

**D39S00**  
**Maryland State Board of Contract Appeals**

***Operating Budget Data***

(\$ in Thousands)

	<u>FY 09</u> <u>Actual</u>	<u>FY 10</u> <u>Working</u>	<u>FY 11</u> <u>Allowance</u>	<u>FY 10-11</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$589	\$591	\$612	\$21	3.6%
Contingent & Back of Bill Reductions	0	0	-20	-20	
<b>Adjusted General Fund</b>	<b>\$589</b>	<b>\$591</b>	<b>\$592</b>	<b>\$1</b>	<b>0.2%</b>
<b>Adjusted Grand Total</b>	<b>\$589</b>	<b>\$591</b>	<b>\$592</b>	<b>\$1</b>	<b>0.2%</b>

Note: For purposes of illustration, the Department of Legislative Services has estimated the distribution of selected across-the-board budget. The actual allocations are to be developed by the Administration.

- The allowance increases by \$1,000, or 0.2%, above the fiscal 2010 working appropriation.
- Increases for retirement (\$7,000) and health insurance (\$6,000) are offset by decreases in operating expenditures totaling \$12,000

***Personnel Data***

	<u>FY 09</u> <u>Actual</u>	<u>FY 10</u> <u>Working</u>	<u>FY 11</u> <u>Allowance</u>	<u>FY 10-11</u> <u>Change</u>
Regular Positions	5.00	5.00	5.00	0.00
Contractual FTEs	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Total Personnel</b>	<b>5.00</b>	<b>5.00</b>	<b>5.00</b>	<b>0.00</b>

***Vacancy Data: Regular Positions***

Turnover and Necessary Vacancies, Excluding New Positions	0.00	0.00%
Positions and Percentage Vacant as of 12/31/09	0.00	0.00%

- The fiscal 2011 allowance does not include any new or abolished positions.

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

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## ***Analysis in Brief***

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### **Major Trends**

***Managing for Results Indicate Continued Success in Resolving Appeals:*** The percent of bid protests decisions issued within three months was maintained at 100%, though the number of bid protests and contract claims carried forward showed mixed results.

### **Issues**

***Budget Reductions May Impact Services and Operations for 2011:*** The fiscal 2011 allowance eliminates the Maryland State Board of Contract Appeals' (MSBCA) entire budget for the recording and transcribing of hearings, eliminates all funds for web-hosting fees for its public web site, and reduces office supplies to \$233. **DLS recommends the MSBCA work with Department of Budget and Management (DBM) to allocate funds necessary to maintain the integrity of its hearings and records, as well as for basic operations such as office supplies. This could be accomplished through a supplemental budget or from the Board of Public Works' Contingent Fund.**

### **Recommended Actions**

1. Concur with Governor's allowance.

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***Operating Budget Analysis***

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**Program Description**

Title 15, Subtitle 2 of the State Finance and Procurement Article established the Maryland State Board of Contract Appeals (MSBCA) and vested it with the authority to hear and resolve all protests and disputes relating to the letting of contracts and the performance, breach, modification, and termination of State contracts. The board hears bid protests, which involve the preparation and interpretation of bid specifications, qualification and selection of successful bidders, and contract claims, which relate to the contractual relationship between the State and a contractor including quality of performance, compliance with contract provisions, compensation, claims and change orders, and terminations.

