Maryland General Assembly
LEGISLATIVE POLICY COMMITTEE

(All files are in PDF format and may be viewed using Adobe Reader)

Tuesday, December 16, 2003, 4:30 p.m.
120 Lowe House Office Building

Agenda

Part I: Sunny Day Fund Requests/Department of Business and Economic Development

Consideration of the following requests from the Department of Business and Economic Development (DBED) for the transfer of funds from the Economic Development Opportunities (Sunny Day) Fund:

Modifications of Prior Authorizations:

- ClosetMaid
- Mack Trucks, Inc.
- Morgan Stanley & Company
- Simon Pearce (MD), Inc.

Part II: Maryland Program Evaluation Act (Sunset Process)

Sunset Review began during the 1998 interim and is defined by statute as "the process by which the Legislative Policy Committee determines whether a governmental activity should undergo an evaluation". During the 2003 interim DLS conducted preliminary evaluations of four agencies. The Policy Committee will consider whether to waive or perform full evaluation of the following agencies:

-- Department of Health and Mental Hygiene
  - State Board of Dental Examiners
  - Respiratory Care Professional Standards Committee

-- Department of Agriculture
  - Maryland Horse Industry Board
  - Maryland Tobacco Authority

Part III: State Treasurer's Office – Report of the Treasurer

A written report to the Legislative Policy Committee by the Honorable Nancy K. Kopp, State Treasurer, on operations in the State Treasurer's Office during the last six months of 2003.

Part IV: Legislative Staff Agency Budget (Internal Document)

Consideration of the fiscal year 2004 budget for the Department of Legislative Services.

Part V: Joint Advisory Committee on Legislative Data Systems

Recommendations of the Joint Advisory Committee on Legislative Data Systems to retain current guidelines with no changes, effective January 1, 2004.

Part VI: Personnel Guidelines – General Assembly Employees (Internal Document)

Consideration of Personnel Guidelines for General Assembly Employees.

Part I
Sunny Day Fund Requests

Department of Legislative Services
Annapolis, Maryland

December 2003

Contents

Status of the Economic Development Opportunities (Sunny Day) Fund
December 2003

Fiscal 2004 beginning balance	$24,299,568
Fiscal 2004 general fund appropriation	0
Repayment of principal and interest during fiscal 2004 (est. $3.35 million)	1,156,758
Other Income – miscellaneous recoveries	
Fiscal 2004 operating expenses	(1,167,290)
Fiscal 2004 fund adjustment	(0)
Total funds available	$24,289,036
Disbursements	(775,000)
Committed Funds*	(22,500,000)
Withdrawals and changes in fiscal 2004 of previously approved projects (for December 2003: none)	0
Current funds available	**$1,014,036**
December 2004 LPC New requests	(0)
Estimated balance as of December 2004	**$1,014,036**

* This includes $2.5 million approved by the LPC in January 2003 for Morgan Stanley of which $1.0 million is not to be disbursed until Fiscal 2008 and $1.5 million in Fiscal 2011.

Economic Development Opportunities (Sunny Day) Fund
December 2003

Requests for New Funding

None

Requests for Modification

Closet Maid	Extend the funding commitment by two years (from 12/31/03 to 12/31/05); and extend the date upon which the company must invest or cause to invest $30 million in project costs (from 12/31/05 to 12/31/11).
Mack Trucks, Inc.	Shorten the loan maturity date by one year (from 3/31/10 to 3/31/09); increase the minimum investment requirement from $115 million to $155 million; and alter the manner in which full-time employment levels will be measured.
Morgan Stanley & Co. the	Eliminate the requirement that contractual employees be provided an employer-subsidized health care package to be counted toward required employment.
Simon Pearce, Inc.	Reduce the employment target (from 150 to 100 jobs) and extend the deadline to create (jobs from 12/31/03 to 12/31/06).

Notification of Withdrawal

None

ClosetMaid (Garrett County) — *Modification*

Sunny Day Funds	$3,000,000	**Recommendation: Approve**
Type of Assistance	Unsecured Conditional Grant	Current Conditions to Keep Grant from Converting to a Loan: • Create 708 jobs by no later than 9/30/11 • Retain at least 708 jobs on an annual basis through 9/30/14 • Full re-payment of grant funds should employment fall below minimum figure of 245 at any reporting period • Partial re-payment on a pro rata basis of $3,955 for each job below 708 but above 245 minimum at any reporting period • Invest or cause or cause to invest a minimum of $30 million in project costs by 12/31/05 • May not close or relocate outside of the State anytime prior to 12/31/14

Original Approval Date	December 2000
First Modification Date	November 2001
Second Modification Date	September 2002
Employment at Original Approval	0
Current Employment	0
Projected Employment	708
Requested Modification at the December 16, 2003 LPC Meeting	Extend the funding commitment to 12/31/05; Extend the date upon which ClosetMaid must invest or cause to invest $30 million in project costs from 12/31/05 to 12/31/11.

Original Agreement with ClosetMaid

In December 2000, the Legislative Policy Committee (LPC) approved a conditional grant of $3.0 million to assist ClosetMaid Corporation in the construction and equipping of a new 600,000 gross-square-foot manufacturing and distribution facility in Garrett County. The site of the new facility is the Northern Garrett Industrial Park which is a designated enterprise zone within the Town of Grantsville. The total cost of the project is estimated at $60 million with ClosetMaid required to invest at least $30 million in capital expenditures in Maryland.

The funds were to be made available in the form of a lump-sum unsecured conditional grant and subject to repayment at a rate of three percent interest calculated from the date of initial disbursement. The grant funds would be subject to full or partial repayment in the event that ClosetMaid failed to meet certain job creation and investment requirements. Should ClosetMaid fully meet the job creation and investment conditions none of the conditional grant would be repaid. In the event that the company only partially met the grant conditions the grant terms provide for a *pro rata* repayment.

Requested Modification

The Department of Business and Economic Development (DBED) is requesting the following modifications to the current conditional grant agreement with ClosetMaid:

- Extend DBED's Sunny Day funding agreement with ClosetMaid from December 31, 2001 to December 31, 2005, to be more in line with ClosetMaid's projected construction schedule. In addition to aligning the anticipated disbursement of Sunny Day funds with the projected construction schedule, the proposed modification would also update the conditional grant agreement so that it is in compliance with the statutory requirement concerning the disbursement of Sunny Day funds. Section 7-314(m) of the State Finance and Procurement Article stipulates that the disbursement of funds must take place within one year after the expected disbursement date presented to LPC. If funds are not dispersed within the prescribed timeframe the Governor is required to resubmit the request to LPC to transfer funds by budget amendment to the Sunny Day clearing account and provide LPC with a detailed description of the proposed use of funds. Essentially, the proposal would have to be reconsidered and approved by LPC. A full review of the ClosetMaid Sunny Day fund file indicated that, while LPC has approved modification to the original grant agreement in each of the last two years, at no such time was the anticipated disbursement date of December 31, 2001, ever modified to reflect ClosetMaid's current project build-out schedule. Under Section 7-314, DBED would now have until December 31, 2006 to complete the disbursement of Sunny Day funds to ClosetMaid.

- Extend from December 31, 2005 to December 31, 2011, the date upon which ClosetMaid must invest or cause to invest $30 million in project costs to be more in line with the company's projected construction schedule.

ClosetMaid anticipates adhering to a phased-in five stage construction schedule for the 600,000 square foot manufacturing and distribution facility that was articulated to the committee as part of the September 2002 approved modification. **Exhibit 1** summarizes the current projected construction and job creation schedule. Construction is expected to commence in either 2004 or 2005 and completed by 2011. The company's anticipated job creation schedule is also expected to be phased-in consistent with the construction schedule. The Department of Legislative Services (DLS) would like to remind LPC, however, that ClosetMaid is not obligated to adhere to the construction and job creation schedule shown in Exhibit 1 other than to reach the job creation condition by September 30, 2011, and retain those jobs through September 30, 2014.

Exhibit 1
Construction and Employment Time Line

Year	Sq. Ft.	Jobs
2004*	135,000	110
2005	90,000	110
2006	0	85
2007	75,000	65
2008	0	70
2009	125,000	70
2010	0	100
2011**	175,000	108
Total	**600,000**	**708**

* It is possible that Phase 1 construction would not commence until 2005 in which case the construction and job creation schedule shown above would be somewhat altered but none-the-less still phased-in.
**First employee measurement date (these are the jobs that must be retained through September 30, 2014).

Source: Department of Business and Economic Development

Previous Modifications

LPC has approved several modifications to the original conditional grant agreement since it was first approved in December 2000. In November 2001, LPC approved modifications that reduced the total job creation and employment goals, and delayed by one year the point at which job creation and retention would first be measured. In September 2002, LPC approved additional modifications that extended the first employment measurement date and employment retention period by five years. **Exhibit 2** summarizes the conditions of the original conditional grant agreement, and the changes made under the first and second modifications. **DLS advises that the proposed modification request seeks only an extension of the funding agreement and does not further alter the job creation, job retention, minimum employment, repayment, or minimum investment provisions currently in place under the funding agreement.**

Exhibit 2
Conditional Loan Grant Agreement Provisions
Original, First Modification Request, Second Modification Request, and Proposed Modification Request

	Original Conditions	First Modification	Second Modification	Proposed Modification
Sunny Day Disbursement	12/31/01	12/31/01	12/31/01	12/31/05
Total Job Creation	750	708	708	No change
First Annual Measurement Date	12/31/05	12/31/06	9/30/11	No change
Job Retention	12/31/08	12/31/09	9/30/14	No change
Minimum Employment to Avoid Full Repayment	260	245	245	No change
Pro Rata Repayment Amount	$4,000	$3,955	$3,955	No change
Investment	$30 million by 12/31/05	$30 million by 12/31/05	$30 million by 12/31/05	$30 million by 12/31/11
Use of Proceeds	$3.0 million to Closetmaid for construction and equipping of new facility	$2.8 million to Closetmaid and $200,000 to reimburse Garrett County for site work expenses	$2.8 million to Closetmaid and $200,000 to reimburse Garrett County for site work expenses	No change
Amount Subject To Repayment	$3.0 million	$2.8 million	$2.8 million	No change

Source: Department of Business and Economic Development

Recommendation

DLS recommends approval of the requested m odification. It seeks only to extend the Sunny Day funding commit ment through Decem ber 31, 2005, and extend the date upon whic h

ClosetMaid must invest or cause to invest $30 million in the project through December 31, 2011. DLS believes that the proposed modifications will not materially or adversely affect the position of the State in the project, and will serve to bring the State's Sunny Day Fund incentive to ClosetMaid into compliance with applicable State statutory requirements governing funding distribution time lines.

Despite project delays, the addition of ClosetMaid's manufacturing and distribution facility still represents a significant economic development opportunity for the Garrett County. Although Garrett County has enjoyed an improved unemployment rate thus far during 2003 – ranging from a high of 8.6 percent in January 2003 to a low of 4.1 percent in August 2003 which compares favorably to the statewide unemployment rate of 4.1 percent as of September 2003 as measured by the Department of Labor, Licensing, and Regulation statistics – the county is a qualified distressed jurisdiction. Assisting the county's efforts to attract and retain manufacturing jobs is important to the economic viability of the region and helps address an articulated State economic development goal of promoting economic development in the State's qualified distressed jurisdictions.

ClosetMaid remains committed to the development of the site and eventual construction of the facility. ClosetMaid has completed the purchase of the approximate 71 acre site, and secured $1.75 million of Community Development Block Grant funding through Garrett County to complete the development of the site. Construction on the first section of the facility is scheduled to commence in either 2004 or 2005 with initial job creation to begin soon thereafter. While the agreement does not provide for incremental job growth requirements, the company reports an employment schedule that will provide for incremental job growth as the facility is increased in size and capacity. A manufacturing and distribution facility of the size and scope planned by ClosetMaid will add a significant number of manufacturing jobs in one of the State's qualified distressed jurisdictions.

December 16, 2003

The Honorable Thomas V. “Mike” Miller, Jr.
President
Maryland State Senate
State House, Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker
Maryland House of Delegates
State House, Annapolis, MD 21401

Dear Mr. President and Mr. Speaker:

The Legislative Policy Committee approved a conditional grant of $3,000,000 from the Economic Development Opportunities Program Fund (Sunny Day) in December 2000 to assist ClosetMaid Corporation’s expansion to the Northern Garrett Industrial Park, an Enterprise Zone within the Town of Grantsville. Significant progress has been made on the project, including ClosetMaid’s purchase of the approximately 71 acres and completion of the site work to prepare the land for building. However, ClosetMaid has advised that there will be a delay in construction, due to the weakness in the economy. ClosetMaid has decided to postpone construction until 2004 or 2005. The sluggish pace of the economy has caused many companies to hesitate embarking on significant capital investments. This is a request to extend the funding commitment by two years from 2003 to 2005 and align the date of the $30,000,000 investment to conform with project completion in 2011 from 2005.

ClosetMaid remains strongly committed to the expansion and to the Garrett County site. The building is designed, quoted and equipment layouts are complete awaiting commencement. The project will create a long-sought Mid-Atlantic regional presence for the manufacturing, distribution and packaging of closet storage and shelving units. The plans call for initially constructing a 135,000 square foot facility costing $24,000,000 with equipment of $3,000,000, plus additional costs resulting in capital expenditures of over $30,000,000. The initial jobs are projected to be 110, with a ramp up to 708. The first measurement in 2011 and retention through 2014 remain unchanged.

ClosetMaid is a wholly-owned subsidiary of Emerson Electric Corporation, a Fortune 500 company traded on the New York Stock Exchange and highly rated by S&P and Moody’s.

This is a very important project to Garrett County and Western Maryland. Garrett County is a One Maryland jurisdiction and the number and quality of jobs is a significant step in moving the county forward with the rest of the state. The Department supports the extension of the funding period from November 2003 to November 2005 and aligning the investment date with project completion in 2011.

Sincerely,

Aris Melissaratos
Secretary

Attachment

cc: Governor Robert L. Erhlich, Jr.
The Honorable Ulysses Currie
The Honorable Ida G. Ruben
Deputy Secretary Edward B. Miller
Mr. Tim Perry
Ms. Lynne Taylor Porter
Mr. Steve Ports
Mr. Thomas Lewis
Mr. Karl Aro
Mr. Warren G. Deschenaux
Ms. Kristin Jones
Mr. John Favazza

Mack Trucks, Inc. (Washington County) *Modification*

Sunny Day Funds	$2,000,000	**Recommendation: Approve**
Type of Assistance	Unsecured Conditional Loan	Current Conditions to Convert Loan to Grant: • Retain at least 1,000 full-time employees through 12/31/09 to be measured annually • Invest a minimum of $15 million for machining equipment improvements and $100 million for operational improvements by 12/31/08 Effect of Proposed Modification on Conditions: • Retain at least 1,000 full-time employees through 12/31/08 to be measured annually on a historical rolling three-year quarterly average beginning with the first quarter after the initial disbursement • Invest a minimum of $155 million for machining equipment improvements and/or operational improvements of which not less than $15 would be toward new product machining improvements by 12/31/08
Original Approval Date	January 2003	
Employment at Original Approval	1,133	
Current Employment	Estimated at 1,133	
Projected Employment	1,038 to 1,301	
Requested Modification at the December 16, 2003 LPC Meeting	Shorten the loan maturity date by one year from 3/31/10 to 3/31/09; increase the minimum investment requirement from $115 million to $155 million; and alter the manner in which full-time employment levels will be measured; shorten job retention from 12/31/09 to 12/31/08.	

Original Agreement with Mack Trucks, Inc.

In January 2003, the Legislative Policy Committee (LPC) approved a conditional loan of $2.0 million from the Sunny Day Fund to assist Mack Trucks, Inc. in making operational and machining equipment improvements at its existing manufacturing facility in Hagerstown, Maryland.

The $2.0 million in Sunny Day funds was to be provided to Mack Trucks in the form of an unsecured conditional loan. The loan would carry a 3 percent annual interest rate and mature on December 31, 2009. The payment of principal and accrued interest would be deferred during the duration of the loan terms and fully abated in the event the company satisfied the following employment and capital expenditure requirements:

- retain a minimum of 1,000 full-time employees at the Hagerstown facility for the duration of the loan terms. Full-time employment means that the employee works at least 1,800 hours in a 12-month period, is offered an employer-subsidized health care benefits package, and is paid at least 150 percent of the federal minimum wage; and

- invest a minimum of $15 million in machining equipment improvements and $100 million in operational improvements at the Hagerstown facility by December 31, 2008.

Annual reporting measurement dates would commence on December 31, 2003, and end on March 31, 2010, when the loan was to mature. If the company failed to retain 1,000 full-time employees at the Hagerstown facility on any of the annual measurement dates it could still retain a portion of the Sunny Day funds if employment levels were less than 1,000 but greater than 750. For every job less than 1,000 but greater than 750, the company would make a *pro rata* repayment of $2,000 in principal plus allocable interest, less any amounts previously repaid within 60 days of the date of noncompliance. If the company failed to meet the $115 million in capital expenditure requirements by December 31, 2008, or failed to qualify for a *prorated* abatement based upon employment levels (failed to retain a minimum of 750 employees at each measurement date) the outstanding principal and accrued interest would be payable no later than 120 days from the measurement date

Mack Trucks intended to use the Sunny Day funds, as well as $3.0 million provided by the Department of Business and Economic Development (DBED) in the form of an unsecured loan through the Maryland Economic Development Assistance Fund (MEDAAF) and $400,000 in the form of a Maryland Industrial Training Program (MITP) grant, to make the machining and operational improvements and provide employee training. Collectively, the Sunny Day and MEDAAF funds were intended to leverage a minimum of $115 million in project expenditures and require the retention of at least 1,000 full-time employees at the Mack Trucks Hagerstown facility through December 31, 2009.

Requested Modification

DBED is requesting a modification to the original conditional loan agreement so that the employee retention period is shorted by one year (from December 31, 2009 to December 31, 2008). Additional documentation provided by DBED indicates that other provisions of the

Sunny Day conditional loan would also be modified by the proposed request. These modifications include: (1) shortening the loan maturity date by one year from March 31, 2010, to March 31, 2009; (2) increasing the minimum investment required by Mack Trucks from the current $115 million to $155 million; and (3) altering the manner in which full-time employment levels will be measured. The proposed modification would not alter the total job retention requirements, minimum employment levels that trigger either partial or full repayment of the loan, or the *pro rata* repayment amount. **Exhibit 1** shows the original conditional loan provisions and the proposed provisions under the requested modification.

Exhibit 1
Original Provisions and Proposed Modified Provisions

	Original Conditions	**Proposed Conditions**
Funding Amount and Terms	$2.0 million at 3% annual interest and maturity on **3/31/2010**. Payment of principal and interest deferred during duration of loan.	$2.0 million at 3% annual interest and maturity on **3/31/2009**. Payment of principal and interest deferred during duration of loan.
Minimum Job Retention	1,000	No Change
Job Retention Period	**12/31/09**	**12/31/08**
Job Measurement Provisions	**Job retention measured annually.**	**Job retention measured on a three-year quarterly average on a calendar basis beginning with the first quarter after the initial disbursement.**
Pro Rata Repayment Amount	$2,000 for every employee under 1,000.	No Change
Minimum Employment to Avoid Full Repayment	750	No Change
Minimum Investment	Aggregate minimum of **$115 million** of which not less than $15 million shall be for machining and equipment improvements at the Hagerstown facility by 12/31/08.	Aggregate minimum of **$155 million** of which not less than $15 million shall be for machining and equipment improvements at the Hagerstown facility by 12/31/08.

