Public Service Commission

Operating Budget Data

($ in Thousands)

	FY 11 Actual	FY 12 Working	FY 13 Allowance	FY 12-13 Change	% Change Prior Year
Special Fund	$16,329	$18,351	$15,963	-$2,388	-13.0%
Adjusted Special Fund	**$16,329**	**$18,351**	**$15,963**	**-$2,388**	**-13.0%**
Federal Fund	567	821	580	-242	-29.4%
Adjusted Federal Fund	**$567**	**$821**	**$580**	**-$242**	**-29.4%**
Adjusted Grand Total	**$16,895**	**$19,172**	**$16,543**	**-$2,630**	**-13.7%**

- The fiscal 2013 allowance for the Public Service Commission (PSC) decreases by $2.6 million, or 13.7%, compared to the fiscal 2012 working appropriation. Special funds decrease by $2.4 million, or 13%, and federal funds decrease $241,793, or 29.4%, in the fiscal 2013 allowance.

- Decreases in the fiscal 2013 allowance primarily occur in consultant services and in the Engineering Investigations Division due to additional support available from the federal Office of Pipeline Safety available in fiscal 2012.

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

For further information contact: Tonya D. Zimmerman Phone: (410) 946-5530

Personnel Data

	FY 11 Actual	FY 12 Working	FY 13 Allowance	FY 12-13 Change
Regular Positions	140.00	138.00	139.00	1.00
Contractual FTEs	10.71	13.60	12.60	-1.00
Total Personnel	**150.71**	**151.60**	**151.60**	**0.00**

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	6.32	4.58%
Positions and Percentage Vacant as of 12/31/11	9.00	6.52%

- The fiscal 2013 allowance adds 1 regular position in the Engineering Investigations Division to support the processing of applications for Solar Renewable Energy Credits due to Chapters 407 and 408 of 2011. These chapters establish solar water heating systems as a Tier 1 renewable energy source eligible to meet the Tier 1 solar portion of the State's renewable portfolio standard.

- The fiscal 2013 allowance eliminates 1 contractual full-time equivalent (FTE). This FTE served as an administrative specialist in the Office of External Relations assisting with utility bill payment extensions, payment plans, and consumer complaints.

- The turnover expectancy increases slightly from 4.46 to 4.58% in the fiscal 2013 allowance.

- As of December 31, 2011, PSC had a vacancy rate of 6.52%, or 9 positions. To meet its turnover expectancy of 4.58%, excluding the 1 new position, PSC needs to maintain 6.32 vacant positions in fiscal 2013.

Analysis in Brief

Major Trends

Despite Improvements Administrative Performance Remains Lower Than Goals: Although PSC improved performance in the areas of work items completed within 30 days and the percent of consumer complaints resolved, both remain below the 80% goal. Percent of work items completed within 30 days was less than half of the goal in fiscal 2011, at 36%.

Staffing Difficulties Lead to Reduced Performance in the Engineering Investigations and Hearing Examiners Divisions: For the first time in recent years, the Engineering Investigations Division investigated fewer accidents (18) than the number of accidents reported (23). In addition, in the Hearing Examiners Division, the percent of decisions issued timely fell below the performance goals for both transportation and nontransportation matters in fiscal 2011. PSC attributes the reduction in performance in each case to a decrease in staff available to perform the function.

Issues

***Electric Universal Service Program Ratepayer Surcharge Collections Exceed Authorized Levels*:** In fiscal 2011, collections of the Electric Universal Service Program ratepayer surcharge exceeded the level required in statute, $37 million, by more than $2 million. Fiscal 2011 was the third consecutive year in which actual collections exceeded the level allowed in statute. PSC is responsible for determining the surcharge and monitoring collections; however, no action has been taken in response to the over-collection.

Examination of Power Purchasing Agreements: PSC is examining whether it should exercise its statutory authority to order utilities to enter into power purchasing agreements to enable the construction, acquisition, or operation of new electricity generation. Although PSC has not yet determined that new generation is required, in September 2011, the commission ordered the four investor-owned utilities to issue a request for proposals (RFP) for the output of new natural gas fired generation. In December 2011, PSC ordered the utilities to issue a revised RFP. Under the timeline contained in the revised RFP, PSC would select and approve any winning bidders in April 2012.

Recommended Actions

		Funds
1.	Increase turnover expectancy for 1 new position to 25%.	$ 12,129
	Total Reductions	**$ 12,129**

Updates

Service Quality and Reliability Standards: Following a series of storms in 2010, concerns arose regarding service quality in the Potomac Electric Power Company (Pepco) electric distribution territory. In December 2011, following more than a year-long review of Pepco's service quality and reliability, PSC levied a $1 million fine on Pepco and imposed other penalties. Chapters 167 and 168 of 2011 require PSC to adopt regulations implementing service quality and reliability standards for the delivery of electricity to retail customers. PSC is in the process of promulgating regulations regarding these standards.

Review of the Merger of Exelon Corporation and Constellation Energy Group: In May 2011, Exelon Corporation (Exelon), Constellation Energy Group, Inc. (CEG), and Baltimore Gas and Electric Company (BGE) submitted a joint application requesting authorization for Exelon to acquire the power to exercise substantial influence over the policies and actions of BGE, which results from a merger between Exelon and CEG. Although PSC would otherwise have been statutorily required to make a determination on its review of the transaction by January 5, 2012, the applicants agreed that PSC could delay its determination until February 17, 2012. As of this writing, the review has not been completed.