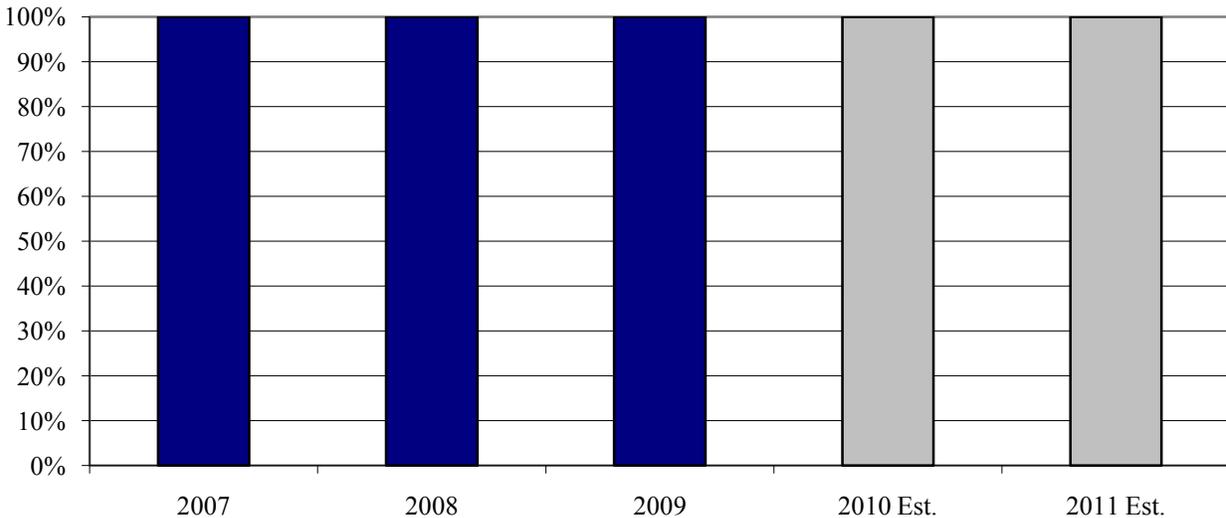
Statutory qualifications to serve on the three member panel are the ability to serve in a quasi-judicial capacity and possession of a thorough knowledge of procurement practices and processes. MSBCA's mission addresses the need to:

- resolve bid protests and contract claims before the board in the least time possible consistent with established legal requirements; and
- enhance the value and credibility of board opinions, by providing in a timely manner, written opinions in sufficient detail and with appropriate research and documentation to serve as guides to future actions by procurement authorities, the legal community, and contractors doing or wishing to do business with the State.

**Performance Analysis: Managing for Results**

Overall, MSBCA's Managing for Results performance measures indicate continued success. **Exhibit 1** shows that in fiscal 2007 the percent of bid protests decisions issued within three months has been held consistently at 100%. MSBCA attributes this success to its case management protocols that are designed to resolve cases in a more timely fashion.

**Exhibit 1**  
**Bid Protests**  
**Percent of Timely Decisions Issued**  
**Fiscal 2007-2011**



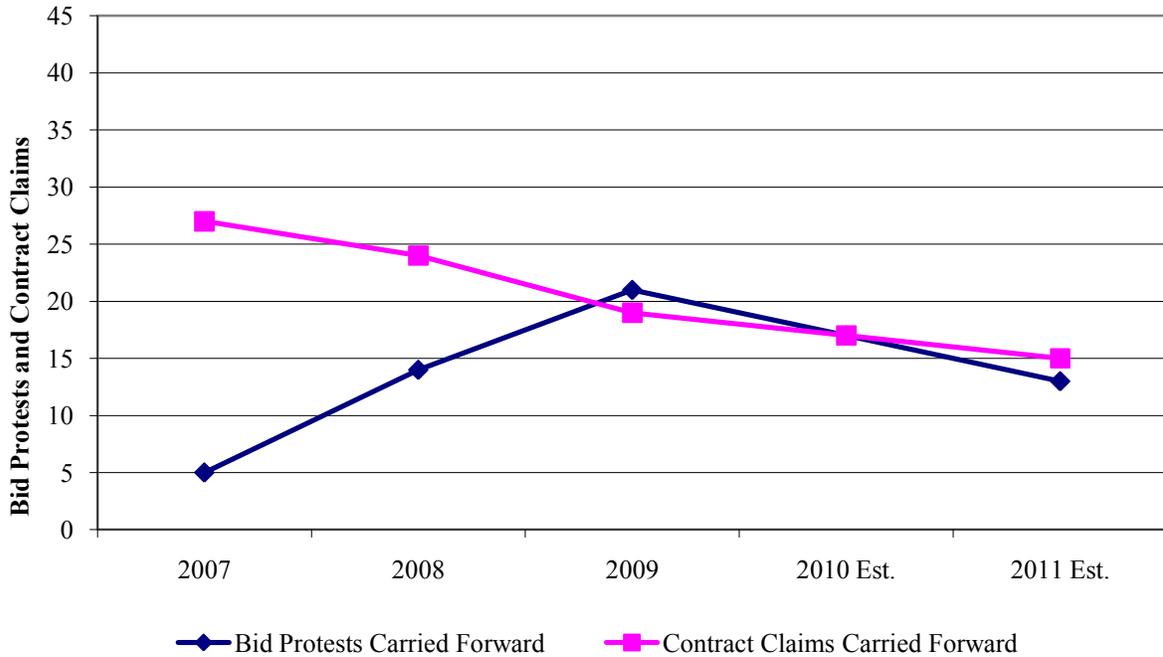
Note: Maryland State Board of Contract Appeals' goal is to issue bid protest decision within three months.