Source: Department of Business and Economic Development

Modifications to Other Public Support

The requested modification is part of a larger overall restructuring of the total State incentive package offered to Mack Trucks. **Exhibit 2** shows the original and the proposed State and local incentives offered to the company.

Exhibit 2
Original and Proposed State and Local Incentives

Fund Source	Assistance	Original Amounts	Proposed Amounts
Sunny Day	Conditional Loan	$ 2,000,000	$ 2,000,000
Maryland Economic Development Assistance Fund (MEDAAF)	Loan	3,000,000	2,000,000
Maryland Industrial Training Program (MITP)	Grant	400,000	1,300,000
Washington County	Grant	300,000	300,000
Total		**$5,700,000**	**$5,600,000**

The State's restructured incentive package results in an overall reduction in total funding for the project from $5.7 million to $5.6 million. More important, however, is the restructuring of the amounts and terms for both the MEDAAF loan and MITP grant. **Exhibits 3** show the original and restructured MEDAAF incentive. Important changes include: (1) structuring the loan as two separate loans with separate conditions and provisions; (2) reducing the total available loan amount from $3.0 million to $2.0 million; (3) potentially increasing the job retention requirement to 1,150 jobs and extending the retention period to December 31, 2012, under conditional loan #2; and (4) providing for a phased-in disbursement of funds for both loan #1 and loan #2.

Exhibit 3
Original and Restructured MEDAF Loan Provisions

	Original Conditions	Restructured Conditions Loan #1	Restructured Conditions Loan #2
Funding Amount and Terms	$3.0 million unsecured at 3% annual interest and maturity on 12/31/2009. Payment of principal and interest due quarterly over the term of the loan.	$1.5 million unsecured at 3% annual interest and maturity on 3/31/2009. Up to $ 1.0 million disbursed in fiscal 2004 and the remaining $500,000 disbursed in fis cal 2005. Pay ment of principal and interest deferred during duration of loan.	$500,000 unsecured at 3% annual interest. The loan would be disbursed in fiscal 2006 and mature on March 31, 2013. Payment of principal and interest deferred during duration of loan.
Minimum Job Retention	1,000	No Change	1,150 by 12/31/07
Job Retention Period	12/31/09	12/31/08	12/31/12
Job Measurement Provisions	Job retention measured annually. The interest rate on the loan would adjust to 4% if employment fell below 1,000, 5% if less than 950, 6% if less than 900, 7% if less than 850, and 8% if less than 800.	Job retention measured on a three-year quarterly average on a calendar basis beginn ing with the first quarter after the initial disbursement.	Job retention measured on a three-year quarterly average on a calendar basis beginn ing with the first quarter after the initial disbursement.
Pro Rata Repayment Amount	N/A	$1,500 for every employee less than 1,000.	$435 for e very employee below 1,150 but above 1,000
Minimum Employment to Avoid Full Repayment	750	No Change	No minimum employment criteria.
Minimum Investment	$100 million in operational improvements at the Hagerstown facility by December 31, 2008.	Aggregate minimum of $155 million of which not less than $15 million shall be for machining and equipm ent improvements.	Aggregate minimum of $175 million of which not less than $15 million shall be for machining and equipm ent improvements.

Source: Department of Business and Economic Development

The MITP grant agreement with Mack Trucks has also been restructured by DBED. The grant was to be in the amount of $400,000 and disbursed in fiscal 2002. The grant funds were conditioned upon the company retaining a minimum of 1,000 full-time employees at the Hagerstown facility through December 31, 2006. Employee measurement dates would be conducted annually with *pro rata* repayment of the outstanding training fund balance for each employee under the 1,000 minimum employment level. The restructured MITP grant increases the amount of funding by $900,000, or from $400,000 to $1.3 million, and provides for an incremental distribution of the funds conditioned upon the company maintaining minimum employment levels. **Exhibit 4** summarizes DBED's original and restructured MITP grant agreement with Mack Trucks.

Exhibit 4
Original and Restructured MITP Grant

	Original Conditions	**Proposed Conditions**
Funding Amount	$400,000	$1.3 million
Minimum Job Retention	1,000	1,000 to 1,150
Job Retention Period	December 31, 2006	Base Employment: 1,000 job through December 31, 2009 for the first 1.0 million of funds. Enhanced Employment: 1,150 jobs through December 31, 2012 for the final $300,000 grant installment.
Job Measurement Provisions	Job retention measured annually with pro rata repayment of outstanding training fund balance for each employee under 1,000.	Job retention measured on a three-year quarterly average on a calendar basis beginning with the first quarter after the initial disbursement for both base and enhanced employment. Pro rata repayment of outstanding training fund balance for each employee under 1,000 for base employment and for each employee under 1,150 for enhanced employment.

Source: Department of Business and Economic Development

Recommendation

The Department of Legislative Services recommends that the modification be approved. The requested modification does not significantly or adversely affect the overall position of the State in the transaction or the economic benefit to be derived by the State in the transaction. The project still represents a significant economic development opportunity for Washington County and the State.

Taking only the Sunny Day loan into consideration, the modification, while shortening the loan term, will leverage $155 million in aggregate operational and machining equipment improvements by Mack Trucks at its Hagerstown facility which is $40 million more in project expenditures than required under the original loan agreement. In addition, changing the job retention measurement criteria to a three-year quarterly average will provide the company with greater flexibility and ability to meet the job retention requirements. Finally, when considered in conjunction with the restructured $2.0 million MEDAAF loan and restructured $1.3 million MITP grant, the project is likely to leverage a minimum of $175 million in total project expenditures by Mack Trucks, increase the job retention to a minimum of 1,150 employees, and extend the job retention period through December 31, 2012.

December 16, 2003

The Honorable Thomas V. “Mike” Miller, Jr.
President
Maryland State Senate
State House, Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker
Maryland House of Delegates
State House, Annapolis, MD 21401

Dear Mr. President and Mr. Speaker:

On January 14, 2003, the Legislative Policy Committee approved $2,000,000 from the Economic Development Opportunities Program Fund for use by the Department of Business and Economic Development (the “Department”) as a conditional loan to Mack Trucks, Inc., or a related entity acceptable to the Department (collectively, the “Borrower”) for operational and machining equipment improvements to their existing 1,500,000 square foot manufacturing facility in Hagerstown, Maryland. As a condition of the loan, the Borrower was required to retain an average of a least 1,000 full-time employees at the Hagerstown facility through December 31, 2009. After protracted discussions and negotiations concerning the long term commitment of the Borrower and its parent AB Volvo to the facility, in addition to refined information provided by the borrower with respect to employment projections and product cycles, the Department was asked to shorten the employee retention period of the conditional loan by one (1) year to December 31, 2008.

The above request was part of a larger restructure by which this $2,000,000 loan and a portion of the restructured MEDAAF and MITP grant funds would address the Borrower’s core employment through December 31, 2008, with the remaining portion of the MEDAAF and MITP grant funds addressing core and future employment through December 31, 2012.

Restructured assistance for the Project includes:

MEDAAF Conditional Loans	$2,000,000
Sunny Day Conditional Loan	2,000,000
MITP Grant	1,300,000
County	300,000
Total	$5,600,000

Even with the restructure, this Project continues to represent an “extraordinary economic development opportunity” as mandated by the Sunny Day statute. The current restructured incentive package, which includes the requested change, will help insure the continued commitment of Mack Trucks, Inc. and its parent AB Volvo to the long term stability of the Hagerstown facility, in addition to providing significant economic impact to both Washington County and the State of Maryland and as such is recommended by the Department.

Sincerely,

Aris Melissaratos
Secretary

Attachment

cc: Governor Robert L. Ehrlich, Jr.
The Honorable Ulysses Currie
The Honorable Ida G. Ruben
Deputy Secretary Edward B. Miller
Mr. Tim Perry
Ms. Lynne Taylor Porter
Mr. Steve Ports
Mr. Thomas Lewis
Mr. Karl S. Aro
Mr. Warren G. Deschenaux
Ms. Kristin Jones
Mr. John Favazza

AM/TDoyle/cmi

Morgan Stanley & Co. (Baltimore City) *Modification*

Sunny Day Funds	$3,500,000	**Recommendation: Approve**
Type of Assistance	Unsecured Conditional Grant	Original Conditions to Keep Grant from Converting to a Loan: • Create 150 jobs by 6/30/05 and retain all jobs for three years • Create 150 additional jobs by 12/31/10 and retain all 300 jobs for three years • Create 300 additional jobs by 12/31/14 and retain all 600 jobs for three years
Original Approval Date	January 2003	
Employment at Original Approval	0	
Current Employment	65	
Projected Employment	600 (by 2014)	
Requested Modification at the December 16, 2003 LPC Meeting	Eliminate the requirement that contractual employees be provided an employer-subsidized health care package to be counted toward the required employment.	

Original Agreement with Morgan Stanley

In January 2003, the Legislative Policy Committee approved a conditional grant of $3.5 million to assist Morgan Stanley to lease 30,000 square feet of office space for an institutional securities processing facility in Fells Point, Baltimore. The total cost of the project is estimated at $19 million, of which Morgan Stanley is contributing $15.5 million. Due to the company's financial health, no security was required. Morgan Stanley is an international financial services company that reported $3 billion in net income in 2002.

The Sunny Day funds will be disbursed in three phases (over seven years) with employment and investment goals for each phase. Morgan Stanley receives $1 million in fiscal 2004 (Phase I), $1 million in fiscal 2008 (Phase II), and $1.5 million in fiscal 2011 (Phase III). Failure to meet these goals will trigger clawback provisions that will require payment for unfilled positions or complete repayment; however, no interest rate will be assessed on any funds required under these clawbacks.

Morgan Stanley has begun hiring at the new facility and expects to create 600 new jobs by the end of 2014. It is unknown how many jobs will be contractual rather than full-time permanent. Contractors must be full-time, earn of a minimum of 150 percent of the federal minimum wage, and be offered an employer-subsidized health care package.

Requested Modification

The Department of Business and Economic Development (DBED) is requesting a modification to the original agreement so that a contractual employee who earns at least $50,000 annually can be counted toward the employment requirement regardless of whether the employee has been offered a subsidized health care package. DBED advises that Morgan Stanley may not be able to acquire information about contractors' health care to meet this requirement, particularly if the company is not contracting directly with the employee.

Recommendation

The Department of Legislative Services (DLS) recommends approval of the modification. It advises that the requirement for a health care package is based on DBED guidelines and the State definition of eligible employees for tax purposes; the Sunny Day statute does not require health benefits for any jobs created. The guidelines help ensure that contractual positions meet the intent of the program and prevent the usage of low-paying, temporary, or part-time positions to satisfy the employee count. DLS advises that a few modifications regarding contractual employees have been approved by the Legislative Policy Committee; however, this is the first one requesting an exemption from the health care requirement.

DLS notes that while the average salary of Morgan Stanley employees is expected to be $52,000, clerical or entry-level employees at the facility will be paid less and may face difficulty affording health insurance. Accordingly, DLS supports the minimum salary proposed for contractual employees to ensure those employees have access to health care. At the end of calendar 2004, Morgan Stanley will begin providing employment reports that will include the number of contractual employees and a certification from the company that all of those employees were paid a minimum salary of $50,000.

December 16, 2003

The Honorable Thomas V. “Mike” Miller, Jr.
President
Maryland State Senate
State House, Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker
Maryland House of Delegates
State House, Annapolis, MD 21401

Dear Mr. President and Mr. Speaker:

This request is to clarify certain employment requirements of the previous approval from the Economic Development Opportunities Program Fund (Sunny Day) for Morgan Stanley & Company (“Company”) to locate an institutional securities facility in Baltimore City. In January 2003, the LPC approved a conditional grant totaling $3,500,000. Based on the information provided by the Company at the time, the Department defined the assistance to be in support of 600 new jobs, which will include contract employees. While this remains to be the project, the Department would like to clarify the definition of employee.

By terms of the original approval, to be eligible for inclusion in the Project Annual Employment Report, a contract employee must be full-time, 100% dedicated to working at the Project Site, earn a minimum of 150% of federal minimum wage and be offered an employer subsidized health care package. Recognizing the Company’s limitations in obtaining information as it pertains to contract employees, the Department requests a modification to the definition of contract employees that allows the company to include contract employees in their Annual Employment Report that are 100% dedicated to working at the Project Site, without the requirement of reporting whether the employee has been offered an employer subsidized health care package.

The Department acknowledges that an employer subsidized health care package is an important factor in viewing the value of jobs, but the positions referred to with respect to the “No Benefits” language are at a professional or executive level, with a minimum annual salary of $50,000.
It is reasonable to believe that an employee at this level is capable of providing their own health care benefits.

Morgan Stanley has initiated a project that, at the completion of all phases, will bring 600 well-paying jobs to an enterprise zone in Baltimore City. The requested modification conforms the definition of eligible employee to Morgan Stanley’s standard operating model and is recommended by the Department.

Sincerely,

Aris Melissaratos
Secretary

Attachment

cc: Governor Robert L. Ehrlich, Jr.
The Honorable Ulysses Currie
The Honorable Ida G. Ruben
Deputy Secretary Edward B. Miller
Mr. Tim Perry
Ms. Lynne Taylor Porter
Mr. Steve Ports
Mr. Thomas Lewis
Mr. Karl S. Aro
Mr. Warren G. Deschenaux
Ms. Kristin Jones
Mr. John Favazza

AM/JHenry/cmi

Simon Pearce (MD), Inc. (Garrett County) — *Modification*

Sunny Day Funds	$500,000	**Recommendation: Approve**
Type of Assistance	Conditional Loan	Original Conditions to Convert Loan to Grant: • Create 150 full-time jobs by 12/31/03 • Retain jobs for one year
Original Approval Date	June 1998	
Employment at Original Approval	0	
Original Projected Employment	150	
Current Employment	47	
Modified Projected Employment	100	
Requested Modification at the December 16, 2003 LPC Meeting	Reduce the employment target from 150 to100 jobs; and extend the deadline to create jobs from 12/31/03 to 12/31/06.	

Original Agreement with Simon Pearce

In June 1998, the Legislative Policy Committee approved a conditional loan of $500,000 to assist Simon Pearce (MD), Inc. (SPM) to finance its Garrett County facility (glass manufacturing) in Oakland. The total cost of the project is estimated at $4.59 million with SPM investing in an estimated $490,000 in capital expenditures in Maryland. Interest will accrue from settlement at a fixed rate of 3 percent with no payments due until December 31, 2003. The Sunny Day loan is to be guaranteed by Simon Pearce (U.S.), Inc. and Mr. Simon Pearce, personally. The loan is to be secured with a subordinate lien on fixed assets purchased and a subordinate lien on the working capital assets of SPM, and an assignment of the lease on the facility. The lien is to be subordinate to the Community Development Block Grant loan.

The loan is converted to a grant if SPM hires 150 permanent, full-time employees by December 31, 2003, and retains them for a one-year period. If SPM does not create the agreed number of jobs, SPM is to return a *pro rata* portion of the conditional loan and interest on December 31, 2003, at a rate of $3,333 for each position not created.

Requested Modification

SPM is requesting a modification to the original conditional loan agreement because the company has been unable to meet the employment goals. SPM cites various reasons for this, including the recent economic downturn and challenges finding enough qualified glass blowers after a pick-up in business. According to the SPM, it takes an individual two to five years to learn the art of glassblowing. Each blower follows a course from apprentice to master under the guidance of a master glassblower.

SPM is requesting that the Department of Business and Economic Development reduce the employment target to 100 jobs and extend the deadline for the creation of these jobs to December 31, 2006. These jobs would then need to be retained for one year. SPM has agreed to pay the $3,333 *pro rata* amount plus accrued interest for the 50 jobs that would not be created. Interest would continue to accrue but would be deferred on the unpaid balance of the loan through December 31, 2006.

Recommendation

The Department of Legislative Services recommends that this modification be approved. SPM has created 47 new jobs in the State since the inception of the project. The modification recognizes that original employment projections were unrealistic in light of actual need. SPM has therefore agreed to pay the *pro rata* amount for the 50 jobs by which the employment projection has been reduced. At the same time, the modification allows SPM to demonstrate its commitment to expand its Maryland operations.

The recent upsurge in the economy could cause an increased demand for SPM's products. This, in turn, could increase SPM's need for employees at its Maryland facility. It should also be noted that in addition to its manufacturing operations, SPM intends to open a call center at its Maryland facility, which would also increase employment at the SPM facility.

December 16, 2003

The Honorable Thomas V. “Mike” Miller, Jr.
President
Maryland State Senate
State House, Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker
Maryland House of Delegates
State House, Annapolis, MD 21401

Dear Mr. President and Mr. Speaker:

The Legislative Policy Committee approved, at it’s meeting on June 9, 1998, the transfer of $500,000 to the Department of Business and Economic Development from the Economic Development Opportunities Program (Sunny Day) to assist Simon Pearce MD, Inc. (“SPM”) to locate a glass manufacturing operation in Garrett County. The assistance was structured as a conditional loan. The loan and accrued interest would be forgiven if SPM created 150 full-time jobs by December 31, 2003 and retained those jobs for one year. The loan is eligible for pro-rata forgiveness, with repayment of $3,333 required for each job short of the goal of 150 new jobs. SPM currently has 47 employees and is not expected to have the initially projected employment of 150 by December 31, 2003. However, SPM is projecting to have 100 employees by December 31, 2006. This request is to extend the job creation period from December 31, 2003 to December 31, 2006 to create the 100 jobs. SPM would be required to repay the pro-rata portion in January 2004 for the 50 positions that would not be created. Interest would continue to accrue but be deferred on the unpaid balance of the loan through December 31, 2006.

In 1998 when Simon Pearce commenced the fit up of the building in Oakland to expand its glass manufacturing operations, the Company was coming off a history of double digit growth since its founding in the U.S. in 1981. However, the growth slowed to 7.5% in 1999, regained momentum in FY 2000 to increase by 17.5%, but then slowed to 5% in FY 2001 and decreased by 4% in FY 2002, which included the effects of the 9/11 disaster. The industry in general has experienced sales decreases over this period and glass manufacturing plants have closed. This pull back in manufacturing is evident in the local market where Blenko in Milton, West Virginia and West Virginia Glassworks in Weston, West Virginia have reduced workforce or closed completely.