Operating Budget Analysis

Program Description

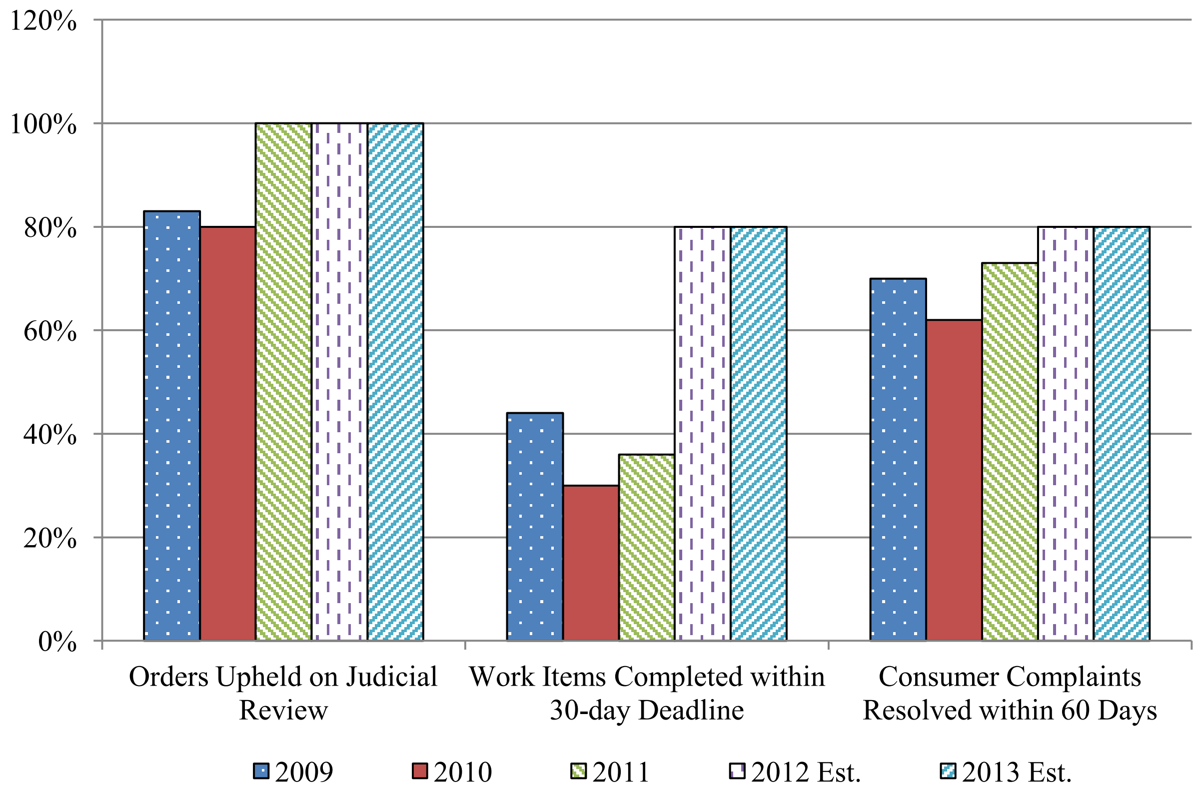
The Public Service Commission (PSC) regulates natural gas, electric, telephone, water, sewage disposal, and certain passenger transportation companies doing business in Maryland. PSC is authorized to hear and decide matters relating to (1) rate adjustments; (2) applications to exercise franchises; (3) approval of the issuance of securities; (4) promulgation of new rules and regulations; (5) quality of utility and common carrier service; and (6) issuance of Certificates of Public Convenience and Necessity. PSC sets utility rates, collects and maintains records and reports of public service companies, reviews plans for service, inspects equipment, audits financial records, handles consumer complaints, promulgates and enforces rules and regulations, defends its decisions on appeal to State courts, and intervenes in relevant cases before federal regulatory commissions and federal courts. PSC is primarily funded by special funds obtained through assessments on public service companies. PSC's key goals are:

- to ensure that gas and electric utility companies operate utility systems safely;
- to ensure that public service companies deliver reliable services;
- to conduct open and fair proceedings and render timely decisions in accordance with statutory mandates and applicable law;
- to ensure that all Maryland consumers have adequate consumer protection; and
- to ensure that EmPower Maryland programs submitted by electric utilities are thoroughly reviewed, evaluated, and approved consistent with Section 7-211 of the Public Utilities Article.

Performance Analysis: Managing for Results

As shown in **Exhibit 1**, performance in the areas of the percent of consumer complaints resolved within 60 days and percent of work items completed within the 30-day deadline improved in fiscal 2011 compared to fiscal 2010; however, both remain below the goal of 80%. The Office of External Relations, which handles consumer complaints, increased the percent of complaints resolved in 60 days to 73% in fiscal 2011 through the use of additional staff and efforts to maintain communication with utility companies.

Exhibit 1
Administration
Fiscal 2009-2013



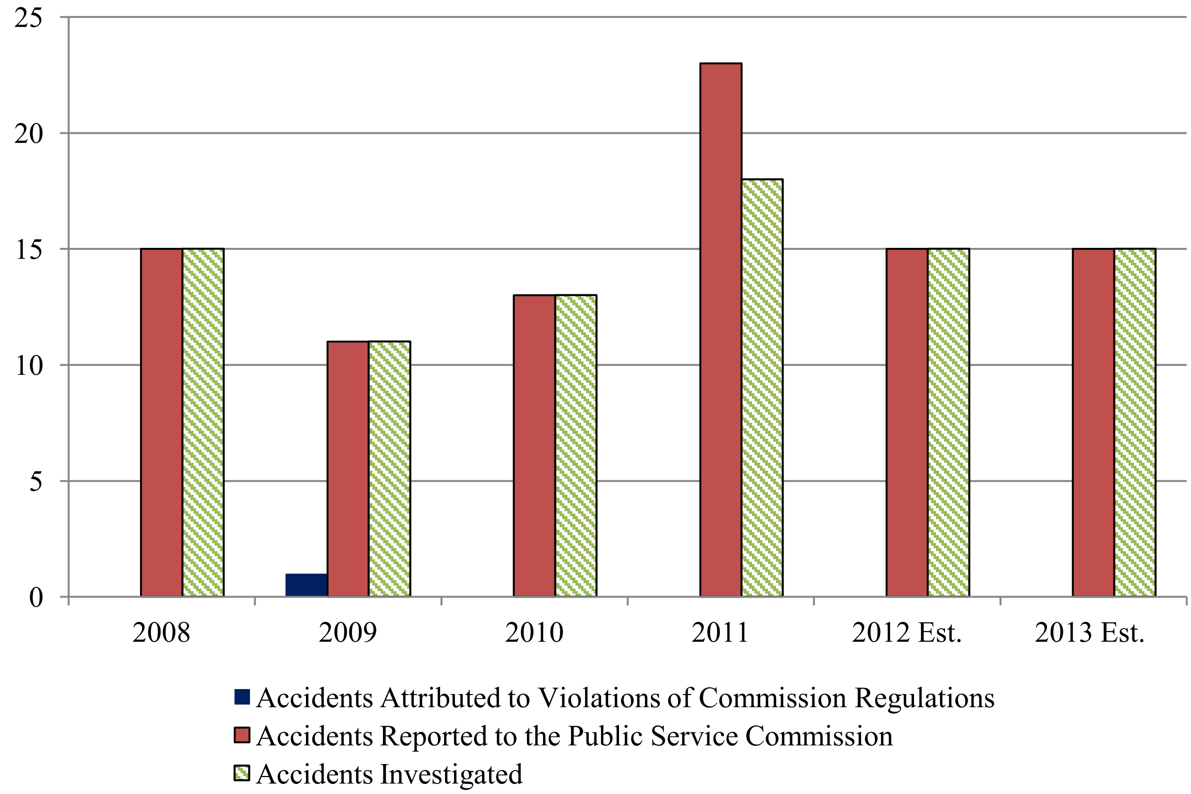
Note: The percent of orders upheld on judicial review for fiscal 2010 has been revised to accurately reflect experience.

