely been cited in the denial of claims by insurers. According to the Maryland Insurance Administration (MIA), insurers have sometimes denied coverage entirely in connection with a single "event" even when the overall damage could clearly be differentiated.

Chapter 383 of 2013 (House Bill 695) requires homeowner's insurers that issue a policy in the State that contains an ACC clause to provide a policyholder each year with a specified notice regarding the exclusions. As flooding and water damage are some of the more common damages invoking an ACC, this bill also requires the House Economic Matters Committee and the Senate Finance Committee to study the handling by insurers and the National Flood Insurance Program of property insurance claims in cases where there are two or more factors that could affect or cause the loss. The final report is due by December 31, 2013.

Limited Lines Insurance

Limited lines insurance provides coverage that is usually connected to specific goods or services from businesses that do not hold a general insurance producer license. In general, a person may not sell, solicit, or negotiate insurance in the State unless they are licensed as an insurance producer by MIA. For limited lines insurance, the business (rather than an individual) selling the goods or services along with the insurance coverage is licensed as the insurance producer. Under current law, MIA issues seven limited lines licenses for the sale of (1) title insurance; (2) travel insurance; (3) motor vehicle insurance; (4) health maintenance organization contracts; (5) rental vehicle insurance; (6) credit insurance; and (7) portable electronics insurance. The National Association of Insurance Commissioners (NAIC) has encouraged states to limit additions to the five core limited lines insurance, which include car rental insurance, credit insurance, crop insurance, surety insurance, and travel insurance.

Chapter 525 of 2013 (Senate Bill 682) allows vendors of portable electronics insurance to compensate employees based on insurance sales, although it cannot be the sole basis for compensation. MIA opposed this bill because the employees receiving the financial incentive to sell insurance are not licensed and, therefore, are not subject to MIA disciplinary authority in the

event of Insurance Article violations. Additionally, Chapter 525 requires the Insurance Commissioner to perform two studies related to this issue. The first study is due by December 1, 2013, and its purpose is to research the types of limited lines insurance offered and the regulatory laws and practices related to limited lines insurance in other states, and to determine the appropriate regulatory structure for selling limited lines insurance in Maryland. The second study, due on January 1, 2017, requires the commissioner to track complaints from consumers regarding the sales practices of vendor employees who sell limited lines insurance in the State.

Rental Car Insurance

The Motor Vehicle Administration (MVA) may not register a rental motor vehicle until the owner of the vehicle certifies to MVA's satisfaction that the owner has the required insurance coverage. Liability coverage protects the owner of a vehicle and each person driving or using the vehicle with the permission of the owner or lessee. In Maryland, all rental car companies are required to maintain primary insurance coverage on every car the company owns, except in the case when a rental car is used as a replacement vehicle. A replacement vehicle is a vehicle that is loaned by an automobile repair facility or a dealer, or that an individual rents temporarily, to use while a vehicle owned by the individual is not in use because of breakdown, repair, or any other reason described in the individual's insurance policy. The owner of a replacement vehicle may satisfy the requirement to maintain required security by maintaining required security that is secondary or "excess" to any other valid and collectible coverage that covers the renter.

Currently, approximately 44 states do not require rental car companies to provide primary insurance coverage on any vehicle rentals, whether retail or replacement. Of those 44 states, some states allow rental car companies to require a renter to provide primary coverage by contract, some states explicitly require renters to provide primary coverage by either statute or case law, and some states require rental car companies and renters to be jointly and severally liable for any damages incurred. Six states explicitly require rental car companies to provide primary insurance coverage on retail vehicle rental transactions and secondary or "excess" on replacement vehicle rental transactions. These states include Maryland, Arkansas, Idaho, Massachusetts, Tennessee, and South Carolina.

During the 2012 and 2013 legislative sessions, the rental car industry suggested two proposals intended to bring Maryland in line with the majority of states in regards to how insurance is handled for rental vehicles.

- **A Rental Car Company's Insurance Is Secondary or "Excess" to the Renter's Insurance While a Car Is Used as Any Rental Vehicle (Senate Bill 907/ House Bill 356 of 2012 – both failed)** – The rental car industry proposed that a rental car company may satisfy the requirement to maintain required insurance by maintaining coverage that is secondary or "excess" to any other valid and collectible coverage that covers the renter.

- **A Rental Car Company Has a Right of Indemnification Against a Renter's Insurer (Senate Bill 919/House Bill 1089 of 2013 – both failed)** – Alternatively, the rental car industry proposed that a rental car company shall have a right of indemnification against a renter's insurer for property damage, personal injury, and wrongful death claims paid by the rental car company that arose from the renter's use of the rental vehicle.

Proponents contend that these proposals shift the accountability for unsafe driving away from rental car companies and back to the renter of the vehicle. Opponents assert that these proposals change Maryland's long standing policy position that, in nearly every circumstance, automobile insurance follows the car and not the driver.

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Public Safety

Baltimore City Detention Center

Recent indictments of correctional officers and inmates at the Baltimore City Detention Center have raised concerns regarding safety and security at State prisons and local jails. A Special Joint Commission on Public Safety and Security in State and Local Correctional Facilities has been appointed to perform an in-depth and critical review of the laws, regulations, policies, and practices affecting safety and security at all State prisons and local jails. The commission has held several meetings this interim and is expected to issue a report by the end of the year.

Background

On April 23, 2013, a federal grand jury returned an indictment charging 25 individuals, including inmates and 13 correctional officers employed by the Maryland Department of Public Safety and Correctional Services (DPSCS), with conspiring to run operations of the Black Guerilla Family (BGF) gang inside the Baltimore City Detention Center (BCDC) and related facilities. Charges included racketeering, drug distribution, money laundering, victim and witness retaliation, bribery, and extortion. According to the indictment, correctional officers helped leaders of the BGF smuggle cell phones, drugs, and other contraband into State correctional facilities.

Legislative Action

In response to the indictment, the President of the Senate and Speaker of the House announced the creation of a Special Joint Commission on Public Safety and Security in State and Local Correctional Facilities. The commission is charged with conducting an in-depth study and critical review of the laws, regulations, policies and practices affecting safety and security at all State and local correctional facilities. The commission has been asked to examine a number of issues, including:

- the level of gang activity in State and local correctional facilities;
- the policies governing the recruitment, hiring, and training of State and local correctional officers and the impact of the policies on security, workforce quality, and retention;
- the disciplinary policies and practices governing correctional officers and how the policies and practices impact administrators' ability to investigate allegations of wrongdoing;

- the duties and responsibilities of the Maryland Correctional Standards Commission and the standards set by the commission for State and local correctional facilities;

- the effectiveness of the existing policies and procedures regarding contraband prevention and detection in correctional facilities; and

- the best practices for addressing prison gang activity within State and local correctional facilities.

The commission met for the first time on June 27, 2013. Since that time, the commission has held several meetings, with briefings on various topics by representatives from the Maryland Judiciary; State's Attorney's offices; the Baltimore City Criminal Justice Coordinating Council; the Maryland Commission on Correctional Standards; the American Federation of State, County, and Municipal Employees; and DPSCS. The commission has received information regarding (1) local court and detention center interaction; (2) short- and long-term funding needs to enhance security at State correctional facilities; (3) the role and auditing processes of the Maryland Commission on Correctional Standards; and (4) personnel policies regarding correctional officer hiring, training, professional development, salary, and benefits.

Policy Considerations

The commission is expected to issue a report containing its findings and recommendations to the Legislative Policy Committee and the General Assembly by December 31, 2013. The commission's recommendations are likely to propose changes to State law and policies regarding (1) prison gang activity and contraband prevention and detection in correctional facilities; (2) investigatory and disciplinary procedures for employee misconduct under the State Correctional Officers' Bill of Rights; and (3) the operating and capital budget funding needs of DPSCS.

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Public Safety

Firearms

Following passage of the Firearm Safety Act during the 2013 session, the State has seen an unprecedented surge in applications for firearms purchases, as well as two lawsuits challenging the new law.

The Firearm Safety Act of 2013

The national increase in incidents of mass shootings, and particularly the Sandy Hook Elementary School shooting in Newtown, Connecticut in December 2012, brought renewed focus in 2013 to issues relating to gun violence and individuals' access to firearms. Several states, including Maryland, New York, Connecticut, and Colorado, passed sweeping gun control legislation.

The Firearm Safety Act of 2013 (Chapter 427) modified and expanded the regulation of firearms, firearms dealers, and ammunition in Maryland and made changes to related mental health restrictions on the possession of firearms. Among other things, the Act extended the scope of assault pistol prohibitions to all assault weapons, created a new licensing scheme for handguns under the authority of the Department of State Police, and imposed restrictions on ammunition.

Although the Firearm Safety Act was an initiative of the Governor, many of the Act's provisions were distilled from more than three dozen gun control proposals that were introduced in 2013. The Act's most significant provisions are discussed below.

Assault Weapons

The Act created a definition of "assault weapon," encompassing assault pistols, assault long guns, and copycat weapons. The Act applied current law prohibitions relating to assault pistols to all assault weapons. With specified exceptions, transporting, possessing, selling, offering to sell, transferring, purchasing, or receiving any assault weapon is prohibited. A person who lawfully possessed, had a purchase order for, or completed an application to purchase an assault long gun or a copycat weapon before October 1, 2013, is allowed to continue to possess and transport the weapon. The Act clarified when the inheritance of a prohibited assault weapon is permitted.

Ammunition

The allowable detachable magazine capacity for manufacture, sale, purchase, receipt, or transfer in the State was reduced from 20 to 10 rounds of ammunition. The Act also prohibits the possession or use of restricted firearm ammunition (sometimes called "cop killer bullets") during or in relation to the commission of a crime of violence.

Handgun Qualification License

Under the Act, a new licensing scheme was established for handguns. A "handgun qualification license" authorizes a person to purchase, rent, or receive a handgun. Certain persons are exempt from this provision. The Secretary of State Police is required to apply for a fingerprint-based State and national criminal history records check on behalf of each handgun purchase applicant. Written approval or denial of an application by the State Police must be made within 30 days. The application fee for a license may be up to $50, and the term of the license is 10 years. License renewal fees may not exceed $20. Among other requirements, unless exempt, an applicant must show proof of completion of an approved firearms safety training course. Renewal applicants are not required to complete the firearms safety training course or submit to a criminal history records check.

Restrictions on the Mentally Ill

The Act prohibits a person from possessing a regulated firearm, rifle, or shotgun if the person suffers from a mental disorder and has a history of violent behavior against the person or another; has been found incompetent to stand trial or not criminally responsible in a criminal case; has been voluntarily admitted for more than 30 consecutive days to a mental disorder facility; has been involuntarily committed to a facility; or, with certain physical disability exceptions, is under the protection of a court-appointed guardian of the property or guardian of the person. The Act specifies circumstances under which a person must surrender firearms due to the mental health provisions. Specific procedures for relief from such a disqualification are also spelled out.

Persons Moving into the State

A person who moves into the State with the intent of becoming a resident must register all regulated firearms within 90 days after establishing residency.

Lost or Stolen Firearms

The Act specifies requirements for reporting lost or stolen firearms. Civil penalties apply to a first knowing and willful violation of the reporting requirements, with misdemeanor penalties for a second or subsequent offence.

Firearms Dealers

An application for a State-regulated firearms dealer's license must be disapproved if it is determined that the applicant intends that a person not qualified for a license or whose license has been revoked or suspended will participate in the management or operation of the business or holds an interest in the business. The Act requires stricter recordkeeping of sales and inventory by licensed dealers. The State Police must inspect the inventory and records of a licensed dealer at least once every two years, and may inspect the inventory and records at any time during the normal business hours of the licensed dealer's business. Unless a recordkeeping or reporting error is inconsequential, a violator is subject to certain civil penalties.

Schools

The Act exempts an off-duty law enforcement officer who is a parent, guardian, or visitor of a student attending a school from the prohibition against carrying a firearm, knife, or other deadly weapon on public school property, provided that the officer is displaying the officer's badge or credential, and the weapon is concealed. A person, while hunting for any wild bird or mammal, may not shoot or discharge any firearm within 300 yards of any school during school hours or at a time when a school-approved activity is taking place.

Subsequent Developments

During and after the 2013 session, the Licensing Division of the Department of State Police was overwhelmed with new applications for firearm purchases, including assault weapons and handguns. The unprecedented surge in applications was presumably due to the desire of buyers to purchase certain weapons before new restrictions went into effect. The backlog was not fully eliminated by the October 1, 2013 effective date of the new law. Two separate suits challenging Maryland's new law on a variety of grounds were filed in federal district court shortly before the law went into effect. On October 1, a district court judge denied the plaintiffs' request to enjoin implementation of the Firearm Safety Act pending the outcome of the litigation.

It is unlikely that the Firearm Safety Act represents the last word on gun policy. Strong objections to provisions of the Act remain. Issues related to gun carry permits, school safety, and the potential impacts of new technologies like 3D printing will continue to shape the policy conversation in the years ahead.

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Public Safety

Security Technology

The use of security technology for public safety purposes is becoming more widespread and is receiving increasing attention from the public. The technology has many benefits; however, there are also many areas of concern, including privacy, safety, and effectiveness.

Security Technologies

Security technology is being utilized across the State in a variety of ways in the interest of public safety.

License Plate Readers

License plate reader (LPR) technology uses a high-speed camera to automatically detect a vehicle's license plate as it passes the reader, mounted either at a fixed location or on a patrol vehicle. The scan is then compared to information in a "Hot List," which consists of license plate numbers of wanted vehicles associated with wanted or missing persons. Once a scan is confirmed, law enforcement in the field can attempt to apprehend the wanted vehicle or person. LPR data is also used in investigating crimes and accidents. The LPR data collected is networked to the Maryland Coordination and Analysis Center (MCAC), where it is retained on a central server for one year. Currently, 64 law enforcement agencies in Maryland utilize LPR technology, and 80% of these agencies have networked their LPR systems to the MCAC.

Facial Recognition Systems

A facial recognition system is a computer application that can identify the digital image of an unknown person by comparing it with photos in a database. The Department of Public Safety and Correctional Services (DPSCS) has used a facial recognition system since 2011. A police officer with access to the National Crime Information Center can scan a photo of an unknown offender and compare it against millions of offenders in the DPSCS, Federal Bureau of Investigation, and Motor Vehicle Administration databases. MCAC also performs facial recognition for any law enforcement entity nationwide on request.

Closed-circuit Televisions

Closed-circuit televisions (CCTVs) are systems that transmit TV signals to limited monitors, rather than broadcasting signals publicly. Developing a robust CCTV network to secure critical infrastructure is one of Maryland's Strategic Goals and Objectives for Homeland Security, outlined by the Governor in March 2013. Currently more than 8,400 State-owned

CCTV cameras throughout Maryland provide situational awareness of events, help to deter and prevent crime, manage traffic congestion and incidents, and assist in police investigations. The largest local government user of CCTVs is the Baltimore CitiWatch, which is a public-private partnership that incorporates 635 CCTVs and has access to approximately one thousand additional cameras. CitiWatch uses proactive monitoring and an information management system to identify incidents in real-time and dispatch first responders as an incident is occurring. CitiWatch also uses retroactive monitoring and geographic information system crime mapping to assist in investigations and identify criminal hot spots. The CCTV system is networked to several State agencies, such as MCAC, the Maryland Institute for Emergency Medical Services Systems, and the Maryland Emergency Management Agency, which allows agencies to tap into a video feed in order to view an incident.

Cell Phone Pinging

A cell phone "ping" is the process of determining the location of a cell phone at any given point in time by utilizing the phone's global positioning system (GPS) capabilities. Cell phone "triangulation" is a different process that can be utilized for cell phones without GPS capabilities by comparing the signal strength and time lag for a phone's carrier to reach surrounding cell towers. Cell phone pinging can be used by 911 operators to determine the location of a caller who is making an emergency phone call and by law enforcement to locate a suspect or find a missing person. Cell phone records can also be used in court as proof of a person's location at a specific time. In 2012, the U.S. Court of Appeals for the Sixth Circuit ruled that it was not a violation of privacy to ping a cell phone with only a court order, not a search warrant. There is currently no statutory law governing cell phone pinging, but the Department of State Police and the Baltimore City and Montgomery County police departments require court orders in order to ping a cell phone.

Marine Radar

Radar is a system that uses radio waves to determine the location of objects. Marine radar uses this system to identify ships. In 2010, the Maryland Natural Resources Police (NRP) launched the Maritime Law Enforcement Information Network (MLEIN) to monitor vessel activity and assist first responders. MLEIN allows officers to view incidents in multiple jurisdictions through radar signatures and images. For instance, NRP use MLEIN to more efficiently monitor areas prone to oyster poaching and to find stranded vessels. MLEIN also uses fixed cameras, both day and night, to transmit images back to command centers, which can then provide the images to officers in the field; the network is also developing the capacity to use cameras on vessels to transmit images. MLEIN is monitored 24/7 at NRP's Sandy Point Communication Center. NRP officers respond to more than 3,000 maritime calls each year.

Unmanned Aerial Vehicle

Unmanned aerial vehicles (UAVs), or "drones," are aircraft controlled remotely from another location without a human pilot on board. The State does not currently use UAVs, but

there is great potential for their use in law enforcement, including surveillance, search and rescue, accident investigations, hostage situations, and aerial mapping. In 2012, Congress passed the Federal Aviation Administration (FAA) Modernization and Reform Act, which directed the FAA to safely integrate UAVs into national airspace by September 2015. To assist with integration, the FAA will designate six UAV test sites by December 2013. The University System of Maryland (USM) has submitted a proposal to become one of the test sites. In addition, $500,000 was awarded to the Patuxent Partnership, a nonprofit in Southern Maryland, to assist in establishing a test site proposal that includes USM, Virginia Tech, and Rutgers University as part of a tri-state effort. Although the test site designation does not come with federal funding, some consider the associated expenditure as an opportunity to get a head start into a new market.

Cameras on Police Officers

Police departments in California, New Mexico, and Texas require police officers to wear cameras as part of the uniform, usually attached on glasses or headgear. Although many police vehicles are equipped with cameras, incidents that take place away from the vehicle are not captured. In Maryland, only the Laurel Police Department (LPD) has officers that wear cameras. Proponents have said the uniform video recordings are valuable training tools, assist officers in writing accurate reports, and can be used as evidence. Additionally, LPD reports that the cameras have led to a reduction in complaints against officers.

Privacy, Safety, and Effectiveness

As the use of security technology has become more widespread, it has received increasing attention from the public, with the main concerns being privacy, safety, and effectiveness. It is uncertain whether current privacy protections apply to the new technology, whether the technology is safe (particularly in regard to UAVs), and whether this technology is accurate enough to assist law enforcement. Legislation has been introduced in Maryland in recent years to address privacy concerns, data collection, and transparency for UAVs and cell phone pinging.

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Public Safety

Speed Cameras

Speed cameras have been controversial since they were first authorized in 2006. Recent scrutiny has centered around two common criticisms of speed monitoring systems: (1) technical issues and insufficient review of recorded images that have resulted in the issuance of erroneous citations; and (2) contracts with vendors that are structured in a manner that establishes an incentive to generate more citations and revenues.

Background

State law authorizes local jurisdictions to enact legislation establishing a program of speed monitoring systems to enforce highway speed limits. By the 2013 session, seven counties and 24 municipalities had established speed monitoring programs. Under the State enabling law, a local jurisdiction that implements a speed monitoring program may (1) operate the system only in a legally established school zone (except in Montgomery County, where it also may be operated in a residential district with a maximum posted speed limit of 35 miles per hour, and in Prince George's County, where it may be operated proximate to an institute of higher education); (2) operate the system only Monday through Friday from 6:00 a.m. through 8:00 p.m.; (3) issue a maximum $40 civil citation, which must be signed, sworn to, and affirmed by a law enforcement officer, for a violation recorded by a speed monitoring system; and (4) issue a citation only if a vehicle is recorded speeding at least 12 miles per hour above the posted speed limit. State law also authorizes the operation of speed monitoring systems in highway work zones on an expressway or a controlled access highway where the speed limit is at least 45 miles per hour.

2013 Session

During the 2013 session, the General Assembly considered numerous bills addressing issues related to speed monitoring systems, in part due to constituent and stakeholder complaints and media scrutiny. The issues raised generally centered around two common criticisms of the systems: (1) that technical issues and insufficient review of recorded images had resulted in erroneously generated citations; and (2) that the agreements with the contractors that implement the programs are structured in a manner that establishes an incentive to generate more citations and revenues (*i.e.*, contractors are paid based on the number of citations issued), thereby casting doubt on the integrity of the programs as a safety measure.