Sales have begun to improve for Simon Pearce as reflected by a 2.5% increase for the Fiscal Year ended in February 2003. With demand increasing, SPM is starting to adjust production upwards and is planning to place all of the required increased production in the Oakland plant. In addition to expanding the production at Oakland, SPM is expanding the distribution operation there and is establishing a call center to handle all consumer phone traffic. SPM also revamped its internet site in September 2002 and has seen a 50% increase in volume in this business. The fulfillment of internet orders are handled at the plant in Oakland. It is expected that with the growth of the internet and the addition of the catalog business, the retail fulfillment operation will grow 300% in the next year and solidly in the double digits through FY 2008. In addition to staffing to meet this volume, SPM is also planning on providing call center coverage for expanded hours to meet West Coast demand.

This is an important project to Garrett County. Garrett County is a One Maryland jurisdiction and the opportunity to retain the existing jobs and create new jobs has significant impact on this region. The Department supports extending the time period to create the 100 jobs from December 2003 to December 2006 and recommends your approval.

Sincerely,

Aris Melissaratos
Secretary

Attachment

cc: Governor Robert L. Ehrlich, Jr.
The Honorable Ulysses Currie
The Honorable Ida G. Ruben
Deputy Secretary Edward B. Miller
Mr. Tim Perry
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Mr. Warren G. Deschenaux
Ms. Kristin Jones
Mr. John Favazza

AM/JMcCrea/cmi

Approved Sunny Day Projects (New Projects Only)
Fiscal 1990 to 2003

Updated: December 2003

- Himont, Inc., now Montell ($2.275 million loan) - expand manufacturing center (fiscal 1990)
- Information Technology Center ($1 million grant) - develop the center (fiscal 1992)
- Northwest Airlines ($750,000 loan) - equip air line passenger reservation facility (fiscal 1992)
- Chesapeake Consortium ($1 million grant) - develop prototype electric vehicle (fiscal 1993); unexpended funds transferred to Northrop Grumman (fiscal 1997)
- Advanced Lithography Group ($600,000 grant) - develop technology to enhance production of semiconductors (fiscal 1993)
- Westinghouse ($500,000 grant) - develop high- technology law enforcement equipment (fiscal 1993)
- Mountaire Corporation ($2 million loan) - purchase and renovate the Campbell Soup facility in Salisbury, Wicomico County (fiscal 1994)
- Vitro Corporation ($1.5 million grant) - implement a software engineering education and training program for employees at Montgomery County facility (fiscal 1994)
- Cellulose Fullstoff Fabrik ($750,000 grant) - purchase land in Kent County for the construction of a paper recycling and cellulose production facility (fiscal 1994)
- Martin Marietta Aero and Naval Systems, now Lockheed-Martin ($900,000 grant) - train staff and retool and upgrade equipment to fulfill a newly-awarded General Electric contract, Baltimore County (fiscal 1994)
- Maryland Industrial Training Program ($500,000 grant) - provide five firms with consultation and matching grant assistance for training new employees, with an emphasis on newly located companies; various locations (fiscal 1994)
- Maryland Manufacturing Modernization Network ($500,000 grant) - match a federal Technology Reinvestment Project grant to assist manufacturers (defense-dependent companies) in becoming more competitive through deployment of technology; statewide (fiscal 1994)

- Maryland Health Care Product Alliance ($350,000 grant) - match a federal grant to provide assistance to companies in utilizing defense technologies to create health care products and businesses; statewide (fiscal 1994)
- SuperValu, Inc. ($500,000 grant) - train new and existing employees at new food distribution facility in Harford County (fiscal 1995)
- Defense Adjustment Revolving Loan Fund ($500,000 grant) – match a federal grant to provide working capital loans to defense dependent companies for manufacturing modernization and technology commercialization; statewide (fiscal 1995)
- TNT Logistics ($150,000 grant) – assist in relocating corporate headquarters to Anne Arundel County (fiscal 1995)
- Trans-Tech, Inc. ($1.25 million loan) – expand capital facilities in Frederick County to fulfill a newly awarded Motorola cellular telephone contract (fiscal 1995)
- Rohr, Inc. ($1 million grant) – relocate equipment and retrain workers at Hagerstown, Washington County facility to absorb the transfer of production responsibilities from California (fiscal 1995)
- London Fog Industries ($500,000 grant) – make capital improvements, relocate equipment, and retrain workers at the Park Circle, Baltimore City manufacturing facility (fiscal 1995)
- University of Maryland Eastern Shore ($750,000 grant) – match a federal grant of $2.25 million to establish a Southern Eastern Shore Revolving Loan Fund (fiscal 1995)
- Maryland Industrial Training Program ($400,568 grant) – provide four firms with consultation and matching grant assistance for training new employees and upgrading skills of existing employees, for new and expanding companies; various locations (fiscal 1995)
- McCormick & Co., Inc. ($5 million: $4 million loan and $1 million grant) – assist in land acquisition, building construction, and equipment purchase in Harford County (approved fiscal 1995, charged to fiscal 1996)
- Avesta Sheffield East, Inc. ($1.45 million: $1.1 million grant and $350,000 loan) – upgrade equipment and refurbish stainless steel plant in Baltimore County (fiscal 1996)
- Saks Fifth Avenue ($3 million: $2.5 million conditional loan and $500,000 grant) – assist in constructing and equipping of distribution center in Harford County (fiscal 1996)
- Ballys Health and Tennis Corporation ($1.5 million loan) – assist in the purchase of equipment to consolidate member services operations at Baltimore County location (fiscal 1996)

- Marada Industries ($1.4 million conditional loan) – construct and equip manufacturing facility in Carroll County (fiscal 1996)

- Nabisco Holdings, Inc. ($1.2 million conditional loan) – assist in equipment acquisition for refurbished manufacturing plant in Dorchester County (fiscal 1996)

- Art Litho Company ($1.3 million loan) – construct a new facility or purchase and install upgraded equipment in Baltimore County (fiscal 1996)

- Sweetheart Cup Company, Inc. ($1.08 million conditional loan) – upgrade equipment and relocate corporate headquarters to Baltimore County (fiscal 1996)

- TESSCO Technologies ($1 million conditional grant) – consolidate operations and upgrade equipment in Baltimore County (fiscal 1996)

- MedImmune, Inc. ($4 million loan) – assist in construction of a pharmaceutical production facility in Frederick County (fiscal 1996)

- Fila Sports, Inc. ($1.25 million conditional grant) – assist in expansion of warehouse and distribution facility in Anne Arundel County (fiscal 1996, modified December 2000)

- Staples, Inc. ($2.7 million: $2 million loan and $700,000 conditional loan) – assist in construction of a new distribution center in Washington County (fiscal 1997)

- Canam Steel Corporation ($1.5 million: $1 million loan and $500,000 conditional grant) – upgrade plant and construct addition of administrative facilities in Frederick County (fiscal 1997)

- Filtronic Comtek ($1 million loan) – provide working capital and assist in purchase of equipment and machinery for Wicomico County facility (fiscal 1997)

- Wm. T. Burnett, Inc. (STX) ($1 million: $500,000 loan and $500,000 conditional grant) – consolidate headquarters operation in Baltimore City (fiscal 1997)

- Principal Health Care, Inc. ($750,000 conditional grant) – retain and expand administrative offices in Montgomery County (fiscal 1997)

- Southern Eastern Shore Revolving Loan Fund ($500,000 grant) – match $1.5 million federal funds for defense adjustment loan fund (fiscal 1997)

- Dome Corporation ($600,000: $300,000 grant and $300,000 conditional loan) – renovate facilities at the Hopkins Bayview Campus (Baltimore City) to accommodate the Center for Inherited Disease Research (fiscal 1997)

- Prince George's Metro Center, Inc. ($1.5 million loan) – renovate office tower to accommodate the Federal Emergency Management Agency (fiscal 1997)

- Northrop Grumman ($5.5 million: $4 million grant and $1.5 million conditional loan; will include another $6 million conditional loan over fiscal years 1998-2001) – retain the Electronic Sensors and Systems Division operations in Anne Arundel County (fiscal 1997)

- Integrated Health Services, Inc. ($2.5 million conditional loan) – develop corporate campus and headquarters in Baltimore County (approved December 1996) – filed for Chapter 11 Bankruptcy Protection on February 2, 2000

- Watson Wyatt & Company ($1.3 million conditional loan) – make leasehold improvements to accommodate the relocation of Wellspring Resources and company headquarters in Montgomery County (approved December 1996, withdrawn November 1997)

- C.M. Offray and Son, Inc. ($1 million conditional loan) – acquire manufacturing facility in Washington County to allow for company expansion (approved December 1996)

- Aspen Systems Corporation ($500,000 conditional loan) – make leasehold improvements to Montgomery County facility to accommodate company consolidation (approved December 1996)

- Unisite Design, Inc. ($800,000 conditional loan)– acquire, make improvements, and equip new manufacturing facility in Caroline County (approved December 1996)

- RWD Technologies ($1.272 million conditional loan) – make tenant improvements at Howard County facility to accommodate expansion of employee performance consulting business (approved December 1996, withdrawn in December 2000)

- Telespectrum Worldwide ($1 million: $500,000 loan and $500,000 conditional loan) – make leasehold improvements to establish a telemarketing call center in Washington County (approved December 1996, withdrawn May 1997)

- Continental Plastic Containers ($180,000 conditional grant) – relocate manufacturing equipment from facilities in other states to Baltimore County facility (approved December 1996)

- Metris Companies and Metris Direct ($800,000 conditional loan) – make leasehold improvements to establish a regional customer operations service center in Baltimore County (approved December 1996)

- Rite Aid Corporation ($2.25 million conditional loan) – construct a regional distribution facility in Harford County (approved March 1997)

- Domino Sugar ($3 million: $2 million conditional loan and $1 million loan) – renovate and expand facility at Baltimore's Inner Harbor (approved June 1997, withdrawn December 1998)
- Solo Cup Company ($500,000 conditional loan) – construct distribution center in Harford County (approved June 1997)
- Harland Company ($1 million conditional loan) – construct new facility in Anne Arundel County to consolidate mid-Atlantic printing operations (approved June 1997)
- McGregor Printing ($250,000 conditional loan) – acquire and equip facility in Carroll County to expand into direct mail advertising (approved June 1997)
- Amisys Managed Care ($555,000 conditional loan) – make leasehold improvements for expansion of headquarters facility in Montgomery County (approved June 1997, withdrawn December 1997)
- Acacia Group ($300,000 conditional loan) – relocate corporate headquarters from Washington, D.C. to leased office space in Montgomery County (approved June 1997, withdrawn June 1998)
- T. Rowe Price ($1 million conditional loan) – construct new facility in Baltimore County to accommodate expansion (approved June 1997)
- The Cosmetic Center ($1.05 million: $600,000 conditional loan and $450,000 loan) – consolidate headquarters and distribution space in Howard County due to merger (approved June 1997, withdrawn December 1998)
- Human Genome Sciences ($2 million loan) – construct new laboratory facility in Montgomery County (approved June 1997)
- Bata Shoe ($1 million conditional loan) – construct new facility and renovate existing facility for consolidation, both in Harford County (approved June 1997, withdrawn June 1998)
- Safeway ($800,000 conditional loan) – construct distribution facility in Prince George's County (approved June 1997, first of multi-year $2 million commitment)
- ASCI ($1 million conditional grant) – expand and enhance headquarters in Anne Arundel County, finance leasehold improvements, and construct digital fiber optic network (approved June 1997)
- Northrop Grumman ($1.5 million conditional loan, second year of five-year commitment) – (approved June 1997)

- International Masonry Institute and International Union of Bricklayers and Allied Craftsmen ($1.5 million loan) – develop national trowel trades training facility at Fort Ritchie, Washington County (approved July 1997, modified December 2000)

- MCI Communications ($450,000 loan) – leasehold improvements to establish an in-bound call services center in Frederick County (approved December 1997, withdrawn July 1998)

- Sierra Military Health Services, Inc. ($750,000: $400,000 loan and $350,000 conditional loan) – leasehold improvements to establish company headquarters in Baltimore City (approved December 1997)

- DAP, Inc.($425,000 conditional loan) – assist in relocation expenses, leasehold improvements, and purchase of equipment for corporate headquarters in Baltimore City (approved December 1997)

- F&G Life Insurance Co.($500,000 conditional loan) – leasehold improvements, furniture, and equipment for the retention of F&G Life in Baltimore City (approved December 1997)

- ADP, Inc. ($200,000 conditional loan) – purchase of machinery and equipment to support expanding work force in Baltimore County (approved December 1997, withdrawn December 1998)

- Dahbura Real Estate Partnership/Hub Labels ($200,000 conditional loan) – expansion of the manufacturing facility of Hub Labels in Washington County (approved December 1997, modified June 2002)

- Wood Products, Inc. ($350,000 conditional loan) – procurement of more efficient and advanced machinery for mill operation in Garrett County (approved December 1997, modified June 2002)

- Bethlehem Steel Corporation ($5.5 million conditional grant) – construction of a new cold rolling mill at the Sparrows Point, Baltimore County plant (approved December 1997)

- Baltimore Marine Industries ($4 million: $3 million loan and $1 million conditional loan) – to provide working capital to assist BMI restore operations to the former Bethlehem Steel Shipyard in Baltimore County (approved December 1997)

- Chalprep Limited Partnership/Radio One ($500,000: $400,000 conditional loan and $100,000 loan) –acquisition of an office building in Prince George's County to house the headquarters of Radio One (approved fiscal 1998, withdrawn January 1998)

- Allied Signal Technical Services Corporation ($1 million conditional loan) – to assist in equipping a new facility in Howard County (approved June 1998)

- BioReliance ($3 million loan) – consolidation and expansion of a headquarters and manufacturing facility in Montgomery County (approved June 1998)

- Cellco Partnership/Bell Atlantic Mobile ($1.5 million loan) – to assist Bell Atlantic Mobile consolidate its regional headquarters to a new facility in Howard County (approved June 1998, withdrawn January 2000)

- Digene Corporation ($1 million loan) – consolidation and expansion of headquarters and biotech research and development operations in Montgomery County (approved June 1998)

- Genetic Therapy, Inc. ($2 million loan) – construction of an office and laboratory facility in Montgomery County (approved June 1998, withdrawn December 1998)

- Manugistics ($1.75 million conditional loan) – to assist the company purchase or lease new office space in Montgomery County (approved June 1998, withdrawn June 1999)

- Maryland Casualty Company ($2.4 million conditional loan) – renovation of existing facilities and the construction of a parking garage in Baltimore City (approved June 1998, withdrawn June 1999)

- MRA Systems, Inc. ($3 million conditional loan) – renovations and purchase of major equipment at airplane maintenance and parts facility in Baltimore County (approved June 1998, withdrawn December 1999)

- Simon Pearce ($500,000 conditional loan) – to assist in establishing a glass manufacturing facility in Garrett County (approved June 1998, modification before LPC in December 2003)

- US Foodservice ($250,000 conditional loan) – relocation and expansion of its headquarters facility in Howard County (approved June 1998)

- Northrop Grumman ($1.5 million conditional loan, third installment of five year $7.5 million commitment) (approved June 1998)

- Safeway, Inc. ($400,000 conditional loan, second installment of total $2 million commitment) (approved June 1998)

- Bechtel Power Corporation ($2 million conditional loan) – construction and equipment for consolidation of operations in Frederick County (approved December 1998)

- Celera Genomic ($4 million loan) – equipment purchase and installation for this new company in Montgomery County (approved December 1998, withdrawn in June 2001)

- Dietz & Watson, Inc. ($750,000 conditional loan) – acquisition, renovation, and expansion of a meat processing facility in Baltimore City (approved January 1999)

- Magellan Behavioral Health ($2 million conditional grant) – equipment and leasehold improvements for expansion of headquarters operations in Howard County (approved December 1998, modified December 2001)

- MEDO, Inc. ($300,000 conditional loan) – equipment and leasehold improvements for the expansion of operations in Baltimore City (approved December 1998, withdrawn January 2000)

- Merkle Computer Systems ($1,150,000 conditional loan) – equipment and leasehold improvements for in the expansion of headquarters and operations in Prince George's County (approved December 1998, withdrawn June 2000)

- National Association of Security Dealers, Inc. ($1 million conditional loan) – consolidation and expansion of operations in Montgomery County (approved December 1998)

- Sodexho Marriott Services ($750,000 conditionalloan – decreased to $500,000) – leasehold improvements associated with the retention and expansion of headquarters operations in Montgomery County (approved December 1998, modified December 1999)

- Telecommunication Systems, Inc. ($400,000 conditional loan) – equipment and leasehold improvements for the expansion of operations in Anne Arundel County (approved December 1998, December 2000)

- Marriott International ($14,200,000 conditional loan over four years) – to assist in the retention and expansion of corporate headquarters operations (approved April 1999; fiscal 2000 disbursement approved at $5 million, modified to $12.5 million June 2002, clarified January 2003)

- Bertelsmann, A.G. ($2.5 million conditional grant) – to assist in facility expansion for consolidation of publishing house distribution activities in Carroll County (approved June 1999)

- MICROS Systems ($1.2 million loan at 2 percent) – for equipment and leasehold improvements associated with consolidation of operations into a larger facility in Prince George's County (approved June 1999)

- Monumental Life/AEGON ($2,176,000 conditional loan – decreased to $1,835,000 – decreased to $1,747,000) –renovation of office space and purchase of property for possible expansion in Baltimore City (approved June 1999, modified December 2000 and December 2001)

- Northrop Grumman ($1.5 million conditional loan, fourth installment of five year $7.5 million commitment) – (approved June 1999)

- Safeway, Inc. ($400,000 conditional loan, third installment of total $2 million commitment) – (approved June 1999)

- Allison Transmission Division of General Motors ($2,250,000 conditional loan) – for equipment and other eligible costs associated with construction of new transmission manufacturing plant in Baltimore County (approved July 1999)

- Ameritrade Holding Corporation ($1 million conditional grant) – to establish software and systems development center in Anne Arundel County (approved December 1999, withdrawn June 2002)

- Discovery Communications ($2.4 million conditional loan) – to expand headquarters operations in Montgomery County (approved December 1999, modified December 2001)

- Lockheed Martin Launching Systems ($300,000 conditional grant) – to expand and renovate an existing facility in Baltimore County and construct a new facility at the same location (approved December 1999, withdrawn in June 2001)

- RWD Technologies, Inc. ($500,000 conditional grant) – for equipment and fit-up expense at a new facility in Baltimore County (approved December 1999, withdrawn in December 2000)

- Sweetheart Holdings, Inc. ($800,000 conditional loan) – to establish a distribution center for Sweetheart Cup Company in Carroll County and establish a new EarthShell manufacturing operation in Baltimore County (approved December 1999, withdrawn in December 2000)

- Banc One National Processing Corporation ($2 million: $1 million loan; $750,000 grant; $250,000 contingent grant) – to be provided to the Maryland Economic Development Corporation (MEDCO) for the construction of a check remittance processing facility and parking garage in Baltimore City (approved April 2000, modified December 2000)

- QIAGEN Sciences, Inc. ($2.5 million conditional loan) – for the construction of a manufacturing and research and development headquarters in Montgomery County (approved April 2000)

- Digex, Inc. ($3 million conditional loan for Phase I; additional $1 million request expected if requirements are met) – for the construction of a web hosting facility in Prince George's County (approved June 2000)