Source: Public Service Commission; Governor's Budget Books

The percent of work items completed within 30 days, despite a modest improvement in fiscal 2011, was less than half of the goal of 80% for the second year in a row. PSC indicates that new processes and requirements of the commission for investigating filings have led to longer investigations and additional correspondence that delays the completion of the work. PSC continues to update resources to assist filers in providing complete and accurate filings and anticipates that this will lead to improved performance. **PSC should comment on how the delays impact the work of the commission.**

In recent years, the Engineering Investigations Division was able to complete investigations on all accidents reported to PSC; however, in fiscal 2011, the division investigated only 18 of the 23 accident reports, as shown in **Exhibit 2**. Only a portion of the time of 1 position has been dedicated to this task.

Exhibit 2
Engineering Investigations Division
Fiscal 2008-2013

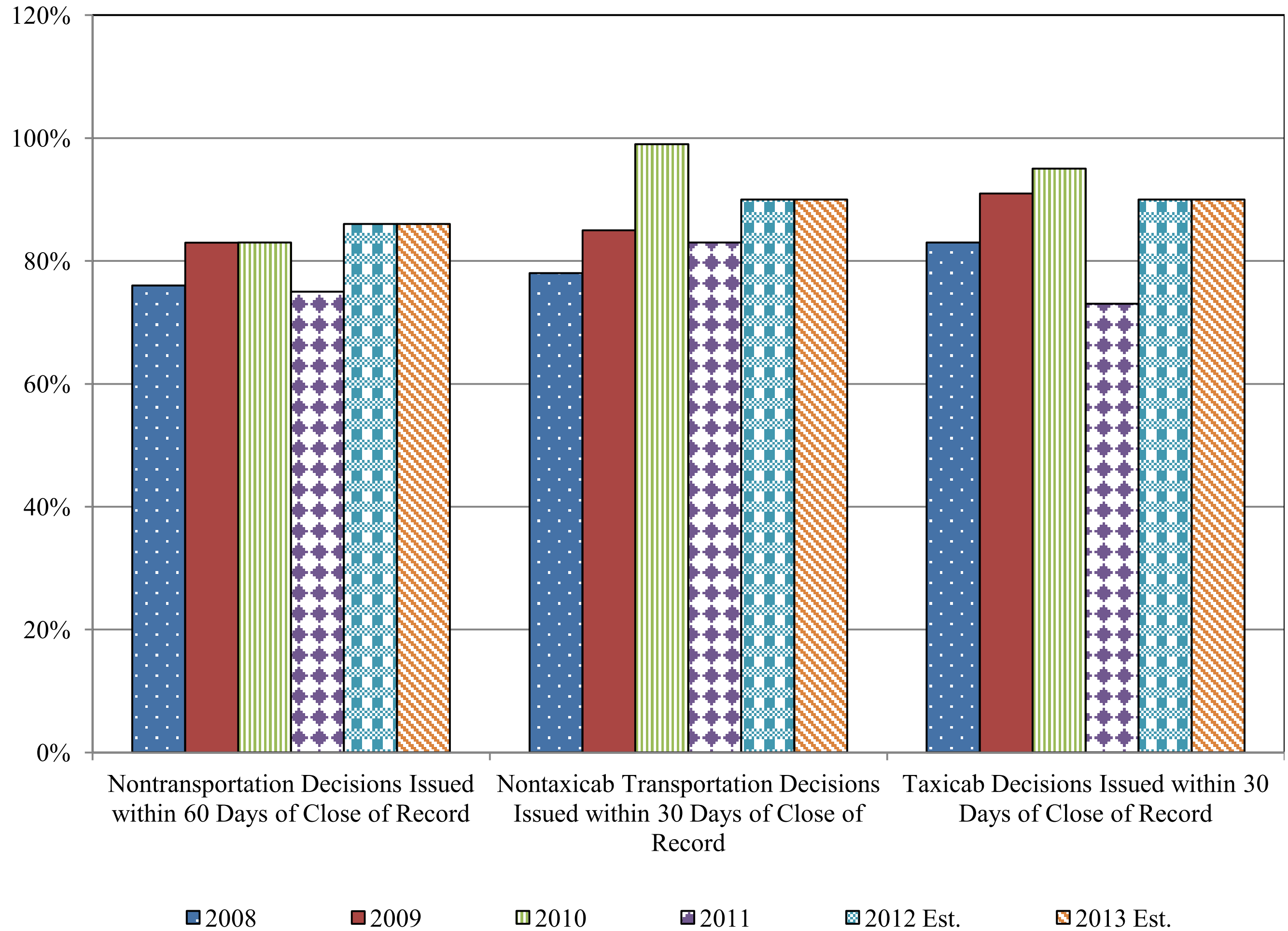


Source: Public Service Commission; Governor's Budget Books

A change in the assignment for the individual in that position led to a reduction in the staff time dedicated to completing investigations. PSC is in the process of hiring an individual for the vacant position and anticipates that performance in this area will improve in fiscal 2012.

The Hearing Examiner Division has a goal of issuing 80% of decisions in nontransportation matters within 60 days of the close of record and 90% of decisions in transportation matters within 30 days of the close of record. As shown in **Exhibit 3**, after exceeding the goals in fiscal 2010, decision timeliness fell below these goals in fiscal 2011. The reduction was most pronounced in transportation decisions; in fiscal 2011, the percent of nontaxicab decisions rendered timely was 83% compared to 99% in fiscal 2010, and taxicab decisions was 73% in fiscal 2011 compared to 95% in 2010. PSC explained that the decline in performance was primarily the result of two factors. First, a reduction in the number of hearing examiners increased the workload for each hearing examiner,

Exhibit 3
Hearing Examiner Division
Fiscal 2008-2013



Note: Hearing examiners are also referred to as Public Utility Law Judges.