Source: Maryland State Board of Contract Appeals

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As illustrated in **Exhibit 2**, the number of new contract claims carried forward declined significantly from fiscal 2007-2009. The number of new bid protests carried forward, however, nearly tripled in fiscal 2008 and increased again in 2009. MSBCA attributes this to several factors including ongoing settlement discussions, appellants who file protests that they do not aggressively pursue, multiple protests for one contract, and the fact that most protests are filed in May or June and, thus, are likely to be carried over to the new fiscal year on July 1.

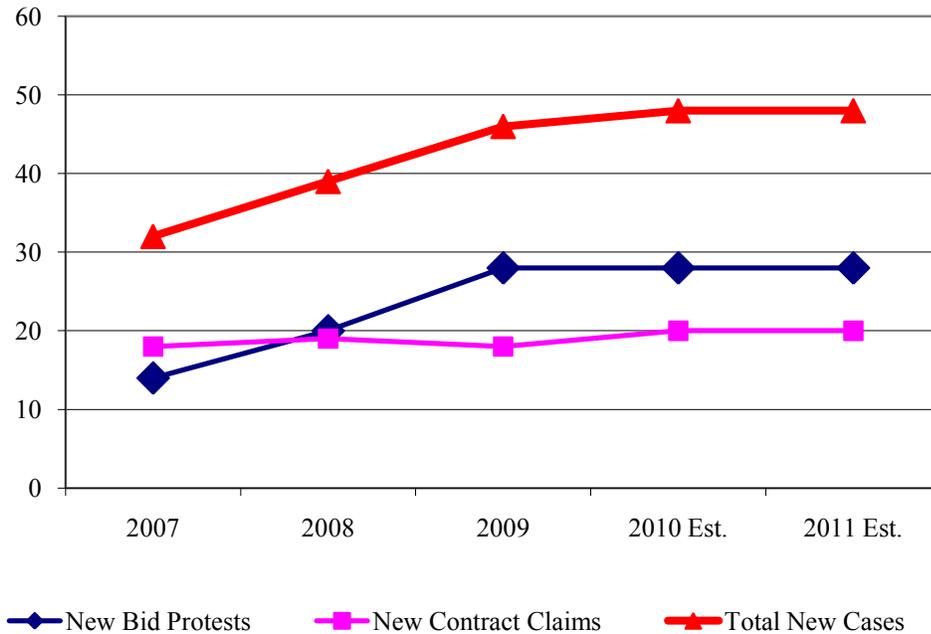
**Exhibit 2**  
**Bid Protest and Contract Claims Carried Forward**  
**Fiscal 2007-2011**



Source: Maryland State Board of Contract Appeals

The number of bid protests carried forward is likely attributable to the agency’s caseload. As illustrated in **Exhibit 3**, the number of new contract claims filed with MSBCA remained almost level, while the number of new bid protests increased from fiscal 2007-2009, resulting in an overall caseload increase.

