# P00C
# Business Regulation
### Department of Labor, Licensing, and Regulation

## *Operating Budget Data*

**($ in Thousands)**

| | FY 11 Actual | FY 12 Working | FY 13 Allowance | FY 12-13 Change | % Change Prior Year |
|---|---|---|---|---|---|
| General Fund | $8,410 | $8,505 | $8,902 | $397 | 4.7% |
| **Adjusted General Fund** | **$8,410** | **$8,505** | **$8,902** | **$397** | **4.7%** |
| | | | | | |
| Special Fund | 39,459 | 84,211 | 108,075 | 23,864 | 28.3% |
| Contingent & Back of Bill Reductions | 0 | 0 | -721 | -721 | |
| **Adjusted Special Fund** | **$39,459** | **$84,211** | **$107,355** | **$23,144** | **27.5%** |
| | | | | | |
| Federal Fund | 5,203 | 4,992 | 4,991 | -1 | |
| **Adjusted Federal Fund** | **$5,203** | **$4,992** | **$4,991** | **-$1** | **0.0%** |
| | | | | | |
| Reimbursable Fund | 1,428 | 1,477 | 1,395 | -82 | -5.5% |
| **Adjusted Reimbursable Fund** | **$1,428** | **$1,477** | **$1,395** | **-$82** | **-5.5%** |
| | | | | | |
| **Adjusted Grand Total** | **$54,500** | **$99,184** | **$122,643** | **$23,458** | **23.7%** |

- The fiscal 2013 allowance increases by approximately $23.5 million over the fiscal 2012 working appropriation. The vast majority of this increase relates to the increase in video lottery terminal (VLT) special funds for horse racing purse enhancements, racetrack facility redevelopment, and VLT local impact aid.

- General funds increase by about $397,000 in the fiscal 2013 allowance primarily due to personnel costs. Federal funds remain flat in the fiscal 2013 allowance, and reimbursable funds decrease by $82,000 due to personnel savings within the Division of Occupational and Professional Licensing.

- The fiscal 2013 budget bill includes a contingent reduction to the mandated horse racing impact aid due to insufficient revenues.

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

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## *Personnel Data*

| | FY 11 Actual | FY 12 Working | FY 13 Allowance | FY 12-13 Change |
|---|---|---|---|---|
| Regular Positions | 365.45 | 358.95 | 357.70 | -1.25 |
| Contractual FTEs | 31.09 | 34.02 | 40.81 | 6.79 |
| **Total Personnel** | **396.54** | **392.97** | **398.51** | **5.54** |

***Vacancy Data: Regular Positions***

| | | | |
|---|---|---|---|
| Turnover and Necessary Vacancies, Excluding New Positions | | 12.05 | 3.37% |
| Positions and Percentage Vacant as of 12/31/11 | | 35.35 | 9.85% |

- The fiscal 2013 allowance reflects the reduction of 1.25 regular full-time positions within the Division of Occupational and Professional Licensing.

- Contractual positions increase by 6.79 full-time equivalents in the fiscal 2013 allowance. These positions will be housed within the Division of Labor and Industry.

- Vacancies are significantly higher than what is needed to meet turnover. However, the majority of the vacancies are funded with special and federal funds.

# *Analysis in Brief*

## Major Trends

***Division of Labor and Industry Falls Short of Objectives:*** The Division of Labor and Industry strives to annually maintain the percentage of outcome objectives achieved by units in the division at or above 85%. In fiscal 2011, this performance measure dropped sharply primarily due to underperformance in the Employment Standards Unit and the Apprenticeship and Training Program.

***Maryland Better Than National Average in Manufacturing Injuries:*** Maryland's injury rate has been consistently lower than the national average for the manufacturing sector. The Maryland Occupational Safety and Health Administration contributes to that success with their workplace safety programs.

***Mediation Begins to Show Positive Results:*** The Division of Occupational and Professional Licensing has made an effort to significantly increase the number of complaints that are resolved using alternative dispute resolution in order to avoid a lengthy formal hearing process. The Managing for Results data shows that this increase has reversed the trend of increasing inefficiency within the division.

## Issues

***Operating Assistance for Maryland Horse Tracks:*** Chapter 412 of 2011 altered the distribution of VLT revenue to allow the horse racetrack owners to apply for and receive financial assistance for operational costs in return for a guaranteed full racing schedule in calendar 2012 and 2013. **The Department of Legislative Services (DLS) recommends that the department brief the budget committees on the status of the horse racing industry and the use of VLT revenues to subsidize operations of racetracks in 2012.**

***Conflicting Data from the Workplace Fraud Unit:*** The department created the Workplace Fraud Unit in response to Chapter 188 of 2009. Fiscal 2011 was the first year for which performance data is available, but the available data is inconsistent. Given the inconsistency in the unit's performance measures and in the data, it is difficult to assess the early work of the unit. **DLS recommends that the department comment on the progress of the newly created Workplace Fraud Unit, especially in light of the fact that no wages were collected in fiscal 2011. DLS also recommends that the department adopt standard performance measures to gauge the success of the unit.**

## Recommended Actions

| | | Funds |
|---|---|---|
| 1. | Reduce funds for horse racing purse enhancements. | $ 3,791,600 |
| 2. | Strike the special fund reduction to the Share of Racing Revenues to Local Subdivisions that is contingent on the Budget and Reconciliation Act of 2012. | |
| 3. | Reduce local impact aid based on projected revenues. | 900,800 |
| | **Total Reductions** | **$ 4,692,400** |

## Updates

***Report on Benefits for Racetrack Employees:*** The 2011 *Joint Chairmen's Report* included committee narrative that requested the Maryland Racing Commission to study the current levels of benefits provided to employees of the State's thoroughbred and standardbred racetracks. The Maryland Racing Commission submitted its report on December 12, 2011. The report includes a description and brief history of the related pension funds, and it further includes one recommendation from the commission.