Source: Public Service Commission; Governor's Budget Books

which was coupled with an increased workload for the administrative assistants that prepare the final orders. Second, reduced timeliness in the issuance of orders was the result of the complexity of the issues under review. Performance in this area is expected to improve in fiscal 2012 as a result of changes in staffing within the division.

Proposed Budget

As shown in **Exhibit 4**, the fiscal 2013 allowance decreases by $2.6 million compared to the fiscal 2012 working appropriation. The decrease is largely the result of a special fund decrease of $2.4 million, or 13%, in the fiscal 2013 allowance; however, federal funds also decrease by $241,793.

The majority of the federal fund decrease relates to the pipeline safety program. A portion of this decrease is the result of additional funding in fiscal 2012 for the Engineering Investigations Division available from the federal Office of Pipeline Safety. These additional funds were intended to support increases in staff, training, inspections, program enhancements, and public awareness programs including:

- contractual services to conduct underground utility locator training and outreach materials;
- the purchase of two motor vehicles;
- travel to training and inspections; and
- equipment for various activities including investigations and supplies for engineers including personal protective gear.

These funds, totaling $121,700, are not available in fiscal 2013. The remaining decrease in the pipeline safety program ($65,855) is the result of an anticipated change in the reimbursement rate for direct expenses of the program from 50 to 40%, which ultimately impacts the reimbursement of indirect costs because these costs are reimbursed as a percent of the direct expense reimbursement.

The remaining federal fund decrease ($54,238) is due to a lower level of grant funding available from the American Recovery and Reinvestment Act of 2009 (ARRA) in fiscal 2013, largely in the areas of contractual employee payroll, travel, and equipment. The ARRA funds will be available to PSC until September 30, 2013.

Exhibit 4
Proposed Budget
Public Service Commission
($ in Thousands)

How Much It Grows:	Special Fund	Federal Fund	Total
2012 Working Appropriation	$18,351	$821	$19,172
2013 Allowance	15,963	580	16,543
Amount Change	-$2,388	-$242	-$2,630
Percent Change	-13.0%	-29.4%	-13.7%
Contingent Reductions	$0	$0	$0
Adjusted Change	-$2,388	-$242	-$2,630
Adjusted Percent Change	-13.0%	-29.4%	-13.7%

Where It Goes:	
Personnel Expenses	
Employee and retiree health insurance	$112
Employee retirement	97
One new position in the Engineering Investigations Division to assist in the processing of Solar Renewable Energy Credit Applications	59
Regular earnings due to the annualization of savings from positions abolished through the Voluntary Separation Program and other salary adjustments	53
Workers' compensation premium assessment	47
Turnover adjustments, unemployment insurance, and Social Security contributions	-13
Removal of one-time employee bonus	-103
Cost Allocations	
Statewide personnel system allocation	65
Department of Information Technology services allocation	23
Retirement administrative fee	17
Elimination of State agency charge for eMaryland Marketplace	-1
Department of Budget and Management paid telecommunications	-14
Other Changes	
Gas and maintenance for motor vehicles to reflect recent experience	30
Rent paid to the Department of General Services	21
Legal services for costs of court reporters, online legal research services, and payments on behalf of staff attorneys to the Client Protection Trust Fund to reflect recent experience	20

Where It Goes:

Equipment repairs to reflect recent experience	16
Washington Metropolitan Area Transit Commission	-4
Data processing materials to reflect recent experience	-14
Eliminate 1 contractual FTE in the Office of External Relations	-22
Wage adjustments and increase in turnover expectancy for contractual positions associated with the American Recovery and Reinvestment Act of 2009	-48
Federal funds from the federal Office of Pipeline Safety	-122
Consultant services to support the review of the transaction between Exelon Corporation and Constellation Energy Group, to assist in a proceeding before FERC, and other consultant services	-2,810
Other changes	-41
Total	**-$2,630**

FERC: Federal Energy Regulatory Commission
FTE: full-time equivalent

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

Personnel

The fiscal 2013 allowance includes 1 new position and related salary and fringe benefits ($58,884) in the Engineering Investigations Division. This position will assist in the processing of applications for Solar Renewable Energy Credits (SREC) related to solar water heating systems. Chapters 407 and 408 of 2011 added solar water heating systems as an eligible Tier 1 resource under the State's Renewable Portfolio Standard, which requires 20% of electricity to come from renewable sources by 2020 (of which 2% must be from solar sources). This legislation was effective January 1, 2012, and is expected to increase the number of applications for SRECs. The fiscal note for the bill indicated that a significant increase in SREC applications may not be absorbable within existing budgeted resources.

Excluding the new position, personnel expenditures increase by $194,460. The largest personnel increases occur in the areas of employee and retiree health insurance, an increase of $112,279, and employee retirement expenses, an increase of $97,385. Increases in salaries and fringe benefits are partially offset by the removal of the one-time employee bonus, a decrease of $103,297.

One contractual full-time equivalent was reduced in the fiscal 2013 allowance resulting in a decrease of $22,173. This position served as an administrative specialist in the Office of External Relations. The position assisted in utility bill payment extensions, payment plans, and consumer complaints. PSC indicates that the elimination of this position may lead led to increased wait times for customers seeking assistance.

Contractual employee payroll was also impacted by the application of a turnover expectancy to contractual positions associated with the ARRA and changes in the hourly wages for these positions. These changes resulted in a reduction of $48,137 in contractual employee salaries and fringe benefits in the fiscal 2013 allowance.

Consultant Services

Annually, PSC requires the services of consultants to assist in investigations or cases before it, which are often driven by activity outside of PSC, such as filings by utilities. In recent years, consultants have participated in cases such as the transaction between FirstEnergy Corp. and Allegheny Energy, Inc. and the transaction between Exelon Corporation (Exelon) and Constellation Energy Group (CEG). Consultants are also sometimes used by PSC in activities related to the Federal Energy Regulatory Committee (FERC). As a result of the unexpected nature of cases requiring consultant services, PSC's budget in the budget bill as introduced in the past typically has included little, if any, funding to support consultant services.