Among the measures considered were bills that would have (1) required daily calibration of the systems; (2) required the issuer of a citation to produce and make available a video recording of a violation or information that would allow for the calculation of the speed of the vehicle; (3) repealed both the local program and the highway work zone program; (4) banned any contingent fees for contractors that implement a program; (5) established penalties for the

issuer of an erroneous citation; (6) established limits on intervals between systems; (7) required worker presence for highway work zone systems to be in operation; (8) required warnings for a first violation under a local program; and (9) authorized persons who are not sworn law enforcement officers to sign, swear to, and affirm a citation for a violation recorded by a system. None of these bills were passed by their respective house of origin.

The General Assembly also considered two bills that passed their respective houses of origin. HB 929, as it passed the House, would have (1) defined "erroneous violation" and subjected a contractor to damages and possible contract cancellation for the issuance of specified levels of erroneous violations; (2) established a warning period of 15 days following the placement of proper signage for a system placed at a new location by a local jurisdiction; (3) prohibited systems in school zones on roads with speed limits under 20 miles per hour; (4) expressly required system signage to be in accordance with State Highway Administration specifications; (5) required local jurisdictions with speed monitoring programs to establish a local contact available for questions or concerns about the program and administrative review of citations; (6) prohibited a contractor that administers or processes citations from being compensated on a contingent basis; (7) required a local jurisdiction to alter any obligation, contract, or contract right to comply with the legislation by October 1, 2014; and (8) required law enforcement agencies in the State to develop a training program for the oversight and administration of local programs, including a curriculum in best practices, and required local program administrators to participate in the training program. The Senate adopted amendments to HB 929 to strike the requirement that a local jurisdiction alter any obligation, contract, or contract right to comply with the legislation and to prohibit a local jurisdiction from exercising a contract extension for an existing program contract (effectively establishing a temporary grandfathering of existing contracts); however, a final vote on the bill was never taken. A conference committee on SB 207 agreed to amendments that made it identical to the amended version of HB 929, but neither chamber adopted the conference committee report before *Sine Die*.

Potential 2014 Legislation

Whether some variation of the final version of HB 929 or SB 207 of 2013 is introduced in 2014 may depend on whether the operation of the local programs improves and the public criticism abates. Law enforcement agencies in the State have voluntarily begun to implement the speed monitoring training program and best practices curriculum envisioned in the 2013 legislation. In addition, the public criticism has prompted local jurisdictions to identify and correct problems with the local programs. Any legislation that might affect the terms of a program contract would likely include a grandfather clause for existing contracts (usually around three years in length), as local jurisdictions have expressed concern that a required alteration of existing contracts to conform to the legislation could lead to costly lawsuits. Finally, some of the bills that failed to pass out of their respective houses of origin in 2013 are likely to be reintroduced in the 2014 session.

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Public Safety

State Correctional System

The Department of Public Safety and Correctional Services (DPSCS) is in the process of dealing with a number of security and staffing concerns. In addition, DPSCS continues to work on a variety of construction projects, with an increased emphasis on pre-release and reentry services.

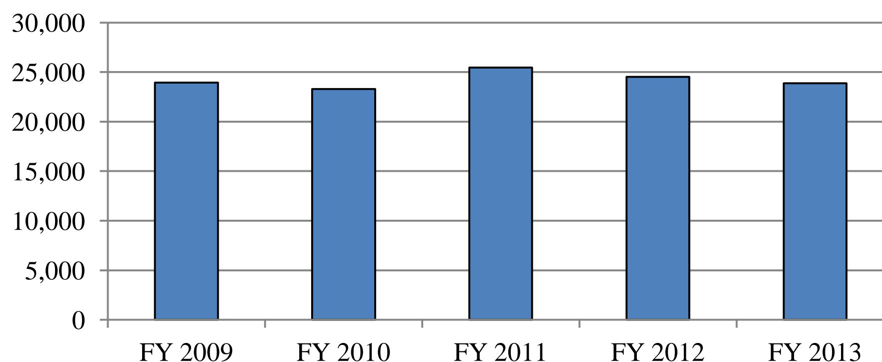
Background

The Department of Public Safety and Correctional Services is a principal department of State government, the primary functions of which include the operation of 27 State correctional and Baltimore City pretrial facilities, as well as the supervision of offenders in the community who are on parole or probation. With over 11,000 employees and a fiscal 2014 budget in excess of $1.3 billion, DPSCS accounts for 13.9% of the total State workforce and 7.1% of general fund expenditures.

Population Trends

As seen in **Exhibit 1**, the average daily population (ADP) of individuals under DPSCS custody (sentenced and detained) increased by more than 1,500 offenders between fiscal 2009 and 2011. The population of offenders housed in DSPCS facilities peaked at 25,463 offenders in fiscal 2011; however, the population has declined by 6.3% to an ADP of 23,861 in fiscal 2013. Preliminary fiscal 2014 data indicates a slight increase in the population, although population forecasts anticipate less than 1.0% growth in fiscal 2015.

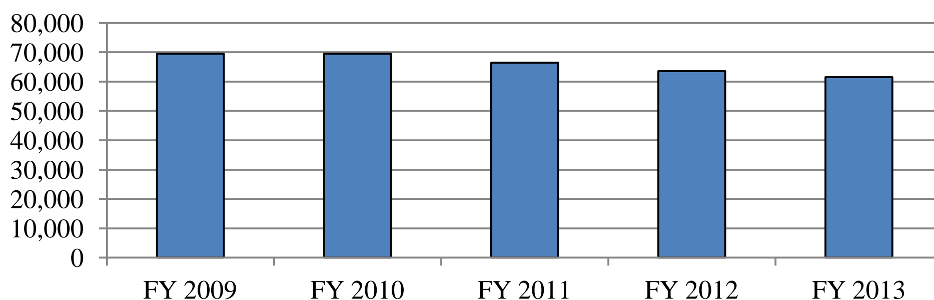
Exhibit 1
Department of Public Safety and Correctional Services
Average Daily Population
Fiscal 2009-2013



Source: Department of Public Safety and Correctional Service State Stat Data

As seen in **Exhibit 2**, between fiscal 2009 and 2013, community supervision cases declined by nearly 8,000 cases, or 11.4%. A 27.0% increase in the number of parole cases, reflective of the department's efforts to increase parole rates in order to reduce the size of the incarcerated offender population, is offset by reductions in all other case types. The most significant decreases occurred among the probation before judgment and Drinking Driver Monitor Program cases, each experiencing a 22.0% reduction over the five-year period.

Exhibit 2
Community Supervision Cases
Fiscal 2009-2013



Source: Department of Public Safety and Correctional Services State Stat Data

Recidivism

DPSCS defines recidivism as "a new Maryland conviction that results in a return to departmental incarceration or supervision on probation within three years of an inmate's date of release from departmental incarceration or a probationer's entry (intake) into community supervision." **Exhibit 3** shows the one-, two-, and three-year recidivism rates for all offenders released from departmental custody since fiscal 2007.

Exhibit 3
Department of Public Safety and Correctional Services
Recidivism Rates
Fiscal 2007-2011 Releases

Fiscal Year of Release	Total Number of Releases	1-year	2-year	3-year
2007	11,843	23.3%	38.3%	47.8%
2008	11,332	20.4	34.1	43.3
2009	11,418	17.3	31.0	40.5
2010	11,045	15.5	28.7	
2011	9,682	16.6		

Source: DPSCS 2012 Repeat Incarceration Supervision Cycle Report

The three-year recidivism rate, the most common form of measurement, has fallen 7 percentage points between fiscal 2007 and 2012, from 47.8% to 40.5%. This is the lowest three-year recidivism rate in the past decade; historically, nearly half of all offenders released in Maryland returned to departmental custody within three years of release. DPSCS attributes the significant reduction to improvements in communication with other State agencies, such as the Departments of Health and Mental Hygiene and the Department of Labor, Licensing, and Regulation, to provide efficient wraparound services for offenders reentering the community. In addition, more inmates are participating in community service projects, job skills training, employment readiness programming, and mental health and addictions counseling.

Security and Staffing Concerns

In response to issues with corruption and security within the department, primarily at the Baltimore City Detention Center (BCDC), DPSCS is in the process of implementing a variety of enhancements to address concerns. The additional resources are estimated to cost nearly $6.5 million in fiscal 2014. This includes nearly $4.7 million to implement a managed access system at BCDC to curb the illegal use of cell phones by inmates and to upgrade the facility's video recording system. Additional staffing, created through the realignment of existing vacancies within the department, will be utilized to enhance and expand the department's Internal Investigative Unit and employee hiring and recruitment functions, including the creation of an Applicant Polygraph Unit. Resources will also be provided in fiscal 2015 to begin the phased-in expansion of in-service training from 18 to 40 hours. The phase-in is estimated to require four years to complete.

A 2010 staffing assessment conducted by DPSCS, with training from the National Institute of Corrections and assistance from members of the American Federation of State, County, and Municipal Employees, identified a departmentwide staffing deficiency requiring an additional 377 correctional officer (CO) positions. Language added to the fiscal 2014 budget bill expressed legislative intent that, in order to improve the security of the department's facilities and reduce overtime spending, DPSCS should begin to address the staffing deficiency in fiscal 2015 by adding 100 CO positions annually until the 377 position target is met. Based on a cost estimate provided by the department, 100 additional CO positions would require an additional $4.1 million in fiscal 2015 and would not generate significant overtime savings due to phased-in hiring and pre-service training requirements. By fiscal 2019, the addition of 377 CO positions will generate overtime savings of approximately $18.1 million; however, due to the cost of fringe benefits associated with adding positions to the State workforce, the additional positions will ultimately cost the State approximately $4.5 million annually despite the estimated overtime savings.

Capital Program

DPSCS released a new Facilities Master Plan (FMP) in June 2013, providing a framework for the department's capital needs over the next decade. As a result of the population

declines discussed above, the FMP focuses heavily on the improvement and/or replacement of existing facilities, as opposed to increasing bed capacity for incarcerated individuals.

A major component of the new FMP is the redevelopment of the Correctional Complex in Baltimore City, with an increased emphasis on pre-release and reentry services. The plan proposes new facilities for all pretrial populations, the creation of a reentry campus to serve inmates from the Central Region (Baltimore City and Baltimore County), and improved program space for short-sentenced offenders. The estimated cost of the entire redevelopment, in fiscal 2013 dollars, is approximately $508 million over the next 10 years. This includes $30 million for a new youth detention center to accommodate pretrial youth who are detained while awaiting charges in adult court. The General Assembly added $2.6 million in general obligation bond funds to the fiscal 2014 capital budget to begin designing the renovation of an existing facility within the complex to accommodate this population. Nearly $96 million would be required to construct a 512-bed replacement for the Women's Detention Center, and an estimated $280 million would be needed to construct a 2,304-bed replacement of the Men's Detention Center (MDC). The MDC would be completed in three phases between fiscal 2019 and 2023. Additional projects within the complex include a new power plant and food service facility, a medical and mental health facility, a 500-bed reentry unit with program services, and administration, parking, and video visitation space.

Outside of Baltimore City, the FMP includes a variety of out-year projects, including construction of a new infirmary for the Jessup region, a new 300-bed mental health facility at the Patuxent Institution, and an addition to the academic buildings at the Public Safety Education and Training Center. DPSCS has also identified the need to upgrade perimeter security and administration spaces at facilities in Hagerstown. In the more immediate future, the FMP (and the Governor's five-year Capital Improvement Plan) includes construction of Phase II of the Dorsey Run Correctional Facility in Jessup. Construction of the first 560-bed compound is complete and will be populated with inmates from the Jessup Pre-release Unit (JPRU) by the end of calendar 2013. DPSCS will close JPRU in order to accommodate the additional operating expenses required by opening the Dorsey Run facility. Construction of the second 560-bed compound is estimated to cost $27.7 million and to be complete in fiscal 2016. To date, nearly $9.0 million has been authorized for the construction of Phase II.

Criminal Law

Representation by Office of the Public Defender

The Court of Appeals has ruled on constitutional grounds that indigent individuals brought before a District Court commissioner for an initial appearance have a right to representation by counsel. Now the State is confronted with how best to ensure the availability of counsel for indigent defendants and with broader questions about the proper role of District Court commissioners and reform of the pretrial system.

Background

When an individual is arrested, he or she must go before a judicial officer for an initial appearance. The judicial officer, usually a District Court commissioner, has a number of duties at the initial appearance, among which is to determine whether there was probable cause for the arrest and, if so, whether the defendant should be released on his or her own recognizance, on bail, or not at all. Under the Maryland Rules, 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 must 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. Historically, the Office of the Public Defender (OPD) has not provided representation to indigent defendants at the initial appearance phase in any jurisdiction in the State. Prior to 2012, public defender representation was provided to indigent defendants at bail review only in Montgomery and Harford counties and Baltimore City.

DeWolfe v. Richmond

In *DeWolfe v. Richmond*, No. 34 (September Term 2011), the Maryland Court of Appeals held on January 4, 2012, that under the then-effective version of 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 ("*DeWolfe I*").

The plaintiffs in the case represented a class of indigent criminal defendants who were arrested, detained at the Central Booking and Intake Facility in Baltimore City (CBIF), brought before a commissioner for initial bail hearings, and requested and were denied representation by counsel at the initial bail hearings. It was undisputed that the initial appearances of criminal defendants in Baltimore City were not conducted in a courtroom, open to the public, or recorded. The initial appearances occurred in a small room at CBIF, with the defendant and the commissioner on opposite sides of a plexiglass window talking through a speaker system. The commissioner was not required to give Miranda warnings. The commissioner could ask the

defendant about residence, family, employment history, and community ties, and the answers could have been used against the defendant at trial. Evidence was presented that the commissioner's initial bail decision often was not modified by a District Court judge on bail review.

The *DeWolfe I* opinion was based on the wording of the Maryland Public Defender Act, including language that OPD must represent an indigent defendant "in all stages" of a criminal proceeding. The court did not address the plaintiffs' federal and State constitutional claims of a right to representation. However, the Circuit Court for Baltimore City had previously held, based on *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), that indigent arrestees have a federal and State constitutional right to be appointed counsel at initial appearance.

Activity During 2012 Legislative Session

DeWolfe I sparked considerable debate during the 2012 session of the General Assembly. There was much concern about how the State would fund the obligation of OPD to begin representing people at the initial appearance phase. It was estimated that the cost to OPD alone (aside from costs that would be incurred by the Judiciary, the Department of Public Safety and Correctional Services, State's Attorneys offices, law enforcement agencies, and local correctional facilities) would exceed $27 million annually. On the other hand, serious questions were raised about whether people possess a constitutional right to legal representation at initial appearance, regardless of cost. This debate prompted broader questions about and scrutiny of Maryland's criminal justice system, including the District Court commissioner and pretrial release systems. A number of bills were introduced to attempt to counteract or mitigate the effect of *DeWolfe I*. The Senate Judicial Proceedings Committee and the House Judiciary Committee extensively explored these issues and met with stakeholders, including the Office of the Public Defender, the Judiciary, law enforcement agencies, State's Attorneys, and civil liberties advocates.

Ultimately, the General Assembly passed Senate Bill 422 and House Bill 261 (Chapters 504 and 505) of 2012, which were signed into law by the Governor on May 22, 2012. These laws (1) amend the Public Defender Act to specify that OPD is required to provide legal representation to an indigent defendant at a bail hearing before a District Court or circuit court judge but is not required to represent an indigent criminal defendant at an initial appearance before a District Court commissioner; (2) prohibit a statement made during an initial appearance before a District Court commissioner from being used as evidence against the defendant in a criminal or juvenile proceeding; (3) codify the rule that a defendant who is denied pretrial release by a District Court commissioner or who remains in custody after a District Court commissioner has determined conditions of release must 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; (4) require a police officer to charge by citation for specified offenses if certain conditions are met; (5) authorize a District Court commissioner to issue an arrest warrant based on an application for a statement of charges filed by an individual only if specified criteria are met; (6) establish the

Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender; and (7) require specified entities to develop a format and procedures to record specified citation data and require the Maryland Statistical Analysis Center within the Governor's Office of Crime Control and Prevention to analyze citation data for five years beginning January 1, 2013.

Subsequent Developments

On August 22, 2012, the Court of Appeals issued an order stating its intention to rule on the issue of whether the plaintiffs in the *DeWolfe* case are entitled, under the recently amended Public Defender Act, to relief on the basis of the federal and/or State constitutional right to counsel.

The task force created by Chapters 504 and 505 of 2012 met several times during 2012 and 2013. Workgroups that were established at the initial meeting conducted work independently and kept the full task force abreast of their progress. An interim report of the legislative task force was submitted November 1, 2012; a final report was required by November 1, 2013.

Following briefing and oral argument, on September 25, 2013, the Court of Appeals issued an opinion in the *DeWolfe* case holding that, under the Due Process component of Article 24 of the Maryland Declaration of Rights, an indigent defendant has a right to State-furnished counsel at an initial appearance before a District Court Commissioner ("*DeWolfe II*"). In the wake of *DeWolfe II*, the Judiciary created a Task Force on Pretrial Confinement and Release to examine recommended rule changes for implementing the decision.

At a meeting on October 9, 2013, the legislative task force voted to delay the submission of its final report until December 2013, to enable it to fully incorporate the implications of *DeWolfe II*. The legislative task force also decided to pursue legislation during the 2014 legislative session to extend its termination date from May 31, 2013, to May 31, 2014.

The Court of Appeals' mandate in the *DeWolfe* case issued on October 17, 2013, and the Circuit Court for Baltimore City entered a declaratory judgment on October 24, 2013, that indigent arrestees have a right to counsel at initial bail hearings. Following the issuance of the mandate, the State filed motions to recall the mandate, for reconsideration, and for a stay of enforcement of the judgment, and following entry of the declaratory judgment, the State filed a motion to vacate the declaratory judgment. In its motion to vacate the declaratory judgment, the State asked the court to not enter judgment until the Court of Appeals had acted on the pending motions; however, on November 1, the circuit court denied the motion. On November 4, the Court of Appeals approved procedural rules to ensure that defendants are represented by counsel at initial bail hearings but delayed implementation of the rules for an undesignated time period, and on November 6' the Court of Appeals denied all motions pending before the court.

It is expected that additional funding for OPD will be a major topic of discussion for the budget committees during the 2014 session of the General Assembly. It is also expected that the policy committees, especially the Senate Judicial Proceedings Committee and the House Judiciary Committee, will be the focal points for developing a legislative response to the *DeWolfe* case. Proposals may involve expanding pretrial release investigative services to invest greater resources in supervising pretrial detainees, requiring that release decisions be based on risk assessments, limiting the use of monetary bonds, establishing bail schedules, limiting the authority of District Court commissioners, and requiring that judicial officers receive additional training and education on pretrial decision making.

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Criminal Law

Drunk Driving

The National Transportation Safety Board recommended that states lower the *per se* alcohol limit to a 0.05 blood alcohol concentration (BAC). Federal highway funding legislation (1) modifies requirements concerning use of an ignition interlock device by a repeat offender; (2) requires an ignition interlock device on an employer-owned vehicle; and (3) authorizes grants to encourage enactment of an ignition interlock device requirement for a first-time offender convicted of driving with a BAC of 0.08 or more.

Background

In May 2013, the National Transportation Safety Board (NTSB) released a report entitled *Reaching Zero: Actions to Eliminate Alcohol-Impaired Driving*. The catalyst for the report was concern over what has been regarded as a plateau in national progress towards reducing traffic fatalities caused by alcohol-impaired drivers. The report defined alcohol-impaired driving fatalities as those involving a driver with a BAC level of 0.08 or higher (generally measured as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath). NTSB, while acknowledging a significant reduction in the percentage of alcohol-impaired traffic fatalities, also noted that more significant progress occurred in the 1980s and 1990s, most notably from 1982 to 1995. During this period, the percentage of traffic fatalities with alcohol impairment as a factor declined from about 48% in 1982 to about 31% in 1995. From 1995 to 2011, the percentage of highway fatalities associated with alcohol impairment hovered around 31%. The National Highway Traffic Safety Administration (NHTSA) reports that in 2011 (the latest year for which data is available), there were 32,367 traffic fatalities nationally and 9,878 of those fatalities, or 31%, involved a driver with a BAC of 0.08 or higher. In Maryland, out of a total of 485 traffic fatalities in 2011, in 162 fatalities, or 33%, a driver had a BAC of 0.08 or higher.