- Dynatech LLC ($2,225,000 conditional loan for Phase I; additional $775,000 request expected if requirements are met) – expansion of headquarters operation in Montgomery County (approved June 2000)

- RAG American Coal Holding, Inc. ($500,000 conditional loan) – to consolidate American operations headquarters in Anne Arundel County (approved June 2000, withdrawn in June 2001)

- Northrop Grumman ($1.5 million conditional loan, final installment of five year $7.5 million commitment) – (approved June 2000)

- Safeway, Inc. ($400,000 conditional loan, final installment of total $2 million commitment) – (approved June 2000)

- Aetna U.S. Healthcare, Inc. (Prince George's County) $500,000 conditional loan to be used by the company to absorb a portion of the cost of new equipment as a part of the consolidation and expansion project of a new Regional Headquarters for Aetna U.S. Healthcare, Inc. in Largo (approved December 2000, withdrawn December 2001)

- Allison Transmission Division of General Motors Corporation (Baltimore County) (project II) ($1.5 million conditional loan to be used to assist the company with the expansion of the manufacturing plant (project II) currently under construction in the White Marsh area of Baltimore County (project I)(approved December 2000)

- Corvis Corporation (Howard County) $1.2 million conditional loan to be used for building construction or tenant improvements and equipment as the company seeks to expand its executive offices and manufacturing operations (approved December 2000, withdrawn June 2002)

- Clairson International Corporation – d/b/a ClosetMaid (wholly-owned subsidiary of Emerson Electric Company)(Garrett Count) $3 million conditional grant to assist the company the construction and equipping of a new manufacturing and distribution facility to be located in an Enterprise Zone within the Town of Grantsville in the Northern Garrett Industrial Park (approved December 2000, modified November 2001, modification before LPC in December 2003)

- MedImmune (Montgomery County) $2.5 million conditional grant to assist the company in the expansion of its operations in Gaithersburg (approved December 2000)

- Ciena Corporation (Anne Arundel County) $1 million conditional grant to be used for building construction or tenant improvements and equipment as the company seeks to expand its manufacturing operations (approved June 2001, withdrawn June 2002)

- Bookham Technology, Inc. (Howard County) $1 million conditional loan to be used for establishing a North American headquarters and a manufacturing facility (approved June 2001, withdrawn January 2003)

- Giant/Royal Ahold (Howard County) $1.25 million conditional grant to be used to assist Giant relocate (and expand) its distribution center from Landover to Jessup (approved June 2002)

- Mack Trucks (Washington County) $2 million conditional loan to be used to assist Mack Trucks make operational and machining equipment improvements at its existing manufacturing facility in Hagerstown (approved January 2003, modification before LPC in December 2003)

- Morgan Stanley & Co. (Baltimore City) $3.5 million conditional grant to assist Morgan Stanley lease office space in Baltimore City. Disbursements in three phases ($1 million in fiscal 2004, $1 million in fiscal 2008, and $1.5 million in 2011) (approved January 2003, modification before LPC in December 2003)

- University of Maryland, Baltimore (Baltimore City) $4 million investment to assist UMB with the development of a health sciences biomedical research park adjacent to and afiliated with UMB (government-university-private entities research park) (before LPC June 2003)

- University of Maryland, College Park (Prince George's County) $5 million investment to assist UMCP with the development of a regional research and technology park adjacent to and affiliated with UMCP (government-university-private entities research park) (approved June 2003)

- University of Maryland, College Park (Prince George's County) $775,000 grant to provide new equipment for an expansion of the Bioprocess Scale-Up Facility (BSF) at UMCP (under the Maryland Technology Enterprise institute)—the equipment is to expand BSF's current capability to the next step which is to "scale-up" products for the commercial market (government-university-private entities research park) (approved June 2003)

Note: <u>conditional loan</u>: payment is forgiven if certain employment or investment conditions are met;
<u>conditional grant</u>: payment is required only if certain employment or investment conditions are not met

Part II
Maryland Program Evaluation Act
(Sunset Process)

Department of Legislative Services
Annapolis, Maryland

December 2003

Summary of Sunset Review in 2003

- Four agencies underwent preliminary evaluation -- DLS findings and recommendations for the LPC's consideration are discussed in the preliminary evaluation reports.

  - Three agencies are recommended for full evaluation next interim.

  - One agency is recommended for a waiver from further evaluation at this time.

- One agency underwent full evaluation. The evaluation committees for the State Board of Dietetic Practice are holding hearings on December 9 and December 12 and will report their recommendations to the General Assembly by the twentieth day of session.

- Last year, the LPC waived one agency from further evaluation. The State Board of Acupuncture has complied with the follow-up reporting requirement, sending its report directly to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee. Copies of this report are available on request.

DLS Recommendations on Preliminary Evaluations

Preliminary Evaluation	DLS Recommendation on Further Evaluation: Full	DLS Recommendation on Further Evaluation: Waive
Department of Health and Mental Hygiene		
State Board of Dental Examiners	U	
Respiratory Care Professional Standards Committee*		U
Department of Agriculture		
Maryland Horse Industry Board	U	
Maryland Tobacco Authority	U	

*Legislative Services recommends that this committee be re-authorized until 2013, putting it on the same evaluation schedule as the other committees within the State Board of Physicians. The follow-up report is to be provided to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee.

Source: Department of Legislative Services

DLS Recommendations on Evaluation Committees

Agency to Undergo Full Evaluation	Senate Committee	House Committee
State Board of Dental Examiners	EHE	HGO
Maryland Horse Industry Board	FIN	W&M
Maryland Tobacco Authority	EHE	ENV

EHE = Senate Education, Health, and Environmental Affairs Committee
ENV = House Environmental Matters Committee
FIN = Senate Finance Committee
HGO = House Health and Government Operations Committee
W&M = House Ways and Means Committee

Source: Department of Legislative Services

November 21, 2003

Dr. W. King Smith, President
State Board of Dental Examiners
Spring Grove State Hospital
Benjamin Rush Building, 55 Wade Avenue
Baltimore, Maryland 21228

Dear Dr. Smith:

The Department of Legislative Services has completed its preliminary evaluation of the State Board of Dental Examiners. As you know, this evaluation was undertaken to assist the Legislative Policy Committee in determining whether to waive the board from full evaluation next year. The Department of Legislative Services has recommended that the board undergo full evaluation.

Please note that your evaluation is one of several topics which will be discussed during the Legislative Policy Committee's meeting on Tuesday, December 16. At that meeting, the committee will act on our recommendations. You are welcome to attend; however, there is no need for the board to be represented at the hearing as there will not be an opportunity for comments.

Again, we appreciate the cooperation and assistance provided by the board and its staff throughout the preliminary evaluation process and look forward to working with you over the coming year. The board's comments have been reflected in the enclosed evaluation. Additional copies are being provided to Ms. Hobbs for distribution to board members and key staff.

Sincerely,

Karl S. Aro
Executive Director

KSA/LJM/mll
Enclosure
cc: Mr. Nelson J. Sabatini
Mr. Richard A. Proctor
Ms. Christine Hobbs
Mr. Warren G. Deschenaux

Preliminary Evaluation of the State Board of Dental Examiners

Recommendation: Full Evaluation

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-400 *et seq.* of the State Government Article), which establishes a process also known as sunset review. Enacted in 1978, the Maryland Program Evaluation Act requires the Department of Legislative Services (DLS) to periodically evaluate certain State agencies according to a statutory schedule. The agencies subject to review are usually subject to termination unless legislative action is taken to reauthorize them. The State Board of Dental Examiners is one of 68 entities currently subject to evaluation. The Legislative Policy Committee decides whether to waive an agency from full evaluation. If waived, legislation to reauthorize the agency must be enacted. Otherwise, a full evaluation of the organization is completed the subsequent year.

The board last underwent a full evaluation in 1998. The October 1998 DLS evaluation report recommended that legislation be enacted to extend the termination date for the board to July 1, 2013. However, the General Assembly only extended the board's termination date to July 1, 2006. The board was required to submit a report to selected committees on its implementation of the nonstatutory recommendations contained in the sunset evaluation report. The board's report was submitted in a timely fashion.

In conducting this preliminary evaluation, DLS staff reviewed statutory and regulatory changes related to the practice of dentistry and board materials including minutes and financial and complaint data. Additionally, DLS staff attended two board meetings and conducted interviews with the executive director, president, and vice-president of the board, as well as representatives from dental and dental hygiene professional societies and the University of Maryland Dental School.

The State Board of Dental Examiners reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**.

A History of Dental Care and Regulation in Maryland

Evidence of the earliest forms of dental care dates back more than 4,000 years when ancient Chinese and Egyptian cultures catalogued diseases of the teeth and treatments to relieve pain in the mouth. Modern dentistry is believed to have emerged in the late 1830s, with some of the most significant advancements taking place in Maryland.

In 1839 two prominent Baltimore dental practitioners, Dr. Horace H. Hayden and Dr. Chapin A. Harris, applied for a charter from the Maryland General Assembly to establish an independent dental school that would award a new degree, the Doctor of Dental Surgery (DDS). The General Assembly granted the charter in 1840, establishing the first dental school in the world, the Baltimore College of Dental Surgery (now the Dental School of the University of Maryland).

More than four decades later, the General Assembly passed legislation to formally regulate the practice of dentistry. Legislation in 1884 established the State Board of Dental Examiners to:

- limit the practice of dentistry to those who are competent to engage in it;
- maintain a registry of certified practitioners;
- provide reasonable opportunity to qualified persons who wish to practice in Maryland;
- support an acceptable standard of dental practice; and
- protect the public interest.

In 1947 the board's regulatory authority was expanded to include dental hygienists. In keeping with its original charges, the board currently regulates dentists, dental hygienists, dental assistants, and the practice of dentistry and dental hygiene in Maryland.

The State Board of Dental Examiners

The State Board of Dental Examiners is housed within the Department of Health and Mental Hygiene (DHMH). The mission of the board is to protect the citizens of Maryland and to promote quality health care in the field of dentistry and dental hygiene by:

- licensing dentists and dental hygienists and certifying dental radiation technologists;
- setting standards for the practice of dentistry through regulations and proposed legislation; and
- receiving and investigating complaints from the public regarding the practice of dentistry.

Dentists, Dental Hygienists, and Consumers Form Board Membership

The board consists of 15 members appointed by the Governor, including nine licensed dentists, three licensed dental hygienists, and three consumer members. Members serve four-year terms and may not serve more than two consecutive full terms. The board currently operates with a president, president-elect, vice-president, and asecretary-treasurer. Statute entitles board members to receive compensation in accordance with the budget of the board. Board members currently receive a $100 per diem, in addition to reimbursement for expenses.

Board Supported by 11 Full-time Staff

The board has 11 full-time staff members, with two additional positions currently vacant. Staff are organized into three units: administrative, licensing, and compliance. Administrative positions include the executive director, fiscal analyst, computer network specialist, and assistant to the executive director. The licensing unit is staffed by a licensing coordinator and a dental assistant coordinator. The unit's verification coordinator position is currently vacant. The compliance unit includes a dental compliance officer, legal assistant, case manager, one investigator, and the assistant to the dental compliance officer. A second investigator position is currently vacant.

Committees Facilitate Board Work

The board, which meets on the first Wednesday of each month, accomplishes the bulk of its work through six standing committees, which meet on the third Wednesday of each month. Three to five members serve on each of the standing committees: Applications, Case Resolution Conference, Dental Hygiene, Discipline Review, Executive, and Rules and Regulations. Committee composition is largely prescribed in the board bylaws, with all appointments made by the president. Previous sunset evaluations of the board raised the issue of how effectively dental hygiene issues were referred to the Dental Hygiene Committee. Based on this evaluation, it is unclear whether dental hygiene issues are being properly referred.

The Dental Well-Being Committee (also known as the Dental Rehabilitation Committee) is not part of the board but is run by the Maryland State Dental Association and reports to the board on the progress of licensees seeking assistance with substance abuse and mental health issues. A similar committee is run for dental hygienists by the Maryland Dental Hygienists Association.

Legislative and Regulatory Changes Since 1999

As shown in **Exhibit 1**, the General Assembly altered the board or the practice of dentistry and dental hygiene 10 times over the past five years. The majority of these Acts addressed small licensing modifications; however, more significant changes included expanding the scope of practice for dental hygienists, bolstering the boards disciplinary powers, and creating two volunteer licenses.

Exhibit 1
Statutory Changes to the Maryland Dentistry Act since 1999

Year	Chapter	Major Changes
1999	158	Increased consumer membership on the board from two to three; required the board to fund Dentist and Dental Hygiene Rehabilitation committees; provided for appointment of members to rehabilitation committees; required budgets of committees be audited; and extended the termination date of the board to July 1, 2006.
1999	376	Expanded the grounds for disciplinary action to include violation of a professional code of ethics pertaining to dentistry or dental hygiene and failure to comply with a board order; authorized the board to approve a recognized specialty; clarified the waiver of education provisions for limited license; and provided for a waiver for a teacher's license to practice dentistry.
2000	83	Established retired volunteer dentist and retired dental hygienist licenses.
2000	239	Permitted the board to waive educational requirements for certain general license applicants.
2002	140	Reinstated the authority of dental hygienists to practice under general supervision of a dentist in certain facilities that report to the board.
2003	58	Authorized any board officer or the board administrator to issue subpoenas and administer oaths to witnesses.
2003	131	Temporarily authorized the board to waive education requirements for a limited license for pediatric dental fellows with foreign degrees; and authorized the board to grant limited licensees a general license under certain circumstances.
2003	142	Altered the examination requirements for licensure for dentists and dental hygienists licensed in another state; and required either passage of a regional board examination or a specified number of years in practice prior to applying for licensure in Maryland, in addition to passage of board examinations.
2003	221	Authorized dental hygienists in private dental offices to provide services under general supervision if certain conditions are met.
2003	237	Established volunteer dentist and volunteer dental hygienist licenses.

Source: Laws of Maryland

The Practice of Dentistry in Maryland

Dental care is typically provided by dentists, dental hygienists, and dental assistants. Dentists are the proprietors of a dental practice who perform diagnosis, treatment, and dental services both within and between the teeth. Dentists typically hold a Doctor of Dental Surgery or Doctor of Dental Medicine (DDM) degree from a four-year, post-baccalaureate dental school. Dental hygienists clean and polish teeth and perform preliminary dental examinations and other functions. Dental hygienists have, at a minimum, graduated from a two-year dental hygiene school. Both dentists and dental hygienists must pass the Northeast Regional Board (NERB) examinations, as well as a jurisprudence examination offered by the board.

Dental assistants are employed by dentists to assist in the performance of dental services within the mouth under the direct supervision of the dentist. Dental assistants are not licensed by the board (unless they become certified dental radiation technologists as discussed below); however, the board issues a Maryland certification card to dental assistants who successfully pass the Dental Assisting National Board Maryland Only Examination. This card is issued one time only upon passage of the examination and is not subject to renewal.

Dental radiation technologists are individuals certified by the board (typically dental assistants with additional training) who are authorized to perform the placement or exposure of dental radiographs. Dental radiation technologists must take a board-approved radiology course and pass a radiology examination.

Board Issues More Than 7,600 Licenses, 250 Certificates, and Various Permits

The board's primary licensing activity is the issuance of new and renewal licenses for the practice of dentistry and dental hygiene. Licenses are renewed every two years. Currently, four dental licenses are being issued: general, limited, teacher's, and retired volunteer's. A fifth license, a volunteer dentist's license, is under development in response to legislation enacted in the 2003 legislative session. Four dental hygiene licenses are issued: general, teacher's, retired volunteer, and temporary. A fifth license, a volunteer dental hygienist's license, will soon be available. Students of dentistry, dentists serving in a federal dental service, and licensed dentists visiting Maryland for specific professional duties are exempt from the State licensure requirement. In fiscal 2003, there were more than 7,600 active licensed dentists and dental hygienists in Maryland, with the board issuing more than 3,700 new or renewal licenses.

In addition to its licensing duties, the board certifies approximately 250 dental radiation technologists and issues four types of permits (general anesthesia, parenteral sedation, facility, and dispensing prescription drug) annually. Ten permits were issued in fiscal 2003. The board also administers a jurisprudence examination for both dentists and dental hygienists.

Number of Dentists Fluctuates, with Slow Growth Potential

As shown in **Exhibit 2**, the number of active licensed dentists increased by approximately 2 percent annually since fiscal 1999. The number of new licensees fluctuated between 170 and 223, with an average of 193. The number of renewal licenses issued also fluctuated between 2,278 and 2,752, with an average of 2,500. The board indicates that licensees who do not renew ("nonrenewals") significantly impact the total number of renewals from year to year. For example, 138 dentists due to renew in fiscal 2001 did not do so. These nonrenewals were offset by almost 200 new dentists in fiscal 2001, resulting in a net gain of dentists in Maryland. However, 2,682 dentists (new licensees and renewal licensees from fiscal 2001) should have renewed again in fiscal 2003, yet only 2,278 renewal licenses were issued. While 223 new licences were issued, there was a net loss of approximately 180 dentists. Anecdotal evidence suggests that the population of Maryland dentists is aging without sufficient new graduates to replace soon-to-be retirees.

According to the 2002-03 edition of the U.S. Bureau of Labor Statistics' *Occupational Outlook Handbook,* employment of dentists is expected to grow more slowly than the average for all occupations through 2010. Although employment growth will provide some job opportunities, most jobs will result from the need to replace the large number of dentists projected to retire.

Number of Dental Hygienists Also Fluctuates with High Growth Potential

As shown in Exhibit 2, the number of active licensed dental hygienists increased by approximately 12 percent since fiscal 1999. The number of new licensees fluctuated between 104 and 146, with an average of 121. The number of renewal licenses issued also fluctuated between 1,115 and 1,340. While there is some attrition among dental hygienists, it appears to be offset by the number of new licensees. However, the professional societies believe there is a shortage of dental hygienists in Maryland.

According to the U.S. Bureau of Labor Statistics, employment of dental hygienists is expected to grow much faster than the average for all occupations through 2010, in response to increasing demand for dental care and the greater substitution of the services of hygienists for those previously performed by dentists.

Board Does Not Issue Licenses in a Timely Fashion

Between May and July 2003, the board's licensing unit issued nearly 3,800 new and renewal licenses for dentists and dental hygienists. According to the board's executive director, the board's target time frame for issuing licenses is 45 days from receipt. The board's Managing for Results (MFR) goals state that the board aims to issue a license within 30 days of receipt by July 1, 2003, and within 15 days by July 1, 2004. However, due to the documentation-intensive nature of the licensing process and the current vacancy in the licensing unit, the board, on average, issued licenses only within 62 days during the 2003 renewal period. The board indicates that the licensing process is hindered by the submission of late applications, incomplete applications, and applications that do not include the proper renewal fee.