Spending has varied widely from as little as $55,493 in fiscal 2006 to $3.6 million in fiscal 2009; however, in only one year between fiscal 2008 and 2011 was spending on consultant services less than $2.5 million. The fiscal 2012 budget, as introduced, contained only $14,500 for consulting services for underground utility safety programs. Supplemental Budget No. 1 added $1.25 million for consultant services to support PSC activities in FERC. An additional $2.5 million for consultant services was added by budget amendment.

Over concern that failing to include consultant services needs in the budget limits transparency and prevents the General Assembly from having the opportunity to fully review PSC's planned expenditures, committee narrative in the 2011 *Joint Chairmen's Report* expressed the intent of the budget committees that PSC determine a method of estimating consultant services needs each year and work with the Department of Budget and Management to include funds for these services in the budget bill as introduced beginning with fiscal 2013. The fiscal 2013 allowance contains $954,047 for consultant services, of which $14,500 represents the ongoing funding for underground utility safety programs, a decrease of $2.8 million compared to the fiscal 2012 working appropriation.

PSC should explain its new process for estimating consultant services needs as part of the budget process.

The Maryland Offshore Wind Energy Act of 2012 (SB 237/HB 441) would require PSC to contract with independent consultants to evaluate proposed offshore wind projects. Uncodified language in the bill would allow for a cumulative $3.0 million to be assessed by PSC for the purpose of hiring consultants as required in the bill. The funds could be available at any time between fiscal 2013 and 2016. No funds are included in the fiscal 2013 allowance for this purpose. **PSC should comment on how it would evaluate when those funds would be required.**

Issues

1. Electric Universal Service Program Ratepayer Surcharge Collections Exceed Authorized Levels

Section 7-512.1(e) of the Public Utilities Article states that the total amount of funds to be collected for the Electric Universal Service Program (EUSP) each year shall be $37.0 million and allocates these funds ($27.4 million from commercial and industrial classes and $9.6 million from residential classes). PSC is responsible for determining the collections and is, therefore, also responsible for monitoring the collections to ensure that the proper amount is being collected and that the amount being collected does not exceed the amount allowed under the law.

The surcharge is currently set for residential ratepayers at $0.37 per month and varies among the classes of commercial and industrial customers based on historic usage. In annual reports published by PSC, for most years following program implementation through fiscal 2008, PSC reported on the impact of customer charge on ratepayers. The discussion noted that the agency monitors collections to ensure that the amount collected, "…is in keeping with statutory guidelines."

In 2001, PSC initiated a review of the collections specifically in response to over-collections. As part of that review, in 2002, the residential ratepayer surcharge was reduced from $0.40 to $0.37, where it has remained for the last 10 years. Commercial and industrial surcharges were also altered at that time. History suggests that PSC has at times made adjustments to the surcharge, including those required after the total required level of collections was increased in Chapter 5 of the 2006 special session to the current level.

Despite the monitoring of collections in recent years, the amount collected from the EUSP ratepayer surcharge has exceeded the authorized level of collections by:

- $1.16 million in fiscal 2009;
- $1.81 million in fiscal 2010; and
- $2.04 million in fiscal 2011.

The majority of the over-collections have occurred among the commercial and industrial classes. PSC attributes these over-collections to the structure of the charge for these classes. By statute, the charges cannot be based on kilowatt hour usage. **PSC should explain why it has not taken steps to re-evaluate the surcharge to ensure that the level of collections represents only the level allowed under statute.**

2. Examination of Power Purchasing Agreements

In July 2009, CPV Maryland, LLC (CPV) filed a motion requesting that PSC order one or more investor-owned utilities to enter into a 20-year power purchase agreement with CPV for the output of a planned new combined cycle natural gas-fired facility. In the filing, CPV claimed that under current conditions, financing for new generation cannot occur without a long-term agreement.

As a result, PSC has undertaken an examination of whether it should exercise its statutory authority, provided in Section 7-510 of the Public Utilities Article, to issue an order requiring investor-owned utilities to procure Standard Offer Service through bilateral contracts and to require investor-owned utilities to build, acquire, lease, or operate new generation. In the initial announcement of the examination, PSC requested that those interested in proposing a new generation facility for Maryland submit a proposal by December 1, 2009. However, PSC later lifted that deadline as it attempted to better define the scope for these proposals.

In December 2010, PSC released a draft request for proposals (RFP) for public comment, and in September 2011, PSC ordered the utilities to release an RFP. The RFP was for a 20-year agreement and limited to natural gas fired generation in the Southwestern Mid-Atlantic Area Council (known as SWMAAC) region of PJM Interconnections, LLC (PJM) territory (including the Baltimore Gas & Electric (BGE) and Potomac Electric Power Company (Pepco) service territories). The RFP was later revised to, among other actions, extend the deadline for submission of proposals until January 20, 2012. Under the timeline identified in the revised RFP, PSC was expected to complete the evaluation and select and approve any proposals on April 6, 2012.

PSC has also given indication, through the hiring of a consultant to develop the RFP, that PSC may release a second RFP focused on a power purchase agreement for renewable energy generation.

Although PSC required the release of this RFP by the investor-owned utilities, PSC has not made a final determination of the necessity of new generation. A hearing was held on this issue on January 31, 2012.

Concerns Regarding New Generation Requirements

Several parties have expressed concern regarding the RFP. Concerns of some parties focused on the issuance of the RFP before PSC had made a final determination that new capacity was needed and questioned, in fact, whether such a need exists. Concern was also expressed regarding the limitations placed on the RFP. Governor Martin J. O'Malley was one party that expressed concern over these limitations. Specifically, he sought the opportunity for renewable energy to be included in the RFP, an expansion of the territory in which the new generation could be placed, and the opportunity for utility-owned generation.

Another example of the concerns regarding the limitations of the RFP was provided in two October 2011 filings by Pepco Holdings, Inc. (PHI). PHI explained that a utility-built option would be better than a power purchase agreement. PHI cited examples of two previous long-term agreements in Maryland that resulted from federal legislation and left ratepayers paying higher than market prices for electricity. PHI also noted that PSC should discuss other alternatives as well, such as new transmission, demand side management, and fuel sources.

In January 2012, the independent market monitor of PJM reiterated concerns expressed in response to the draft RFP, stating that, "[t]he proposed RFP approach is not consistent with the operation of a competitive capacity market." In particular, the monitor focused on the limitation of the RFP for new natural gas fired generation, as opposed to existing generation or other types of generation, and the requirement to offer the capacity at a level that would clear capacity auctions. The monitor believes that the pricing requirement would artificially lower auction prices and reduces incentives for generators to build new generation without subsidies.