**Exhibit 3**  
**Maryland State Board of Contract Appeals Caseload**  
**Fiscal 2007-2011**



Source: Maryland State Board of Contract Appeals

## Fiscal 2010 Actions

### Impact of Cost Containment

In July, August, and November of 2009, the Governor proposed and the Board of Public Works (BPW) adopted reductions to the fiscal 2010 appropriation. Cost containment actions specific to the MSBCA included \$17,771 in general funds for the statewide furlough.

### Proposed Budget

As shown in **Exhibit 4**, the fiscal 2011 allowance increases by \$1,000, or 0.2%, above the fiscal 2010 working appropriation. The largest contributor is a \$7,000 increase for the employee retirement system, followed by a \$6,000 increase for health insurance. These increases are offset by

**Exhibit 4**  
**Proposed Budget**  
**Maryland State Board of Contract Appeals**  
**(\$ in Thousands)**

<b>How Much It Grows:</b>	<b>General Fund</b>	<b>Total</b>
2010 Working Appropriation	\$591	\$591
2011 Allowance	<u>612</u>	<u>612</u>
Amount Change	\$21	\$21
Percent Change	3.6%	3.6%
 Contingent Reductions	 -\$20	 -\$20
Adjusted Change	\$1	\$1
Adjusted Percent Change	0.2%	0.2%
 <b>Where It Goes:</b>		
<b>Personnel Expenses</b>		
Employee retirement system.....		\$7
Employee and retiree health insurance .....		6
Salary actions net of 2011 furlough .....		-2
Other fringe benefit adjustments.....		2
<b>Other Changes</b>		
Recording and transcription of hearings .....		-4
Web-hosting fees for MSBCA web site.....		-4
Office Supplies.....		-2
Telecommunications.....		-1
Other .....		-1
<b>Total</b>		<b>\$1</b>

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

various reductions to operating expenses totaling \$12,000. Operating reductions include \$4,000 for printing, recording and transcribing of hearings, and \$4,000 for web-hosting fees for the MSBCA web site. Reductions and their impact are discussed further in Issue 1.

## **Impact of Cost Containment**

The fiscal 2011 budget reflects several across-the-board actions to be allocated by the administration. This includes a combination of employee furloughs and government shut-down days similar to the plan adopted in fiscal 2010; a reduction in overtime based on accident leave management; streamlining of State operations; hiring freeze and attrition savings; a change in the injured workers' settlement policy and administrative costs; and a savings in health insurance to reflect a balance in that account. For purposes of illustration, the Department of Legislative Services has estimated the distribution of selected actions relating to employee furloughs and health insurance.

## **Issues**

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### **1. Budget Reductions May Impact Services and Operations for 2011**

The fiscal 2011 allowance for MSBCA grows only \$1,000, or 0.2%, above the fiscal 2010 working appropriation. The Administration made nonpersonnel reductions to the operating budget in the fiscal 2011 allowance that are likely to have serious impacts on MSBCA's operations and obligations.

The fiscal 2011 allowance eliminates the MSBCA's entire budget for the recording and transcribing of hearings in accordance with Section 20.10.06.23 of the *Code of Maryland Regulations*. According to MSBCA, this may threaten the legality and fairness of its proceedings as hearings are part of the agency's core functions. The Governor's allowance also eliminates all funds for web-hosting fees that are paid to the Maryland State Archives (MSA), meaning the MSBCA may not have a web site accessible to the public unless it can make other arrangements with MSA. MSBCA may also not have access to the State's network and telecommunications systems. Finally, only \$233 remains in the budget for office supplies, even though fiscal 2009 actual expenditures totaled \$3,500. These actions result in a very lean budget for the MSBCA which may be unable to provide basic essentials such as office supplies for its staff of 5 employees.