Exhibit 2
Trends in Licensing Activity: State Board of Dental Examiners
Fiscal 1999 – 2003

Description	1999[1]	2000	2001	2002	2003
Dentists					
New Licenses Issued	172	200	198	170	223
Renewal Licenses Issued	2,450	2,540	2,484	2,752	2,278
Total Active Licensees	4,688	4,793	4,896	4,982	5,080
Dental Hygienists					
New Licenses Issued	110	116	130	146	104
Renewal Licenses Issued	N/A	1,340	1,115	1,337	1,164
Total Active Licensees	2,286	2,355	2,435	2,471	2,566
Total Active Licensees	**6,973**	**7,148**	**7,331**	**7,453**	**7,646**

[1]The board was unable to verify fiscal 1999 licensure information and indicates that dental hygiene data for fiscal 1999 represent the total number of licensed dental hygienists rather than the total number of active licensees.

Source: State Board of Dental Examiners

Licensing Unit Could Improve Customer Service

In addition to hindering the board's ability to issue licenses in a timely manner, the board's current licensing caseload has impacted the board's responsiveness to applicants and licensees. DLS consistently heard complaints about the accessibility of board staff and the level of customer service, particularly during the renewal period, when it is difficult to reach licensing staff and the unit's answering machine was often left on indicating that the board was essentially "too busy to help." The board recognizes that other boards have faced similar issues without adding additional staff or being inaccessible to licensees. The issue of accessibility for licensees and customer service was recently faced by the State Board of Nursing in its 2001 full sunset evaluation.

Complaint Process and Trends in Complaint Activity

The board investigates and acts upon complaints against dentists and dental hygienists. After a complaint has been considered by the board, it may be referred for substantive investigation. Once the board's investigator has examined the case and presented the findings to the board, the board must decide if the complaint is within its jurisdiction and either close the case without action, take informal or formal action, or refer the case to the Office of the Attorney General for prosecution. The board is currently operating with only one investigator due to a recent vacancy.

Board Handles More Than 400 Complaints Annually

As shown in **Exhibit 3**, over the past five fiscal years, the board has, on average, dealt with 422 total complaints annually. Prior to fiscal 2002, the board averaged less than 400 complaints per year. However, the number of total complaints exceeded 500 in both fiscal 2002 and 2003. The increasing number of pending or unresolved complaints indicates that the board's current investigative staff and disciplinary process may be inadequate to manage the large number of complaints filed.

Approximately half of all complaints received by the board are closed with no action, with the remainder of cases addressed through informal or formal board action or referral to the Attorney General. The board's use of both formal action and referral of cases to the Attorney General declined significantly between fiscal 2000 and 2002. In fiscal 1999, the board took formal action on 65 complaints (16 percent). In fiscal 2000 through 2002, the board took formal action on six or fewer cases per year. The board referred 65 cases to the Attorney General in fiscal 1999, but no more than four cases per year between fiscal 2000 and 2002. Formal disciplinary action and referrals to the Attorney General increased sharply in fiscal 2003 to 44 and 35 cases, respectively. This increase in more significant disciplinary action far exceeds the increase in the number of total complaints in corresponding years and may signal a shift in how aggressively the board pursues disciplinary cases.

Exhibit 3
Complaint Activity: State Board of Dental Examiners
Fiscal 1999 – 2003

Complaint Volume	**1999**	**2000**	**2001**	**2002**	**2003**
New Complaints	286	272	247	354	316
Pending Complaints	110	-	135	168	222
Total Complaints	396	272	382	522	538
Type of Action Taken					
Case Closed – No Action	200	129	189	266	213
Informal Action	40	7	20	24	70
Formal Action	65	0	4	6	44
Referred to Attorney General	65	1	1	4	35
Total Actions Taken	370	137	214	300	362
Complaints Carried Over	–	135	168	222	176

Note: Data on the number of complaints carried over from fiscal 1999 to 2000 could not be verified by the board and are therefore not included.

Source: State Board of Dental Examiners

DLS observed that the board conducts disciplinary hearings and deliberations on board action with professionalism. Board members appeared cognizant of the need to sanction licensees appropriately and consistently. However, there continues to be a significant backlog of disciplinary cases. In fiscal 2003, the board had a five-year high of 222 cases carried over from the previous fiscal year. The board's MFR goals state that the board aims to reduce the average time between the initial receipt of a complaint and board resolution of the complaint to 180 days. The board has made some progress toward this goal, reducing the average number of days to resolve a complaint from 280 days in fiscal 2001 to 230 days in fiscal 2002. However, even with both investigator positions filled (and it will be several months before the board will be able to fill the second vacant position), investigators are forced to carry caseloads in the hundreds, which clearly prohibits a thorough, timely investigation of consumer complaints.

The Board's Current Financial Standing Is Healthy

As shown in **Exhibit 4**, board revenues from licensure and certification fees were, on average, $1.12 million annually between fiscal 2000 and 2003, with revenues of $1.68 million anticipated for fiscal 2004. Board revenues increased by nearly 40 percent in fiscal 2003 due to significant fee increases in November 2002. Fees for initial licensure increased from $300 to $450 (50 percent) for dentists and $250 to $375 (50 percent) for dental hygienists. Fees for license renewal increased from $250 to $450 (80 percent) for dentists and $110 to $185 (68 percent) for dental hygienists. Revenues did not increase proportionate to the fee increases due to attrition by nonrenewing licensees.

Exhibit 4
Fiscal History of the State Board of Dental Examiners
Fiscal 2000 – 2004

	2000	2001	2002	2003	2004
Total Revenues	$859,119	$1,252,390	$1,021,600	$1,415,882	$1,680,860
Total Costs	1,384,025	1,163,379	1,233,810	1,331,450	1,459,527
Direct Costs	1,169,170	944,117	1,006,735	1,036,624	1,138,072
Indirect Costs	214,855	219,262	227,075	294,826	321,455
Surplus/(Deficit)	($524,906)	$89,011	($212,210)	$84,432	$221,333

Note: Fiscal 2004 figures are projected.

Source: State Board of Dental Examiners

As licenses are renewed every other year, board revenues are expected to fluctuate from even-numbered to odd-numbered years depending on the number of licensees who are scheduled to renew on that particular cycle. Despite data indicating that a larger proportion of dentists and dental hygienists renew in even-numbered years, board revenues are higher in odd-numbered fiscal years as these are the years in which all dental radiation technologists renew their certification with the board. The board renewed 2,660 dental radiation technologists in fiscal 2003, at a renewal fee of $75.

Total costs for the board have averaged about $1.3 million. Expenses include direct costs for personnel and information technology and indirect costs paid to DHMH. In fiscal 2000, board expenses exceeded revenues by more than half a million dollars due to unanticipated expenses incurred when the board moved from its former offices on Patterson Avenue to the board's current location at Spring Grove Hospital Center. Board expenses also exceeded revenues in fiscal 2002 due to lower-than-anticipated revenues. However, as the board is special funded, the board generally carries a fund balance. Consequently, the board never incurred a deficit but spent down its fund balance when fee revenue was lower than expenditures. Fee increases in 2002 substantially boosted revenues for fiscal 2003, and the board is projected to have sufficient revenues to cover its ongoing costs in fiscal 2004. The board reviews the status of its budget at each monthly meeting and appears to be attuned to its financial situation.

The Board's Fund Balance Is Higher than Targeted Levels

As shown in **Exhibit 5**, the board's fund balance for fiscal 2003, $261,554, was just under the target balance of $266,290 (20 percent of actual expenditures). For fiscal 2004, however, the board's fund balance is projected to be 65 percent higher than the target. This large fund balance is due to the recent fee increase, with the higher license renewal fees to be paid by the second half of licensees to renew in 2004. Even though the balance is high, the board needs to maintain a cushion, and expenses should increase in the future. The board plans to invest some of its fund balance in upgrading its computer systems to enhance staff efficiency. When the board is able to fill its two vacancies, the money will be needed to pay salaries.

Exhibit 5
State Board of Dental Examiners: Financial Status in Fiscal 2003 and 2004

Fiscal 2003 Fund Balance	
Balance Carried Forward from Fiscal 2002	$177,122
Revenue in Fiscal 2003	1,415,882
Total Available Revenue	1,593,004
Actual Expenditures	1,331,450
Fund Balance at End of Fiscal 2003	**261,554**
Fund Balance in Fiscal 2004	
Anticipated Revenue	1,680,860
Total Anticipated Available Revenue	1,942,414
Budgeted Expenditures	1,459,527
Anticipated Fund Balance	**482,887**
Target Fund Balance (20% of Expenditures)	**291,905**

Surplus/(Deficit) to Target Fund Balance	**$190,982**

Source: State Board of Dental Examiners

Board Has Made Significant Progress in Implementing Recommendations from the 1998 Sunset

Chapter 449, Acts of 1994 terminated the sitting members on the State Board of Dental Examiners, appointed new members (with some limited carryover), and advanced the termination date for the board from July 1, 2003, to July 1, 1999. For the most part, this legislation was in response to a report prepared by the then Department of Budget and Fiscal Planning (DBFP) for the Secretary of DHMH that alleged certain improprieties in the manner in which the board operated.

The DLS October 1998 sunset evaluation report noted that, since the board's reconstitution in 1994, "the administrative staff and members of the [board] have worked hard to address the concerns that were raised in 1994 and to improve the board's administrative operations." The report also made numerous recommendations designed to clarify or strengthen the board's statutory and regulatory authority and improve the board's administrative process and overall operations. A summary of the major findings and recommendations of the 1998 DLS report, together with DLS' comments on the implementation of those recommendations based on the current review, is included as **Appendix 2**.

Of the 24 recommendations included in the 1998 report, the board has addressed 19, the more significant issues of which include implementing a formal ethics and recusal policy; increasing consumer membership on the board from two to three; improving oversight of the board's finances; and amending the board's bylaws. However, five recommendations have yet to be addressed by the board, some of which reemerged as issues in this report.

- **The board should be more vigilant about directing dental hygiene issues to the Dental Hygiene Committee**. The board has improved handling of dental hygiene matters; however, it is not clear that all issues are properly forwarded to the committee, nor that the Dental Hygienists' Association is included in the same manner as the dentists' associations.

- **The board should promulgate regulations regarding the additional duties of dental hygienists**. Although the board indicated in 1999 that it had drafted legislation regarding this issue, no legislation or new regulations have been promulgated.

- **The board should reduce its backlog in complaints and better handle more complex cases by increasing its investigative staff and hiring a dental compliance officer**. The board did hire a dental compliance officer and has worked to reduce its backlog of complaints and reduced the amount of time for complaint resolution. However, a large backlog of cases exists, as well as an extremely large caseload volume for investigators, as well as a vacancy in one of the board's two investigator positions.

- **The board should complete a review of the complaint and disciplinary process and, where appropriate, promulgate regulations**. No new regulations have been promulgated.

- **The board should take steps to ensure that the newsletter is distributed at least twice per year**. The board's newsletter is currently distributed only once annually, which is not sufficient to keep licensees informed of legislative and policy changes.

Recommendation

The continued regulation of dentistry and dental hygiene in Maryland is necessary to protect the public from harm. The board plays an important role in protecting the public by promoting a high level of quality dental care. DLS finds that the board has made improvements in recent years and recently hired a new executive director who appears to be improving efficiency and addressing previous problems at the board. Throughout the preliminary sunset evaluation process, the board was open, receptive, and responsive to DLS. However, this preliminary evaluation identified several issues fundamental to the board's ability to effectively operate.

The board does not issue licenses in a timely fashion, and the licensing unit has demonstrated a poor customer service record. The board has a significant backlog of disciplinary cases, and it is not clear to DLS whether the board is adequately taking formal disciplinary action against licensees where appropriate. Several issues identified in the board's 1998 sunset evaluation report have not yet been addressed. The board's historical licensing, disciplinary, and complaint data are inconsistent. The board, its licensees, and consumers could benefit from a more thorough analysis of each of these issues. Staffing and administration processes should be reviewed to determine how the board could meet its stated goals and improve its customer service. **Given these findings, the Department of Legislative Services recommends that a full evaluation of the State Board of Dental Examiners be undertaken.**

Appendix 1. Written Comments of the State Board of Dental Examiners

STATE OF MARYLAND

DHMH Maryland State Board of Dental Examiners

Maryland Department of Health and Mental Hygiene
Benjamin Rush Bldg. • Spring Grove Hospital Center
55 Wade Ave./Tulip Drive • Baltimore, Maryland 21228
Robert L. Ehrlich, Jr., Governor – Michael S. Steele, Lt. Governor – Nelson J. Sabatini, Secretary

October 20, 2003

Warren G. Deschenaux, Director
Department of Legislative Services
Office of Policy Analysis
Maryland General Assembly
Legislative Services Building
90 State Circle
Annapolis, Maryland 21401-1991

Dear Mr. Deschenaux:

The State Board of Dental Examiners has had the opportunity to review the Department of Legislative Services preliminary evaluation of the Board. The draft report reflects the information provided by the Board and contains no factual errors. The Board would like to commend Ms. Chassee for the exceptional discussion of dental history and industry trends.

The Board concurs with the findings in the draft report. The Board is cognizant of the issues identified in the preliminary evaluation. Our large licensee base and the significant number of complaints received each year challenge the Board to streamline administrative processes and maximize our resources to the benefit of our customers. The Board believes, however, that we are taking positive action to strengthen work processes and improve responsiveness to our customers. We will continue to partner with the Department of Health and Mental Hygiene and other Health Occupation Boards to identify and implement strategies to decrease the time period for licensure and to improve the ratio of investigators to investigative cases.

Thank you for the opportunity to comment on the preliminary evaluation. The Board looks forward to collaborating further with the Department of Legislative Services to enhance the Board's services to its customers.

Sincerely,

W. King Smith, DDS

W. King Smith
President

cc: Mr. Nelson J. Sabatini
Mr. Richard A. Proctor
Mr. Karl S. Aro

Toll Free 1-877-4MD-DHMH • TTY for Disabled – Maryland Relay Service 1-800-735-2258
Web Site: www.dhmh.state.md.us

Appendix 2. Implementation Status of Major Findings and Recommendations in the Department of Legislative Services' *Sunset Review: Evaluation of the State Board of Dental Examiners*, October 1998

DLS Recommendation – 1998	DLS Comment – 2003
The board should implement an ethics policy, including a formal recusal policy.	COMAR 10.31.01, effective July 2000, established a code of conduct for members of and investigators employed by all DHMH health occupations boards, with the exception of the Board of Nursing. DLS observed members abiding by these regulations, and board minutes reflect recusals.
The board should amend its bylaws to eliminate the ex-officio role of the president and the secretary-treasurer and remove the president from the appointment and operations of the Nominating Committee.	The president and secretary-treasurer do not serve as ex-officio members on standing committees. However, the president continues to appoint a three-member Nominating Committee each fall.
The board should be vigilant about directing dental hygiene issues to the Dental Hygiene Committee.	The board has improved handling of dental hygiene matters. However, it is not clear that all dental hygiene issues and correspondence are properly forwarded to the committee.
The board should promulgate regulations regarding the additional duties of dental hygienists or adopt broad authorizing language relating to dental hygienists.	COMAR 10.44.02 and .03 list the intraoral functions that dental hygienists may perform, including exceptions. These regulations were last amended in January 2002. No authorizing language has been enacted.
The board should clearly state in its correspondence to licensees the procedures for reinstating a lapsed license.	DLS reviewed the correspondence sent to licensees who have failed to renew. All procedures for reinstatement, including penalty options, are clearly explained.
The board should promulgate regulations to reflect the board's current practice of offering either a nonpublic consent order or a case resolution conference to reinstate an expired license.	These regulations are in place at COMAR 10.44.10.02(f)(4) and (g)(4).

DLS Recommendation – 1998	DLS Comment – 2003
The minutes of the board's open meetings should more accurately reflect board action on dental hygiene matters.	Board minutes continue to reflect referral of items to the committee and generally reflect action on dental hygiene matters.
Statute should be amended to increase the number of consumer members on the board from two to three.	Chapter 158, Acts of 1999 increased consumer membership from two to three.
The board should take a more active role in the consumer outreach and public education program in the Council of Boards and Commissions.	The board's current consumer members appear to be heavily involved and are expanding the board's consumer-oriented activities.
The board should reduce its backlog in complaints and better handle more complex cases by increasing its investigative staff and hiring a dental compliance officer.	A dental compliance officer has been hired; however, the board lost one of its investigator positions due to budget cuts, and one of the remaining two positions is currently vacant. A large backlog of cases remains.
The board should complete a review of the complaint and disciplinary process and, where appropriate, promulgate regulations.	No new regulations regarding the board's complaint or disciplinary process have been promulgated.
The board should move forward with the purchase of an administrative system that will allow it to better track disciplinary cases.	The board purchased License2000, which provides good data on the number and type of disciplinary cases. However, the software is limited with respect to detailed analysis.
DHMH should investigate the issue of salary disparities between investigators of the Board of Physician Quality Assurance (BPQA) and the board and either justify those disparities or eliminate them.	According to DHMH, BPQA investigators are paid approximately $4,700 more annually than the average health occupations investigator because BPQA has independent salary-setting authority. DHMH indicated that it has tried to enhance the salaries of other investigators, but the Department of Budget and Management has not been supportive.
The board should reconcile discrepancies in the complaint data and ensure that the historical data provided in the Governor's operating budget submissions are accurate.	Current data generally appear to be consistent. The executive director is aware that some inconsistencies still remain and is trying to remedy them.

DLS Recommendation – 1998	DLS Comment – 2003
The board should move forward with the purchase of an administrative system that better integrates its administrative needs and resolves audit issues raised in 1997 and in prior-year audits.	The board purchased License2000, which provides good basic data.
The board should report its application and renewal processing times in the operating budget.	The fiscal 2004 budget book includes estimated numbers of approved applications and average time to issuance of license for fiscal 2003 and 2004 only.
The board should develop written procedures to prevent future repetition of multiple payments to board members for meetings and also present written evidence that the overpayment made to the secretary-treasurer has been corrected. The board should also make clear in its records that this overpayment occurred and the steps taken to resolve the overpayment.	The board's executive director personally handles the processing of per-diem payment to members or attendance at monthly board meetings and committee meetings.
Oversight of the board's finances should be improved. The board should receive quarterly financial reports on implementation of the current fiscal year budget and the status of the fund.	Board members continue to receive monthly updates on the board's budget.
Statute should be amended to refer to funding of a Maryland State Dental Association (MSDA) Dentist Rehabilitation Committee, with that specific language modeled after the BPQA statute. The Secretary of Health and Mental Hygiene should ensure that the committee includes representation from the other major professional dental association, the Maryland Dental Society.	Chapter 158, Acts of 1999 enacted these recommendations.
The board should seek an Attorney General's opinion on the issue of whether holding an elected position in a national dental organization falls within the scope of the prohibition established in statute and promptly implement the recommendations of that opinion.	None of the current members holds an elected position in a national dental organization.

DLS Recommendation – 1998	DLS Comment – 2003
The board should ask the State Ethics Commission for a formal review of the employment relationship of the two board members (a dental hygienist and a dentist) who work in the same office and should act upon the recommendation.	None of the current members works in the same dental office as another member.
The board should take steps to ensure that the newsletter is distributed at least biannually and to update the law book immediately.	The newsletter is currently published only once per year.
The board should evaluate the costs and benefits of issuing law books and updates to licensees with their renewal, utilizing the newsletter as a vehicle to provide more regular updates of statutory and regulatory changes.	The board currently issues law books to licensees upon initial licensure or on request. The newsletter is not published frequently enough to provide regular updates of statutory and regulatory changes.
The board should update its bylaws and keep them current to minimize potential criticism of the way the board conducts itself.	The board is in the process of updating its bylaws.