# *Operating Budget Analysis*

## Program Description

The Department of Labor, Licensing, and Regulation (DLLR) includes many of the State's agencies and boards responsible for licensing and regulating various businesses, professions, and trades. The department also administers a variety of federally funded employment service programs. This analysis focuses on the department's business regulation divisions.

- **The Division of Labor and Industry** is responsible for safety inspections of boilers, elevators, amusement rides, and railroads. It also enforces certain protective labor laws and administers the Maryland Occupational Safety and Health Act. Its mission is to protect the health, safety, and employment rights of Maryland citizens.

- **The Division of Occupational and Professional Licensing** licenses, regulates, and monitors 24 different professions and trades through boards and commissions. All but seven boards are supported by the general fund. Its mission is to ensure that practitioners of occupations and professions regulated by the agency are qualified, competent, and compliant with State laws, regulations, and standards so that the provision of their commercial services is conducive to the health, safety, and welfare of Maryland consumers.

- **The Division of Racing** regulates thoroughbred and harness racing at tracks across the State. Responsibilities include assigning racing days, regulating wagering on races, collecting the wagering tax, licensing all racetrack employees, and operating a testing laboratory. The division also pays the salaries and stipends of all racetrack employees who are appointed by the State Racing Commission.

- **The Division of Financial Regulation** regulates commercial banks, trust companies, credit unions, mortgage lenders and originators, collection agencies, and consumer loan companies. Its mission is to protect financial services consumers, ensure appropriate licensing, and maintain safety and soundness in Maryland's financial services industry.

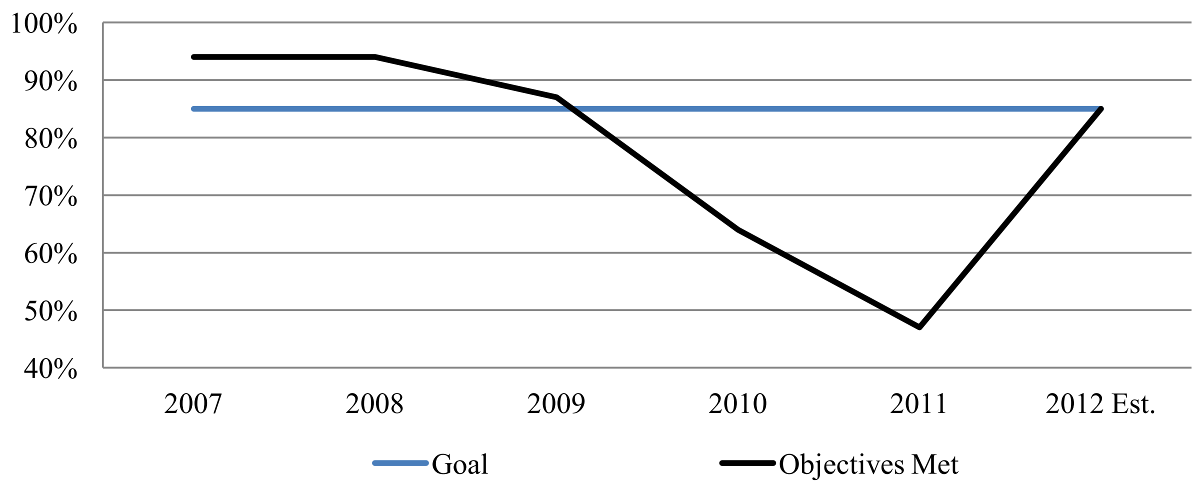
A separate analysis discusses the department's Division of Workforce Development and Adult Learning; Division of Unemployment Insurance; and administrative units.

## Performance Analysis: Managing for Results

### Division of Labor and Industry Falls Short of Objectives

The Division of Labor and Industry strives to annually maintain the percentage of outcome objectives achieved by units in the division at or above 85%. This includes outcomes related to wage claims under the wage and hour law, elevator inspections, the number of register apprentices, and the number of manufacturing hazards abated, among several others. **Exhibit 1** shows that the division has fallen far short of its goal in fiscal 2011 with a significant decline in the percentage of goals met.

**Exhibit 1**
**MRF Goal Attainment**
**Division of Labor and Industry**
**Fiscal 2007-2012**




MFR: Managing for Results

Source: Governor's Budget Books, Fiscal 2009-2013

The units mainly responsible for the sharp decline are the Employment Standards Unit and the Apprenticeship and Training Program. The Employment Standards Unit aims to measure how well it enforces the Maryland Wage Payment and Collection law and the Wage and Hour law. For example, it seeks to reach disposition on 75% of wage claims within 90 days. However, in fiscal 2011, the unit only closed 55% of cases within 90 days. The Apprenticeship and Training Program seeks to encourage the highest standards for registered apprenticeship programs. In fiscal 2011, the program received only a 49% positive assessment from employers and apprentices. This falls far short of the 90% goal.

The division is attempting to address the failure to meet its goals. Specifically, a departmental bill was enacted in 2010 that provides the department a more streamlined procedure to resolve wage complaints under $3,000. Additionally, the division is undertaking an internal review to eliminate registered programs that have not had any apprenticeship activities in some time. The division contends that these actions, among others, will improve their performance measures in the near future.