Other Efforts to Increase In-State Generation

This ongoing examination is, however, not the only effort to increase in-State generation. As discussed in the Updates section of this analysis, the proposed settlement between Exelon, CEG, and other parties regarding the merger of Exelon and CEG, would increase generation capacity on several fronts. The terms of the settlement require Exelon to develop or assist in the development of 285 to 300 megawatts (MW) of new generation within 10 years of the merger including:

- 125 MW of Tier 1 renewable resources, of which up to 75 MW may be part of an RFP issued by PSC, electric distribution companies or cooperatives, or the government at the federal, state, or local level,
    - 62.5 MW of the 125 MW must be from wind energy;
- 120 MW of primarily gas fired combustion turbines within a specific area;
- 25 MW of animal waste to energy or pay a set MW per hour of output under a previously released RFP by the Department of General Services; and
- 30 MW of solar generation in Baltimore City and other particular areas in Maryland.

Each of these have set timelines for the generation to be in service (typically in either 2016 or 2022) and associated penalties if the development timelines are not met. PSC has not, as of this writing, made a determination on the merger or the proposed settlement.

In addition, Governor Martin J. O'Malley has proposed (SB 237/HB 441) a carve out in the State's renewable portfolio standard for offshore wind energy beginning in calendar 2017, of an amount to be determined by PSC based on proposed projects but not to exceed 2.5% of the electricity supply in the State.

PSC should discuss options for resolving these overlapping options for creating new generation and the concerns expressed by various parties related to the RFP.

Recommended Actions

		Amount Reduction	
1.	Increase turnover expectancy for 1 new position in the Engineering Investigations Division to 25.0%. Due to timing required in the hiring of a new employee, turnover expectancy for new positions is typically budgeted at 25.0%. The fiscal 2013 allowance for the Public Service Commission assumes only a 4.59% turnover expectancy, virtually the same level as the agency's existing positions.	$ 12,129	SF
	Total Special Fund Reductions	**$ 12,129**	

Updates

1. Service Quality and Reliability Standards

Weather events in 2010 and 2011 have led to an increased focus on service quality and reliability issues among Maryland utilities at PSC and in the General Assembly. In summer 2010, a series of three severe storms in the Pepco service territory led to substantial numbers of customers experiencing power outages and, in some cases, lengthy power restoration. In addition to large numbers of customers being impacted by the three storms, during a storm in July 2010, Pepco experienced problems with the estimated time of restoration. During that event, in which peak outages in Maryland were 290,872, Pepco noted that when outages were initially reported, some customers received an estimated time of restoration in the middle of September.

In 2011, a tropical system, Hurricane Irene, led to significant outages in several utility service territories including[1]:

- BGE (peak outages 476,664);
- Pepco (peak Maryland outages 194,516);
- Southern Maryland Electric Cooperative (SMECO) (peak outages 104,328); and
- Delmarva Power and Light (DPL) (peak Maryland outages 63,597).

In addition to the significant number of outages, BGE experienced a lengthy restoration period (outages beginning on August 27 with restoration largely complete by September 4, 2011), approximately two days longer than any of the other Maryland utilities.

PSC Review of Utility Reliability

In August 2010, PSC initiated Case No. 9240 related to Pepco's service reliability issues. The case was expected to focus on (1) the number of customers affected by the power outages; (2) the root causes for the scope, frequency, and duration of outages; (3) communication failures; and (4) inability to communicate estimated times of restoration. PSC held two public hearings in this case. As part of the investigation, PSC directed Pepco to release an RFP for a consultant to evaluate the company's distribution service reliability and its performance relative to other electric utility companies.

The consultant report was released on March 2, 2011. The consultant concluded that Pepco's subtransmission and distribution system infrastructure is well designed and is consistent with

[1] Total customer interruptions may exceed peak outages; for example, BGE reported cumulative interruptions of 756,395.

reliability standards. However, the consultant found that the subtransmission and distributions systems are vulnerable to tree damage and that trees are a key cause of potentially preventable outages. The consultant noted that the reliability difficulties in Pepco's service territory occurred as a result of residual effects from a previous tropical system, Isabel, and Pepco's insufficient preventative maintenance (such as vegetation management). The consultant also found that while Pepco's restoration efforts were "reasonably good," except damage assessments, its communication problems and difficulties in developing and communicating estimated times of restoration led to a perception of poor restoration. Damage assessment issues impact the ability to develop estimated times of restoration. The report included several recommendations, for example, that Pepco:

- fully implement its new vegetation management program for two cycles (eight years) and treat it as nondiscretionary spending;

- implement a damage prediction model and resource planning process; and

- improve the process for the development of estimated times of restoration and related customer communications.

On December 21, 2011, PSC issued an order in this case that concluded, "… that Pepco indeed failed to provide an acceptable level of service during 2010 and for at least the preceding few years. Pepco's failure to maintain its system properly over a period of years subjected its customers to excessively high frequencies and long durations of electric outages, during storm events and on fair weather days, and Pepco compounded those reliability problems through poor customer communications." (p. 1) In the order, PSC imposed a civil penalty for Pepco totaling $1.0 million for recurring daily violations determined to have occurred as a result of inadequate vegetation management. PSC also warned that further fines could be levied in the event that service reliability is not improved. PSC further announced that in the next distribution rate case it will disallow any reliability spending resulting from previous imprudent management, which will apply to a distribution rate case filed on December 16, 2011. The order also imposes several reporting requirements including a detailed work plan for the Reliability Enhancement Plan and annual and quarterly reporting.

PSC initiated Case No. 9279 to review utility performance during Hurricane Irene and ordered each of the affected utilities to submit a major storm report as required in the *Code of Maryland Regulations*. PSC also held public hearings regarding BGE's performance during Hurricane Irene. On October 31, 2011, PSC ordered the utilities to (1) submit implementation plans for the "lessons learned" contained in each utility's major storm report; (2) form a work group to develop standards to provide customers reasonable and reliable estimated times of restoration to be led by PSC staff; and (3) file with PSC the protocols used in determining restoration priorities. Although significant concern was raised regarding BGE's performance during the storm, PSC decided against further investigation into the company's performance. Required information has been submitted by the utilities, and a process to review other utilities' methods of estimating restoration times is underway.