NTSB Recommendations

The main recommendation of the 2013 NTSB report was that all states and the District of Columbia lower the *per se* limit from 0.08 BAC to 0.05 BAC. The *per se* limit is the amount of alcohol required to designate a driver as "under the influence" of alcohol or "intoxicated" to the point where, as a matter of law, the driver cannot operate a motor vehicle safely. In support of its recommendation, NTSB cited numerous studies finding that drivers suffered significant impairment of driving ability at 0.05 BAC. Types of driving impairment include deficiencies in simple reaction time, perception, visual function, and tracking. Also cited was the adoption of 0.05 BAC as the *per se* limit in more than 100 countries, including most member countries of the European Union. In addition to a reduction of the *per se* limit, NTSB made the following recommendations to states:

- conduct high visibility enforcement of impaired driving laws, including the use of passive alcohol sensing technologies;

- expand the use of ignition interlock devices;

- establish and use driving while intoxicated (DWI) courts and other programs to reduce alcohol offender recidivism; and

- establish measurable goals to track progress in reducing impaired driving.

The adoption of 0.05 BAC as a *per se* standard in Maryland would require a wholesale change in the State's impaired driving law. In Maryland, the law establishes that there is no presumption that a person was or was not driving while under the influence of or impaired by alcohol if a BAC test result is less than 0.07 but more than 0.05. If the BAC test result is 0.05 or less, the law establishes a presumption that the driver was *not* under the influence of or impaired by alcohol. The presumption that the driver was not under the influence of or impaired by alcohol may be rebutted by other evidence, such as observed behaviors by a law enforcement officer.

To encourage adoption of this recommendation, NTSB recommended that NHTSA request legislative authority to award incentive grants to states that establish a *per se* standard of 0.05 BAC or less. NTSB also recommended that NHTSA create financial incentives for states to adopt best practices for the use of ignition interlock devices.

Moving Ahead for Progress in the 21st Century Incentives

The federal Moving Ahead for Progress in the 21st Century law (MAP-21) reauthorized surface transportation programs for federal fiscal 2013 and 2014 and changed some provisions to encourage greater installation and use of ignition interlock devices. Before enactment of MAP-21, states were subject to a reduction in federal highway funds unless those convicted of a repeat drunk driving offense (*i.e.*, another offense within five years of the previous drunk driving offense) received a mandatory one-year driver's license suspension that included a 45-day "hard" suspension followed by installation and use of an ignition interlock device for the balance of the year. Under MAP-21, states may eliminate the 45-day "hard" suspension requirement and instead require a repeat offender to install and use an ignition interlock device for at least one year, without loss of federal highway funds. MAP-21 also allows states to expand the locations to which repeat offenders using an ignition interlock device are allowed to drive. For example, Maryland law restricts a repeat drunk driving offender to driving to school, work, an ignition interlock service facility, or an alcohol and/or drug treatment program. MAP-21 authorizes states to expand permissible driving locations to include, for example, court-ordered community service, destinations related to work, and school appointments for children.

MAP-21 requires essentially that states require drivers using ignition interlock devices to drive only vehicles with those devices, including vehicles owned by others that the driver needs to use for employment purposes. States that do not conform to this provision are subject to having highway funds diverted to alcohol education programs. Under Maryland law, the Motor Vehicle Administration (MVA) has the authority to exempt these drivers from using ignition interlock devices in employer-owned vehicles. According to MVA, if Maryland law does not conform to this MAP-21 provision, the State is subject to having up to $12 million of federal highway funds diverted from its transportation projects to alcohol education programs.

MAP-21 also creates an incentive grant program for states that adopt and enforce an ignition interlock requirement for all drivers, including first-time offenders, convicted of driving with a BAC of 0.08 or higher.

Legislative Prospects

Bills may be introduced in the next session to implement the NTSB recommendations and to conform Maryland law to MAP-21 provisions, including bills that:

- lower the .08 BAC threshold for driving under the influence of alcohol;
- require all drivers convicted of driving under the influence of alcohol to install and use an ignition interlock device;
- require drivers using ignition interlock devices to use the device in employer-owned vehicles;
- alter the mandatory one-year suspension for repeat offenders to eliminate the 45-day "hard" suspension and to instead require a full year of participation in the Ignition Interlock System Program; and
- expand the locations to which a driver with an ignition interlock device restriction may drive.

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Criminal Law

Drugged Driving

Drugged driving is a threat to public safety that is far more difficult to combat than drunk driving. Evidentiary issues relating to drug tests and evaluations by drug recognition experts, as well as the limited number of police officers trained as drug recognition experts, contribute to the difficulty. The easing of restrictions on marijuana use also may exacerbate the problem.

Overview

The problem of drugged driving in the United States often has been overshadowed by the problem of drunk driving. Studies have found, however, that drugged driving is a significant contributor to impaired driving accidents and fatalities. According to a 2012 report by the federal Substance Abuse and Mental Health Services Administration, between 5% and 25% of drivers in motor vehicle accidents test positive for drugs, and 18% of motor vehicle driver deaths involve drugs. Despite these statistics, progress in the enforcement of drugged driving laws lags behind that of drunk driving laws, and efforts to ease restrictions on marijuana use may increase the problem of drug-impaired driving.

Challenges in Enforcing Drugged Driving Laws in Maryland

Maryland law prohibits a person from driving or attempting to drive a vehicle while impaired by a controlled dangerous substance (CDS). A person also is prohibited from driving if so impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive a vehicle safely. Due to the complicating factors discussed below, a conviction for drugged driving is far more difficult to obtain than one for drunk driving. In fiscal 2013, of a total of 6,761 guilty convictions for drunk or drugged driving, only 312 convictions (4.6%) were for drugged driving.

Limited Research and Technology

Enforcement of drunk driving laws is aided by the fact that there is a nationally recognized level of impairment (*i.e.*, 0.08 or more blood alcohol concentration) and technology that allows for easy and accurate testing. However, there are no such recognized levels of impairment for drugs. Moreover, a 2012 National Highway Traffic Safety Administration (NHTSA) report stated that determining impairment levels for even the commonly abused drugs would require decades of research.

In addition, the lack of a breath drug testing device like the breathalyzer used to measure alcohol is another barrier to enforcement. However, the 2012 NHTSA report suggested that,

within a timeframe of not more than five years, advanced technology could be available to determine immediately and reliably the presence of drugs in a driver. In April 2013, scientists in Sweden reported developing a device that analyzes breath, with 87% accuracy, to detect the presence of 12 different drugs in the body, including cocaine, marijuana, and amphetamines.

Reliance on Drug Recognition Experts

Because there are so many different types of drugs with different effects that may impair people in different ways from alcohol, it is more difficult to detect and evaluate impairment from drugs. In Maryland, State law specifies that only police officers trained as drug recognition experts (DREs) are considered qualified to evaluate a person for drug impairment. A DRE is trained to recognize impairment in drivers under the influence of drugs other than or in addition to alcohol, and to distinguish between drug impairment and mental or physical illness or injury.

Typically an officer who detains a driver for drugged driving will request that a DRE evaluate the driver. A standard 12-step evaluation by a DRE concludes with a blood test, which is used to confirm the DRE's opinion that a driver is likely impaired by a drug and the category of the drug. The blood test detects the presence of drugs or their metabolites. According to the Maryland State Police, a driver may refuse to undergo or complete the first 11 steps in the evaluation without risking the imposition of any sanctions.

As of October 2013, there were 111 DREs in Maryland. In 2012, DREs in the State performed 553 evaluations of individuals suspected of driving while impaired by drugs. According to the Maryland State Police, the specialized training needed to become a DRE and the relatively small number of trained DREs likely hinder the enforcement of drugged driving laws.

Also, the accuracy and reliability of DRE testimony have been the subject of legal challenges in the State. In 2012, a circuit court judge in Carroll County granted the consolidated motion of 27 defendants to exclude DRE testimony, finding that a DRE "is not sufficiently qualified to render an opinion." However, in 2013, a circuit court judge in Montgomery County denied a motion to exclude DRE expert testimony after finding that it did not constitute new or novel scientific evidence. The Office of the Public Defender appealed the decision to the Court of Special Appeals. To date, there has been no Maryland appellate decision addressing the admissibility of DRE testimony.

Drug *Per Se* Laws

Drug *per se* laws have emerged as a means of avoiding the requirement of proving a driver was actually impaired by a drug the driver ingested. Under a *per se* law, showing the presence of a drug in the driver's body is sufficient to obtain a conviction.

According to the National Conference of State Legislatures, between 1990 and 2013, 20 states enacted *per se* laws that make it illegal for drivers to have any or specified amounts of

drugs in their bodies while driving. The laws vary in their provisions. Eleven states prohibit driving with any amount of a prohibited drug or its metabolite in the driver's body (Arizona, Delaware, Georgia, Illinois, Indiana, Iowa, Michigan, Pennsylvania, Rhode Island, Utah, and Wisconsin). Minnesota prohibits any amount of a prohibited drug or its metabolite but specifically exempts marijuana. North Carolina prohibits any amount of a CDS designated as Schedule I. South Dakota prohibits any amount of a prohibited drug, but only for individuals younger than age 21. Three states prohibit specified amounts of certain prohibited drugs (Nevada, Ohio, and Virginia). The three most recent states to pass *per se* laws were Colorado, Montana, and Washington. In these states, it is unlawful to drive with five nanograms or more of THC in the blood. (THC is the primary psychoactive ingredient in marijuana).

Easing Restrictions on Marijuana Use

A survey released by the Pew Research Center in April 2013 showed that, for the first time, a majority of Americans support the legalization of marijuana. This shift in public opinion is reflected in the passage in 2012 of ballot initiatives legalizing the recreational use of marijuana in Colorado and Washington.

Twenty states and the District of Columbia have laws authorizing and setting up programs for the medical use of marijuana. In Maryland, medical necessity may be raised as an affirmative defense to a charge of marijuana possession, and possession of less than 10 grams is subject to a reduced penalty.

The trend toward easing restrictions on marijuana use, in combination with changing public opinion, suggests that use of the drug may increase. The impact this would have on highway safety is unknown, but potentially very significant. NHTSA is currently conducting a study on the effects of marijuana on driving performance that is scheduled to be completed in late 2014.

Legislative Activity in Maryland

A bill that would have established the *per se* offense of driving or attempting to drive while impaired by an illegally used CDS was introduced most recently during the 2010 session. During the 2012 and 2013 sessions, legislation was introduced that would have deemed DRE evaluation procedures "generally accepted within the scientific community and based on generally accepted scientific protocol."

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Criminal Law

Criminal Records – Expungement and Shielding

In recent years, discussions regarding the successful reintegration of offenders back into society have turned to the use of expungement and shielding of criminal records. Obtaining employment is an important piece to successful reentry; however, many types of public- and private-sector employment require criminal history records checks.

Criminal Background Checks

State law requires a criminal history records check for various types of public- and private-sector employment in the State, typically where it is determined that there is a job-related need. For example, employees and employers in the following facilities must apply for a national and State criminal history records check: (1) a licensed child care center; (2) a registered family day care home; (3) a licensed child care home; (4) a licensed child care institution; (5) a juvenile detention, correction, or treatment facility; (6) a public school; (7) a private or nonpublic school that is required to report to the State Board of Education; (8) a foster care family home or group facility; (9) a government-operated recreation center or program that primarily serves minors; or (10) a day or residential camp that primarily serves minors. Many local jurisdictions also specify requirements in statute regarding criminal background checks for employees, volunteers, or license applicants.

The Task Force on Prisoner Reentry, created by Chapters 625 and 626 of 2009, issued a final report on its findings and recommendations in 2011, including recommendations focused on removing barriers to reentry for Marylanders with criminal records. In particular, the task force found that the ability to obtain employment is critical to successful reentry. Citing research indicating that recidivism risks are highest during the first three to five years following incarceration and that recidivism declines steadily with "time clean," *i.e.,* the amount of time without a subsequent arrest or conviction, the task force recommended the shielding from public view of criminal records for nonviolent convictions after an appropriate waiting/proving period, with provisions for full access for law enforcement and relevant parties. According to the task force, employer access to outdated conviction information unfairly bars ex-offenders from job opportunities.

Expungement and Shielding

A person who has been charged with the commission of a crime may file a petition for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State, in cases of acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, *stet* of charge, gubernatorial pardon, or transfer to juvenile court. Individuals convicted of specified public nuisance crimes are also eligible for

expungement under certain circumstances. Generally, a petition for expungement may not be filed until three years after the disposition of the charge.

Expungement means removal from public inspection by obliteration; by removal to a separate secure area to which the public is denied access; and if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

State law also authorizes the shielding of court records pertaining to peace and protective order proceedings upon the respondent's written request, if the petition has been denied or dismissed at the interim, temporary, or final stage of the proceeding. Shielding removes the physical court record to a separate, secure area that is inaccessible to the public, and completely removes all information concerning the proceeding from the Judiciary's public website.

Potential Legislation

Legislation was introduced during the 2013 session to partially implement the recommendation of the task force relating to shielding. The legislation would have authorized a person to petition a court to shield the person's court records and police records relating to a "shieldable conviction" of the person no earlier than five years after the person satisfies the sentence imposed for the conviction, including parole, probation, or mandatory supervision. The bills would have imposed a limit of one stand-alone conviction or one "unit" of convictions shielded per person per lifetime.

"Shielding" a conviction would render the associated court record or police record inaccessible to members of the public, but it would remain fully accessible to (1) criminal justice units for legitimate criminal justice purposes; (2) prospective employers who are subject to a statutory or contractual requirement to inquire into an applicant's criminal background for purposes of carrying out that requirement; (3) facilities that are authorized or required to inquire into an individual's criminal background under specified provisions relating to child care facilities; (4) the person who is the subject of the shielded record and that person's attorney; and (5) health occupations boards. "Shieldable conviction" referred to a list of specified nonviolent misdemeanors committed by an individual younger than age 26, including possession of small quantities of marijuana, disorderly conduct, theft under $100, and trespass. If the person is convicted of a new crime during the five-year period, the bills specified that the original conviction would no longer be eligible for shielding, unless the new conviction becomes eligible for shielding as well.

Though similar bills were passed by both the Senate and the House and a conference committee was appointed to resolve differences on the House version of the bill, the conference committee report was not adopted in the Senate before the close of the 2013 session.

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Courts and Civil Proceedings

Strict Liability for Dogs

Legislative responses to a 2012 decision by the Court of Appeals imposing strict liability for damages caused by a pure bred pit bull continue to be developed for consideration by the General Assembly.

Response to Court of Appeals Decision Concerning Pit Bulls

In order to hold a dog owner strictly liable under the common law for an attack by the dog (regardless of breed), the victim must prove that the owner knew or should have known that the dog had vicious or dangerous propensities. On April 26, 2012, the Court of Appeals modified the common law by holding that a dog owner, or a landlord or other person having the right to control a dog's presence on the premises, is strictly liable on proof that (1) the dog that attacked the victim is a pit bull or a mixed-breed pit bull; and (2) the owner, landlord, or other person knew or should have known that the dog is a pit bull or a mixed-breed pit bull. *Tracey v. Solesky,* 427 Md. 627 (2012). On August 21, 2012, the court reconsidered its decision and limited its application to purebred pit bulls.

The *Solesky* ruling drew criticism from dog owners, animal advocacy groups, landlords, and insurers as news reports emerged relating to landlords banning pit bulls and animal shelters preparing for an influx of pit bulls. In response, the General Assembly formed the Task Force to Study the Court Decision Regarding Pit Bulls, which held hearings in June 2012. Common themes in the testimony at the hearings included (1) imposing strict liability on an owner of a dog regardless of breed in lieu of breed-specific standards; (2) criticism of the lack of guidance as to what constitutes a pit bull or a mixed-breed pit bull; and (3) the negative effects on the housing rental market, including higher rents and insurance premiums for landlords and potential bans on all dogs or specific breeds.

The task force did not propose its own bill, but legislators introduced several different bills during the second special session of 2012. Some bills would have restored the common law, while others would have imposed strict liability for all breeds under specified circumstances. The General Assembly was unable to reach a consensus on legislation during the brief special session. During the 2013 session, legislators introduced bills that would have reversed the *Solesky* decision, but also would have established a rebuttable presumption that a dog owner knew or should have known that the dog had vicious or dangerous propensities if the dog caused an injury or death. Once again, the General Assembly could not reach a consensus, due in part to disagreement about the effect of proposed amendments on the availability and affordability of insurance for homeowners and renters.

Liability for Dogs in Other States

Thirty-two states have modified the common law by enacting a statute that imposes strict liability for any dog bite, including a first bite, under specified circumstances. Typical exceptions to strict liability include provocation of the dog and trespassing or commission of a tort or crime.

Of the 32 states with strict liability statutes, 21 states have statutes that can be described accurately as being broad in their scope. The other 11 strict liability states have relatively limited statutes because of various provisions relating to the (1) identity of the victim; (2) place of the attack; and (3) type of damages eligible for recovery. In the remaining 18 states and the District of Columbia, a claim for an injury caused by a dog is governed almost exclusively by the common law. (Hawaii and the District of Columbia have statutorily modified the common law governing a negligence claim based on a dog injury but have not enacted a strict liability statute. Although New York and North Carolina have enacted a strict liability statute that applies only if the dog was previously declared dangerous, their statutes should not be considered as significantly modifying the common law.)

The effect of a broad strict liability statute for dog bites on the availability and affordability of homeowner's insurance is not identifiable. A representative of the Property Casualty Insurers Association of America stated that there are so many factors that affect the cost and availability of homeowner's insurance it would be impossible to identify the impact of liability standards for dog bites.

A comparison of the average homeowner's and renter's insurance premiums for each state reported by the Insurance Information Institute (I.I.I.) does not reveal a pattern of premium levels associated with the different state liability standards for dog bites.

Homeowner's Insurance in Maryland – Coverage for Dog Owners

According to the Maryland Insurance Administration (MIA), in 2012 there were approximately 130 admitted insurers and 15 surplus lines insurers that were actively writing homeowner's insurance in the State. Of these insurers, the top 10 insurers/insurer groups wrote approximately 85% of the homeowner's insurance market, by premium volume, in Maryland.

According to MIA, 1 of the top 10 insurers/insurer groups has a policy liability exclusion for losses caused by specific breeds of dogs. In addition, MIA states that 2 of the top 10 insurers/insurer groups have underwriting standards that apply to specific breeds of dogs. For one of those two insurers/insurer groups, the underwriting standards prohibit offering or renewing coverage for specific breeds. The other insurer/insurer group requires a referral of an owner of one of the specific breeds to its underwriting department for additional review before binding coverage.

The breeds included in breed-specific underwriting guidelines or that require the applicant to be referred to the underwriting department for further review are Alaskan Malamute; American Staffordshire Terrier, American Pit Bull Terrier, Staffordshire Bull Terrier ("Pit Bull" breeds); Akita; Boerbel; Chow Chow; Doberman Pinscher; English Bull Terrier; German Shepherd; Kyiapso; Mastiff, American Bondogge Mastiff, Neapolitan Mastiff; Presa Canario (Dogo Canario, Canary Dog, Peroo Basto, Verdino); Rottweiler; Siberian Husky; Wolf Hybrid; and any dog that is a mix of an ineligible dog breed.

The General Assembly passed House Bill 1203 of 2013 (Chapter 406), which requires an insurer that offers homeowner's or renter's insurance that does not provide coverage for losses caused by specific breeds of dogs to provide to an applicant or insured, at the time of application for or issuance of a policy and at each renewal of a policy, written notice that (1) states that the policy does not provide coverage for losses caused by specific breeds or specific mixed breeds of dogs and (2) identifies the specific breeds or specific mixed breeds of dogs for which the policy does not provide coverage. The Act applies to all homeowner's or renter's insurance policies issued, delivered, or renewed in the State on or after January 1, 2014.