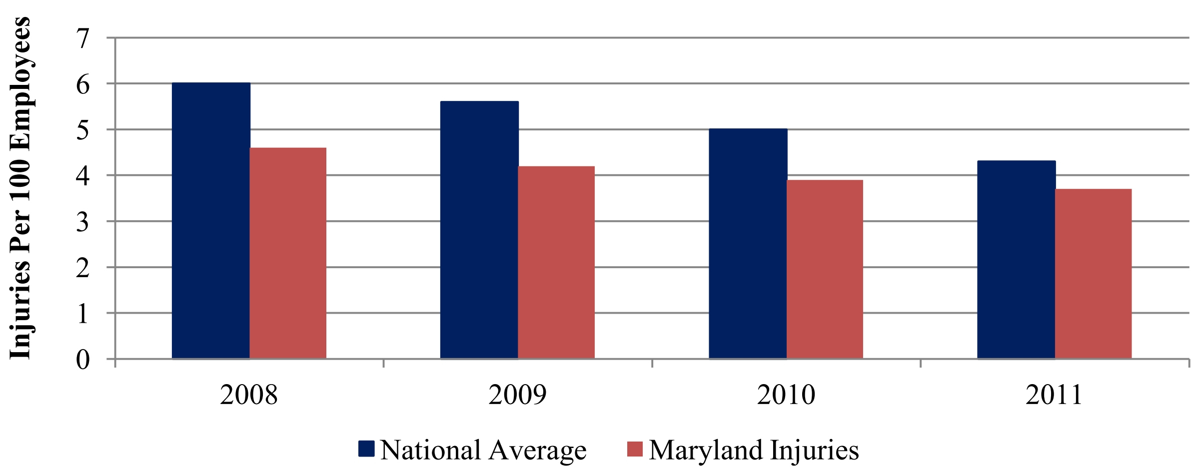
## Maryland Better Than National Average in Manufacturing Injuries

The Maryland Occupational Safety and Health Administration strives to promote workplace safety and health in the State. Specifically, the program inspects workplaces and issues citations and penalties; responds to fatalities, injuries, and employee complaints; provides assistance to employers to voluntarily comply with safety regulations; provides on-site surveys and technical assistance to employers; and provides free training programs for employers and employees.

To measure its performance, the program measures the rate of injuries in manufacturing workplaces in the State. The program seeks to annually reduce the rates of injury so that the State stays below the national average.

As shown in **Exhibit 2**, Maryland consistently shows a lower injury rate than the national average. Additionally, the injury rate has consistently fallen in recent years.

**Exhibit 2**
**Occupational Safety and Health Administration**
**Annual Manufacturing Injury Rate**
**Fiscal 2008-2011**

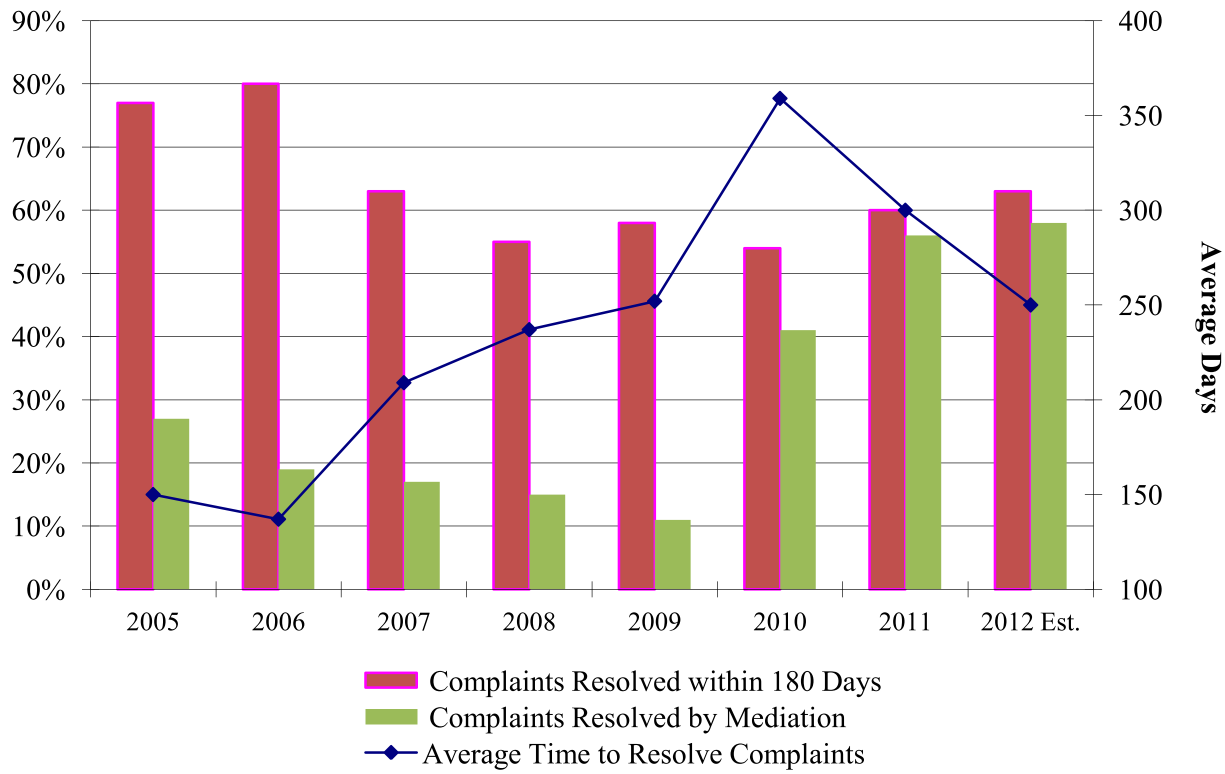



Source: Governor's Budget Books, Fiscal 2009-2013

## Mediation Begins to Show Positive Results

The Division of Occupational and Professional Licensing handles calls and complaints from consumers against those licensed by the department or against those individuals or companies that should be licensed by the department. The division's goal is to protect the public health and safety by the efficient review, resolution, and adjudication of consumer complaints. It measures attainment of this goal by the percentage of complaints resolved within 180 days. **Exhibit 3** shows that, after several years of decline, the division has improved its efficiency in fiscal 2011.