**DLS recommends the MSBCA work with the Department of Budget and Management to allocate funds necessary to maintain the integrity of its hearings and records, as well as for basic operations such as office supplies. This could either be addressed through a supplemental budget or use of the BPW Contingent Fund.**

***Recommended Actions***

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1. Concur with Governor's allowance.

## ***Current and Prior Year Budgets***

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### **Current and Prior Year Budgets Maryland State Board of Contract Appeals (\$ in Thousands)**

	<b><u>General Fund</u></b>	<b><u>Special Fund</u></b>	<b><u>Federal Fund</u></b>	<b><u>Reimb. Fund</u></b>	<b><u>Total</u></b>
<b>Fiscal 2009</b>					
Legislative Appropriation	\$604	\$0	\$0	\$0	\$604
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	12	0	0	0	12
Cost Containment	-24	0	0	0	-24
Reversions and Cancellations	-3	0	0	0	-3
<b>Actual Expenditures</b>	<b>\$589</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$589</b>
<b>Fiscal 2010</b>					
Legislative Appropriation	\$608	\$0	\$0	\$0	\$608
Cost Containment	-18	0	0	0	-18
Budget Amendments	0	0	0	0	0
<b>Working Appropriation</b>	<b>\$590</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$590</b>

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

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**Fiscal 2009**

MSBCA completed fiscal 2009 \$15,000 below the legislative appropriation. Budget amendments provided \$9,857 for a cost-of-living adjustment and \$2,000 for health benefits disbursements. BPW enacted cost containment actions totaling \$23,815 throughout the year, and the agency reverted \$3,000 at the close of fiscal 2009.

**Fiscal 2010**

In fiscal 2010, the working appropriation for MSBCA is \$17,771 lower than the legislative appropriation. This is due to \$17,771 in cost containment measures implemented by BPW in August 2009, which reduced general funds for the statewide furlough.

**Object/Fund Difference Report  
Maryland State Board of Contract Appeals**

<u>Object/Fund</u>	<u>FY09 Actual</u>	<u>FY10 Working Appropriation</u>	<u>FY11 Allowance</u>	<u>FY10 - FY11 Amount Change</u>	<u>Percent Change</u>
<b>Positions</b>					
01 Regular	5.00	5.00	5.00	0	0%
<b>Total Positions</b>	<b>5.00</b>	<b>5.00</b>	<b>5.00</b>	<b>0</b>	<b>0%</b>
<b>Objects</b>					
01 Salaries and Wages	\$ 559,611	\$ 560,382	\$ 593,324	\$ 32,942	5.9%
02 Technical and Spec. Fees	250	4,000	0	-4,000	-100.0%
03 Communication	11,004	9,424	8,315	-1,109	-11.8%
04 Travel	68	100	65	-35	-35.0%
07 Motor Vehicles	4,650	4,680	4,320	-360	-7.7%
08 Contractual Services	8,648	8,694	4,006	-4,688	-53.9%
09 Supplies and Materials	3,500	2,000	233	-1,767	-88.4%
13 Fixed Charges	1,513	1,365	1,365	0	0%
<b>Total Objects</b>	<b>\$ 589,244</b>	<b>\$ 590,645</b>	<b>\$ 611,628</b>	<b>\$ 20,983</b>	<b>3.6%</b>
<b>Funds</b>					
01 General Fund	\$ 589,244	\$ 590,645	\$ 611,628	\$ 20,983	3.6%
<b>Total Funds</b>	<b>\$ 589,244</b>	<b>\$ 590,645</b>	<b>\$ 611,628</b>	<b>\$ 20,983</b>	<b>3.6%</b>

Note: The fiscal 2010 appropriation does not include deficiencies.