Dog Bite Claims in the United States and State Farm Insurance Company

According to I.I.I., in 2011, approximately 2.2% of the total losses paid nationwide for claims under homeowner's insurance were for all liability claims, including dog bite claims, and 97.8% of the total losses paid were for property damage claims. While liability claims constitute a small percentage of the total losses paid, I.I.I. reports that dog bites accounted for more than one-third of all homeowner's insurance liability claims paid out in the United States during 2012, costing nearly $490 million (16,459 claims). I.I.I. found that the cost of the average dog bite claim increased by 51.4% between 2003 and 2012. The average nationwide cost for a dog bite claim was $29,752 in 2012.

State Farm Insurance Company, the largest writer of homeowner's insurance nationwide and in Maryland, reported that it does not refuse insurance in any state based on the customer's breed of dog and bases its underwriting decisions on the dog's behavior, not the breed. According to the company, the general assumption is that the cost of the premium will go up for dog bites, but it is difficult to determine what portion of the premium is attributable to coverage for dog bites. The company paid out more than $109 million for nearly 3,800 dog bite claims in 2011 and $108 million for 3,670 dog bite claims in 2012. In Maryland, the company paid out 51 dog bite claims (homeowner's and commercial) during 2012, resulting in approximately $1,584,676 in paid claims, with an average cost per claim of $31,072.

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Courts and Civil Proceedings

Judicial Compensation

The Judicial Compensation Commission is required to review judicial salaries and pensions and make recommendations to the Governor and the General Assembly this year. The last salary increase for judges was generated by a three-year salary plan adopted by the General Assembly in the 2012 session.

Background

The Judicial Compensation Commission is required to review judicial salaries and pensions and make recommendations to the Governor and the General Assembly once every four years. A joint resolution incorporating the salary recommendations must be introduced in each house of the General Assembly by the fifteenth day of the session following the release of the commission's proposals. The General Assembly may amend the joint resolution to decrease, but not increase, any of the salary recommendations, and it may not reduce the salary of a judge during the judge's continuance in office. Failure by both houses of the General Assembly to adopt or amend a joint resolution within 50 calendar days after its introduction results in adoption of the salary recommendations. If the General Assembly rejects any of the commission's recommendations, the salaries of the judges remain unchanged, unless modified under other provisions of law.

The last salary increase for judges was generated by a three-year salary plan in an amended resolution adopted by the General Assembly in 2012. In October 2011, the commission recommended increasing the salaries of all Maryland judges by $29,006 over a three-year period, with the salary increases to begin in fiscal 2014. Specifically, the joint resolution proposed the following annual increases for all judges at each of the seven salary levels: (1) $9,111 beginning July 1, 2013; (2) $9,658 beginning July 1, 2014; and (3) $10,237 beginning July 1, 2015. The General Assembly amended the resolution submitted by the commission so that the annual salaries for all judges increased as follows: (1) $4,556 beginning July 1, 2013; (2) $4,692 beginning July 1, 2014; and (3) $4,833 beginning July 1, 2015. In addition, since judges did not receive a salary increase in fiscal 2013, they received the 2% cost-of-living adjustment that was effective December 31, 2012, for all State employees.

The commission also made recommendations in its 2011 report on appropriate retirement benefit and member contribution levels, which take into account the sustainability of pension systems, based on instructions included in Chapter 397 of 2011 (the Budget Reconciliation and Financing Act of 2011). The commission voted to include in its report a recommendation that the contribution rate for judges appointed after July 1, 2012, increase from 6% to 8%. Chapter 485 of 2012 increased the member contribution rate from 6% to 8% of earnable

compensation for all members of the Judges' Retirement System (JRS), and further added a five-year vesting requirement for individuals who become JRS members on or after July 1, 2012.

Salary and Pension Recommendations for the 2014 Session

The commission plans to meet in the fall of 2013 to make salary and pension recommendations for judges. The Department of Legislative Services will provide information on the State's economic condition, the State retirement system, national and regional salary rankings for all levels of courts, and salary information for various Executive and Legislative branch officials. The commission also will hear presentations from the Maryland Judiciary and the Maryland State Bar Association on the workload of the courts and obstacles to recruiting and retaining talented individuals on the bench. In the absence of any legislative changes, the commission will next meet in 2017.

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Courts and Civil Procedure

Dram Shop Liability

The Court of Appeals recently declined to change the common law to impose civil liability on an alcoholic beverage licensee that serves a visibly intoxicated patron, who then drives drunk and causes an injury or death, stating that the issue involves significant public policy considerations that are best left to the General Assembly.

Background

A "dram shop law" is a law that allows a person to sue an alcoholic beverage licensee, such as a restaurant, bar, or liquor store, for damages incurred as a result of a patron's intoxication. While a majority of states do have dram shop laws, Maryland does not.

In 2010, William and Angela Warr (the Warrs) filed suit in the Circuit Court for Montgomery County against JMGM Group, LLC, the corporate owner of a tavern, the Dogfish Head Alehouse (Dogfish Head), for injuries they and their daughter sustained in a car accident and for the death of their other daughter. The car that struck the Warrs' vehicle was driven by Michael Eaton, whom the Warrs alleged was improperly served by Dogfish Head while he was visibly intoxicated. The Warrs maintained Dogfish Head had breached its duty to them not to furnish alcohol to an intoxicated person and, therefore, was liable for damages. The trial court decided that the case could not proceed to trial because Maryland does not have a dram shop liability law. The Warrs sought review of the decision in the Court of Appeals.

The Court of Appeals affirmed the decision of the trial court (*Warr v. JMGM Group, LLC*, 433 Md. 170 (2013)), stating that the determination as to whether to change the common law and impose liability on an alcoholic beverage licensee for damages caused by serving a visibly intoxicated patron involves significant public policy considerations that are best left to the General Assembly.

Dram Shop Laws in Other States

Although many states have dram shop laws, these laws vary greatly. A majority of states that have adopted the doctrine of dram shop liability have limited liability to cases where a licensed establishment served alcohol to an obviously intoxicated individual or an individual under the legal drinking age. Generally, only individuals injured by the underage or visibly intoxicated individual who had been furnished alcohol by the licensee may recover under a dram shop law.

Several states have adopted specific limits on the amount of damages that may be recovered in a dram shop action. For example, New Mexico limits dram shop liability to

$50,000 for bodily injury to, or death of, one person in each instance; $100,000 for bodily injury to, or death of, two or more persons in each instance; and $20,000 for property damage in each instance. Meanwhile, Utah permits recovery by an individual of not more than $1,000,000, and awards not in excess of $2,000,000 to all persons injured as a result of one occurrence. Some states that have adopted specific limits on recovery automatically adjust the limits for inflation.

Some states have imposed notice requirements and statutes of limitation for causes of action for dram shop liability. Several states require a plaintiff to provide a licensee written notice of intent to bring an action for dram shop liability within a specified period of time. For example, in Connecticut, written notice of intent to bring an action must be provided to a licensee within 120 days of the injury or property damage and must specify the time, date, and person to whom the sale was made; the name and address of the person injured or whose property was damaged; and the time, date, and place where the injury to person or property occurred. Michigan similarly requires a plaintiff to provide written notice to all defendants within 120 days of entering an attorney-client relationship for the purpose of pursuing an action for dram shop liability. Failure to provide timely written notice constitutes grounds for dismissal of the claim unless sufficient information for determining that a retail licensee might be liable was not known and could not reasonably have been known within the 120 days. Idaho, Iowa, and Montana require plaintiffs to notify a licensee of intent to file a suit within 180 days of the date of sale or injury. Other states specify periods of time in which an action must be brought against the licensee. Generally, statutes of limitation range from one year (*e.g.*, Illinois) to four years (*e.g.*, Nebraska).

Recent Legislative Activity in Maryland

Since 2002, three bills proposing dram shop liability have been introduced in the General Assembly. Senate Bill 739 of 2002 received an unfavorable report from the Judicial Proceedings Committee. More recently, House Bill 1120 of 2011 and House Bill 1000 of 2012 received no action after being heard by the Judiciary Committee.

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Courts and Civil Proceedings

Maryland Trust Act

The proposed Maryland Trust Act is a major revision and codification of the law of trusts, modeled mostly on the Uniform Trust Code drafted by the Uniform Law Commission. It is a modified version of the Uniform Trust Code, and has been proposed in varied forms in Maryland each year since 2011.

Background

Legislation has been introduced in recent sessions proposing enactment of the Maryland Trust Act, which would establish a comprehensive revision and codification of the law of trusts. Currently, the law of trusts in Maryland is reflected in discrete provisions in the Maryland Code, certain provisions in the Maryland Rules, and some Maryland case law. Trustees, lawyers, and courts often look to case law of other jurisdictions or the Restatement of the Law of Trusts (a treatise on trust law principles written by legal experts) when Maryland law does not resolve an issue, but such an approach does not provide the certainty desired when making legal decisions.

The proposed legislation is a modified version of the Uniform Trust Code, which was initially completed by the Uniform Law Commission in 2000 and last amended in 2005. The Estates and Trusts Section of the Maryland State Bar Association (MSBA) and the Maryland Bankers Association (MBA) made various modifications to the Uniform Trust Code to produce the initial version of the bill, which was first introduced in the General Assembly in 2011 (SB 745/HB 750), and reintroduced in 2012 (SB 722/HB 682). The most recent versions of the bill introduced in 2013 (SB 753/HB 437) were revised to delete or modify several proposed changes to Maryland law.

Trusts in General

Trusts are most commonly known as a method of gifting assets, such as from parents to their children, whether during the lifetime of the person transferring the assets or upon death. A trust provides for a trustee to manage and distribute the assets to the beneficiary or beneficiaries of the transfer in a defined manner. In addition to transfers of assets to specific persons, trusts can be established to manage and distribute assets for charitable purposes. Trusts also can involve circumstances other than a donative transfer. According to the Uniform Law Commission, examples of nondonative trusts include a trust created pursuant to a divorce action that is part of a bargained-for exchange and various forms of commercial trusts, such as trusts created to pay pensions, business trusts, or real estate investment trusts. Specific types of commercial trusts may be subject to statutory or case law that may displace generally applicable trust law to an extent.

Trusts can offer various benefits. These benefits include (1) the ability to divide property among multiple beneficiaries (such as supporting a person's spouse for life, then giving the remainder of the assets to the person's children); (2) the competent management of assets for less sophisticated persons; (3) the protection of assets against certain creditors of the beneficiaries; and (4) favorable tax consequences. Trusts may be managed by a nonprofessional trustee, such as a family member, or a professional trustee, such as a bank trust department, a trust company, a financial professional, or an attorney.

Codification of Trust Law

The Uniform Trust Code has been enacted in some form by 25 states (Alabama, Arizona, Arkansas, Florida, Kansas, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wyoming) and the District of Columbia. In his 2007 legal article on the modern trend in American trust law towards codification (*Why Did Trust Law Become Statute Law in the United States?*, 58 Ala. L. Rev. 1069 (2007-2007)), John H. Langbein indicates that the use of trusts has evolved and become increasingly complex to the point where case law, from which trust law originates and in which trust law has a long history, is less suited to governing modern trusts due to its incremental development. Mr. Langbein maintains that comprehensive legislation like the Uniform Trust Code can fill in "gaps" and answer questions in the law that can exist even in a state with a well-developed common law of trusts.

As noted earlier, the proposed Maryland legislation is an adaptation of the Uniform Trust Code that has been modified to address concerns of various stakeholders. Although the proposed legislation incorporates existing Maryland statutory law and conforms to principles in Maryland case law, in some cases, the proposed legislation would change or add to Maryland law. A discussion of notable provisions that would have changed or added to Maryland law, as well as of portions of the Uniform Trust Code that are not included in the bill, is included in the fiscal and policy note for HB 437 of 2013.

Policy Implications

The proposed legislation would involve the codification of a significant body of law, with the potential to impact many individuals and entities involved with trusts. Given the length and complexity of the bill, understanding its potential impact on the administration of trusts and interested parties will continue to demand the focus of the General Assembly.

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Environment and Natural Resources

Addressing Future Growth in Chesapeake Bay Pollution

To better manage new pollution from future growth and development, the State established a system of local land use tiers to discourage residential growth using septic systems on undeveloped lands and is finalizing a new policy for reducing pollution associated with development projects. However, these two efforts face opposition, and it is not clear whether they will successfully offset future pollution loads.

Background

In December 2010, the U.S. Environmental Protection Agency established a Chesapeake Bay Total Maximum Daily Load (TMDL) that set forth specific pollution reduction requirements for Maryland and neighboring states. Achieving and maintaining these pollution reductions will be a significant challenge, as Maryland's population of more than 5.7 million people is expected to grow by at least 15% over the next 25 years. Two of Maryland's main efforts to address future pollution growth are implementation of the Sustainable Growth and Agricultural Preservation Act (Chapter 149 of 2012) and creation of a new policy for offsetting pollution from development and redevelopment projects.

Sustainable Growth and Agricultural Preservation Act of 2012

Septic systems are responsible for a significant portion of the State's total nitrogen pollution load to the bay, and they discharge significantly more pollution than a major wastewater treatment plant (WWTP). Chapter 149 aims to steer future residential growth toward more urban forms of development served by public sewers and away from undeveloped lands that require the use of septic systems. It creates four growth tiers based on specified land use characteristics which may be adopted by local jurisdictions and establishes land use and sewerage restrictions applicable to each tier. Beginning December 31, 2012, a jurisdiction could not approve a major residential subdivision served by septic systems, community sewerage systems, or shared systems, unless the jurisdiction had adopted growth tiers consistent with the Act. A jurisdiction that does not adopt growth tiers may still authorize either a minor residential subdivision served by septic systems or any subdivision in an area served by public sewer.

As of August 2013, 12 counties and Baltimore City had adopted tier maps, one county was in the process of finalizing its map, and 10 counties were still considering options. Also, of the 110 municipalities with planning and zoning authority, 61 had adopted tier maps. Because most municipalities are served by existing sewerage systems, a municipality's failure to adopt a tier map has less of an impact on growth. Nevertheless, the Maryland Department of Planning (MDP) is encouraging municipalities to complete their tier maps to avoid potential conflicts with county maps.

Implementation of Chapter 149 has not been without challenges. While MDP may make formal comments on a tier map, it lacks the authority to require a jurisdiction to change its tier map. As of August 2013, MDP had submitted comments stating that Cecil and Frederick county tier maps violated provisions of the Act, and an Allegany County map raised significant issues. However, Frederick County did voluntarily revise its map in response to MDP concerns. Also, 16 counties have taken advantage of a statutory exemption authorizing the maximum number of lots in a minor subdivision to be increased from five to seven, effectively allowing more development to occur on septic systems. Further, counties may seek to alter their comprehensive plans to effectively limit the Act's impact, as Charles County has done by proposing that 150,000 acres change from conservation to residential use.

New Policy for Managing Future Pollution Growth

To comply with the bay TMDL, Maryland plans to manage new pollution loads in the future by (1) upgrading major WWTPs to accommodate sewage from new development and (2) establishing a new growth policy to offset pollution loads from development. While efforts to upgrade major WWTPs are well underway, the State lacks a strategy to manage new pollution from infrastructure development. The Administration proposed a draft growth offset strategy in 2012; however, it prompted significant stakeholder concerns. In response, the Administration convened an Accounting for Growth Workgroup – comprised of agricultural, environmental, developer, local government, and public interest stakeholders – to craft a policy for offsetting future pollution loads. The workgroup made recommendations in August 2013, including:

- make development projects that disturb one acre or more of land subject to the policy and establish a reduced or sliding scale fee-in-lieu payment for projects that disturb between 5,000 square feet and one acre of land;

- create a more robust nutrient credit trading policy with a 1:1 trading ratio (*e.g.*, one nonpoint source credit must be generated to offset every point source credit) and that requires 10% of the total credits sold to be "retired" and not used by the buyer to offset pollution; and

- make pollution offset requirements permanent and guarantee operation and maintenance of pollution reduction practices in perpetuity.

The workgroup did not reach consensus on other issues, such as setting a price for fee-in-lieu amounts, establishing new geographic boundaries for trading, and strengthening existing credit verification policies. The Administration is expected to submit regulations in late 2013 that implement a new policy for managing future pollution growth.

Policy Implications

While the State is engaged in several efforts to limit future pollution, its ability to effectively manage growth is still uncertain. Further debate is likely to occur over whether to clarify and strengthen mechanisms for enforcing Chapter 149 or to alter the State's anticipated policy for managing future pollution growth.

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Environment and Natural Resources

Local Stormwater Management

Chapter 151 of 2012 requires the 10 Phase I municipal separate storm sewer system jurisdictions to establish a fee to fund stormwater management projects. In total, the local jurisdictions will generate $80.2 million in new revenue for stormwater management projects. The fees that were adopted by local jurisdictions varied and reflect the flexibility that Chapter 151 provided.

Introduction

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (NPDES), a component of the CWA, regulates stormwater discharges from municipal separate storm sewer systems (MS4). There are 10 jurisdictions in Maryland that hold NPDES Phase I MS4 permits (Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince George's counties, and Baltimore City). In the 2012 legislative session, the General Assembly passed legislation, House Bill 987 (Chapter 151), which required these 10 jurisdictions to establish a local stormwater remediation fee to assist in financing the implementation of the local MS4 permits, including the requirement of each permit to meet the stormwater-related targets under the Chesapeake Bay Total Maximum Daily Load (TMDL).

Chapter 151 of 2012

Chapter 151 of 2012 was passed by the General Assembly in the context of a substantial projected shortfall in funding for local water quality related stormwater projects. The Phase II Watershed Implementation Plan under the bay TMDL was released in fall 2012 and estimated that the largest cost to implement the bay TMDL, by a significant margin, was attributed to local stormwater management. Thus, Chapter 151 required the 10 jurisdictions subject to a NPDES Phase I MS4 permit – representing the vast majority of the State's population and untreated impervious surface area – to adopt local laws establishing a stormwater remediation fee and watershed protection and restoration fund by July 1, 2013.

Chapter 151 provided flexibility for each jurisdiction to decide the level and structure of the fee, how it is collected, and other details of the fee and fund. The law did require the fee to be based on the share of stormwater management services related to a property and provided by the county or municipality. The law also required fee exemptions and a system of offsets, as well as a process for property owners to appeal a fee assessment, and specified that money in each fund is intended to be used only to support additional (not existing or ongoing) efforts for stormwater management activities.

Adoption and Implementation of Local Laws

In fiscal 2014, it is estimated that the stormwater fee will generate about $80.2 million across nine jurisdictions; if revenues from the restructured fee established by Montgomery County are counted, fiscal 2014 revenues amount to $103.0 million. The structure and amount of the fees established pursuant to Chapter 151 vary greatly by jurisdiction, as shown in **Exhibit 1**. For example, with respect to residential fees, four counties chose to establish a flat fee per property or per unit, while four other jurisdictions established fees based on imperviousness, type or size of property, or home size. One county established a hybrid approach, assessing both a flat fee and an impervious unit fee. Finally, one jurisdiction did not establish a fee. For nonresidential properties, most counties chose to establish a rate based on the amount of impervious surface, as defined through an equivalent residential unit (ERU) or an impervious unit (IU). Jurisdictions have also established separate fees for certain types of properties, such as properties owned by religious groups or nonprofit organizations.

In recognition of the financial burden that the new fees may cause for some property owners, several jurisdictions adopted a phased-in fee collection. Four counties are phasing in their local stormwater remediation fees for at least some types of properties, while other jurisdictions that have not formally done so have expressed (in planning documents) the intent to gradually increase fees in future years along with the growing need for stormwater management.

Each jurisdiction has also devised a unique approach to the provision of fee exemptions, credits, and rebates. Chapter 151 specifies that property owned by the State, a local government, or a volunteer fire department is exempt from the stormwater fee; each jurisdiction also had to establish a financial hardship exemption. Some jurisdictions have chosen to establish further exemptions, such as for properties located within municipal boundaries, properties that are already subject to certain permits, properties owned by disabled veterans, and agricultural nonresidential properties. Similarly, while Chapter 151 requires jurisdictions to establish Maryland Department of the Environment-approved policies to reduce fees to account for services or activities that a property owner has invested in to reduce or treat stormwater runoff, each jurisdiction has established slightly different credits available for property owners. Key differences include eligibility requirements and caps on the percentage by which a fee may be reduced. Some jurisdictions have also established rebate programs designed to incentivize the installation of stormwater best management practices by property owners.

The significant variation in each jurisdiction's local laws, regulations, and associated programs, as well as the differing amounts of untreated impervious surfaces and overall level of local stormwater infrastructure needs in each jurisdiction, are projected to result in a wide range of revenues collected in fiscal 2014, as shown in Exhibit 1.