**Exhibit 3**
**Occupational and Professional Licensing**
**Complaint Resolution**
**Fiscal 2005-2012**




Source: Governor's Budget Books, Fiscal 2006-2013

The vast majority of complaints involved the Home Improvement Commission. The commission has made an effort to significantly increase the number of complaints that are resolved using alternative dispute resolution (ADR) in order to avoid a lengthy formal hearing process. The commission almost tripled the percent of complaints resolved by ADR in fiscal 2010. That percentage grew by another 37% in fiscal 2011. It appears that this increase has reversed the trend of increasing inefficiency within the division. The number of closed complaints increased by 11% in fiscal 2011. Also, the average length of time to close a complaint fell by 16% in fiscal 2011. Both of these achievements surpass what was originally expected for the year.

## Fiscal 2012 Actions

Section 47 of the fiscal 2012 budget bill required the Governor to abolish 450 positions as of January 1, 2012. These departmental divisions' share of the reductions was 3 positions. The annualized salary savings due to the abolition of these positions is expected to be $148,259 in special and federal funds.

## Proposed Budget

As shown in **Exhibit 4**, after contingent reductions, the fiscal 2013 allowance grows by $23.5 million, or 23.7%, over the fiscal 2012 working appropriation. The vast majority of this increase relates to the increase in video lottery terminal (VLT) special funds for horse racing purse enhancements, racetrack facility redevelopment, and VLT local impact aid.

**Exhibit 4**
## Proposed Budget
**DLLR – Business Regulation**
**($ in Thousands)**

| How Much It Grows: | General Fund | Special Fund | Federal Fund | Reimb. Fund | Total |
|---|---|---|---|---|---|
| 2012 Working Appropriation | $8,505 | $84,211 | $4,992 | $1,477 | $99,184 |
| 2013 Allowance | 8,902 | 108,075 | 4,991 | 1,395 | 123,363 |
| Amount Change | $397 | $23,864 | -$1 | -$82 | $24,179 |
| Percent Change | 4.7% | 28.3% | | -5.5% | 24.4% |
| | | | | | |
| Contingent Reduction | $0 | -$721 | $0 | $0 | -$721 |
| Adjusted Change | $397 | $23,144 | -$1 | -$82 | $23,458 |
| Adjusted Percent Change | 4.7% | 27.5% | -0.0% | -5.5% | 23.7% |

**Where It Goes:**

| | |
|---|---|
| **Personnel Expenses** | |
| Abolished positions | -$45 |
| Annualization of previously abolished positions and other salary changes | -496 |
| One-time employee bonus of $750 in fiscal 2012 | -252 |
| Funds related to reclassification in fiscal 2012 | -182 |
| Health insurance and retirement system | 354 |
| Turnover adjustments | 187 |
| Other fringe benefit adjustments | -67 |
| **Other Changes** | |
| ***Departmentwide*** | |
| In-state travel | 240 |
| Supplies and equipment | 177 |
| Communication costs | 73 |
| Increase in contractual staff | 20 |
| Funds to develop a workplace fraud database | 50 |
| Rent | -56 |
| Outside consultants | -55 |

**Where It Goes:**

| | |
|---|---|
| ***Racing Commission*** | |
| VLT funds for purse enhancements | 12,763 |
| VLT funds for racetrack facility renewal | 3,204 |
| VLT funds for local impact aid | 7,049 |
| Horse racing impact aid including contingent reduction | 531 |
| Miscellaneous changes | -37 |
| **Total** | **$23,458** |

DLLR: Department of Labor, Licensing, and Regulation
VLT: video lottery terminal

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

## Video Lottery Terminal Special Funds

Chapter 4 of the 2007 special session authorized up to 15,000 VLTs in five locations across that State and provided for the distribution of the VLT proceeds. Two VLT facilities have opened to date, and one is expected to open in June 2012. The Division of Racing's fiscal 2013 allowance includes the following special funds for the following purposes:

- $40.5 million – to a purse dedication account to enhance horse racing purses and bred funds. Of this amount, 80% is allocated to the thoroughbred industry and 20% to the standardbred industry.

- $13.1 million – to a racetrack renewal account for racetrack facility capital construction and improvements. Of this amount, 80% is allocated to Pimlico Race Course, Laurel Park, and the Racecourse at Timonium and 20% to Rosecroft Raceway and Ocean Downs Race Course.

- $28.9 million – for local impact grants. Of this amount, 82% is allocated to local jurisdictions with VLT facilities, based on each jurisdiction's percentage of overall gross revenues from VLTs. The remaining 18% is allocated to Baltimore City on behalf of the Pimlico Community Development Authority (of this amount, $1.0 million is re-allocated to Prince George's County for capital projects around the Rosecroft Raceway).

## Horse Racing Special Funds

Horse racing impact aid consists of grants to counties and municipalities that contain or are located close to thoroughbred tracks. The aid has been in place since 1975 and is derived, in part, from the collection of the tax on horse race wagering. The amounts granted to each jurisdiction are mandated by statute and are largely based on the number of racing days held each year. In the past few years, and in the current year, despite cost containment reductions, the revenues have been insufficient to fulfill the expected allocation to each jurisdiction and to the other mandated uses. This is due, mainly, to the reduction in racing days in recent years.

**Exhibit 5** demonstrates the extent of the funding problem. The exhibit shows each of the mandated uses of the special horse racing fund. The mandates total over $3.5 million. However, expected revenues into the fund total approximately $2.7 million. It should be noted that the agriculture boards and fair funds are budgeted under the Maryland Department of Agriculture.