November 21, 2003

Dr. Samir R. Neimat, Chairman
State Board of Physicians
4201 Patterson Avenue
Baltimore, Maryland 21215

Mr. Melvin G. Martin, Chairman
Respiratory Care Professional Standards Committee
4201 Patterson Avenue
Baltimore, Maryland 21215

Dear Dr. Neimat and Mr. Martin:

The Department of Legislative Services has completed its preliminary evaluation of the State Board of Physician's Respiratory Care Professional Standards Committee. As you know, this evaluation was undertaken to assist the Legislative Policy Committee (LPC) in determining whether to waive the committee from full evaluation next year. The Department of Legislative Services has recommended that the committee be waived from full evaluation, be extended to July 2013, and submit a follow-up report on the items specified.

Please note that your evaluation is one of several topics which will be discussed during the Legislative Policy Committee's meeting on Tuesday, December 16, 2003. At that meeting, LPC will act on our recommendations. You are welcome to attend; however, there is no need for the committee to be represented at the hearing as there will not be an opportunity for comments.

Again, we appreciate the cooperation and assistance provided by the board, the committee, and your staff throughout the preliminary evaluation process. The board's comments have been reflected in the enclosed evaluation. Additional copies are being provided to Mr. Pinder for distribution to committee members and key staff.

Sincerely,

Karl S. Aro
Executive Director

KSA/LJM/mll
Enclosure
cc: Mr. Nelson J. Sabatini
Mr. Richard A. Proctor
Mr. C. Irving Pinder, Jr.
Ms. Fannie B. Yorkman
Mr. Warren G. Deschenaux

Preliminary Evaluation of the Respiratory Care Professional Standards Committee

Recommendations: **Waive from Full Evaluation**

Extend Termination Date to July 1, 2013

Require Follow-up Report by October 1, 2004

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-400 *et seq.* of the State Government Article), which establishes a process also known as sunset review. Enacted in 1978, the Maryland Program Evaluation Act requires the Department of Legislative Services (DLS) to periodically evaluate certain State agencies according to a statutory schedule. The agencies subject to review are usually subject to termination unless legislative action is taken to reauthorize them. The Legislative Policy Committee decides whether to waive an agency from full evaluation. If waived, legislation to reauthorize the agency must be enacted. Otherwise, a full evaluation of the organization is completed the subsequent year.

The Respiratory Care Professional Standards Committee is a sub-unit of the State Board of Physicians. Both are among the 68 entities currently subject to evaluation. This preliminary evaluation of the committee is the first review undertaken by DLS; however, the board recently underwent its third full evaluation by DLS.

In conducting this preliminary evaluation, DLS staff reviewed statutory and regulatory changes related to respiratory care practitioners and reviewed committee documents, including minutes and board annual reports. Additionally, DLS staff conducted interviews of the chairman and administrative officer of the committee, as well as other staff for the board.

The committee and board reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document.

Prepared by: Stacy M. Goodman ● Department of Legislative Services ● Office of Policy Analysis ● November 2003

Respiratory Care Practitioners in Maryland

A "licensed respiratory care practitioner" is defined in Title 14, Subtitle 5A of the Health Occupations Article as an individual who is licensed by the board to practice respiratory care. The committee describes the practice of respiratory care as including the evaluation, treatment, and caring for "patients with breathing disorders, including asthma, chronic bronchitis, emphysema, cystic fibrosis, and coronary heart disease" under the direction of a physician. The tasks a respiratory care practitioner may perform include:

- administering therapeutic and diagnostic gases (except for general anesthesia) and prescribing medications for inhalation or direct tracheal installation;
- inserting, maintaining, and removing artificial airways;
- collecting body fluids and blood samples for evaluation and analysis;
- inserting diagnostic arterial access lines;
- collecting and analyzing exhaled respiratory gases; and
- administering advanced cardiopulmonary measures and cardiopulmonary rehabilitation.

Respiratory care practitioners treat a wide range of patients including premature infants, the elderly with breathing problems, emergency care/accident victims, lung cancer patients, and individuals with Acquired Immune Deficiency Syndrome in acute and sub-acute settings including hospitals, nursing homes, and private residences.

Over the past five years, the number of licensed respiratory care practitioners has fluctuated between 2,300 and 2,000, with the most recent number of respiratory care practitioners in Maryland recorded at 2,283. The committee reports that there is a growing shortage of respiratory care practitioners in the State. The committee is working with the Governor's Workforce Investment Board to increase the number of individuals entering the profession.

The Regulation and Licensing of Respiratory Care in Maryland

The practice of respiratory care has been regulated by the board since 1988. At that time, a respiratory care practitioner was required to be certified by the board in order to practice. In 1995 legislation was introduced that attempted to codify scope of practice regulations and license respiratory care practitioners, given the responsibilities of the respiratory care practitioner. The next year the General Assembly passed Chapter 516, Acts of 1996, the Maryland Respiratory Care Practitioners Act. This Act created the committee, codified the scope of practice standards, and established a licensing statute.

Since the Act's inception, there has been only one significant legislative change and minimal regulatory changes. Chapter 479, Acts of 2001, requires hospitals, related institutions, alternative health systems, or employers of a respiratory care practitioner to report to the board any changes to the respiratory care therapist's duties for any reason that may be grounds for disciplinary action under the statute. There are exceptions to this notice requirement for respiratory care practitioners who disclose that they are in treatment for alcohol or drug abuse. This law also requires the revocation of a license for conviction of a crime based on moral turpitude. The regulatory changes were proposed in a timely manner.

Closely following the effective date of the committee's enabling legislation, the board published notice of its intention to repeal the regulations that certified respiratory care practitioners and to adopt regulations to license respiratory care practitioners. These regulations were adopted on April 25, 1997. The only other regulatory change was finalized on August 9, 2002. This action added three regulations regarding proceedings for violations of crimes of moral turpitude, required reports, and penalties for violations of certain provisions of law.

The Respiratory Care Professional Standards Committee

The committee functions as a sub-unit of the board and is charged with:

- reviewing all applications for licensing, renewal, and reinstatement of respiratory care practitioners as well as making recommendations to the board;
- making recommendations to the board regarding:
    - standards of care for respiratory care practitioners;
    - regulations governing respiratory care practitioners;
    - the accreditation status of education programs in respiratory care for the board's approval; and
    - the endorsement of credentials of respiratory care practitioners from outside of the State;
- investigating complaints against respiratory care practitioners as referred by the board;
- developing and recommending a code of ethics;
- developing and recommending continuing education requirements for license renewal to the board; and

- advising the board on matters related to the practice of respiratory care.

Committee Membership Does Not Meet Statutory Requirements

Statutorily, the committee consists of seven members appointed by the board – three members are respiratory care practitioners, three members are physicians, and one member is a consumer. Each physician member must specialize in one of three areas related to respiratory care: thoracic surgery, pulmonary medicine, and anesthesiology. The committee is presided over by a chairman. The term of a member is three years. The committee is supported by an administrative specialist who is shared with the Medical Radiation and Nuclear Medicine Technology Advisory Committee. The board provides legal support and other services.

Contrary to statutory requirements, the current committee is composed of four respiratory care practitioners, two physicians, and no consumer member. Although the committee has been functioning without an appointed physician member specializing in thoracic surgery, it has been functioning as if it were in compliance with the statute because the board had appointed an alternate physician member who specializes in thoracic surgery. However, in its response to this report, the board noted that a physician with this specialty has been appointed, effective February 2004, and one of the four respiratory care practitioner committee members has been redesignated as an alternate member.

According to regulation, COMAR 10.32.11.04, the board is required to choose six alternate committee members – three alternate respiratory care practitioners and three alternate physician members. Alternate members may represent appointed committee members at formal meetings if the committee member anticipates being absent at a scheduled committee meeting. The regulation also defines a quorum as "[a] majority of the voting members *then* serving on the Committee." [Emphasis added.]

The board cites Title 14, Subtitle 5A as statutory authority for this alternate member system. However, there is no provision in statute that grants the board the authority to choose alternate members to represent the appointed committee members in a committee member's absence. Despite this lack of statutory authority, the current committee includes three alternate members – one alternate physician and two alternate respiratory care practitioners.

Another membership problem faced by the committee is a persistently vacant consumer member position. According to the board's annual reports for the past five years, the presence of a consumer member has only been recorded once at a May 2001 meeting. The committee chairman and staff acknowledge this as a problem. Committee members and staff agree that the consumer member's opinions could be important and helpful to the committee. The committee reports having difficulty recruiting and retaining a consumer member because of the time of scheduled committee meetings and the steep learning curve for understanding the medical jargon and issues related to the respiratory care profession.

The committee is actively working to solve this problem. A proposed and promising solution is having one of the board's six consumer members assigned to the consumer member position on the committee. Consumer members of the board often have limited work assignments beyond the member's general membership on the board. The committee is attempting to determine if this solution will benefit all parties by fostering closer communication between the committee and board, giving a consumer member on the board more responsibilities, and filling the committee's persistently vacant consumer member position. In its response to this report, the board has agreed to appoint one of its consumer members to the committee when a new board is appointed.

Committee Meetings Are Poorly Attended

The committee schedules meetings for a Thursday afternoon of every month but cancels most of those meetings as unnecessary. The committee accomplishes its work through an informal structure of assignment referrals to staff or committee members or discussions among members at meetings, through e-mail, or by telephone. Reviewing initial applications for licensure is the main responsibility of the committee. Applications are sent to committee members for their review and recommendation through this informal system. Most complete applications are processed and approved within two weeks.

As the other responsibilities of the committee are issue-oriented and cyclical, the committee averages three formal meetings per year. The presence of a majority of the appointed members on the committee is statutorily required to conduct business. However, when the committee does meet, an average of three of the committee's members are absent. This problem is only somewhat alleviated by the presence of the alternate members appointed according to regulation discussed above. There has been at least one formal meeting where enough committee members and alternates were absent to result in a lack of quorum to conduct business.

The reasons for recurrent absenteeism by committee members from meetings include:

- the lack of compelling issues at meetings; and
- busy schedules of committee members which often conflict with the scheduled time and location of committee meetings.

Licensing of Respiratory Care Practitioners

The board, with the committee's input, issues licenses annually and renews licenses biennially. An initial license is effective upon approval. A renewal license is effective June 1 every even-numbered year.

The board reviews three types of applications to practice respiratory care – full licensure, temporary licensure, and participation in the Veterans' Internship Program. Federal government employees are exempt from licensure. To be fully licensed, an applicant must:

- be at least 18 years old;

- be of good moral character;
- demonstrate competency in the English language;
- be certified by a national certifying board;
- be a graduate of a respiratory care educational program that is accredited by the Council on Accreditation of Allied Health Education programs; and
- meet the educational and clinical training requirements established by the committee.

The board may grant a temporary license to an applicant who has met all the above-named requirements for licensure except for certification from a national board if that applicant has applied for the first available national certifying examination. A temporary license holder must work in association with a licensed respiratory care practitioner. The temporary license is effective until 45 days after the results of the examination are available to the public.

In the Veterans' Internship Program, the board allows individuals with certain military training and experience, who have not yet taken the first available certifying examination and received the results, to practice their skills without a license. The scope of practice of veteran interns is limited to supervised hospital care of noncritical patients. A veteran intern may only practice under the program for 30 months and must be in continual compliance with all regulations. Within 30 days of graduation from the program, a veteran intern must apply for a temporary license in order to continue practicing.

Respiratory care practitioners employed by the federal government who are working within their scope of employment in the State are exempt from the above-cited licensing requirements.

Committee's Role in Complaint Resolution Is Limited

Complaints against respiratory care practitioners are initially received by the board. Once a complaint is received, a preliminary investigation begins. Board investigators determine whether there has been a violation of the law governing physicians or other health care providers regulated by the board. The investigator gathers pertinent information surrounding the complaint and presents it to a panel of board members. The board panel may choose to dismiss the complaint with a letter of information to the health care provider or may direct further investigation.

Regulation stipulates that the board is responsible for reviewing the complaints, but the board may refer to the committee if it chooses. In practice, the board has retained the responsibility for the complaint process, but the chairman of the board sometimes seeks the advice of the chairman of the committee, mainly in complaints involving scope of practice violations. Formal action such as a summary suspension, probation, administrative fine, or a disposition agreement has been taken against a respiratory care practitioner in less than 10 percent of the complaints investigated. Most cases are dismissed entirely.

Since 1998 the board has received an average of 16 complaints per year against respiratory care practitioners, with a high reached two years in a row of 21 complaints in both 2001 and 2002 and a low of 10 complaints received in 1999. This represents less than 1 percent of the board's compliance workload. The majority of complaints against respiratory care practitioners involve substance abuse-related issues.

Licensing Fees Were Recently Raised

Section 14-5A-04 of the Health Occupations Article grants the board authority to set reasonable fees. Licensing fees are received by the board, not the committee. As shown in **Exhibit 1**, an initial license fee is $184, and the renewal fee is $169. The fees described in this exhibit became effective July 1, 2003. These fees were recently increased from $150 to $184 and $135 to $169. The $34 fee increase is not revenue for the board. This past year, the Maryland Health Care Commission determined that respiratory care practitioners, as well as other specified allied health care practitioners, should also pay part of the commission's costs of regulating the health care industry in the State as authorized in § 19-111 of the Health-General Article. The assessment fee is paid to the board and deposited in the Maryland Health Care Commission Fund.

Otherwise, the various licensing fees applied to respiratory care practitioners have remained constant since 1996. The board does not advocate any fee increases because the current fees are high in proportion to the salary earned by a respiratory care practitioner.

Exhibit 1
Schedule of Fees: Respiratory Care Professional Standards Committee

Initial License Fee*	$184
Renewal Fee*	169
Temporary License Fee*	184
Reinstatement Fee*	184
Veteran Intern Registration Fee	25
Inactive Status Fee	25
Duplicate License Fee	25
Name Change Fee	25

*Fee includes $34 assessment by the Maryland Health Care Commission.
Source: Respiratory Care Professional Standards Committee

Revenues Attributable to Respiratory Care Practitioners Appear to Cover a Substantial Portion of Costs

The committee does not maintain a separate budget; anticipated expenses and revenues are included in the board's budget. DLS staff were notable to identify the committee's direct expenses because it shares so many resources, such as office space, with the board. The committee is not responsible for collecting fees paid by respiratory care practitioners, as all fees are received directly by the board. Therefore, all revenues and direct expenses attributed to respiratory care practitioners could not be determined.

The board estimates that a portion of the salary plus fringe for staff who assist the committee and 7 percent of its other expenses can be attributed to the cost of the respiratory care program. This puts the estimated cost of the committee at $230,000 per fiscal year. However, given the limited activity related to respiratory care practitioners, the Department of Legislative Services believes that the actual cost could be lower. Nevertheless, the board states that the costs of licensing a pool of professionals as small as the respiratory care practitioners make self-governance cost prohibitive. Consequently, the board agrees to cover some of the licensing costs in exchange for greater authority in licensing respiratory care practitioners and does not recommend increasing any of the licensing fees.

As shown in **Exhibit 2** – a snapshot of the available committee expense and revenue information for fiscal 2002 and 2003 – revenues related to respiratory care practitioners appear to cover a substantial portion of the expenses associated with the committee.

Exhibit 2
Select Revenue and Expense Information for Fiscal 2002 and 2003: Respiratory Care Professional Standards Committee

Revenue Sources – 2002	
Initial Licenses	$ 22,650
License Renewals	281,745
License Reinstatements	6,600
Revenue Sources – 2003	
Initial License	$ 22,950
License Renewals	NA[1]
License Reinstatements	3,000
Delineated Expenses	
Committee Staff Salaries Per Year[2]	$25,979
Other Board Expenses Attributed to Committee	204,447

[1]Licenses are renewed biennially.
[2]Includes $12,824 for 7 percent of two assistant Attorneys General time and $13,155 for 1 percent of compliance staff time.
Source: Board of Physicians

Recommendations

The committee plays an important role in advising and making recommendations to the board on matters relating to respiratory care practitioners. The committee appears to take its task of reviewing hundreds of applications for licensure seriously and completes the reviews in a timely manner. Based on this preliminary evaluation, DLS finds that the committee is a beneficial component to the board. Therefore, **the Department of Legislative Services recommends that the Legislative Policy Committee waive the Respiratory Care Professional Standards Committee from full evaluation and that legislation be enacted to extend the committee's termination date to July 1, 2013, to put it on the same schedule as the Medical Radiation and Nuclear Medicine Technology Advisory Committee and the Physician Assistant Advisory Committee, both of the State Board of Physicians.**

DLS also recommends that the Respiratory Care Professional Standards Committee submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by October 1, 2004, on the steps taken to:

- bring the membership of the committee into compliance with the requirements in statute;
- recruit and retain a consumer member to fill the persistently vacant seat on the committee;
- compose and introduce legislation authorizing the use of alternate members at committee meetings, or, alternately, phase out the alternate committee member system; and
- encourage regular attendance by committee members at scheduled committee meetings including exploring a more appropriate scheduled time for committee meetings.

Appendix 1. Written Comments on Behalf of the Respiratory Care Professional Standards Committee

STATE OF MARYLAND

Board of Physicians

Maryland Department of Health and Mental Hygiene
4201 Patterson Avenue • Baltimore, Maryland 21215-2299
Robert L. Ehrlich, Jr., Governor – Michael S. Steele, Lt. Governor – Nelson J. Sabatini, Secretary

October 27, 2003

Mr. Warren G. Deschenaux, Director
Department of Legislative Services
Office of Policy Analysis
Legislative Services Building
90 State Circle
Annapolis MD 21401-1991

Re: Preliminary Evaluation of Respiratory Care Professional Standards Committee

Dear Mr. Deschenaux:

Thank you for affording both the Board of Physicians and the Respiratory Care Professional Standards Committee (Committee) the opportunity to review and comment on the preliminary evaluation of the Respiratory Care Professional Standards Committee. Overall, we are pleased with the evaluation and have already implemented one of Ms. Stacy Goodman's suggestions, that we include consumer-oriented information on our website explaining what a respiratory care practitioner actually does. There are a few changes to the evaluation which we believe would reflect more accurately the actual operation of the Committee as a Committee that is advisory to the Board.

There are two minor corrections on page two. The citation shown for the definition of a "licensed respiratory care practitioner" should be Title 14, Subtitle 5A of the Health Occupations Article. Also on that page, prescribing medications is not within the scope of practice of a respiratory care practitioners; they do administer prescribed medication.

In the discussion of the statutory basis for the program (pages 3-4), I believe that the correct chapter for the 1996 law is 516, not 514. Also, the law was amended in 2001 (Chapter 479) to include hospital reporting of disciplinary actions to the Board and Board action against a licensee who is convicted of a crime of moral turpitude. The 2002 amendments to the regulations reflected these changes.