Exhibit 1
County Stormwater Fees and Estimated Revenues

Local Jurisdiction	Residential Rate	Nonresidential Fee/ERU or IU	Nonresidential Fee Per Acre Equivalent	Local Estimate of Fiscal 2014 Revenues ($ in Millions)
Anne Arundel	$34, $85, or $170 annually, depending on zoning district	Generally, $85 per ERU; capped at 25% of property tax. Fees vary for specified types of properties.	$1,259.39	$13.9 (subject to phase-in)
Baltimore	$21 (single family attached); $32 (condo); $39 (single family, detached, and agricultural residential).	Generally, $69 per ERU for nonresidential property; $20 per ERU for institutional properties.	$1,502.81	$24.3
Baltimore City	$40, $60, or $120 depending on amount of impervious surface	Generally, $60 per ERU; $12 per ERU for religious nonprofits.	$2,489.11	$16.7 (partial collection)
Carroll	None	None	None	No Fee
Charles	$43 per property (an increase of $29 over fiscal 2013 levels)	$43 per property	N/A	$1.4 (reflects $29 increase)
Frederick	$0.01 per property	$0.01 per property	N/A	$0.0
Harford	$125 per property	$7 per IU	$609.86	$1.05 (subject to phase-in)
Howard	$15, $45, or $90 depending on type and size of property	$15 per IU	$1,306.85	$10.8
Montgomery*	Varies, ranges from $29.17 to $265.20 depending on home size	$88.40 per IU	$1,593.22	$22.8
Prince George's	$20.58 per property plus $20.90 per IU	$20.90 per IU	$391.68	$12.0

ERU: equivalent residential unit
IU: impervious unit

* Montgomery County established a stormwater fee similar to the one required under Chapter 151 of 2012 prior to the enactment of legislation.

Source: Department of Legislative Services

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Environment and Natural Resources

Agricultural Nutrient Management

To achieve federal Chesapeake Bay pollution reduction requirements, the State recently strengthened agricultural nutrient management requirements and established an agricultural certainty program. However, concerns about the policies' impact on farmers and the environment remain.

Background

In spite of numerous programs that seek to manage and reduce pollution from agricultural lands, the agricultural sector is Maryland's largest source of pollution entering the Chesapeake Bay. Over the past 10 years, the mandatory development and implementation of nutrient management plans by farmers, in accordance with the Water Quality Improvement Act of 1998 (Chapters 324 and 325), have been a key strategy for improving water quality. However, to achieve federal bay restoration requirements, the State must expand its efforts to reduce agricultural sector pollution. Toward this end, the State has established several new policies, including creating more aggressive agricultural nutrient management requirements and establishing an agricultural certainty program.

Agricultural Nutrient Management Regulations

In fall 2012, the Maryland Department of Agriculture (MDA) adopted nutrient management regulations that established more rigorous requirements limiting the use of manure, biosolids, and other organic nutrient sources on crop fields. Among other things, the new regulations require farmers to:

- incorporate organic nutrients into the soil within 48 hours of being applied;
- plant cover crops when organic nutrient sources are applied in the fall;
- limit fall fertilizer applications for small grains;
- establish, beginning in 2014, 10- to 35-foot "no fertilizer application zones" adjacent to surface water and streams;
- protect, beginning in 2014, streams from livestock with fencing or other approved alternative best management practices; and

- forgo, beginning July 1, 2016, nutrient application between November 2 and February 28 on the Eastern Shore and between November 16 and February 28 on the Western Shore.

In January 2013, MDA published additional regulations that update an existing phosphorous pollution management tool used to identify where there is a high potential for phosphorous pollution and to help farmers evaluate management options. In response to farmer concerns about unknown impacts and environmental group concerns about implementation, the regulations underwent significant revision throughout 2013 and were resubmitted in October 2013, but were subsequently withdrawn in November 2013. While it is not clear how the regulations will be further revised, it is anticipated that MDA will seek to address stakeholder concerns and sometime in 2014 will resubmit a new proposal that includes a phased-in approach.

Agricultural Certainty Program

Agricultural certainty programs seek to provide farmers with certainty that a state will not require new environmental protection requirements for a given period of time if the operation maintains specific conservation practices. Proponents of this approach believe it will expedite efforts to reduce agricultural pollution by encouraging adoption of pollution reduction practices, while opponents assert that it may limit progress by reducing the state's flexibility to respond to revised pollution reduction goals and estimates. While MDA had already begun to develop a program with federal grant funds, Chapter 339 of 2013 established a voluntary agricultural certainty program in Maryland to accelerate the implementation of agricultural best management practices to help meet pollution reduction goals. Chapter 339 exempts program participants from new State or local water quality laws or regulations for 10 years if MDA, in coordination with the Maryland Department of the Environment, determines that the operation meets specific criteria, including a fully implemented nutrient management plan. In addition, Chapter 339 established an Agricultural Certainty Program Oversight Committee that, among other things, is helping draft program regulations. MDA plans to submit implementing regulations for public comment in December 2013 and initiate the program in spring 2014.

Policy Implications

While Maryland has established several new policies aimed at reducing agricultural sector pollution to meet bay restoration goals, the impact and future implementation of these policies is uncertain. Efforts by agricultural interests to appeal a September 2013 federal district court decision upholding federal bay pollution reduction requirements could ultimately impact the State's pollution reduction requirements. In addition, legislation could be introduced during the 2014 session that modifies recent nutrient management regulations and alters agricultural certainty program goals in response to stakeholder concerns.

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State Government

Improving the Voter Experience

An increase in the length of the "wait time" that many voters must endure before casting ballots at polling places has prompted policymakers nationally and in Maryland to assess their voting policies and practices in order to remove obstacles that negatively affect the voting experience and make it difficult for voters to vote in a timely and efficient manner.

Introduction

The length of time voters must wait before casting ballots at polling places has become an important concern of policymakers nationally and in Maryland. Reports of voters forced to wait for hours in some locations garnered significant media attention in the 2012 general election and prompted President Obama to appoint a commission on election administration to address wait times and other obstacles that make it more difficult to vote. In Maryland, where lines at polling places have consistently been among the longest in the nation, the issue of wait times is particularly urgent. The General Assembly directed the State Board of Elections (SBE) to complete a study of measures and resources necessary to reduce wait times by the end of 2013.

The Problem of Wait Times

According to national data, problems with long delays at polling places are not widespread across the country but are limited to certain states and localities, including Maryland. The U.S. average wait time to vote in 2012 was 14 minutes, while voters in Maryland waited 29 minutes on average (see **Exhibit 1**), according to the Survey of the Performance of American Elections (SPAE). Delays at Maryland polling places were much longer than the national average in 2008 as well, when the average wait in Maryland was 26 minutes compared to 17 minutes nationally. Among the 50 states and the District of Columbia, Maryland's lines ranked third longest in the nation in 2012 (behind Florida and the District). In 2008, Maryland had the sixth longest lines (behind South Carolina, Georgia, Florida, Virginia, and Missouri). Nationwide in 2012, only 13% of voters had to wait more than 30 minutes to vote at a polling place, and just 20% had to wait 10 to 30 minutes. Maryland's 29 minute average wait time in 2012 was therefore well outside the national norm. Waits of several hours were reported at some polling places in Maryland.

The impact of delays at the polling place is also not spread evenly across the electorate, according to the SPAE. Nationally, minority voters and voters in urban areas are more likely to encounter long lines at the polls. In 2012, the national average wait time for white voters was 12 minutes while the average wait time for black and Hispanic voters was 20 minutes. In 2008, whites waited 15 minutes on average while blacks waited 29 minutes and Hispanics 17 minutes.

Voters in the most densely populated areas waited more than twice as long as voters in the least densely populated areas.

Long lines likely prevent a significant number of people from voting because they cannot or do not want to wait. SPAE found that 15% of nonvoters in 2012 cited long lines as a reason they did not vote. In 2008, the percentage of nonvoters who said lines were a factor in their failure to cast a ballot was 24%. Minorities were more likely to report that polling place delays had deterred them from voting. SPAE estimated the number of people who did not vote nationwide in 2012 because of long lines at 1 million.

Chapters 157 and 158 of 2013 require SBE to review maximum wait times during the 2010 and 2012 elections, identify the causes of wait times of more than 30 minutes, and propose target maximum wait times for voters at early voting centers and polling places. SBE must analyze the deployment of voting equipment and related infrastructure and the staffing practices and procedures utilized by local boards of elections to determine what additional resources may be needed to reduce maximum wait times to 30 minutes or, alternatively, to 60 minutes. If additional voting equipment and related infrastructure and staff are needed, SBE must provide an estimate of the cost. A report of SBE's findings and recommendations must be submitted to the Senate Education, Health, and Environmental Affairs Committee and the House Ways and Means Committee by December 31, 2013. SBE has contracted with the University of Baltimore's Schaefer Center for Public Policy to conduct the study and reports that the study is on schedule. As part of the study, the center is interviewing election officials across the State and around the country, as well as election judges and voters from precincts that reported long lines.

Presidential Commission on Election Administration

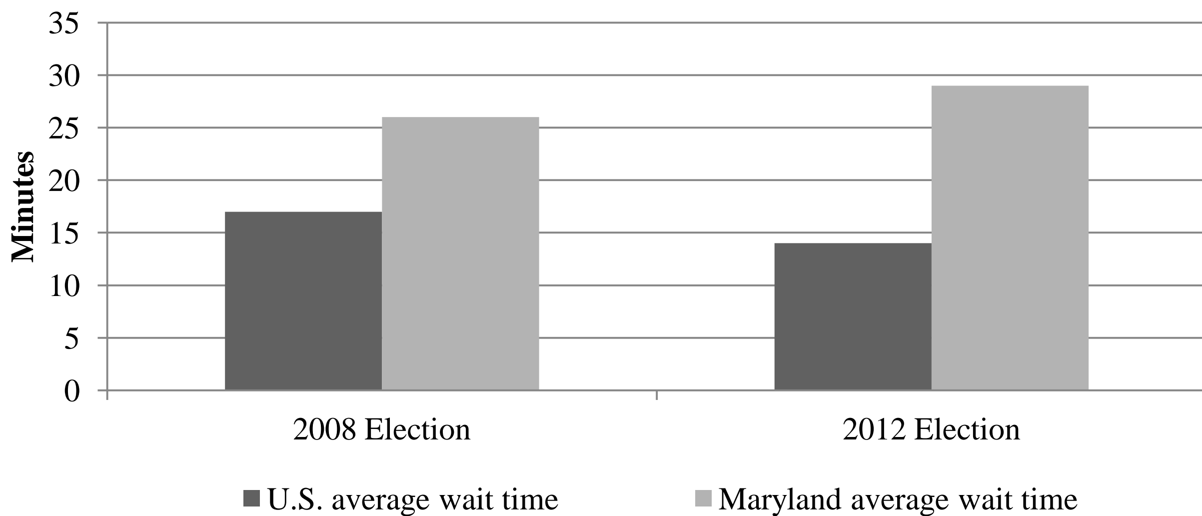
President Obama announced the creation of a "nonpartisan commission to improve the voting experience in America" in his 2013 State of the Union address, citing voter wait times as an issue of special concern. The President's March 2013 executive order establishing the commission defined its mission broadly to include ensuring that "all eligible voters have the opportunity to cast their ballots without undue delay, and to improve the experience of voters facing other obstacles in casting their ballots, such as members of the military, overseas voters, voters with disabilities, and voters with limited English proficiency." The order specifically directed the commission to consider the following issues:

- the number, location, management, operation, and design of polling places;
- the training, recruitment, and number of poll workers;
- voting accessibility for uniformed and overseas voters;
- the efficient management of voter rolls and poll books;
- voting machine capacity and technology;
- ballot simplicity and voter education;

- voting accessibility for individuals with disabilities, limited English proficiency, and other special needs;
- management of, issuing, and processing provisional ballots in the polling place;
- the issues presented by the administration of absentee ballot programs; and
- the adequacy of contingency plans for natural disasters and other emergencies that may disrupt elections.

The commission began meeting in June and has held six public meetings to date. Issues discussed so far include voter registration, wait times, military and overseas voters, absentee voting, voters with disabilities, provisional ballots, early voting, vote-by-mail, vote centers, emergencies that may affect voting, voters with limited English proficiency, voting systems, and poll workers. The final report of the commission is due in December.

Exhibit 1
Average Wait Time at Polls – U.S. and Maryland



Source: Survey of the Performance of American Elections

State Government

Optical Scan Voting System

After being stalled for several years because of technical and fiscal concerns, the State Board of Elections has begun the process of procuring and implementing a new optical scan voting system that produces a "voter-verified paper record" that will be in place for the 2016 elections.

Background

Chapters 547 and 548 of 2007 (later amended by Chapter 428 of 2009) modified the certification standards for the State's voting system, and require that a voting system, among other things, provide a "voter-verifiable paper record" in order to be certified. Since that time, the procurement and implementation of a new, paper-based voting system that would provide a voter-verifiable paper record has been delayed, due in part to questions about the availability of a voting system that would meet all of the State's standards and in part to a lack of funding for a new system. However, funding for the planning stages of the procurement and implementation process for a new system was appropriated for fiscal 2013 and 2014, and the State Board of Elections (SBE) currently is in the early stages of the roughly three-year process that is expected to put a new voting system in place for the 2016 elections.

Funding

Chapters 547 and 548 of 2007 were contingent on the appropriation of sufficient general, special, or federal funds in the State budget no later than fiscal 2009 to perform the functions required in the law. The Department of Budget and Management was to determine and notify the Department of Legislative Services within 10 days of the enactment of the fiscal 2009 budget whether the condition was met.

In fiscal 2009, combined funds totaling $4.1 million were provided in the Major Information Technology Development Project Fund (MITDPF) and SBE budgets to meet this requirement. Funds totaling $5.8 million again were provided in the MITDPF and SBE budgets in fiscal 2010 for the implementation of a new optical scan voting system. The funds provided in these years were later reduced in cost containment actions and most of the remainder was cancelled. No funds were provided in fiscal 2011 for the implementation of the new system, and, as a result, the procurement of the new system that was ongoing at the time of the fiscal 2011 budget release was never finalized.

No funding was provided for the new voting system in fiscal 2012, and initially no funding was available in the fiscal 2013 budget for the implementation of the new system; however, a deficiency appropriation during the 2013 session provided $50,000 to begin planning for the system. An additional $1.15 million of funding was provided to support the planning

process for the implementation of the new system in fiscal 2014. These funds were expected to be used to support consultants during the planning process. Language was also included in the fiscal 2014 budget to express the intent that funding for the procurement of the new optical scan voting system be provided in fiscal 2015.

The Budget Reconciliation and Financing Act (BRFA) of 2009 (Chapter 487) authorized the transfer of $2.0 million from the Fair Campaign Financing Fund to MITDPF to be used for the implementation of an optical scan voting system. Funds transferred for this purpose but not used were to be transferred to the Election Modernization Fund. The BRFA of 2010 (Chapter 484) altered that authorization to require that any funds not used revert to the Fair Campaign Financing Fund. The BRFA of 2012 (Chapter 1 of the First Special Session of 2012) required the $2.0 million transfer from the Fair Campaign Financing Fund be included in the fiscal 2014 budget. The BRFA of 2013 (Chapter 425) later reduced the amount authorized to be used for this purpose to $1.75 million. Because these funds were not used, the amount remained authorized, and the fiscal 2013 deficiency appropriation and fiscal 2014 funding for the optical scan voting system are supported with the funds from the Fair Campaign Financing Fund. In total, $550,000 remains authorized to be transferred from the Fair Campaign Financing Fund but unappropriated, and could be used in the future for this purpose.

The amount of funding required for the implementation of the new voting system will remain uncertain until a procurement award is made for the necessary equipment and services related to the implementation of the system, but it is expected to be significant. A 2010 study conducted by RTI International for the Department of Legislative Services included an estimate of the capital cost of a new optical scan voting system at $35.7 million (which would be financed and paid for over multiple years). Legislation enacted in 2001 (Chapter 564), splits the responsibility for voting system costs between the State and local governments.

Status and Timeline

SBE began a roughly three-year process in 2013 of procuring and implementing a new optical scan voting system for the 2016 elections. The board is in the process of hiring multiple contractual personnel to help manage and implement the process. Local boards of elections are also involved in the process in a variety of ways, including through (1) representation on the Voting System Governance Team, the governing body for the project; (2) participation in regional meetings conducted earlier this year by SBE with local election officials to discuss various aspects of the procurement and implementation process; and (3) representation on workgroups made up of SBE and local elections officials to address various topic areas.

SBE has requested that vendors submit their voting systems for board certification (in accordance with standards set out under State law and regulations) prior to a request for proposals being issued and a contract being awarded. As of mid-October, one vendor had submitted a voting system. In addition to other certification requirements, SBE regulations require that there be a public demonstration of a voting system and that comments from the public on the system and its proposed certification be solicited prior to SBE's determination of whether to grant certification.

The current projected timeline for the process calls for a request for proposals to be issued in early- to mid-calendar 2014 and a contract to be awarded by the end of calendar 2014. Receipt and testing of the voting system, the start of training for election officials and election judges, and distribution of equipment to the local boards of elections are then expected to occur in 2015. In the meantime, the State's existing voting system will be used for the 2014 elections.

State Aid to Local Governments

State aid to local governments is projected to total $7.1 billion in fiscal 2015, representing a $149.5 million, or 2.1% increase over the prior year.

Local governments are projected to receive $7.1 billion in State aid in fiscal 2015, representing a $149.5 million (2.1%) increase over the prior year. Most of the State aid in fiscal 2015, as in prior years, is targeted to public schools, while funding for counties and municipalities will account for 7.8% of total State aid. Public schools will receive $6.2 billion in fiscal 2015, or 86.3% of total State aid. Counties and municipalities will receive $560.1 million; community colleges will receive $307.7 million; libraries will receive $72.3 million; and local health departments will receive $41.0 million. In terms of year-over-year funding enhancements, State aid for public schools will increase by $99.1 million (1.6%); library aid will increase by $1.8 million (2.5%); community college aid will increase by $21.1 million (7.4%); and local health department grants will increase by $1.0 million (2.4%). Also, county and municipal governments will realize a $26.5 million (5.0%) increase in State aid. **Exhibit 1** shows the change in State aid by governmental entity for fiscal 2015. **Exhibit 2** shows the change in State aid by major programs.