**Exhibit 5**
## Horse Racing Special Fund: Mandated Uses
**Fiscal 2013**

| | |
|---|---|
| **Agriculture and Fairs** | |
| Great Pocomoke Fair | $20,000 |
| Great Frederick Fair | 40,000 |
| Agriculture Education Foundation | 75,000 |
| Agriculture Fair Board | 825,000 |
| Maryland State Fair and Agriculture Society | 500,000 |
| Maryland Million | 500,000 |
| Standardbred Race Fund Sire Stakes | 350,000 |
| ***Subtotal*** | ***$2,310,000*** |
| | |
| **Impact Aid** | |
| Anne Arundel County | 339,000 |
| Baltimore County | 50,000 |
| Howard County | 84,750 |
| Prince George’s County | 100,000 |
| Baltimore City | 609,000 |
| Bowie | 18,200 |
| Laurel | 50,850 |
| ***Subtotal*** | ***$1,251,800*** |
| | |
| **Total** | **$3,561,800** |
| | |
| **Estimated Revenues Fiscal 2013** | **$2,661,000** |

Source: Governor’s Budget Books, Fiscal 2013

The fiscal 2013 budget bill includes contingent reduction language to the department's allowance that reduces the horse racing impact aid by $720,800. The reduction is contingent upon the enactment of a provision the Budget Reconciliation and Financing Act (BRFA) of 2012 which provides that the Governor is not required to fund any mandates above the amount that was budgeted in fiscal 2012. The impact aid was eliminated in fiscal 2012 due to the concerns about lagging revenues. As shown in Exhibit 5, there is an anticipated shortfall in fiscal 2013 revenues of $900,800. The Department of Legislative Services (DLS) is recommending that the reduction to impact aid match this shortfall, instead of the reduction of $720,800 as provided for in the budget bill. Given current revenues estimates, the contingent reduction was understated.

## Personnel Changes

The fiscal 2013 allowance reflects the elimination of 1.25 full-time regular positions with the Division of Professional and Occupational Licensing, resulting in a savings of $44,978 in reimbursable funds. These positions are clerical and customer service in nature and have been vacant for over six months.

The allowance also reflects an increase of 6.79 full-time equivalent (FTE) contractual positions. The majority of this increase is in the budget of the Employment Standards Unit. The new contractual FTEs will be used to implement Chapter 29 of 2011, the Job Applicant Fairness Act. The Act prohibits an employer from using an individual's credit report or credit history as a basis to deny employment to an applicant for hire, discharge an employee, or determine compensation or the terms of employment. The additional positions are consistent with what was estimated in the fiscal note that accompanied the legislation. The unit's fiscal 2013 allowance increases by about $161,000 in general funds for this purpose.

Decreases in contractual staff in other units in the department mitigated the total increase for contractual support to about $20,000 across all funds.

## Other Changes

A variety of operational expenses comprise the remainder of the changes in the allowance. Travel expenses are increasing in the fiscal 2013 allowance by about $240,000. This is largely due to the filling of vacancies within the divisions of Financial Regulation and Labor and Industry. Staff is required to travel for bank examinations and workplace inspections.

Also included in the allowance is $50,000 in special funds under the Employment Standards Unit to procure information technology services to assist with the development of a database on the activities of the Workplace Fraud Unit. Workplace fraud is discussed in greater detail under the Issues section of this analysis.

# *Issues*

## 1. Operating Assistance for Maryland Horse Tracks

Maryland's horse racing industry has endured decades of deteriorating revenues and attendance. Interest in the sport has waned, and the industry's share of legal gambling dollars has declined due to increased competition from state lotteries, VLTs, and table games in surrounding states. Further, increased revenues to purses and bred funds in surrounding states have increased pressure on Maryland's horse racing industry to stay competitive.

### Background

In calendar 2010, the State's thoroughbred horse racing industry was in immediate danger of ceasing to function. In December 2010, the racing commission rejected the Maryland Jockey Club's proposal to significantly reduce the number of scheduled racing days from 146 racing days in calendar 2010 at Laurel Park and Pimlico to 77 racing days in calendar 2011. As a result, the Jockey Club announced that it may need to lay off hundreds of employees and close Laurel Park and the Bowie training facility.

In order to prevent that eventuality, an agreement was reached between the State, the Jockey Club, the Maryland Horse Breeders' Association, and the Maryland Thoroughbred Horsemen's Association. In order to subsidize the racetrack operations for calendar 2011, the State agreed to advance $3.6 million, and the breeders/horsemen would contribute $1.7 million to the Jockey Club. The State funds were advanced using the Maryland Economic Development Corporation (MEDCO), which would be repaid from VLT proceeds dedicated to racetrack capital improvements at Laurel and Pimlico.

The BRFA of 2011 included a provision to allow racetrack capital renewal funds to be used to repay the advance from MEDCO. This agreement allowed the racetracks to operate a 2011 live racing schedule similar to the 2010 racing schedule with a 146-day racing season that included the 136th running of the Preakness at Pimlico. The agreement also provided for the continued year-round operation of the Bowie Training Center.

### Operating Assistance

The dedication of current revenues from VLT operations in the State has yet to result in enough revenues to result in a significant boost to the industry. Until the opening of additional VLT facilities with additional revenues for the industry, a stop-gap solution was developed. Chapter 412 of 2011 provided operating assistance to both thoroughbred and standardbred racing licensees in calendar 2012 and 2013. Specifically, Ocean Downs and Rosecroft Raceway may each receive up to $1.2 million from VLT revenues allocated to the Purse Dedication Account to support a minimum of 40 live racing days in calendar 2012 only. Laurel Park and Pimlico Race Course may also receive up to $6.0 million per year from the Racetrack Facility Renewal Account in calendar 2012 and 2013, to support a minimum of 146 live racing days in each year. In order to receive the specified operating assistance, each thoroughbred racing licensee must submit an application that includes a 12-month business plan and a five-year business plan that highlights the economic challenges facing the facilities along with strategies to address those challenges.