Reliability and Service Quality Standards

Chapters 167 and 168 of 2011 require PSC to adopt regulations to implement service quality and reliability standards on or before July 1, 2012, using particular performance measures. PSC is required to develop regulations related to service interruption, downed wire response, customer communications, vegetation management, periodic equipment inspections, annual reliability reporting, and any other standards determined by PSC. The new legislation enables PSC to develop separate reliability standards for each electric company. PSC is required to ensure that the standards are cost-effective and, in the development of vegetation management standards, consider limitations on the electric company's right to access private property and customer acceptance.

Under the new law, PSC is to determine on or before July 1, 2013, and annually thereafter, whether each electric company has met the required standards. For companies failing to meet the standards, PSC is to take corrective action including a civil fine which is not recoverable from rate payers.

As required by legislation, PSC formed a workgroup to develop recommendations for the regulations. After the completion of the workgroup process and after conducting rule making proceedings, PSC adopted proposed regulations to be published in the *Maryland Register*, expected to be published in February or March 2012. These proposed regulations specify:

- utility-specific reliability standards using the system average interruption duration index and system average interruption frequency index for BGE, Choptank, DPL, Pepco, Potomac Edison, and SMECO for each calendar year from 2012 to 2015 and allow PSC to develop reliability standards for years beginning with 2016 at a later date;

- requirements for reporting, remedial action, and monitoring on the poorest performing 3% of feeders and protective devices that are activated more than five times in 12 months;

- service restoration standards that differ based on weather conditions;

- response times to a government emergency responder guarding a downed electric utility wire; and

- telephone response times and other customer service requirements.

The proposed regulations also include requirements for utility vegetation management plans, which would be required to address public education and outreach and public and customer notice of planned activities. Vegetation management would be allowed to be based on a four- or five-year trim cycle, but the regulations prescribe the percent of total distribution miles that must have had vegetation management performed at specific intervals to achieve 100% by the final year of the trim cycle. The regulations also set specific amounts of clearances that must be provided. The proposed regulations would require inspections of poles, overhead distribution lines, above- and below-ground transformers, and substations at specific intervals.

Proposed regulations also define the annual reporting requirements, establish a requirement to develop a major outage event plan, and require the performance of a customer perception survey no less than every four years.

2. Review of the Merger of Exelon Corporation and Constellation Energy Group

On April 28, 2011, Exelon and CEG announced a merger agreement. According to the press release, Exelon would acquire CEG stock for a total value of approximately $7.9 billion. Upon the merger closure, the Exelon shareholders are expected to own 78% of the company and CEG shareholders would own the remaining 22%. The merged company would operate under the name Exelon and continue to maintain headquarters in Chicago, Illinois. However, a portion of the combined company would be based in Baltimore. The press release announcing the merger also indicated Exelon and CEG's intention to divest three power generation facilities in Maryland due to potential market power concerns in the combined company.

The merger requires approval of the Department of Justice, FERC, and Nuclear Regulatory Commission, in addition to the Maryland PSC, New York PSC, and the Public Utility Commission (PUC) of Texas. The PUC of Texas and the New York PSC completed reviews of the merger with PUC of Texas approving the merger on August 3, 2011, and the New York PSC determining no further review was necessary on December 15, 2011. The Department of Justice approved the merger pending conditions already agreed to by the companies related to divesture of certain plants and other mitigation strategies; the remaining federal approvals are still pending.

Maryland Review

On May 25, 2011, the companies filed an application with PSC for authorization for Exelon to acquire the power to exercise substantial influence over the policies and actions of BGE, as required under Section 6-105 of the Public Utilities Article. Section 6-105 requires prior authorization from PSC before a person can acquire directly or indirectly the power to exercise substantial influence over the actions or policies of electric, electric and gas, or gas companies. The section provides specific items that PSC must review in the transactions, such as:

- the impact on rates and charges;
- the impact on the continuing investment needs for maintenance of utility services, plant, and related infrastructure;
- the potential effects on employment;
- issues of reliability, quality of service, and quality of customer service;

- potential impact on community investment;
- whether ring fencing and code of conduct regulations need revision; and
- any other issues PSC deems relevant.

To grant the application, PSC must find that the transaction is "consistent with public interest, convenience, and necessity including benefits and no harm to consumers…." In recent Section 6-105 reviews, PSC has examined each aspect separately requiring companies to show that the transaction meets each of these requirements.

The application of Exelon and CEG included several commitments expected to benefit consumers and limit harm, such as an Exelon-funded rate credit of $100 per residential customer, a contribution to the Electric Universal Service Program (EUSP) for arrearage retirement ($5 million), a $4 million offset of costs already incurred for BGE implementation of EmPower Maryland (which has the effect of reducing the EmPower Maryland surcharge for BGE customers), developing or assisting in the development of at least 25 megawatts (MW) of a Tier 1 renewable electric generation project in Maryland, no net reduction in the employment levels of BGE due to involuntary attrition due to the merger for 2 years, and an annual average contribution of $7 million for 10 years following the merger to charitable and civic organizations.

On December 15, 2011, a Joint Petition for Settlement was filed; the petitioners included the State of Maryland, Maryland Energy Administration, the applicants, the Mayor and City Council of Baltimore, the Baltimore Building and Construction Trades Council, and the American Federation of Labor and Congress of Industrial Organizations. Examples of new or altered commitments in the settlement were to:

- increase the customer benefits including the EmPower Maryland contribution (to $10 million of costs to be incurred), the contribution to EUSP (to $10 million), weatherization assistance ($50 million) with each benefit distributed over a four-year period;
- increase the commitment to develop new generation to between 285 and 300 MW with specific commitments related to wind generation, solar generation, animal waste to energy generation, and natural gas fired generation and create penalties for failure to meet commitments;
- contribute to an offshore wind development fund of $30 million and a commitment of $2 million for related research at public higher education institutions in Maryland; and
- retain the ability of PSC to order Exelon to divest interest in BGE under certain conditions including a nuclear accident or incident, a bankruptcy filing by Exelon or its subsidiaries, or a pattern of material violations of PSC orders, regulations, or of State law.

PSC Action

In order to provide PSC time to review the proposed settlement, the applicants stipulated that the application filed on May 25, 2011, will be considered filed on July 7, 2011. This stipulation allows PSC to meet the statutory deadline if it renders a decision by February 17, 2012. As of this writing, PSC has not issued an order in the case.