Exhibit 1
State Aid to Local Governments
($ in Millions)

Governmental Entity	FY 2014	FY 2015	$ Change	% Change
Public Schools	$6,061.8	$6,160.9	$99.1	1.6%
County/Municipal	533.7	560.1	26.5	5.0%
Community Colleges	286.6	307.7	21.1	7.4%
Libraries	70.5	72.3	1.8	2.5%
Local Health Departments	40.0	41.0	1.0	2.4%
Total	**$6,992.6**	**$7,142.0**	**$149.5**	**2.1%**

Source: Department of Legislative Services

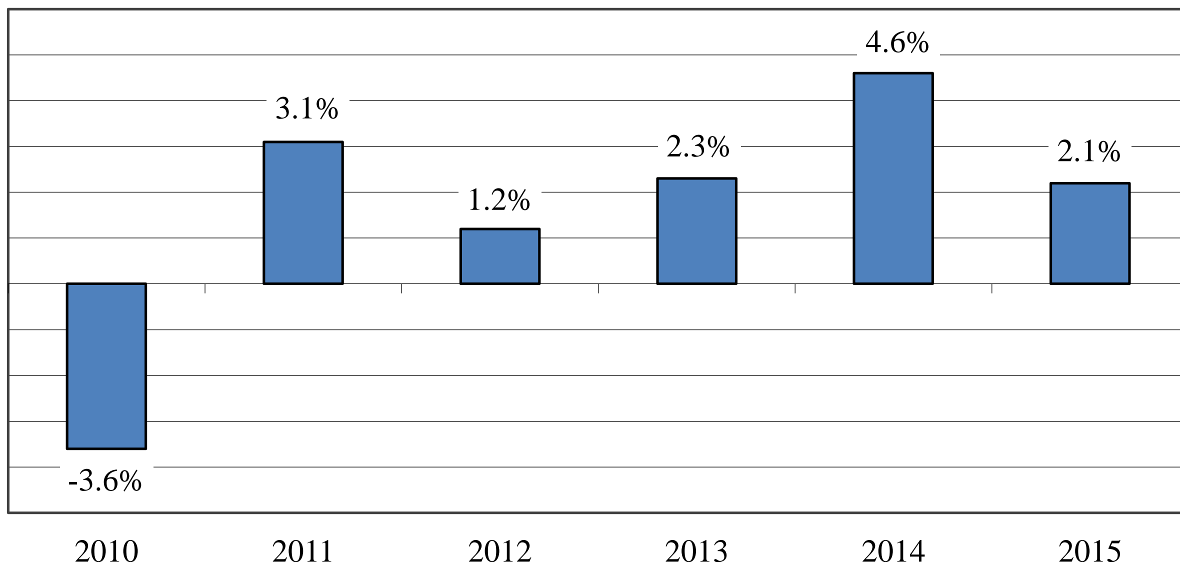
Exhibit 2
State Aid by Major Programs
Fiscal 2013-2015
($ in Millions)

	FY 2013	FY 2014	Baseline FY 2015	$ Change 2014-2015	% Change 2014-2015
Foundation Program	$2,810.4	$2,850.5	$2,875.1	$24.6	0.9%
Supplemental Grant	46.5	46.6	46.6	0.0	0.0%
Geographic Cost Index	128.8	130.8	132.1	1.3	1.0%
Net Taxable Income Education Grants	0.0	8.3	19.7	11.4	136.8%
Foundation – Special Grants	1.2	2.1	0.0	-2.1	-100.0%
Compensatory Aid	1,146.3	1,196.0	1,224.9	28.9	2.4%
Student Transportation	251.3	254.5	258.5	4.0	1.6%
Special Education – Formula Aid	266.5	269.3	272.2	2.9	1.1%
Special Education – Nonpublic Placements	113.9	109.8	112.6	2.7	2.5%
Limited English Proficiency Grants	177.4	193.4	211.0	17.6	9.1%
Guaranteed Tax Base	44.2	52.3	51.8	-0.5	-1.0%
Aging Schools Program	31.1	8.1	6.1	-2.0	-24.7%
Other Education Programs	74.7	87.1	87.2	0.0	0.0%
Subtotal Direct Aid	***$5,092.2***	***$5,208.9***	***$5,297.7***	***$88.8***	**1.7%**
Retirement Payments	$755.4	$852.8	$863.2	$10.3	1.2%
Total Public School Aid	**$5,847.6**	**$6,061.8**	**$6,160.9**	**$99.1**	**1.6%**
Library Aid Formula	$33.7	$34.0	$34.4	$0.4	1.2%
State Library Network	16.1	16.2	16.3	0.1	0.8%
Subtotal Direct Aid	***$49.7***	***$50.2***	***$50.7***	***$0.5***	**1.0%**
Retirement Payments	17.3	20.3	21.6	1.2	6.1%
Total Library Aid	**$67.1**	**$70.5**	**$72.3**	**$1.8**	**2.5%**
Community College Formula	$199.2	$213.0	$231.1	$18.1	8.5%
Other Programs	36.0	30.3	31.1	0.8	2.6%
Subtotal Direct Aid	***$235.1***	***$243.3***	***$262.2***	***$18.9***	**7.8%**
Retirement Payments	$37.2	$43.3	$45.5	$2.2	5.1%
Total Community College Aid	**$272.3**	**$286.6**	**$307.7**	**$21.1**	**7.4%**
Local Health Grants	**$38.1**	**$40.0**	**$41.0**	**$1.0**	**2.4%**
Transportation	$167.7	$190.1	$179.2	-$10.9	-5.7%
Public Safety	91.3	115.9	120.3	4.4	3.8%
Program Open Space/Environment	17.3	32.5	46.7	14.3	44.0%
Disparity Grant	119.9	127.8	128.2	0.4	0.3%
Video Lottery Terminal Impact Grants	28.9	33.4	54.1	20.7	62.1%
Teacher Retirement Supplemental Grant	27.7	27.7	27.7	0.0	0.0%
Other Grants	5.0	6.3	3.9	-2.4	-38.5%
Total County/Municipal Aid	**$457.8**	**$533.7**	**$560.1**	**$26.5**	**5.0%**
Total State Aid	**$6,682.8**	**$6,992.6**	**$7,142.0**	**$149.5**	**2.1%**

Source: Department of Legislative Services

Exhibit 3 shows the annual change in State aid to local governments, beginning with fiscal 2010. The projected growth of 2.1% in fiscal 2015 is below the 4.6% growth exhibited from fiscal 2013 to 2014. The relatively low anticipated growth in fiscal 2015 is in large part due to modest, $10.3 million or 1.2%, growth in State retirement aid for public school teachers, resulting from recent decisions on pension reform and on local sharing of retirement funding. In contrast, State aid for teacher retirement aid increased by $94.7 million, or 12.9%, from fiscal 2013 to 2014.

Exhibit 3
Annual Change in State Aid to Local Governments
Fiscal 2010-2015



Source: Department of Legislative Services

Exhibit 4 shows the increase in State support for local governments over the past five years by governmental entity. During this period, State aid has increased by 14.1% or approximately 2.7% on an average annualized basis. Public schools realized the majority of the funding increase with direct education aid increasing by $550.4 million and teacher retirement funding increasing by $104.1 million. In addition, county and municipal governments realized a $163.0 million funding increase during this same period. Nearly one-half of the increase in county and municipal aid during this period is targeted to specific counties through the video lottery terminal local impact grants ($54.1 million) and the Teacher Retirement Supplemental Grants ($27.7 million), which were enacted to partially offset the costs to local governments from sharing in teacher retirement costs. In addition, around one-third of the funding increase for county and municipal governments is due to the restoration of the police aid formula ($22.6 million) and revenue growth affecting Program Open Space funding ($38.8 million).

Exhibit 4
State Aid by Governmental Entity
($ in Millions)

Governmental Entity	FY 2010	FY 2015	$ Change	% Change
Public Schools	$4,747.3	$5,297.7	$550.4	11.6%
Libraries	48.8	50.7	1.9	3.9%
Community Colleges	226.9	262.2	35.2	15.5%
Local Health	37.3	41.0	3.7	10.0%
County/Municipal	397.2	560.1	163.0	41.0%
Subtotal – Direct Aid	**$5,457.5**	**$6,211.8**	**$754.3**	**13.8%**
Retirement Payments	$803.4	$930.3	$126.9	15.8%
Total	**$6,260.9**	**$7,142.0**	**$881.2**	**14.1%**

Source: Department of Legislative Services

Local Government

Local Government Revenue Outlook

Local taxes account for approximately 45% of county revenues and represent the primary local revenue source for most counties. Overall, county governments are projecting a slight increase in local tax revenues in fiscal 2014. However, while local income, recordation, and transfer tax collections continue to rebound, most local governments continue to experience limited growth in property tax collections.

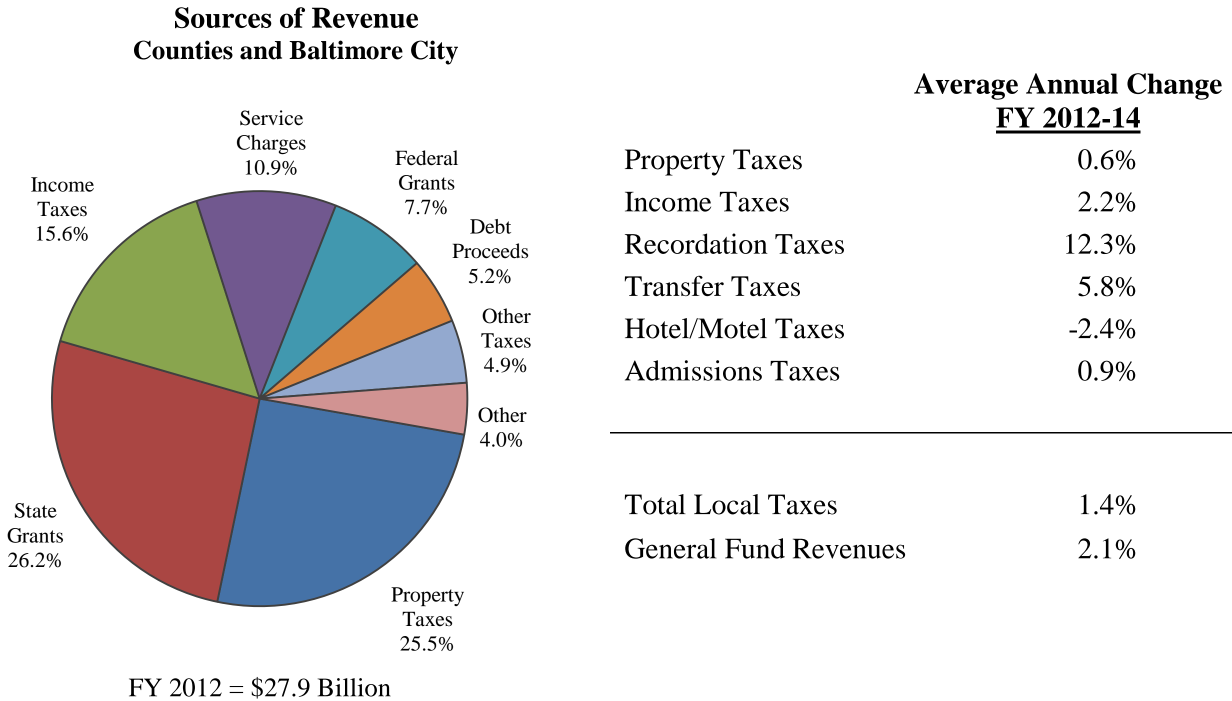
General fund revenues for county governments are projected to total $13.5 billion in fiscal 2014. As shown in **Exhibit 1**, this represents a 2.1% average annual increase over the amount of general fund revenues collected in fiscal 2012. The projected growth in general fund revenues is slightly above the estimated growth in local tax revenues, which includes both general and special fund revenues. The average annual increase in local tax revenues is projected at 1.4% in fiscal 2014. In total, local governments are projected to collect $12.7 billion in local tax revenues, a $343.5 million increase since fiscal 2012. **Exhibit 2** shows the limited growth in local tax revenues in fiscal 2012 through 2014.

The local government revenue outlook is influenced by two primary factors: a rebound in local income tax collections due to improvements in the overall State economy and limited property tax collections. Local governments are projected to collect $4.5 billion in local income tax revenues in fiscal 2014, a $190.5 million increase since fiscal 2012. This represents an average annual increase of 2.2% over the two-year period. Property tax collections, however, are only expected to increase by $81.7 million over the two-year period, representing an average annual increase of 0.6%. Local property tax collections will remain at $6.8 billion in both fiscal 2012 and 2014. The marginal growth in local property tax collections is a direct result of the downturn in the State's housing market. As shown in **Exhibit 3**, property assessments declined sharply in recent years and are not expected to improve until fiscal 2014.

Two other local revenue sources significantly affected by the downturn in the housing market include recordation and transfer taxes. At the height of the real estate market, local governments collected over $1.2 billion in recordation and transfer taxes, as shown in **Exhibit 4**. By fiscal 2011, collections totaled only $511.8 million. In fiscal 2014, local governments are projecting $656.8 million in recordation and transfer tax collections. This represents a $145.0 million increase over the amount collected in fiscal 2011 and illustrates that recordation and transfer tax collections are beginning to rebound. A more detailed depiction of the growth in local tax revenues in fiscal 2014 is provided in **Exhibit 5**.

Exhibit 1

Limited Growth in Local Tax Revenues
Fiscal 2013 and 2014



	Average Annual Change FY 2012-14
Property Taxes	0.6%
Income Taxes	2.2%
Recordation Taxes	12.3%
Transfer Taxes	5.8%
Hotel/Motel Taxes	-2.4%
Admissions Taxes	0.9%
Total Local Taxes	1.4%
General Fund Revenues	2.1%

Exhibit 2

Local Tax Revenue Inches Upwards
Fiscal 2012-2014

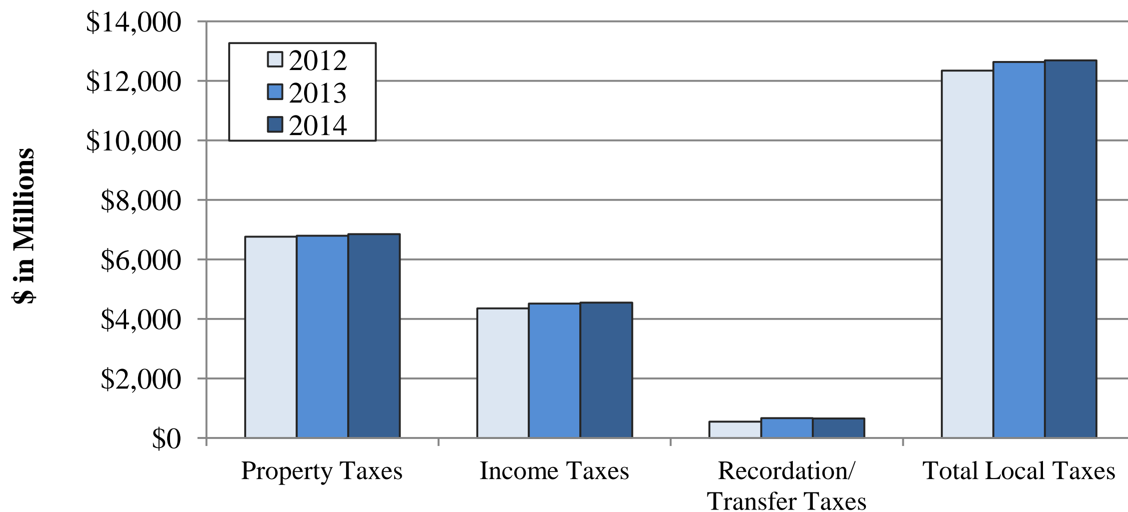


Exhibit 3
Homestead Tax Credit Softened Impact on County Assessable Base

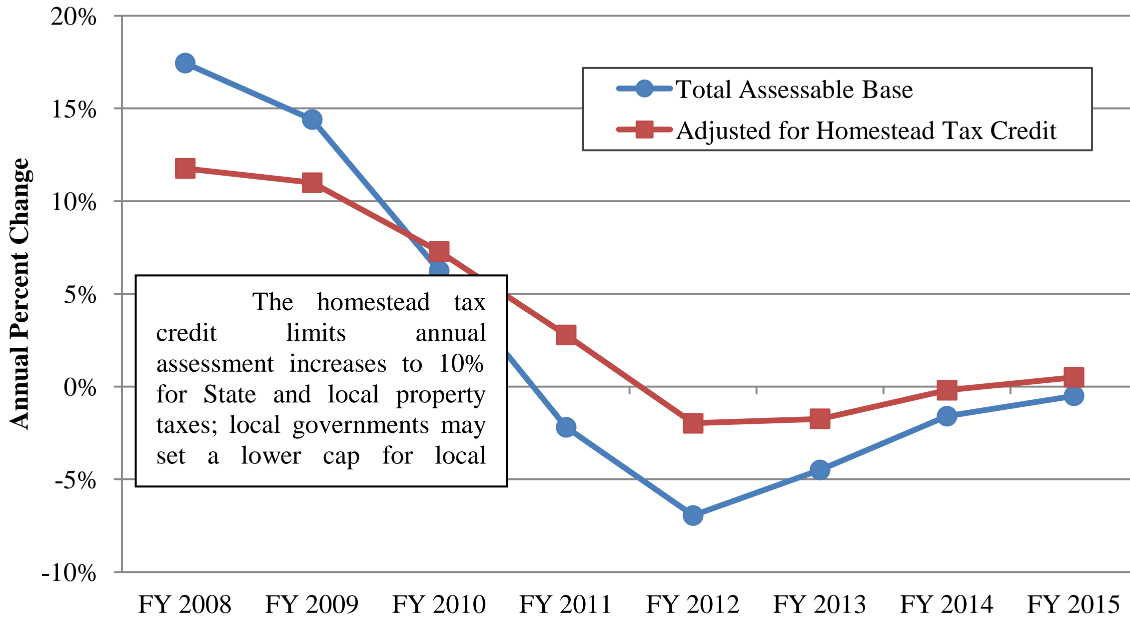


Exhibit 4
Real Estate Meltdown Impacts Recordation and Transfer Taxes

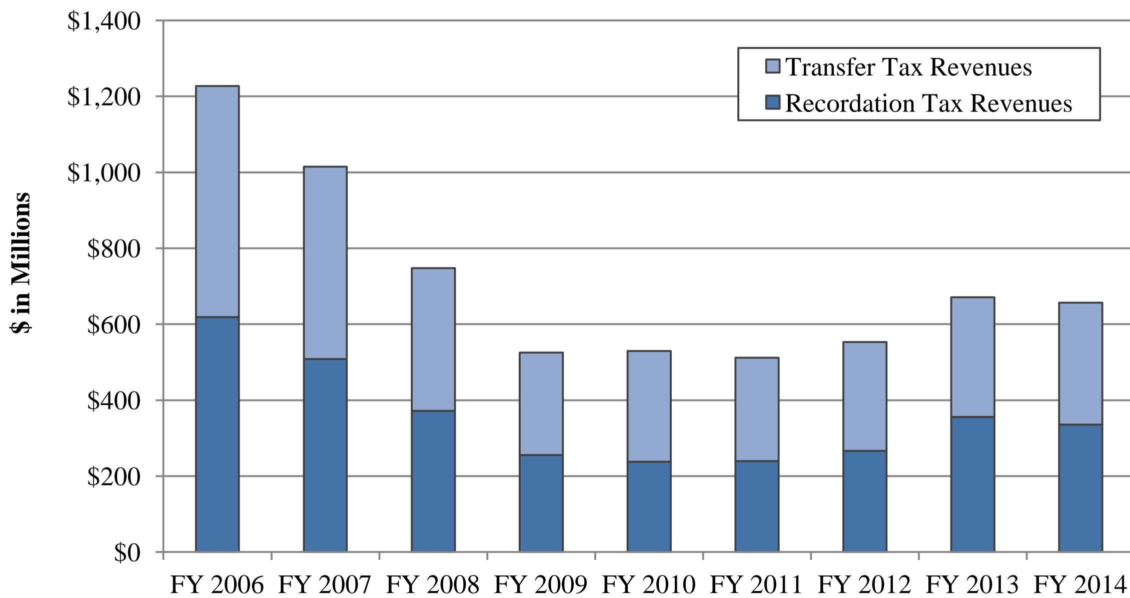


Exhibit 5

Total Local Tax Revenues for Fiscal 2012-2014

County	FY 2012	FY 2013	FY 2014	$ Difference FY 2012-2013	$ Difference FY 2013-2014	Average Annual Difference
Allegany	$69,621,830	$69,477,653	$68,805,954	-$144,177	-$671,699	-0.6%
Anne Arundel	1,062,681,587	1,107,102,000	1,134,369,000	44,420,413	27,267,000	3.3%
Baltimore City	1,199,058,511	1,215,967,101	1,200,858,461	16,908,590	-15,108,640	0.1%
Baltimore	1,545,610,239	1,584,822,591	1,584,576,239	39,212,352	-246,352	1.3%
Calvert	216,741,616	212,872,981	215,910,392	-3,868,635	3,037,411	-0.2%
Caroline	36,545,448	37,163,125	36,809,797	617,677	-353,328	0.4%
Carroll	342,792,114	337,442,690	340,840,045	-5,349,424	3,397,355	-0.3%
Cecil	156,172,343	161,293,505	159,349,264	5,121,162	-1,944,241	1.0%
Charles	303,149,031	312,342,590	331,104,500	9,193,559	18,761,910	4.5%
Dorchester	44,561,724	44,339,249	42,754,449	-222,475	-1,584,800	-2.0%
Frederick	472,370,847	465,269,417	465,353,765	-7,101,430	84,348	-0.7%
Garrett	64,632,753	66,098,114	65,734,751	1,465,361	-363,363	0.8%
Harford	493,125,398	493,159,471	495,379,656	34,073	2,220,185	0.2%
Howard	909,349,447	955,967,566	964,801,516	46,618,119	8,833,950	3.0%
Kent	42,208,389	42,901,268	42,926,975	692,879	25,707	0.8%
Montgomery	3,149,212,615	3,277,677,734	3,280,671,352	128,465,119	2,993,618	2.1%
Prince George's	1,402,760,797	1,394,289,300	1,404,964,500	-8,471,497	10,675,200	0.1%
Queen Anne's	106,422,517	111,686,007	107,806,429	5,263,490	-3,879,578	0.6%
St. Mary's	188,492,856	190,914,298	196,609,371	2,421,442	5,695,073	2.1%
Somerset	22,024,182	21,169,718	20,999,866	-854,464	-169,852	-2.4%
Talbot	58,720,843	65,129,624	68,196,000	6,408,781	3,066,376	7.8%
Washington	194,769,654	198,717,130	197,115,860	3,947,476	-1,601,270	0.6%
Wicomico	104,580,993	104,831,400	108,850,887	250,407	4,019,487	2.0%
Worcester	157,255,089	159,072,808	151,590,468	1,817,719	-7,482,340	-1.8%
Total	**$12,342,860,823**	**$12,629,707,340**	**$12,686,379,497**	**$286,846,517**	**$56,672,157**	**1.4%**

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Local Government

Local Government Tax Actions

Due to limited revenue growth at the local level, seven county governments had to raise at least one major local tax in order to balance their budgets. However, two county governments were able to reduce local property taxes slightly and one reduced its local income tax rate.