In addition to the assistance as provided in the legislation, the Maryland Thoroughbred Horsemen's Association has pledged $4.0 million to the thoroughbred tracks to ensure a full racing calendar in 2012.

### Impact on Budget

The legislation does not affect the amount of funds in the budget but does alter the allowable uses. The entire fiscal 2011 appropriation to the Racetrack Facility Renewal Account ($2.6 million) was used to repay a portion of the advance from MEDCO. As such, no funds were available for any facility renewal at any racetrack in fiscal 2011. The fiscal 2012 appropriation is $9.9 for racetrack renewal. However, of this amount, about $520,000 was needed to repay the standardbred portion of the facility renewal account in fiscal 2011 (as that amount went to repay MEDCO). An additional $1.3 million has been used to make the final payment on the advance from MEDCO. The fiscal 2012 share of the account maximum for the standardbred tracks ( 20% per statute) is close to $2.0 million. The thoroughbred tracks have not yet applied for operating assistance in 2012; however, it is expected that they will. Given the other pressures on the account and the chance that revenues will fall short of estimates, it is not clear that the required amount will be available for the thoroughbred tracks in fiscal 2012.

**DLS recommends that DLLR brief the budget committees on the status of the horse racing industry and the use of VLT revenues to subsidize operations of racetracks in fiscal 2012.**

## 2. Conflicting Data from the Workplace Fraud Unit

Chapter 188 of 2009, (The Workplace Fraud Act), establishes that an employer misclassifies an individual when an employer-employee relationship exists but the employer designates the individual as an independent contractor.

When a company hires an employee, it is responsible for paying half of that employee's Social Security and Medicare taxes, as well as premiums for workers' compensation and unemployment insurance coverage. Employers also typically withhold federal, State, and local income taxes. By contrast, an independent contractor pays all of his or her Social Security and Medicare taxes and has no income taxes withheld but is still responsible for paying them in full.

Individuals misclassified as independent contractors may not be subject to labor and wage protections, may not receive workers' compensation or unemployment insurance benefits, and may not pay an appropriate level of taxes to the State or federal government. Moreover, companies that misclassify employees maintain a lower overhead and have a competitive advantage with respect to those that abide by the law in the treatment of their workers. It is estimated that the rate of misclassification may be as high as 20 to 25% within the construction industry.

The department's Workplace Fraud Unit began its operations in September 2010 but was not fully staffed until February 2011. The unit has 10 full-time staff members, including 1 assistant attorney general, 4 fraud investigators, and 2 auditors who are certified public accountants. It is funded by special funds derived from the Workers' Compensation Commission. The unit is charged with enforcement of the workplace fraud laws and conducts audits based on employee complaints or through referrals from business partners.

As part of DLS' preliminary sunset evaluation of the division, the new unit reported that during fiscal 2011, it conducted 197 audits, issued 12 citations, and assessed $33,200 in penalties. Further, it reported that the unit undertook 623 inquiries into the activities of construction and landscaping companies and conducted 256 site visits. The unit also found 122 workers to be in violation and discovered $2.5 million in unreported wages.

The unit also reports data through the Managing for Results (MFR) process. Some of this data conflicts with the data reported through the sunset evaluation process. For example, the MFR data shows that in fiscal 2011, there were 44 workers improperly misclassified, compared to 122 workers, as mentioned above.

The annual report from the Task Force on Workplace Fraud also reported on the activities of the Workplace Fraud Unit. However, it reported information differently than either the sunset data or the MFR data. The report included calendar year data on the number cases received (626), the number of citations issued (4), amount of penalties collected ($0), and the number of wages collected ($0). Given the outcomes (or lack of outcomes) and the inconsistency in performance measures and in the data, it is difficult to assess the progress of the new unit.

**DLS recommends that the department comment on the progress of the newly created Workplace Fraud Unit. DLS also recommends that the department adopt standard performance measures to gauge the success of the unit.**

# *Recommended Actions*

| | | Amount Reduction | |
|---|---|---|---|
| 1. | Reduce funds for horse racing purse enhancements. These funds derive from proceeds of the video lottery terminal (VLT) program. Estimates for VLT revenues have been revised downward for fiscal 2013, and as such, funds for purse enhancements are overstated in the allowance. This action will bring the budget in line with current projections. | $ 3,791,600 | SF |

2. Strike the following language to the special fund appropriation:

~~, provided that this appropriation shall be reduced by $720,800 contingent upon enactment of the Budget Reconciliation and Financing Act.~~

**Explanation:** The fiscal 2013 budget bill as introduced includes a $720,800 reduction to the Share of Racing Revenue to Local Subdivisions (local impact aid) contingent upon the enactment of a provision in the Budget Reconciliation and Financing Act that allows the Governor to fund mandates at or above the fiscal 2012 level. This action strikes that contingent reduction so that the reduction, in a different amount, may be taken directly.

| | | Amount Reduction | |
|---|---|---|---|
| 3. | Reduce the Share of Racing Revenue to Local Subdivisions (local impact aid). Racing revenues have been dramatically lower in recent years and are not generating enough funds to fully provide for the mandate for local impact aid. | 900,800 | SF |
| | **Total Special Fund Reductions** | **$ 4,692,400** | |

# *Updates*

## 1. Report on Benefits for Racetrack Employees

The 2011 *Joint Chairmen's Report* included committee narrative that requested the Maryland Racing Commission to study the current levels of benefits provided to employees of the State's thoroughbred and standardbred racetracks. The narrative asked for an evaluation of the sustainability and adequacy of the level of benefits for the Maryland Racetrack Employee Pension Fund. Further, it asked for specific recommendations and funding sources to ensure that benefits are sufficient. This narrative was adopted due to the perceived inadequacy of a report previously requested by Chapter 4 of the 2007 special session. The legislation required that the commission make recommendations to ensure that the benefits to and funding for racetrack employees are adequate.