410-764-4777 • Fax 410-358-2252 • Toll Free 1-800-492-6836
Web Site: www.mbp.state.md.us

On page 5, the text refers to two types of exemption from licensure, one of which is the veterans internship program. The veterans internship is considered to be a special category of licensure, rather than an exemption from licensure. It allows the veteran with the requisite experience to work in the field while completing the licensure requirements.

I believe that the list of Committee members was provided to Ms. Goodman contained two inaccuracies, the omission of a physician member and misdesignation of one alternate as a voting member. A corrected copy is attached. I apologize for the inaccuracy. With the appointment of a new Board, a Board consumer has been appointed to the Committee. The statement on page 4, last paragraph, "Consumer members often have no work assignments beyond the member's general membership on the board" is not accurate; we hope that you will remove the sentence from the final report. While historically consumer Board members have not served on allied health advisory committees, they have served on other committees.

In the early years of the program, the Committee was of great assistance to the Board in developing policies and regulations regarding the scope of practice for respiratory care practitioners. Meetings were, of necessity, more frequent, and alternate members were seen as a means of ensuring a quorum. As suggested by the report, the Board will review the need for alternate members for the Committee and will most likely repeal this section from the regulations.

Committee members do not review each application for a license. Board staff process applications for initial, renewal, and reinstated licenses. The Committee provided guidance on the requirements for a license (now reflected in the regulations) and continues to make recommendations for changes when needed. The Committee's main function is to provide advice to the Board on issues relating to the practice of respiratory care practitioners.

Currently, meetings are scheduled quarterly, on the second Thursday of the month. When there are no issues or questions to be considered, the Committee Chair cancels a scheduled meeting. Fortunately, the regulations address, with little ambiguity, issues which might otherwise come before the Committee. I hope that the text of page 5 will be changed to reflect that lack of issues and the busy schedules of all members of the Committee are the reasons for reducing the frequency of the meetings. Board staff are flexible in scheduling meetings, so I do not believe lack of attendance resulted primarily from the time and place of meetings.

I believe there is an incorrect figure on Exhibit 2 (page 8) that proposes to support the stated conclusion that "the actual cost could be much lower." Under "delineated expenses," committee staff salaries are listed as $25,979. This dollar amount appears to be the sum of two lines on information we provided (copy attached) on the cost of the respiratory care program: a percentage of salary and fringe for the two assistant attorneys general who provide support to the program and a percentage of salary and fringe for the staff of the compliance division, which is responsible for investigating all complaints, including those against respiratory care practitioners. The cost of the respiratory care program is $230,426, as indicated in the first paragraph. This estimate includes all costs of operating the program and is a very conservative estimate.

We are pleased that your recommendation is to extend the Committee's termination date to July 1, 2013. We will be happy to provide a follow-up report on Committee membership, meetings, and any changes to our regulations by October 1, 2004.

Since the Committee is an advisory committee to the Board, please refer any correspondence, reports, and questions to the Board through me or the Chief of the Allied Health Division, Ms. Ellen Douglas Smith. If you have questions, we can be reached at 410-764-4777.

Sincerely,

C. Irving Pinder, Jr. JH/MA

C. Irving Pinder, Jr.
Executive Director

Attachments
cc: Ms. Stacy Goodman
Mr. Nelson J. Sabatini
Mr. Richard A. Proctor

RESPIRATORY CARE PROFESSIONAL STANDARDS COMMITTEE

MELVIN MARTIN, M.S., RRT.,CHAIR
Appointed – 02/01 – 2nd term

SAMIR R. NEIMAT, MD
Appointed – 02/04 - 1st term

ALFRED MUNZER, M.D.
Appointed - 07/01 – initial term

ZORAYDA M. LEE-LLACER, MD
Appointed – 02/01 – 2nd term

THELMA BALTIMORE, RRT
Appointed – 02/01 – 2nd term

TERRY DODSON, RRT, RPFT
Appointed – 02/01 – 2nd term

CONSUMER MEMBER
(VACANT)

ALTERNATE MEMBERS

JONATHAN BRETT ORENS, M.D
Appointed – 07/01 – initial term

THOMAS PATRICK McCARTHY, RRT
Appointed – 05/02 – initial term

ROBERT L. JOYNER, PH.D., RRT
Appointed – 05/02 – initial term

GARY POOLE, RRT
Appointed – 05/01 – 2nd term

BOARD COUNSEL

NOREEN RUBIN, ESQ (STAFF COUNSEL)
OFFICE OF ATTORNEY GENERAL

INTERESTED PARTIES

BARBARA SCHENK, BA, RRT

Revised Correction 7/03

RESPIRATORY CARE PROGRAM

Total Board Expenses per Fiscal Year		$5,495,500
Minus:		
Licensure Salaries plus Fringe	$ 242,080	
AG's plus Fringe	1,017,289	
Compliance plus Fringe	1,315,456	
Sub-total	$2,574,825	
Total		$2,920,675

Costs

7% of Expenses - $2,920,675	$204,447
7% of Salary plus Fringe for 2 AG's - T. Keech and N. Rubin	12,824
1% of Compliance Salaries and Fringe Based on Number of Cases	13,155

Total Cost of Respiratory Care Program per Fiscal Year	**$230,426**

8/12/03

November 21, 2003

Mr. Gregory W. Gingery, Chairman
Maryland Horse Industry Board
50 Harry S. Truman Parkway
Annapolis, Maryland 21401

Dear Mr. Gingery:

The Department of Legislative Services has completed its preliminary evaluation of the Maryland Horse Industry Board. As you know, this evaluation was undertaken to assist the Legislative Policy Committee in determining whether to waive the board from full evaluation next year. The Department of Legislative Services has recommended that the board undergo full evaluation.

Please note that your evaluation is one of several topics which will be discussed during the Legislative Policy Committee's meeting on Tuesday, December 16. At that meeting, the committee will act on our recommendations. You are welcome to attend; however, there is no need for the board to be represented at the hearing as there will not be an opportunity for comments.

Again, we appreciate the cooperation and assistance provided by the board and its staff throughout the preliminary evaluation process and look forward to working with you over the coming year. The board's comments have been reflected in the enclosed evaluation. Additional copies are being provided to Mr. Burk for distribution to board members and key staff.

Sincerely,

Karl S. Aro
Executive Director

KSA/LJM/mll
Enclosure
cc: Mr. Lewis R. Riley
Ms. Tonya Kendrick
Mr. J. Robert Burk
Mr. Warren G. Deschenaux

Preliminary Evaluation of the Maryland Horse Industry Board

Recommendation: Full Evaluation

The Sunset Review Process

This evaluation was undertaken as directed by the Maryland Program Evaluation Act (§ 8-400 *et seq.* of the State Government Article), commonly known as sunset review. The Maryland Program Evaluation Act, enacted in 1978, requires the Department of Legislative Services (DLS) to review certain State agencies according to a statutory schedule. The agencies subject to review are automatically terminated unless legislative action is taken to reauthorize them. The Maryland Horse Industry Board (MHIB, "the board") is one of 68 entities currently subject to evaluation. The Legislative Policy Committee decides whether to waive an agency from a full evaluation. If waived, legislation to exempt the agency must be enacted. Otherwise, a full evaluation of the organization is completed the subsequent year.

The board last underwent a full evaluation in 1999. In the October 1999 sunset evaluation report, DLS concluded that the board had recently improved many of its current practices and was developing activities to support newly mandated functions of the board. However, the evaluation also concluded that the board needed to implement formalized complaint and inspection files, explore statutory changes authorizing greater enforcement authority, reevaluate its fee structure, and develop a long-term financing mechanism for the board. DLS recommended that legislation be enacted to extend the board through July 1, 2006. The General Assembly passed legislation extending the board to this date and requiring a follow-up report on the issues raised in the evaluation. The report was received in January 2001.

To collect information and data for this evaluation, DLS staff conducted the following research activities:

- reviewed meeting minutes, financial data, complaint and inspection records, and other relevant information obtained from the board as well as previous sunset evaluations, evaluation responses, statute, and regulations;
- met with the board's executive director and inspectors;
- attended one meeting of both the full board and the Stable Inspection Review Committee; and

- conducted follow-up telephone interviews with the executive director and inspectors.

The board reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document.

The Maryland Horse Industry Board

Horse riding stables have been licensed in Maryland for 35 years. In 1968 the General Assembly enacted Chapter 474, which established the Board of Inspection of Horse Riding Stables. In 1998 the General Assembly passed legislation (Chapter 416) which changed the name of the State Board of Inspection of Horse Riding Stables to the Maryland Horse Industry Board, expanded the membership of the board from 5 to 12, and created the Maryland Horse Industry Fund. The board currently operates under the provisions of Title 2, Subtitle 7 of the Agriculture Article, and is housed within the Maryland Department of Agriculture (MDA). In 2002 the General Assembly passed legislation (Chapter 223) which authorized MDA to levy an assessment on equine feed to fund the activities of the Maryland Horse Industry Board.

Board Structure and Responsibilities

The board meets monthly and consists of 12 members: 11 appointed by the Governor with the advice of the Secretary of Agriculture and the Secretary's designee as an ex-officio member. The board elects a chairman from among its members. Members of the board serve four-year, staggered terms with no limit on the number of terms a board member may serve. Statute requires that the 11 appointed members include:

- one licensed veterinarian;
- one county humane society officer;
- one owner of a licensed stable;
- one public member;
- one representative of the Maryland Horse Council, Inc.;
- one representative of the trails and recreational riding community;
- one representative of the organized competition and shows industry;

- one representative of the Maryland thoroughbred industry;
- one representative of the Maryland standardbred industry;
- one representative of the academic equine community; and
- one representative of the equine trade and support industries.

Board members do not receive compensation for their service on the board but may receive reimbursement for their expenses. The board is currently functioning with one vacancy created by the resignation of the representative of a county humane society officer. In August 2003 the board was soliciting nominations for a replacement. Generally, appointments to the board have run smoothly and without significant delay. Review of meeting minutes indicates that attendance at board meetings has generally been good as well.

Chapter 416, Acts of 1998 defined six statutory duties of the Maryland Horse Industry Board:

- to carry out the licensing, inspection, and enforcement of horse stables in the State;
- to advise MDA regarding matters affecting the horse industry in the State;
- to support research related to equine health and related issues;
- to promote the development and use of horses in the State;
- to create public awareness of the value of equine activities as they relate to the preservation of green space and agricultural land; and
- to develop and disseminate information concerning the equine industry, including the history and tradition of breeding and the role of horses in recreation activities.

To fulfill these various duties, the board divides its work amongst four subcommittees. The Stable Inspection Review Committee monitors all complaints and investigations to determine if board action is necessary or appropriate. The Promotions Committee works to develop the promotion of the horse industry and assists in preparation for events in which MHIB is involved. The Maryland's Best Committee is developing criteria to recognize Maryland's best horses and horse services in all disciplines. Once these criteria are developed, the committee will review applicants and recommend program awards. The Grants Committee reviews grant applications and makes funding recommendations to the full board. The board began a grant program in fiscal 2001 and provides grants to organizations to support equine research, promotion, education, and youth involvement in the horse industry.

The Maryland Horse Industry Board is supported by a full-time executive director, two inspectors that it shares with the State Board of Veterinary Medical Examiners, and an administrative assistant that it also shares with the Board of Veterinary Medical Examiners. The executive director is the first full-time position dedicated exclusively to the Horse Industry Board, and the position was first filled in January 2003.

Major Legislative Changes since Last Sunset Review

Exhibit 1 summarizes legislative changes affecting the board since the 1999 full evaluation. The major change affecting the board occurred during the 2002 legislative session. Chapter 223, Acts of 2002 authorized the Secretary of Agriculture to establish an assessment on commercial equine feed, with proceeds from this assessment deposited into the Maryland Horse Industry Fund. The Horse Industry Board may use these funds for education, research, and promotion of the Maryland horse industry. The fee may not exceed $2 per ton of commercial equine feed and may be refunded to the buyer upon request. This change was a direct response to the 1999 evaluation recommendation that the board explore a long-term financing mechanism to cover the board's regulatory functions. The success of this assessment in meeting this goal will be discussed later in the evaluation. Chapter 223 also repealed the board's authority to charge an existing fee for services.

Exhibit 1
Major Legislative Changes since 1999 Full Evaluation

Year	Chapter	Change
2000	353	Extended termination date by five years to July 1, 2006. Required board to provide a report with an analysis of additional staff needs, fee structure, and a long-term financing mechanism to support the board's functions.
2002	223	Authorized assessment of $2 per ton on commercial equine feed to be paid into Horse Industry Fund and support activities of Horse Industry Board. Revoked authority to charge an existing fee.

Source: Department of Legislative Services

Regulatory Authority

Board Issues Licenses to Four Types of Stables

Statute prohibits operation of a horse riding or rental stable without a license from the board. Regulations provide for the operation of stables under one or more of the following license classes:

- **boarding –** an establishment that stables five or more horses and receives compensation for these services;
- **sales –** an establishment that sells five or more horses a year;
- **rental –** an establishment that lets for hire one or more horses to be ridden or driven; and
- **instruction –** an establishment that lets for hire one or more horses to be ridden or driven, and for which instruction is given.

Though stables may operate under multiple classes, the board conducts only one inspection and issues only one license. Board inspectors indicate that most facilities do fall under more than one license category. Facilities are required to display their license, which lists the activities they are licensed to conduct. The board has no jurisdiction over racing and standardbred stables or horses used solely for agricultural purposes.

The minimum standards for licensed stables appear in Title 15, Subtitle 16 of the Code of Maryland Regulations (COMAR). To qualify for a license, an applicant must:

- provide adequate shelter for all horses;
- maintain fences that are sturdy and in good condition;
- provide stalls that are clean and well-maintained;
- provide adequate food, water, and salt for all horses; and
- provide regular, routine health care for all horses.

In addition, those stables that rent horses or offer instruction must provide each horse adequate rest and sustenance for its age and activities and ensure that all tack and equipment are in good repair.

A stable is required to obtain a license before it may operate. To apply for a license, a stable submits a standard license application to the board indicating all classes of license for which it is applying. An inspector performs the initial inspection and issues a license if the facility meets all requirements. The fee for licensure is $50, and the inspection fee is $25. A stable must renew its license annually as long as it continues to offer any licensed activity. The renewal license and inspection fees are also $50 and $25, respectively. If a facility fails inspection and the board must conduct another inspection before it can issue a license, the stable owner must pay $25 for each additional inspection.

Though a stable may offer any combination of licensed activities, in order to offer an activity for which it is not currently licensed, a stable must undergo an inspection for that activity, even if it already holds a license for an activity requiring the same standards. For example, if a stable holds a license for boarding and instruction but wishes to become a licensed sales facility, it must apply for and undergo inspection to receive the sales license even though the standards for boarding are the same as the standards for sales.

Exhibit 2 indicates licensing and inspection activities from fiscal 1999 through 2004. The number of licensed stables has grown steadily over the past several years. The implementation of the Agricultural Cost Share program, which provides financial assistance for environmental improvements to licensed agricultural businesses, has increased interest in being licensed. As the exhibit indicates, the board's current staff has not been able to ensure that each stable receives its statutorily required annual inspection as workload has increased. Inspectors indicated that the severe weather in the winter of 2002-03 only exacerbated this problem. Generally if inspectors do not reach a facility in a given year, that facility will be a priority visit in the beginning of the next year especially considering that renewal licenses can be and are issued prior to a renewal inspection.

Exhibit 2
License, Inspection, and Complaint Activity
Fiscal 1999 – 2004

	1999	2000	2001	2002	2003	2004*
Licenses Issued	358	382	384	401	386	450
Annual Inspections	370	382	341	389	368	445
Complaints	12	8	12	7	12	12

*Estimate

Source: Maryland Department of Agriculture

Board Lacks Clear Enforcement Authority

A lack of enforcement authority undermines the board's ability to protect horses from inhumane treatment and people from unsafe horses or riding conditions. The board has little recourse over stables that do not comply with State licensing requirements.

Unlicensed Stables Not Under Board's Jurisdiction

Under current law, the board has no jurisdiction over unlicensed facilities. When the board receives information that a facility may be operating illegally, inspectors attempt to visit the facility to determine if it should be licensed. However, operators are not obligated to allow inspectors on their property. If inspectors suspect that the facility is operating without a license but should be licensed, they leave a business card and further information about the licensing requirements and other programs that may be of interest. The board also sends a letter to the facility advising them of the requirements and providing appropriate contact information. An assistant Attorney General receives a duplicate copy of each of these letters. In cases where inspectors witness potentially inhumane treatment of animals at the facility, they recommend the case to local humane authorities.

Technically, the board may refer cases of facilities operating without a license to the local State's Attorney's Office for prosecution of a misdemeanor offense, punishable by a fine of up to $250 and up to 11 months imprisonment. However, previous experience indicates that inspectors are unable to collect sufficient evidence of a violation to warrant criminal investigation. The board has not exercised this option in the past several years due to the low probability that cases will be prosecuted.

Determining the extent of the problem of unlicensed facilities is difficult, given frequent changes in ownership of farms and stables in the horse industry. Various estimates indicate that between 450 and 600 stables in the State could be subject to licensure at any given time. The board indicates that it receives approximately one complaint per month regarding a stable that is operating without a license.

Recommendation 2 of the 1999 full evaluation recommended that MHIB explore ways to address the problem of unlicensed facilities. The recommendation stated that, "*The Horse Industry Board should propose changes to law to permit the use of citations and fines for unlicensed stables to encourage compliance with the law for the licensing of stables under the authority of the board.*" Though the board has discussed the difficulties surrounding enforcement against unlicensed stables, no legislation has been submitted to provide the board with this authority.

Board Has Limited Options for Bringing Facilities into Compliance

The only recourse the board has against a noncompliant licensed facility is suspension or revocation of the license. Such action can only occur after three failed inspections and an administrative hearing. If a facility fails to meet minimum standards upon inspection, the inspectors must provide a written list of deficiencies and actions necessary for correction. Facilities may then comply by providing proof of inspection. If no proof is provided, the board conducts an additional inspection. If the facility fails the second inspection, the board must again provide written notice and schedule a third inspection. Upon failure of a facility to correct the deficiencies by the third inspection, the board must bring formal charges against the licensee and conduct an administrative hearing to determine whether to suspend or revoke the license. Records dating back to 2000 indicate only one instance of the board issuing a formal notice of deficiencies, though in conjunction with issuance of a license. The board has not initiated formal charges against a licensee in over a decade.

The board does not have the authority to issue any fines or citations against deficient licensees. Stables face no penalty for late renewal of licenses. Stables also have little incentive to correct potential deficiencies prior to inspection since they will be given multiple opportunities to do so should they undergo and fail inspection. Preventive actions by stables prior to inspection would alleviate inspector workload by reducing the number of repeat inspections and follow-up on stables requiring corrective action. The ability to assess fines could also improve the board's ability to cover all expenses associated with its licensing and inspection activities.

Recommendation 4 of the 1999 full evaluation of the board recommended that, "*the Horse Industry Board should propose changes to regulation or law to improve the license suspension and revocation process to make it more responsive to problem cases, including the use of civil penalties or fines in conjunction with license suspensions to create a system with progressive penalties for noncompliance.*" Though recent minutes of board meetings indicate an interest in assessing a penalty for late filing, no such changes have been proposed to date.