Appendix 1

Current and Prior Year Budgets

Current and Prior Year Budgets
Public Service Commission
($ in Thousands)

	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2011					
Legislative Appropriation	$0	$14,124	$656	$0	$14,780
Deficiency Appropriation	0	400	0	0	400
Budget Amendments	0	2,500	106	0	2,606
Reversions and Cancellations	0	-695	-196	0	-891
Actual Expenditures	**$0**	**$16,329**	**$567**	**$0**	**$16,895**
Fiscal 2012					
Legislative Appropriation	$0	$15,748	$700	$0	$16,447
Budget Amendments	0	2,603	122	0	2,725
Working Appropriation	**$0**	**$18,351**	**$821**	**$0**	**$19,172**

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

Fiscal 2011

Overall, in fiscal 2011, PSC's expenditures were approximately $2.1 million higher than the legislative appropriation.

Increases of $2.9 million in special funds through a deficiency appropriation and budget amendment supported consultant services to assist in the review of the acquisition of Allegheny Energy, Inc. by FirstEnergy Corporation and in litigation before FERC. PSC cancelled $695,086 of the special fund appropriation primarily due to higher than expected vacancies and lower than expected consultant services expenditures.

The fiscal 2011 federal fund expenditures of PSC were $89,657 lower than the legislative appropriation. An increase of $106,000 resulted from the availability of additional funds from the Pipeline Safety Grant for use in the Engineering Investigations Division to:

- update a training video and to hire a consultant to conduct underground utility locator training ($42,209);
- replace three vehicles ($33,791);
- purchase laptops and assorted engineering equipment ($15,000); and
- travel to conferences and training for pipeline safety engineers ($15,000).

This increase was more than offset by a cancellation of $195,657 that primarily consisted of funds available from the ARRA due to the hiring of fewer contractual positions than expected and lower than anticipated expenditures on travel.

Fiscal 2012

PSC's fiscal 2012 special fund appropriation has increased by approximately $2.6 million. An increase of $2.5 million is associated with consultant services to assist in the review of the proposed merger between Exelon and CEG. The remaining increase ($103,297) is the result of the availability of funding to support the $750 bonus provided to employees.

The fiscal 2012 federal fund appropriation of PSC has increased by $121,700 as a result of funds available from the federal Office of Pipeline Safety to support increases in staff, training, inspections, program enhancements, and public awareness campaigns. These funds will be used for equipment, travel to training and inspections, and supplies ($46,700); contractual services to conduct underground utility locator training and outreach materials ($40,000); and the purchase of two motor vehicles ($35,000).

Object/Fund Difference Report
Public Service Commission

Object/Fund	FY 11 Actual	FY 12 Working Appropriation	FY 13 Allowance	FY 12 - FY 13 Amount Change	Percent Change
Positions					
01 Regular	140.00	138.00	139.00	1.00	0.7%
02 Contractual	10.71	13.60	12.60	-1.00	-6.0%
Total Positions	**150.71**	**151.60**	**151.60**	**0.00**	**0%**
Objects					
01 Salaries and Wages	$ 11,763,759	$ 12,586,465	$ 12,839,809	$ 253,344	2.0%
02 Technical and Spec. Fees	476,122	592,336	522,026	-70,310	-11.9%
03 Communication	117,513	123,338	109,875	-13,463	-10.9%
04 Travel	40,358	143,969	136,208	-7,761	-5.4%
07 Motor Vehicles	224,523	146,828	142,170	-4,658	-3.2%
08 Contractual Services	2,784,925	4,033,211	1,288,718	-2,744,493	-68.0%
09 Supplies and Materials	88,272	89,994	64,494	-25,500	-28.3%
10 Equipment – Replacement	96,000	61,675	31,675	-30,000	-48.6%
11 Equipment – Additional	92,964	7,340	4,000	-3,340	-45.5%
12 Grants, Subsidies, and Contributions	301,293	454,718	451,141	-3,577	-0.8%
13 Fixed Charges	909,594	932,530	952,730	20,200	2.2%
Total Objects	**$ 16,895,323**	**$ 19,172,404**	**$ 16,542,846**	**-$ 2,629,558**	**-13.7%**
Funds					
03 Special Fund	$ 16,328,603	$ 18,351,072	$ 15,963,307	-$ 2,387,765	-13.0%
05 Federal Fund	566,720	821,332	579,539	-241,793	-29.4%
Total Funds	**$ 16,895,323**	**$ 19,172,404**	**$ 16,542,846**	**-$ 2,629,558**	**-13.7%**

Note: The fiscal 2012 appropriation does not include deficiencies.

Appendix 2

Fiscal Summary
Public Service Commission

Program/Unit	FY 11 Actual	FY 12 Wrk Approp	FY 13 Allowance	Change	FY 12 - FY 13 % Change
01 General Administration and Hearings	$ 10,372,232	$ 12,124,968	$ 9,633,170	-$ 2,491,798	-20.6%
02 Telecommunications Division	542,633	638,480	580,525	-57,955	-9.1%
03 Engineering Investigations	1,382,039	1,425,646	1,360,818	-64,828	-4.5%
04 Accounting Investigations	566,514	683,378	570,528	-112,850	-16.5%
05 Common Carrier Investigations	1,402,096	1,317,526	1,349,737	32,211	2.4%
06 Washington Metropolitan Area Transit Commission	219,865	373,290	369,713	-3,577	-1.0%
07 Rate Research and Economics	743,444	833,048	866,601	33,553	4.0%
08 Hearing Examiner Division	685,945	552,074	543,764	-8,310	-1.5%
09 Staff Attorney	755,859	853,708	861,509	7,801	0.9%
10 Integrated Resource Planning Division	224,696	370,286	406,481	36,195	9.8%
Total Expenditures	**$ 16,895,323**	**$ 19,172,404**	**$ 16,542,846**	**-$ 2,629,558**	**-13.7%**
Special Fund	$ 16,328,603	$ 18,351,072	$ 15,963,307	-$ 2,387,765	-13.0%
Federal Fund	566,720	821,332	579,539	-241,793	-29.4%
Total Appropriations	**$ 16,895,323**	**$ 19,172,404**	**$ 16,542,846**	**-$ 2,629,558**	**-13.7%**

Note: The fiscal 2012 appropriation does not include deficiencies.

Appendix 3