By a letter dated December 31, 2009, the commission responded to the 2007 legislative mandate. In that letter, the commission reported that while benefits to racetrack employees were adequate, pension plans offered to the employees of the Maryland Jockey Club and Rosecroft Raceway were not sufficient. However, the letter did not include any specific recommendations to address the inadequacy except to defer any action on the issue until the Maryland General Assembly has established a task force to study the pension plans. The Maryland Racing Commission submitted its revised report on December 12, 2011. It includes a description and brief history of the related pension funds. It further includes one recommendation from the commission.

Currently, pension benefits are being provided to the employees of the thoroughbred racetracks (Laurel, Pimlico, and Timonium) under the Maryland Race Track Employees Pension Fund. The fund is comprised of 0.25% of the licensee's share of the pari-mutuel wagers. However, thoroughbred wagering has declined 43.3% over the last 10 years. As such, the plan has been deemed in "critical status" by a recent actuarial study. The fund's Board of Trustees has formulated a rehabilitation plan that would require increased contributions to the fund by the licensees. It has not yet been agreed to by all the involved parties.

The Maryland Harness Track Employees Pension Fund is intended to provide benefits to employees of the Rosecroft Raceway. Similar to the thoroughbred track fund, the fund was comprised of 0.25% of wagers. However, live racing at the track was suspended, and wagering fell below the $125,000 threshold required for pension contribution (Ocean Downs Raceway does not meet the wagering threshold and is not required to contribute to a pension plan). The fund's Board of Trustees elected to terminate the plan and made lump-sum distributions to employees. Racing resumed at Rosecroft on August 24, 2011, under new ownership. The report states that the new owners indicated their willingness to develop an equitable plan for employees.

The report concludes with a recommendation that there be an actuarial study to determine what the specific level of funding is needed to keep the pension funds solvent. However, the report also states that the commission does not have the financial resources necessary to authorize an actuarial study at this time.

Appendix 1

# *Current and Prior Year Budgets*

**Current and Prior Year Budgets**
**Department of Labor, Licensing, and Regulation – Business Regulation**
**($ in Thousands)**

| | General Fund | Special Fund | Federal Fund | Reimb. Fund | Total |
|---|---|---|---|---|---|
| **Fiscal 2011** | | | | | |
| Legislative Appropriation | $8,424 | $43,412 | $4,556 | $1,445 | $57,837 |
| Deficiency Appropriation | 0 | 0 | 0 | 0 | 0 |
| Budget Amendments | 135 | -200 | 920 | 93 | 947 |
| Reversions and Cancellations | -149 | -3,752 | -273 | -109 | -4,284 |
| **Actual Expenditures** | **$8,410** | **$39,459** | **$5,203** | **$1,428** | **$54,500** |
| **Fiscal 2012** | | | | | |
| Legislative Appropriation | $8,065 | $84,163 | $4,536 | $1,477 | $98,242 |
| Budget Amendments | 439 | 47 | 456 | 0 | 943 |
| **Working Appropriation** | **$8,505** | **$84,211** | **$4,992** | **$1,477** | **$99,184** |

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

## Fiscal 2011

Actual general funds that were expended in fiscal 2011 closely matched the figure that was originally budgeted. However, $135,000 was realigned from departmental divisions that are discussed under a separate analysis. Approximately $149,000 in general funds were reverted primarily due to over budgeting of various operating expenses within the Division of Racing and the Division of Occupational and Professional Licensing.

Actual special fund expenditures were lower than what was originally appropriated in fiscal 2011. A budget amendment transferred $200,000 to another department program that is discussed under a separate analysis. Specifically, the funds were transferred from the Division of Financial Regulation to the Legal Services program for work associated with mortgage fraud and banking regulations. Also, over $3.7 million in special funds were canceled in fiscal 2011. The majority of the canceled funds relate to the lower than expected revenues associated with VLT proceeds. These funds were budgeted under the Division of Racing for horse racing purse enhancements, racetrack improvements, and local impact aid.

Federal funds increased by about $920,000 in fiscal 2011 as a result of a budget amendment that realigned the funds from a departmental program that is discussed under a separate analysis. Two budget amendments increased reimbursable funds by $92,672 in fiscal 2011. The Governor's Office of Crime Control and Prevention provided grant funding ($73,635) to the Division of Financial Regulation to assist the division in reducing a backlog of mortgage fraud cases. The division also received reimbursable funds ($19,037) from the Department of Human Resources to process Notice of Intent to Foreclose notices.

## Fiscal 2012

The original fiscal 2012 appropriation was increased by a total of $252,028 in general, special, and federal funds. This is due to the one-time $750 employee bonus that was distributed to each agency by budget amendment during the fiscal year.

Other budget amendments further increased the original 2012 appropriation. Specifically, the U.S. Department of Justice is providing $390,668 in federal funds to the Division of Financial Regulation for its Mortgage Fraud Enforcement Initiative. The program is designed to identify and investigate mortgage fraud and to improve enforcement cooperation with agencies at the federal, state, and local level. Also, another budget amendment provided $20,848 in federal funds to the department's Apprenticeship and Training program. Funds represent an extension of the Registered Apprenticeship Partners Information Data System grant from the U.S. Department of Labor. Funds are used to measure the capabilities of the new, federally funded, tracking system of the State's apprenticeship programs.