Local Government Tax Rates

Several local tax rates were adjusted in fiscal 2014, reflecting, for the most part, an increased need for additional revenue. As shown in **Exhibit 1**, nine counties changed their local property tax rates, with seven counties increasing their rates and two counties decreasing them. Three counties altered their local income tax rates: Caroline and Charles counties increased their rates, while Carroll County lowered its rate slightly. No county altered its recordation, transfer, admission and amusement, and hotel rental tax rates so that the rates remain the same as in fiscal 2013. A comparison of local tax rates for fiscal 2013 and 2014 is provided in **Exhibit 2**.

Exhibit 1
Counties Changing Local Tax Rates
Fiscal 2012-2014

	Fiscal 2012		Fiscal 2013		Fiscal 2014	
	▲	▼	▲	▼	▲	▼
Real Property	8	2	9	2	7	2
Local Income	1	1	3	0	2	1
Recordation	2	0	1	0	0	0
Transfer	0	0	0	0	0	0
Admissions/Amusement	0	0	0	1	0	0
Hotel Rental	1	0	1	0	0	0

Note: ▲ represents a tax rate increase. ▼ represents a tax rate decrease.
Source: 2013 Local Government Budget and Tax Rate Survey; Department of Legislative Services/Maryland Association of Counties

Exhibit 2
Local Tax Rates – Fiscal 2013 and 2014

	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel Rental	
County	**FY 2013**	**FY 2014**	**CY 2013**	**CY 2014**	**FY 2013**	**FY 2014**	**FY 2013**	**FY 2014**	**FY 2013**	**FY 2014**	**FY 2013**	**FY 2014**
Allegany	$0.981	$0.980	3.05%	3.05%	$3.50	$3.50	0.5%	0.5%	7.5%	7.5%	8.0%	8.0%
Anne Arundel	0.941	0.950	2.56%	2.56%	3.50	3.50	1.0%	1.0%	10.0%	10.0%	7.0%	7.0%
Baltimore City	2.268	2.248	3.20%	3.20%	5.00	5.00	1.5%	1.5%	10.0%	10.0%	9.5%	9.5%
Baltimore	1.100	1.100	2.83%	2.83%	2.50	2.50	1.5%	1.5%	10.0%	10.0%	8.0%	8.0%
Calvert	0.892	0.892	2.80%	2.80%	5.00	5.00	0.0%	0.0%	1.0%	1.0%	5.0%	5.0%
Caroline	0.890	0.940	2.63%	2.73%	5.00	5.00	0.5%	0.5%	0.0%	0.0%	5.0%	5.0%
Carroll	1.018	1.018	3.05%	3.04%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Cecil	0.991	0.991	2.80%	2.80%	4.10	4.10	$10/deed	$10/deed	6.0%	6.0%	3.0%	3.0%
Charles	1.121	1.205	2.90%	3.03%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Dorchester	0.976	0.976	2.62%	2.62%	5.00	5.00	0.75%	0.75%	0.5%	0.5%	5.0%	5.0%
Frederick	1.064	1.064	2.96%	2.96%	6.00	6.00	0.0%	0.0%	0.0%	0.0%	3.0%	3.0%
Garrett	0.990	0.990	2.65%	2.65%	3.50	3.50	1.0%	1.0%	4.5%	4.5%	6.0%	6.0%
Harford	1.042	1.042	3.06%	3.06%	3.30	3.30	1.0%	1.0%	5.0%	5.0%	0.0%	0.0%

	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel Rental	
County	**FY 2013**	**FY 2014**	**CY 2013**	**CY 2014**	**FY 2013**	**FY 2014**	**FY 2013**	**FY 2014**	**FY 2013**	**FY 2014**	**FY 2013**	**FY 2014**
Howard	1.190	1.190	3.20%	3.20%	2.50	2.50	1.0%	1.0%	7.5%	7.5%	7.0%	7.0%
Kent	1.022	1.022	2.85%	2.85%	3.30	3.30	0.5%	0.5%	4.5%	4.5%	5.0%	5.0%
Montgomery	1.003	1.021	3.20%	3.20%	3.45	3.45	1.0%	1.0%	7.0%	7.0%	7.0%	7.0%
Prince George's	1.319	1.319	3.20%	3.20%	2.75	2.75	1.4%	1.4%	10.0%	10.0%	5.0%	5.0%
Queen Anne's	0.847	0.847	3.20%	3.20%	4.95	4.95	0.5%	0.5%	5.0%	5.0%	5.0%	5.0%
St. Mary's	0.857	0.857	3.00%	3.00%	4.00	4.00	1.0%	1.0%	2.0%	2.0%	5.0%	5.0%
Somerset	0.884	0.915	3.15%	3.15%	3.30	3.30	0.0%	0.0%	4.0%	4.0%	5.0%	5.0%
Talbot	0.491	0.512	2.40%	2.40%	6.00	6.00	1.0%	1.0%	5.0%	5.0%	4.0%	4.0%
Washington	0.948	0.948	2.80%	2.80%	3.80	3.80	0.5%	0.5%	5.0%	5.0%	6.0%	6.0%
Wicomico	0.840	0.909	3.20%	3.20%	3.50	3.50	0.0%	0.0%	6.0%	6.0%	6.0%	6.0%
Worcester	0.770	0.770	1.25%	1.25%	3.30	3.30	0.5%	0.5%	3.0%	3.0%	4.5%	4.5%

Notes: The real property tax rates shown for Charles, Howard, Montgomery, and Prince George's counties include special tax rates. Real property tax is per $100 of assessed value. Income is a percentage of taxable income. Recordation tax is per $500 of transaction.

Source: 2013 Local Government Budget and Tax Rate Survey; Department of Legislative Services/Maryland Association of Counties

Property Tax

For fiscal 2014, seven counties – Anne Arundel, Caroline, Charles, Montgomery, Somerset, Talbot, and Wicomico – increased their real property tax rates. Allegany County and Baltimore City decreased real property tax rates slightly. Real property tax rates range from $0.512 per $100 of assessed value in Talbot County to $2.248 in Baltimore City.

Local Income Tax

Three counties altered their local income tax rates for calendar 2014. Caroline County increased its rate from 2.63% to 2.73%, and Charles County increased its rate from 2.90% to 3.03%. Carroll County reduced its local income tax rate slightly, from 3.05% to 3.04%. Local income tax rates range from 1.25% in Worcester County to 3.2% in Baltimore City and Howard, Montgomery, Prince George's, Queen Anne's, and Wicomico counties.

Recordation Tax

No county changed its recordation tax rate for fiscal 2014. Recordation tax rates range from $2.50 per $500 of transaction in Baltimore and Howard counties to $6.00 per $500 of transaction in Frederick and Talbot counties.

Transfer Tax

No county changed its transfer tax rate for fiscal 2014. Local transfer tax rates range from 0.5% in six counties (Allegany, Caroline, Kent, Queen Anne's, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. Seven counties (Calvert, Carroll, Cecil, Charles, Frederick, Somerset, and Wicomico) do not impose a tax on property transfers.

Admissions and Amusement Tax

Admissions and amusement tax rates remain the same in fiscal 2014. Caroline and Frederick counties are the only jurisdictions that do not impose an admissions and amusement tax. Currently, admissions and amusement tax rates range from 0.5% in Dorchester County to 10.0% in six jurisdictions – Baltimore City and Anne Arundel, Baltimore, Carroll, Charles, and Prince George's counties.

Hotel Rental Tax

No county altered its hotel rental tax rate for fiscal 2014. Hotel rental tax rates range from 3.0% in Cecil and Frederick counties to 9.5% in Baltimore City. Harford County is the only jurisdiction that does not impose a hotel rental tax.

Tax Limitation Measures

Five charter counties (Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico) have amended their charters to limit property tax rates or revenues. In Anne Arundel County, the total annual increase in property tax revenues is limited to the lesser of 4.5% or the increase in the Consumer Price Index (CPI). In Montgomery County, the growth in property tax revenues is limited to the increase in CPI; however, this limitation does not apply to new construction. In addition, the limitation may be overridden by a unanimous vote of all nine county council members. In Prince George's County, the general property tax rate is capped at $0.96 per $100 of assessed value. Special taxing districts, such as the Maryland-National Capital Park and Planning Commission, are not included under the tax cap. In Talbot and Wicomico counties, the total annual increase in property tax revenues is limited to the lesser of 2% or the increase in CPI.

The counties may exceed the charter limitations on local property taxes for the purpose of funding the approved budget of the local board of education. If a local property tax rate is set above the charter limit, the county governing body may not reduce funding provided to the local board of education from any other local source and must appropriate to the local board of education all of the revenues generated from any increase beyond the existing charter limit. Any use of this authority must be reported annually to the Governor and the General Assembly. This authority was adopted at the 2012 session in order to ensure that counties have the fiscal ability to meet new maintenance of effort requirements. In fiscal 2013, Talbot County became the first jurisdiction to exercise this new authority by establishing a 2.6 cent supplemental property tax rate for the local board of education. No jurisdiction exercised this authority in fiscal 2014.

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Local Government

Local Government Salary Actions

More county governments are providing ongoing salary enhancements to their employees in fiscal 2014 than in the previous year, while salary enhancements for boards of education remain relatively constant.

County Salary Actions

With salary actions still pending in two jurisdictions, at least 18 counties are providing their employees a cost-of-living adjustment (COLA), general salary increase (GSI), step increase, or combination of enhancements in fiscal 2014, while 14 counties did so in fiscal 2013. More specifically, 16 counties have indicated that they are providing their employees with a COLA or GSI in fiscal 2014, compared to 8 counties in fiscal 2013. Ten counties are providing step or merit increases in fiscal 2014, compared to 7 in fiscal 2013.

In contrast to the county governments, even if the one pending salary action results in salary enhancements, the number of boards of education providing salary enhancements did not increase in fiscal 2014. At least 20 boards of education are providing a COLA, GSI, step increase, or combination of enhancements for their employees in fiscal 2014, while 21 boards did so in fiscal 2013. Seven boards of education have indicated that they are providing COLAs or general salary increases for teachers in fiscal 2014, compared to 8 boards in fiscal 2013. However, 20 boards of education provided step or merit increases for teachers in fiscal 2014, while 19 boards did so in fiscal 2013. **Exhibit 1** compares local salary actions in fiscal 2013 and 2014, while **Exhibit 2** shows specific local salary actions for fiscal 2014.

No county governments or boards of education designated service reduction days or implemented employee furloughs in fiscal 2014. However, one county government indicated that an undetermined number of layoffs are planned, and four boards of education eliminated approximately 117 positions through employee layoffs. In addition, one board of education indicated that it recently closed three schools and has not yet determined whether to implement any layoffs, and other boards eliminated positions through attrition. **Exhibit 3** describes the local government furlough, salary reduction, and layoff plans for fiscal 2014.

State Salary Actions

For comparison purposes, the State provided its employees with a 3% COLA in fiscal 2014, effective January 1, 2014, and a step increase, effective April 1, 2014.

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Exhibit 1
Local Government Salary Actions
Fiscal 2013 and 2014

	County Government		Public Schools	
Salary Action	**FY 2013**	**FY 2014**	**FY 2013**	**FY 2014**
COLA/GSI				
No COLA/GSI	16	6	16	16
COLA/GSI	8	16	8	7
Still Pending	0	2	0	1
Stipend/Bonus[1]	8	0	1	1
Step/Merit Increases	7	10	19	20
Furlough/Salary Reductions	0	0	2	0
Layoffs	2	0	5	4

	State Government		CPI-Urban Consumers	
	FY 2013	**FY 2014**	**FY 2013**[2]	**FY 2014**[2]
COLA Amount[3]	2.0%	3.0%	1.67%	1.60%
One-time Bonus	$0	$0		
Furloughs	No	No		
Step/Merit Increases[4]	No	Yes		

COLA: Cost-of-living adjustment
CPI: Consumer Price Index
GSI: General Salary Increase

[1] In fiscal 2013, Garrett and St. Mary's counties provided stipends in addition to a COLA; Washington County provided a stipend in addition to a step increase; and Calvert, Carroll, Montgomery, Prince George's, and Queen Anne's counties provided a one-time payment to most employees. In addition, in fiscal 2013, Queen Anne's County Public Schools provided a bonus to all employees. For fiscal 2014, Carroll County Public Schools will provide a bonus.

[2] Forecast of the CPI for 2013 (actual) and 2014 (estimate) comes from Moody's Analytics.

[3] Fiscal 2013 COLA was implemented December 31, 2012; fiscal 2014 COLA effective January 1, 2014.

[4] Increment effective April 1, 2014.

Source: 2013 Local Government Salary Action Survey, Department of Legislative Services

Exhibit 2
Local Government Salary Actions in Fiscal 2014

	County Government Generally		Board of Education Teachers	
County	**COLA/GSI**	**Step/Merit**	**COLA/GSI**	**Step/Merit**
Allegany[1]	3.0%	No	0.0%	Yes
Anne Arundel[2]	3.0%	Yes	1.0%	Yes
Baltimore City[3]	most groups pending	most groups pending	pending	pending
Baltimore[4]	varies	Yes	0.0%	Yes
Calvert[5]	1.0%	Yes	3.5%	Yes
Caroline[6]	1.0%	No	0.0%	Yes
Carroll[7]	1.5%	Yes	0.0%	No
Cecil	1.5%	No	1.8%	Yes
Charles	2.0%	Yes	0.0%	Yes
Dorchester	1.0%	No	0.0%	Yes
Frederick	1.0%	Yes	0.0%	Yes
Garrett	0.0%	No	0.0%	2 steps
Harford	0.0%	No	0.0%	No
Howard[8]	2.0%	Yes	0.0%	Yes
Kent	$2,000.00	No	0.0%	No
Montgomery[9]	3.25%	Yes	0.0%	Yes
Prince George's[10]	some groups pending	some groups pending	3.0%	Yes
Queen Anne's[11]	3.0%	No	1.0%	Yes
St. Mary's[12]	0.0%	2 steps	0.0%	Yes
Somerset[13]	0.0%	No	1.0%	Yes
Talbot[14]	3.0%	Yes	0.0%	Yes
Washington[15]	0.0%	No	0.0%	Yes
Wicomico	1.7%	No	1.0%	Yes
Worcester[16]	2.0%	No	0.0%	Yes
Number Granting	**16**	**10**	**7**	**20**

COLA: cost-of-living adjustment
GSI: general salary increase

Comments

[1] Most Allegany County employees will receive a 3.0% COLA; transit employees will receive an increase of $0.35 per hour; sheriff negotiations are pending.

[2] Anne Arundel County nonrepresented employees, except uniformed police, will receive 2.0% COLA in January 2014 and 2.0% COLA in April 2014; detention officers and sergeants will receive 2.0% COLA in January 2014 and 1.0% COLA in April 2014; all other employees will receive 3.0% COLA in January 2014. All employees, except police who are on a new scale, receive 3.0% merit increases. Anne Arundel County Public Schools teachers receive 1.0% COLA on July 1, 2013, and a step increase January 22, 2014; administrators and supervisors receive a 1.0% COLA and 2 steps effective July 1, 2013; AFSCME employees receive 2.0% effective January 1, 2014; SAAAAC (secretaries and assistants) receive 1.5% effective July 1, 2013, and 1 step mid-year; and nonunion employees receive 3.0% effective July 1, 2013.

[3] Baltimore City fire suppression employees will receive 14% increase for new schedule on January 1, 2014; other fire employees receive 2.0% COLA; both groups receive a step increase; Baltimore City is still negotiating with other employee groups. Baltimore City Public Schools teachers, administrators, and supervisors are still negotiating. CUB members receive 1.4% COLA; L44 members receive 2.1%; and PSRP (paraprofessionals and school-related personnel) receive 1.75%; most employees also will receive interval increase.

[4] Baltimore County is still in negotiations with police officers. AFSCME employees received a 3% COLA on July 1, 2013.

[5] Calvert County Public Schools teachers are repositioned on compressed salary scales, then receive 1 step increase and 1.0% COLA, resulting in average GSI of 3.5%. Teachers on top step receive pensionable salary adjustment of 1.0% for fiscal 2014 that will not be incorporated into the base. Similar for support staff and supervisors and administrators, except that supervisors and administrators at top step receive pensionable salary adjustment of 1.5%.

[6] Caroline County State's Attorney and circuit court employees will not receive the 1.0% GSI.

[7] Carroll County Public Schools employees receive a 2.5% bonus.

[8] All Howard County employees will receive a 2.0% COLA January 1, 2014.

[9] Most Montgomery County employees receive 3.25% general wage adjustment and, except management and medical doctors, 3.5% service increment; firefighters receive 2.75% general wage adjustment, police receive 2.1%, fire and police management also receive catch up increments; seasonal employees receive $0.50/hour increase. While Montgomery County Public Schools employees in general will not receive a COLA, employees that did not receive a merit step or longevity increase will receive a 2.0% GSI.

[10] Increases for Prince George's County correctional officers, police, deputy sheriffs, and correctional, fire/EMS, police and sheriff civilian employees not determined at this time; AFSCME employees receive an increase of 2.5% effective July 1, 2013, and 2.5% effective March 1, 2014; firefighters receive a 3.5% merit increase, but no COLA; other employees in general receive 2.5% COLA effective August 25, 2013, and 2.5% COLA effective March 9, 2014. Prince George's County Public Schools teachers will receive a delayed step increase on January 1, 2014; ACE/AFSCME members receive a 3% COLA and a step increase; SEIU members receive a 2% COLA and a step increase; administrators, supervisors, and other professional positions are still in negotiations.

[11] Queen Anne's County Public Schools certificated and support employees that did not receive the step increase will receive an additional 1.0% increase; administrators and supervisors will not receive the step increase.

[12] St. Mary's County employees at top of grade receive $800 stipend in lieu of step increases. St. Mary's County Public Schools teachers and classified/noncertificated employees receive a step and step recovery or $800 stipend if no step increase; administrators are on a new salary scale and receive $800 if no increase.

[13] Somerset County Public Schools employees will receive a step increase in January 2014.

[14] Talbot County Public Schools 180-day staff receive a $100 stipend in lieu of 1 day reduction in calendar days.

[15] While Washington County Public Schools employees in general will not receive a COLA, teachers in the top 2 steps receive a 0.5% increase; teachers, education support personnel, and administrators and supervisors receive a step increase; teachers in the top step receive a one-time stipend of $375; and education support personnel and administrators and supervisors in the top step receive a 1.0% stipend.

[16] Worcester County Public Schools employees will receive 1.0% increase if beyond step.

Exhibit 3

Local Government Furlough, Salary Reduction, and Layoff Plans in Fiscal 2014

County	Furlough/Reduction	Layoffs	
Allegany	No	No	School system indicated that 113.8 positions have been eliminated through attrition since fiscal 2012, including 26 positions in fiscal 2014.
Anne Arundel	No	No	
Baltimore City	No	Yes	School system does not plan any furloughs or salary reductions, but plans to lay off up to 53 nonteacher employees.
Baltimore	No	No	
Calvert	No	No	
Caroline	No	No	
Carroll	No	No	
Cecil	No	No	
Charles	No	No	
Dorchester	No	No	
Frederick	Undecided	Yes	County has not decided whether to implement any furloughs or salary reductions, but indicated that an undetermined number of layoffs are planned at this time. School system has laid off three employees and has not yet determined whether to implement furloughs or additional layoffs.
Garrett	No	Undetermined	School system does not plan to implement any furloughs or salary reductions, but recently closed three schools and has not determined whether to implement any layoffs.
Harford	No	Yes	School system does not plan to implement any furloughs or salary reductions, but laid off 46 teachers.
Howard	No	No	
Kent	No	Yes	School system does not plan to implement any furloughs or salary reductions, but laid off 15 employees, including 6.5 teachers.