Other changes to the original appropriation resulted from budget amendments that realigned funds, in part, between the business regulation components and the workforce development divisions of the department which are discussed in another analysis.

Appendix 2

# *Audit Findings*

| | |
|---|---|
| Audit Period for Last Audit: | February 4, 2008 – February 6, 2011 |
| Issue Date: | August 2011 |
| Number of Findings: | 2 |
| Number of Repeat Findings: | 1 |
| % of Repeat Findings: | 50% |
| Rating: (if applicable) | n/a |

These audit findings apply to the Division of Racing.

***Finding 1:*** **The division did not ensure that certain funds due from Maryland racetracks were received timely.**

***Finding 2:*** The division did not properly calculate the refund of excess laboratory fees collected in fiscal 2010, resulting in an overpayment of $20,000 to the racetracks.

*Bold denotes item repeated in full or part from preceding audit report.

**Object/Fund Difference Report**
**DLLR – Business Regulation**

| Object/Fund | FY 11 Actual | FY 12 Working Appropriation | FY 13 Allowance | FY 12 - FY 13 Amount Change | Percent Change |
|---|---|---|---|---|---|
| **Positions** | | | | | |
| 01 Regular | 365.45 | 358.95 | 357.70 | -1.25 | -0.3% |
| 02 Contractual | 31.09 | 34.02 | 40.81 | 6.79 | 20.0% |
| **Total Positions** | **396.54** | **392.97** | **398.51** | **5.54** | **1.4%** |
| **Objects** | | | | | |
| 01 Salaries and Wages | $ 24,796,616 | $ 27,954,938 | $ 27,454,093 | -$ 500,845 | -1.8% |
| 02 Technical and Spec. Fees | 1,183,496 | 1,714,575 | 1,735,005 | 20,430 | 1.2% |
| 03 Communication | 809,099 | 691,476 | 764,209 | 72,733 | 10.5% |
| 04 Travel | 860,761 | 718,610 | 958,898 | 240,288 | 33.4% |
| 06 Fuel and Utilities | 12,640 | 15,067 | 13,272 | -1,795 | -11.9% |
| 07 Motor Vehicles | 323,047 | 216,877 | 271,178 | 54,301 | 25.0% |
| 08 Contractual Services | 5,908,303 | 5,651,256 | 5,569,177 | -82,079 | -1.5% |
| 09 Supplies and Materials | 697,152 | 398,699 | 445,446 | 46,747 | 11.7% |
| 10 Equipment – Replacement | 334,082 | 55,796 | 147,074 | 91,278 | 163.6% |
| 11 Equipment – Additional | 349,137 | 36,601 | 77,233 | 40,632 | 111.0% |
| 12 Grants, Subsidies, and Contributions | 18,279,588 | 60,458,595 | 84,726,895 | 24,268,300 | 40.1% |
| 13 Fixed Charges | 946,425 | 1,271,961 | 1,200,983 | -70,978 | -5.6% |
| **Total Objects** | **$ 54,500,346** | **$ 99,184,451** | **$ 123,363,463** | **$ 24,179,012** | **24.4%** |
| **Funds** | | | | | |
| 01 General Fund | $ 8,409,508 | $ 8,504,760 | $ 8,902,143 | $ 397,383 | 4.7% |
| 03 Special Fund | 39,459,364 | 84,210,956 | 108,075,439 | 23,864,483 | 28.3% |
| 05 Federal Fund | 5,203,050 | 4,992,087 | 4,990,838 | -1,249 | 0% |
| 09 Reimbursable Fund | 1,428,424 | 1,476,648 | 1,395,043 | -81,605 | -5.5% |
| **Total Funds** | **$ 54,500,346** | **$ 99,184,451** | **$ 123,363,463** | **$ 24,179,012** | **24.4%** |

Note: The fiscal 2012 appropriation does not include deficiencies. The fiscal 2013 allowance does not include contingent reductions.

**Fiscal Summary**
**DLLR – Business Regulation**

| Program/Unit | FY 11 Actual | FY 12 Wrk Approp | FY 13 Allowance | Change | FY 12 - FY 13 % Change |
|---|---|---|---|---|---|
| 01 Division of Financial Regulation | $ 7,855,575 | $ 9,269,147 | $ 8,701,636 | -$ 567,511 | -6.1% |
| 01 Division of Labor and Industry | 16,564,255 | 16,762,767 | 17,650,071 | 887,304 | 5.3% |
| 01 Division of Racing | 20,557,970 | 62,586,522 | 86,861,807 | 24,275,285 | 38.8% |
| 01 Division of Occupational and Professional Licensing | 9,522,546 | 10,566,015 | 10,149,949 | -416,066 | -3.9% |
| **Total Expenditures** | **$ 54,500,346** | **$ 99,184,451** | **$ 123,363,463** | **$ 24,179,012** | **24.4%** |
| | | | | | |
| General Fund | $ 8,409,508 | $ 8,504,760 | $ 8,902,143 | $ 397,383 | 4.7% |
| Special Fund | 39,459,364 | 84,210,956 | 108,075,439 | 23,864,483 | 28.3% |
| Federal Fund | 5,203,050 | 4,992,087 | 4,990,838 | -1,249 | 0% |
| **Total Appropriations** | **$ 53,071,922** | **$ 97,707,803** | **$ 121,968,420** | **$ 24,260,617** | **24.8%** |
| | | | | | |
| Reimbursable Fund | $ 1,428,424 | $ 1,476,648 | $ 1,395,043 | -$ 81,605 | -5.5% |
| **Total Funds** | **$ 54,500,346** | **$ 99,184,451** | **$ 123,363,463** | **$ 24,179,012** | **24.4%** |

Note: The fiscal 2012 appropriation does not include deficiencies. The fiscal 2013 allowance does not include contingent reductions.

Appendix 4