County	Furlough/Reduction	Layoffs	
Montgomery	No	No	
Prince George's	No	No	
Queen Anne's	No	No	County indicated that 23 employees took advantage of a retirement incentive offered in fiscal 2012.
St. Mary's	No	No	
Somerset	No	No	
Talbot	No	No	
Washington	No	No	
Wicomico	No	No	
Worcester	No	No	
Total Jurisdictions Implementing Plans	**0**	**4**	

Source: 2013 Local Government Salary Action Survey, Department of Legislative Services

Local Government

Task Force to Study Rates and Charges in the Washington Suburban Sanitary District

Rising costs and utility rates prompted the General Assembly to establish a task force to study numerous issues confronting the Washington Suburban Sanitary Commission. Proposed legislation based on the task force's findings and recommendations will be introduced at the 2014 legislative session.

Washington Suburban Sanitary Commission

The Washington Suburban Sanitary Commission (WSSC), a bi-county agency established by the General Assembly in 1918, is the eighth largest water and wastewater utility in the country. WSSC provides water and sewer services to 1.8 million residents in an area that comprises most of Montgomery and Prince George's counties (the Washington Suburban Sanitary District). WSSC has over 460,000 customer accounts, serves an area of approximately 1,000 square miles, and currently employs more than 1,500 people. The commission's fiscal 2014 approved budget totals $1.4 billion, which includes $698.8 million for the operating budget and $742.2 million for the capital budget. In terms of facilities, the commission operates and maintains three reservoirs, two water filtration plants, six wastewater treatment plants, more than 5,600 miles of water main lines, and nearly 5,500 miles of sewer main lines.

A six-member commission governs WSSC – three members from Montgomery County and three members from Prince George's County. The commissioners are appointed to four-year terms by their respective county executives and confirmed by their county councils.

Recent Issues in the Washington Suburban Sanitary District

As WSSC approaches its centennial, replacing its aging infrastructure has become a growing priority. In recent years, a series of headline-making water main breaks has required firefighters to rescue people from gushing water, residents to boil water, and crews to tear into roads to replace shattered pipes. A report issued in 2012 by a consulting firm has been reviewed by commission officials with an eye toward reducing costs. Recommendations include the imposition of an extra charge to generate revenue dedicated to replacing aging pipes and issuing 30-year rather than 20-year bonds. After no rate increase between fiscal 1999 and 2004, WSSC customers have faced 10 consecutive years of rate hikes, ranging between 2.5% and 9.0%. For fiscal 2014, rates increased 7.25% to pay, among other things, for critical inspection, reconstruction, and renewal of the water and sewer infrastructure.

An additional issue that has received increasing attention from policymakers and the media is the disparity between fees assessed on homeowners for newly constructed water and sewer connections and the costs for these connections paid by developers. One of these fees is the front foot benefit charge, a fee typically included in a property tax bill for 23 years. In an effort to shed more light on this question, legislation enacted in 2012 (Chapter 685) requires Prince George's County to add a notice on a property tax bill indicating the number of payments remaining for any front foot benefit charge (similar to current practice in Montgomery County). In addition, the legislation established the Task Force to Study Rates and Charges in the Washington Suburban Sanitary District. The task force was originally set to terminate in May 2013 but was extended for an additional year by legislation passed at the 2013 session (Chapter 125).

The task force is required to (1) determine whether other states have a cap on water and sewer usage rate increases; (2) complete a comparison of the rates charged by WSSC with rates charged in other states; (3) determine the effect of a 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 the construction of and connection to water and sewer facilities. The task force is required to report its findings and recommendations to the Governor and the Montgomery County and Prince George's County delegations by December 31, 2013.

Task Force Findings and Recommendations

Based upon findings from two informational meetings and a public hearing, the task force intends to support legislation that will improve the fiscal transparency of the budgetary decisionmaking process within WSSC and to establish additional disclosure requirements for homeowners in Prince George's County. Disclosure provisions will require registered home builders in Prince George's County to include in a contract for the initial sale of a new home the estimated cost of any deferred water and sewer charges for which the purchaser may become liable. In addition, a person that imposes a deferred water and sewer charge in Prince George's County must provide the property owner with a detailed, periodic bill for the charge, including the yearly charge, the number of years remaining, and the method used to compute the bill. In order to improve fiscal transparency, WSSC, in approving a rate schedule for water and sewer charges, must specify the rate amount relating to the operating and capital budgets. Additional recommendations relate to the budget adoption process, rate limitation measures, and notification requirements for utility rate increases.

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Local Government

2014 Legislative Agenda – Maryland Municipal League

The legislative agenda for the Maryland Municipal League includes the restoration of local highway user revenues and the creation of protective measures that will ensure that local transportation funding is not diverted to the State's general fund in future years.

Most municipalities in Maryland rely upon State shared highway user revenues to maintain and improve public roads within their municipal corporate limits, and more than half of all municipalities rely on police aid to assist in providing law enforcement services. Aside from these two revenue sources, municipal governments in Maryland receive limited State support to finance public services. As a result, most municipal governments in Maryland rely on property taxes and service charges to finance public services. In recent years, Maryland's municipal governments have been subject to reduced State funding resulting from decreases in their share of highway user revenues and police aid to help balance the State's operating budget. While full funding for police aid was restored in the fiscal 2014 State budget, State support for local roadways has not been fully restored to prior funding levels.

Prior to the reduction in State support in fiscal 2010, municipalities received 2.5% of highway user revenues. Today, the municipal share of highway user revenues totals only 0.4%, resulting in a sharp decline in State funding (**Exhibit 1**). Municipalities received $46.8 million in highway user revenues in fiscal 2007 compared to approximately $7.0 million in fiscal 2014 and 2015. However, the fiscal 2014 State budget did include a one-time grant of $15.4 million to assist municipalities with local transportation projects. Even with the one-time grant, the reduction in State funding continues to affect the ability of local governments to provide transportation services within their communities (**Exhibit 2**).

Due to the ongoing fiscal outlook, the Maryland Municipal League has adopted the reinstatement of funding for municipal highway user revenues and the creation of protections to ensure that municipal highway user revenues are not diverted to the State's general fund in the future as its sole 2014 legislative initiative.

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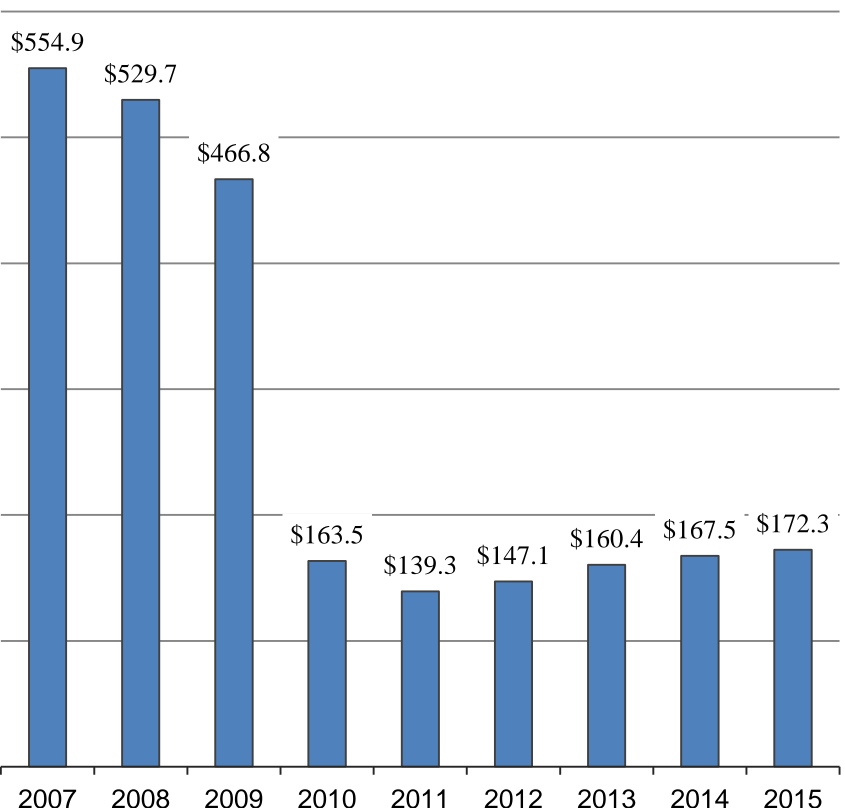
Exhibit 1
Municipalities Receive Small Share of Highway User Revenues
($ in Millions)



Local Highway User Revenues

Fiscal 2007		
MDOT	$1,294.7	70.0%
Baltimore City	226.6	12.3%
Counties	281.6	15.2%
Municipalities	46.8	2.5%
Total Distributions	**$1,849.6**	**100.0%**

Fiscal 2014		
MDOT	$1,577.6	90.4%
Baltimore City	134.4	7.7%
Counties	26.2	1.5%
Municipalities	7.0	0.4%
Total Distributions	**$1,745.1**	**100.0%**

Fiscal 2015		
MDOT	$1,622.7	90.4%
Baltimore City	138.2	7.7%
Counties	26.9	1.5%
Municipalities	7.2	0.4%
Total Distributions	**$1,795.0**	**100.0%**

Source: Department of Legislative Services

Exhibit 2

Municipal Transportation Aid by County

County	Highway User Revenues FY 2007	Highway User Revenues FY 2014	Highway User Revenues Share of FY 2007 Grant	Additional Grant FY 2014	Total Funding FY 2014	Total Funding Share of FY 2007 Grant
Allegany	$2,609,292	$353,519	13.5%	$778,893	$1,132,412	43.4%
Anne Arundel	1,940,953	303,486	15.6%	668,658	972,144	50.1%
Baltimore City	0	0	n/a	0	0	n/a
Baltimore	0	0	n/a	0	0	n/a
Calvert	585,121	86,652	14.8%	190,916	277,568	47.4%
Caroline	945,376	125,120	13.2%	275,672	400,792	42.4%
Carroll	2,629,074	405,648	15.4%	893,747	1,299,395	49.4%
Cecil	1,295,915	195,630	15.1%	431,024	626,654	48.4%
Charles	713,610	115,957	16.2%	255,484	371,441	52.1%
Dorchester	1,371,168	141,602	10.3%	311,986	453,588	33.1%
Frederick	5,028,532	771,022	15.3%	1,698,759	2,469,781	49.1%
Garrett	999,008	116,733	11.7%	257,194	373,927	37.4%
Harford	2,036,430	333,746	16.4%	735,327	1,069,073	52.5%
Howard	0	0	n/a	0	0	n/a
Kent	609,156	72,899	12.0%	160,616	233,515	38.3%
Montgomery	7,162,706	1,115,224	15.6%	2,457,125	3,572,349	49.9%
Prince George’s	9,637,404	1,430,993	14.8%	3,152,843	4,583,836	47.6%
Queen Anne’s	373,875	48,515	13.0%	106,891	155,406	41.6%
St. Mary’s	133,980	24,092	18.0%	53,081	77,173	57.6%
Somerset	453,737	54,037	11.9%	119,057	173,094	38.1%
Talbot	1,406,290	192,732	13.7%	424,637	617,369	43.9%
Washington	3,116,232	460,997	14.8%	1,015,695	1,476,692	47.4%
Wicomico	2,004,034	392,969	19.6%	865,812	1,258,781	62.8%
Worcester	1,706,638	238,992	14.0%	526,562	765,554	44.9%
Total	**$46,758,531**	**$6,980,565**	**14.9%**	**$15,379,979**	**$22,360,544**	**47.8%**

Source: Department of Legislative Services

Local Government

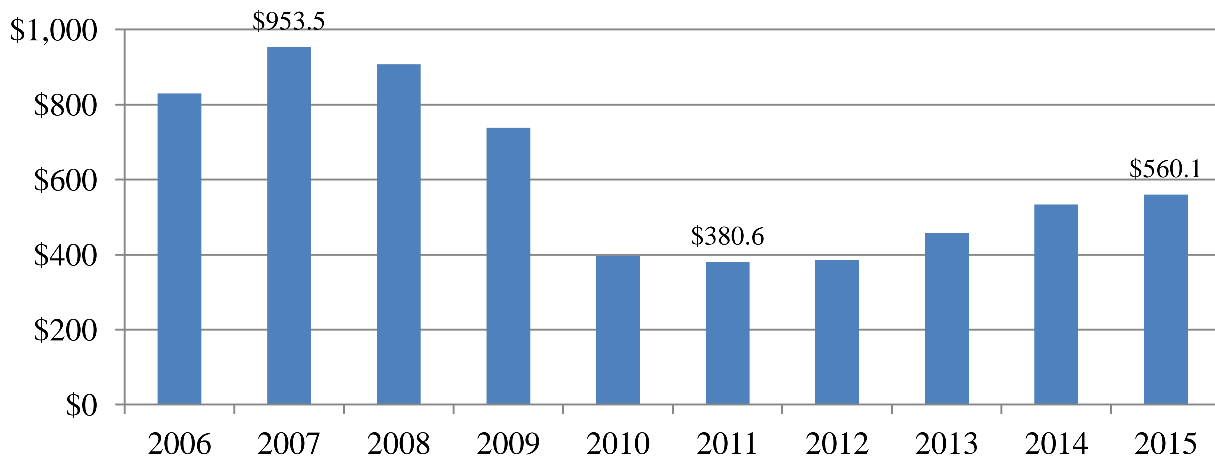
2014 Legislative Agenda – Maryland Association of Counties

The legislative agenda for the Maryland Association of Counties includes restoring transportation funding, encouraging school board and county funding partnerships, using bay restoration funds to target failing septic systems, and enhancing government collaborations within the statewide public safety radio communication system.

Restoring Transportation Funding

Funding to county and municipal governments has been reduced significantly over the past several years as the State has worked to address its structural deficit **(Exhibit 1)**. One of the largest reductions in State support has been to highway user revenues (HUR), which has made it difficult for local governments to maintain and improve local roadways. Prior to the reductions in State support in fiscal 2010, local governments received 30% of HUR and the State received 70%. Since fiscal 2010, local governments have received just under 10% of these revenues. This transfer in HUR has resulted in a $387.4 million reduction in State support for local roadways since fiscal 2007 (**Exhibit 2**). In recent years, more than one policy panel has recommended the incremental restoration of HUR back to the original shared distribution. The Maryland Association of Counties (MACo) urges State policymakers to re-evaluate highway funding and to take the necessary steps to restore HUR and local roadway infrastructure.

Exhibit 1
State Aid to County and Municipal Governments
Fiscal 2006-2015
($ in Millions)



Source: Department of Legislative Services

Exhibit 2

Local Highway User Revenues Since Fiscal 2007

County	FY 2007	FY 2013	FY 2014	Difference FY 2007-14	% Difference FY 2007-14	Difference FY 2013-14	% Difference FY 2013-14
Allegany	$7,438,060	$749,415	$815,252	-$6,622,808	-89.0%	$65,837	8.8%
Anne Arundel	31,918,479	2,844,256	3,094,125	-28,824,354	-90.3%	249,869	8.8%
Baltimore City	226,579,396	129,941,091	134,375,934	-92,203,462	-40.7%	4,434,843	3.4%
Baltimore	43,239,662	3,620,063	3,938,088	-39,301,574	-90.9%	318,025	8.8%
Calvert	6,537,119	635,550	691,384	-5,845,735	-89.4%	55,834	8.8%
Caroline	5,097,930	468,558	509,721	-4,588,209	-90.0%	41,163	8.8%
Carroll	14,462,628	1,362,335	1,482,017	-12,980,611	-89.8%	119,682	8.8%
Cecil	8,012,061	752,222	818,306	-7,193,755	-89.8%	66,084	8.8%
Charles	10,206,348	937,124	1,019,451	-9,186,897	-90.0%	82,327	8.8%
Dorchester	5,675,076	523,106	569,062	-5,106,014	-90.0%	45,956	8.8%
Frederick	18,961,583	1,898,221	2,064,980	-16,896,603	-89.1%	166,759	8.8%
Garrett	6,421,992	573,947	624,368	-5,797,624	-90.3%	50,421	8.8%
Harford	16,571,417	1,543,043	1,678,601	-14,892,816	-89.9%	135,558	8.8%
Howard	15,956,386	1,384,512	1,506,142	-14,450,244	-90.6%	121,630	8.8%
Kent	2,894,425	268,423	292,004	-2,602,421	-89.9%	23,581	8.8%
Montgomery	45,276,129	4,274,614	4,650,141	-40,625,988	-89.7%	375,527	8.8%
Prince George's	39,501,011	3,861,125	4,200,328	-35,300,683	-89.4%	339,203	8.8%
Queen Anne's	5,863,186	511,281	556,197	-5,306,989	-90.5%	44,916	8.8%
St. Mary's	7,790,620	704,471	766,359	-7,024,261	-90.2%	61,888	8.8%
Somerset	3,399,282	299,860	326,203	-3,073,079	-90.4%	26,343	8.8%
Talbot	4,675,038	464,833	505,669	-4,169,369	-89.2%	40,836	8.8%
Washington	12,174,332	1,199,220	1,304,572	-10,869,760	-89.3%	105,352	8.8%
Wicomico	9,295,983	933,506	1,015,515	-8,280,468	-89.1%	82,009	8.8%
Worcester	6,940,174	670,324	729,213	-6,210,961	-89.5%	58,889	8.8%
Total	**$554,888,317**	**$160,421,100**	**$167,533,632**	**-$387,354,685**	**-69.8%**	**$7,112,532**	**4.4%**

Source: Department of Legislative Services

Encouraging School Board and County Funding Partnerships

Local school boards and county governments share the responsibility for the education and well-being of schoolchildren, with funding for public schools accounting for over 50% of local expenditures. With this understanding in mind, MACo supports the creation of a "fast track" State approval process for local agreements on funding initiatives that will encourage school boards and county governments to work together to uncover new cost-saving strategies and improve the effectiveness of both system operations and classroom education. Similarly, MACo encourages reducing disincentives for discretionary education funding so as to support local innovative pilot programs and more fairly recognize short-term needs or investments.

Using Bay Restoration Funds to Target Failing Septic Systems

As counties continue to reduce water pollution entering the Chesapeake Bay through local total maximum daily load requirements, MACo has consistently advocated that counties be given a broad array of "tools" to help them meet their water quality goals. For the 2014 session, MACo supports expanding the use of septic system monies within the Bay Restoration Fund for purposes of extending public sewer systems to failing septic systems. The recommendations of the 2011 Task Force on Sustainable Growth and Wastewater Disposal, established by Executive Order 01.01.2011.05, supported this kind of expansion, provided there were safeguards against sprawl development occurring along the extension. Accordingly, MACo supports legislation to expand the use of Bay Restoration Fund monies for failing septic systems combined with an exception process and other adequate safeguards.

Enhancing Government Collaboration within "Maryland FiRST"

The Maryland First Responders Interoperable Radio System Team (Maryland FiRST) is the new statewide 700 megahertz public safety radio communication system created by the Maryland Statewide Communications Interoperability Program under Executive Order 01.01.2008.07. When fully implemented, Maryland FiRST will provide statewide interoperable communications to connect Maryland's first responders on one secure radio system, allowing them to more effectively and efficiently respond to emergency situations within regions and across county lines. The first phase of Maryland FiRST, covering central Maryland and Kent County, became operational at the end of 2012. The second phase, covering the Eastern Shore, is scheduled for completion at the end of 2013; the entire Maryland FiRST system is anticipated to be completed in 2016.

Counties that choose to participate in Maryland FiRST will realize seamless interoperability and lower infrastructure, equipment, and maintenance costs through shared resources. MACo believes that shared State and county efforts require a commitment from all levels of government and a structure to ensure that the operational needs of all users are

considered. Accordingly, MACo supports the creation of a governance board with committed representatives of the State and county partners who will protect everyone's interests and provide county users with a role in the system's oversight and management, including infrastructure sharing coordination, network prioritization, standardized operations, and financial decisions.