Standards Subject to Interpretation

The regulations governing licensing requirements have not undergone significant revision since 1990. These regulations set out basic requirements for the stable and shelter areas, food and water supplies, mandatory health care, and condition of tack and equipment.

The nature of the regulations requires subjective interpretation of standards such as "clean," "in good repair," "unfit," and "excessive." A true minimum standard is difficult to determine from the regulations. The inspection form indicates "yes" or "no" responses to each of the standards outlined in regulations and allows room for comment and recommendation. Neither the regulations nor the inspection form indicate the number of "no" responses or the severity of a deficiency that would trigger failure of an inspection.

Inspectors indicate that they use the ambiguity in the regulations and standards to help maintain good working relationships with stables. They are of the opinion that issuing a license to a facility that has manageable problems and following up with advice for improvement is more productive than denying that facility a license – especially given that the board has no jurisdiction over unlicensed facilities and little recourse against them, inspectors prefer to maintain contact with these stables and guide the operators through the improvement process. Inspectors believe that their role is changing from one of a strict regulator closing down truly dangerous facilities to an ambassador connecting generally well-meaning operators with resources to improve their operations.

According to the inspectors, public attitudes toward animal rights and facilities' safety have changed over the past several decades. The public is more likely to report poor treatment of animals or use of unsafe equipment. Standards that neighbors and patrons of facilities expect have risen steadily. Review of complaint activity indicates that public interpretation of minimum standards may be more stringent than the board's. In responding to complaints, inspectors most frequently note that they found no violation or that the facility meets minimum standards. Though inspectors may note that facilities can be improved, no complaints against licensed facilities have prompted formal board action beyond a letter outlining the need for remediation since the last evaluation. Though the board receives relatively few complaints each year, public concern over facilities that the board finds in compliance may indicate a need to revisit standards and the inspection process to ensure a clear objective regulatory frame work.

Board Developing a Comprehensive Complaint System

Recommendation 1 of the 1999 sunset evaluation stated that, "*The Horse Industry Board should create and maintain an organized, comprehensive complaint system in which every complaint received by the board is placed, including a clear indication of how and when each complaint was received, responded to, or resolved. The board, in consultation with the inspectors, should develop formal written procedures for the processing and inspection of complaints that includes guidelines for the timely inspection and reinspections associated with complaints.*"

No comprehensive complaint system exists prior to 2003. The only way to track complaints is through the minutes of the monthly Stable Inspection Review Committee meetings. These minutes include discussion of all licensing, inspection, and complaint activities of the board's inspectors. In some cases, following the initiation, investigation, and resolution of a complaint across several months is difficult or impossible.

Beginning in 2003, one of the projects of the new executive director has been to implement a complaint tracking spreadsheet and a separate filing system for complaints. Though these efforts are still underway, this system is a strong improvement in the board's ability to maintain formalized records of complaints and outcomes. However, to date the board has not developed formal written procedures for the processing and inspection of complaints.

Budgetary and Personnel Issues

As noted earlier, the board employs a full-time executive director and one inspector. The board actually has two inspectors; one inspector is budgeted in MHIB and one in the Board of Veterinary Medical Examiners. The two inspectors share the workload required by the two boards, with each conducting inspections and investigations for both boards. The board receives administrative assistance from a position budgeted in the Board of Veterinary Medical Examiners. The board estimates that this administrative assistant spends approximately one-quarter of her time on MHIB activities.

The addition of the full-time executive director will improve the board's ability to meet all of its statutory requirements and function more efficiently. Prior to the hiring of the executive director in January 2003, the inspectors performed most of the administrative functions of the board including preparing annual budget submissions, maintaining inspection and complaint records, administering grants, and recording meeting minutes. The executive director has taken over these responsibilities and also oversees the collection and management of special fund income from the feed assessment enacted in 2002, further develops and administers the board's grant program, promotes the activities of the board within State government and to the public, and provides any necessary support to the board.

The board's two inspectors are responsible for conducting all inspections, renewing licenses, and responding to complaints. The inspectors divide their workload geographically, with one responsible for the western portion of the State and the other the eastern portion. To manage workload and provide prompt response to complaints, inspectors try to perform required annual inspections as a way of investigating complaints where the timing is appropriate. Inspectors also enlist the aid of county animal control units and soil conservation districts to assist in cases of mistreated animals and manure and erosion problems. Still, maintaining the inspection schedule of the approximately 400 licensed stables across the State as well as the workload associated with the Board of Veterinary Medical Examiners is a formidable task, and inspectors have little additional time to investigate or identify unlicensed stables. Additionally, inspectors' work is complicated when stables change ownership, management, or function, and they must first identify these changes and then determine whether the "new" facility is subject to licensure. Inspectors' efforts in fiscal 2003 were further impacted by the severe winter, and not all licensed facilities received their annual inspections.

Recommendation 5 of the 1999 full evaluation stated that, "*the board should examine if there are any additional staff needs for the new board functions or changes in licensing and inspections.*" The board responded that it was able at that time to fulfill its regulatory responsibilities by drawing on additional support from within MDA. The executive director position was created in response to the development of the feed fund assessment. The need for additional regulatory personnel has not been formally examined since the last evaluation.

Special Fund Source Changes Board's Budget

Two recommendations in the 1999 full evaluation focused on the board's inability to raise sufficient funds to cover its expenses. Recommendation 6 stated, "*The Horse Industry Board should review the fee structure to determine the appropriate level for the fees to cover the board's expenses related to regulation.*" Recommendation 7 stated, "*The Horse Industry Board should propose…a permanent long-term financing mechanism for the board that would include all components of the horse industry to support the expanded functions of the board.*" Board analysis indicated that increasing fees for licensing and inspection activities likely would not generate adequate revenue to cover the full costs of these activities due to the often small profit margins of regulated stables. The board's opinion was that increasing fees might perversely encourage small stables to avoid regulation altogether. This issue has not been examined since the last evaluation. The creation of the equine feed assessment was in direct response to Recommendation 7.

The addition of significant special fund revenue has changed the funding of the board's activities. Prior to 2003, general funds supported all of the board's activities. The fees the board collected for licensing and inspections were deposited into the general fund. The board consistently operated with a paper deficit, especially following expansion of the board and creation of the grant program in fiscal 2001. With the creation of the special fund source, MDA has emphasized that the board should fund most of its activities through special funds and reduced operating support for the board as part of cost containment in fiscal 2003. The General Assembly also eliminated general fund support for the grant program in fiscal 2004. Revenue from licensing and inspections is still deposited in the general fund, so providing general funds for these activities is still appropriate to the degree that these activities are self-funded. However, as shown in **Exhibit 3**, the Horse Industry Board still does not generate adequate revenue to cover all of its expenses. The revenue raised through licensing and inspections does not cover the salary and benefits of the one inspector budgeted in the board, so additional general fund support is required.

Exhibit 3
Fiscal History of the Maryland Horse Industry Board
Fiscal 2000 – 2004

	2000	2001	2002	2003*	2004**
General Fund Appropriation	$45,622	$132,108	$123,355	$65,166	$52,994
License and Inspection Revenue	$28,200	$26,925	$29,275	$33,675	$35,989
Maryland Commercial Equine Feed Assessment Revenue	$0	$0	$0	$42,733	$88,000
Total Revenue Generated	*$28,200*	*$26,925*	*$29,275*	*$76,408*	*$123,989*
Expenditures	$45,622	$132,108	$123,335	$120,839	$142,593
Expenditure in Excess of Revenue Generated	-$17,422	-$105,183	-$94,060	-$44,431	-$18,604

*For fiscal 2003, the Horse Industry Board technically is carrying a deficit of $12,940. This deficit is the result of feed funds that were assessed in the final quarter of 2003, but will not be accrued into the budget until after 2003 closeout. The funds will support grant commitments made in fiscal 2003.

**Estimate

Source: Maryland Department of Agriculture, Department of Budget and Management

Special Fund Revenue Significantly Lower than Anticipated

The board originally estimated that an assessment of $2 per ton of commercial equine feed sold in the State would generate approximately $300,000 in revenue per year. Experience to date indicates that this revenue is more likely to be approximately $90,000 to $100,000 per year. Board staff is exploring the reason for this shortfall. One potential explanation is that the legislation creating the fee does not include "custom mixes" of equine feed in the assessment. As many horse owners do not feed their animals strictly premixed formulae, feed they purchase is likely not being assessed the fee. Another possibility is that horse owners order feed from out-of-state suppliers who are not obligated to assess the fee. The board notes that the North Carolina Horse Council, which is funded through a similar mechanism, experienced similar difficulties when it first implemented its assessment. Board staff is in contact with North

Carolina officials. The board may request legislation to alter the feed fund assessment collection in the upcoming General Assembly session if it deems such action necessary.

Board Budget for Expanded Mission Depends Heavily on Special Funds

The board has budgeted all of its nonregulatory activities with special funds in fiscal 2004. The salary of the executive director, all operating expenses not related to licensing and inspection, promotional activities, and the grant program are all dependent upon special fund revenues. The original fiscal 2004 budget estimates included approximately $300,000 in special funds, including $230,000 for consultants and grants.

One of the objectives of the expanded board is to establish a Maryland Horse Park similar to the Kentucky Horse Park, a tourist destination featuring a working horse farm with stables, retired horses, a museum, exhibitions, and hosting horse events throughout the year. Funding for an economic impact study of such a park will not likely be available in this fiscal year as planned.

The board had also hoped to increase funding in the grant program. Part of the justification to the horse community for the feed assessment was that most of the revenue would be reinvested in the industry. If the board has to maintain or reduce current grant levels over the long term, support for this assessment may decline. **Exhibit 4** provides a funding history of the grant program. The future of these long-term objectives and the board's ability to fund all of its legislative mandates is uncertain given the reduced special fund revenue estimates.

Exhibit 4
Maryland Horse Industry Board Grant Program Funding
Fiscal 2001 – 2004

	2001	2002	2003	2004*
Total Grant Funding	$30,000	$20,914	$39,906	$21,254
Grants Awarded	19	27	28	n/a

*Estimate

Source: Maryland Horse Industry Board

Nonregulatory Issues

Equine Census Successful Effort

As the first stage in the feasibility study for the Maryland Horse Park, the board collaborated with MDA and the Maryland Agricultural Statistics Service to conduct the first statewide Equine Census. The census, completed in December 2002, inventories all equines in the State, total individuals and acreage involved in the equine industry, and the total value of equine-related assets. The census provides data by county, breed, and type of facility. The study provides a formal look at the involvement of horses and horse people in Maryland's economy and landscape, indicating that the horse industry comprises $5.2 billion in equine-related assets and approximately 685,000 acres involved in equine activity. The board continues to disseminate information on the census and hopes to produce county fact sheets to supplement the overall data. Conducting the census has allowed the Horse Industry Board to increase its profile and voice throughout the State and the equine community.

Board Improving Its Capacity to Meet Legislative Mandate

Since the last evaluation, the board has consistently improved its ability to meet its multi-faceted mandate. The board has responded to several of the recommendations from the previous sunset evaluation, including creating a database of licensed stables that reflects inspection status and implementing the feed assessment as a long-term financing mechanism. The hiring of the full-time executive director enables the board to increase its impact in the State and on the industry. In conjunction with the development of the complaint system, the board is exploring a partnership with FARM SENSE, a mediation service within MDA, to resolve repeat or ongoing disputes between licensed stables and their communities. The grant program enables the board to expand its education and promotional activities. Grants recipients from the past three years have provided funding for equestrian activities and education for special needs and economically disadvantaged children, development of horse events and venues, and support of equestrian teams and activities. The board has also been represented at several equine events, including shows, races, and the State Fair. The board is also expanding its role in equine health issues, providing education on equine diseases, and proper equine care.

Recommendation

The Equine Census indicates that the horse industry is perhaps the largest agricultural industry in the State, contributing significantly to the State's economy and efforts to preserve a valuable landscape. The Maryland Horse Industry Board continues to provide services vital to this industry and the State. Generally the board is a well-run and professional organization. However, several ongoing and emerging issues indicate that full evaluation at this time could assist the board in furthering its expanded mission. **Therefore, the Department of Legislative**

Services recommends that the Maryland Horse Industry Board undergo a full evaluation to:

- **examine the efficacy of the board's regulatory authority over licensed and unlicensed stables, including the continued need for mandatory regulation, the appropriate length of licensure, and the possibility of assessing penalties for noncompliance;**

- **assess the board's regulatory requirements and inspection process and determine whether standards need to be clarified;**

- **evaluate the board's implementation of a comprehensive complaint system and procedure, as recommended in the previous full evaluation;**

- **explore the need for additional staff or other changes to the regulatory process to ensure personnel is adequate to conduct all required licensing and inspection activities; and**

- **review the status of the equine feed assessment as a viable long-term financing mechanism capable of funding the board's full legislative mandate, including education and promotion activities.**

Appendix 1. Written Comments of the Maryland Horse Industry Board

ROBERT L. EHRLICH, JR., *Governor*

MICHAEL S. STEELE, *Lt. Governor*

LEWIS R. RILEY, *Secretary*

JOHN R. BROOKS, DVM, *Deputy Secretary*

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STATE OF MARYLAND
DEPARTMENT OF AGRICULTURE

November 6, 2003

MEMORANDUM

TO: Warren G. Deschenaux
Legislative Services Building
90 State Circle
Annapolis, MD 21401

FROM: J. Robert Burk, Executive Director
Maryland Horse Industry Board
Maryland Department of Agriculture
50 Harry S. Truman Parkway
Annapolis, MD 21401

RE: Preliminary Evaluation of the Maryland Horse Industry Board

The Maryland Horse Industry Board would like to thank the Office of Policy Analysis for its diligent work to assure the Honorable Members of the General Assembly that the Board is achieving its goals of education, promoting, and researching the Maryland State Horse Industry. Moreover, the Board continues to enforce the provisions of Ag. Article 2-701. Since the previous evaluation approximately 4 years ago, the Board has worked to comply with every recommendation suggested by the Office of Policy Analysis.

The Maryland Horse Industry Board has received and reviewed the draft report of the "Preliminary Evaluation of the Maryland Horse Industry Board." The Board has approved the enclosed response for inclusion in the report. If there are any questions feel free to contact Rob Burk at (410) 841-5861.

JRB
Enclosure
Cc: Karl S. Aro
Kirsten Fairall
Lewis R. Riley
S. Patrick McMillan
Gregory Gingery

"SERVING YOU FOR 30 YEARS"
1973-2003

Follow-Up Comments Regarding the Preliminary Evaluation of the Maryland Horse Industry Board

Following recommendations from the Office of Policy Analysis in the 1999 Full Evaluation of the Maryland Horse Industry Board, the Board has obtained an external source of revenue to pay for the non-licensing activities of the Board, has explored the need for and obtained additional staffing, instituted a record keeping system to track complaints related to licensed stables, and evaluated the authority of the Board related to licensed and unlicensed stables. The following information is intended to further clarify the current status of the Maryland Horse Industry Board.

- **Efficacy of the Board's Regulatory Authority Over Licensed and Unlicensed Stables**

The current regulatory structure allows for the Maryland Horse Industry Board to request criminal action from the States Attorney. Moreover, the Secretary of Agriculture has the power to initiate said action if a facility is in violation of any provision of subtitle 2-7. Therefore, any facility which is unlicensed or is noncompliant with licensing statutes may be prosecuted. Due to the difficulty of pursuing criminal action against stables, as these are not in most cases high priority, and the amount of evidence which must be collected to initiate action is extremely difficult to collect, the Board is considering legislation which would authorize them to impose civil penalties against non-compliant facilities.

- **The Board's Regulatory Requirements Related to Animal Welfare**

The Standards by which the Maryland Horse Industry Board operates to determine compliance of stables with modern standards of animal welfare and public safety were developed by the public, and not by the Maryland Horse Industry Board. The Maryland Horse Council the umbrella organization representing Maryland horse associations for the protection and promotion of horses and the industry developed these standards and further reaffirmed the standards in 2003. As this organization is the "voice of the Maryland Horse Industry" the standards are viewed by the Board to be the most accurate representation of the current public opinion in relation to the minimum standards of care for horses in Maryland. Thus, the standards of the Board are completely congruent with modern standards of animal welfare. The Board would like to further express that it should be a positive reflection on the condition of the Maryland Horse Industry that the majority of facilities in the State are within these standards. This should not be an indication that further regulation is required. The Board strictly adheres to animal welfare standards, but urges that the Office of Policy Analysis not mistake animal welfare standards with animal rights standards.

- **Implementation of a Comprehensive Complaint System**

The Board has been operating with a comprehensive complaint system which was developed from the original recommendations of the Office of Policy Analysis, and by the adaptation of the complaint system currently used by the Maryland State Board of Veterinary Medical Examiners. The Maryland Horse Industry Board has instituted similar procedural guidelines as those developed by the Maryland State Board of Veterinary Medical Examiners, however provisions will be made to include FARM SENSE, the agricultural mediation organization located in the Maryland Department of Agriculture, into said procedures once this relationship is formalized in November of 2003.

- **Additional Staffing and Changes to the Regulatory Process**

As indicated in the preliminary evaluation of the Board, an Executive Director was hired in January 2003 to fill the additional staffing needs. This position is completely funded by special funds obtained by revenue from the Maryland Commercial Equine Feed Assessment. The Board had requested additional staffing from the previous administration, but was not allowed to pursue said action. As such, the Board hired the Executive Director position as a contractual position. The Board had recommended that an additional inspector position was necessary, as well as a shared investigator with the Maryland State Board of Veterinary Medical Examiners. Moreover, it would be in the Maryland Horse Industry Boards best interest to place the Executive Director as a regular employee and no longer on a contractual basis. The Board is planning to pursue these actions next year with the new administration.

- **Status of the Equine Feed Assessment**

The Equine Feed Assessment has provided the Board with funds necessary to conduct its full legislative mandate. This is especially evident in the distribution of over $52,000 in 2003 (calendar year) grants to projects dedicated to; the support of research related to equine health and related issues, promoting the development and use of horses in the State, creating public awareness of the value of equine activities as they relate to the preservation of green space and agricultural land, and developing and disseminating information concerning the equine industry, including the history and tradition of breeding and the role of horses in recreational activities. Moreover, it should be noted that the revenue generated from licensing stables in Maryland is delivered directly back to the States General Funds and is not included in the operating budget of the Maryland Horse Industry Board.

However, the Board is determined to not only meet the standards of the legislative mandate, but to far exceed them. The Board is currently investigating additional funding sources. The Board plans to exceed the standards as in FY 2003 with the completion of the Maryland Horse Industry Board and Maryland Agricultural Statistics Service *2002 Maryland Equine Census*. The statistics obtained by the Board have been cited both in State, and Nationally. Moreover, surrounding States (Delaware, Pennsylvania, Virginia) are mimicking the activities of the Maryland Horse Industry Board in hopes of achieving the similar impact to that of the Maryland Horse Industry Board.

Conclusion

The Maryland Horse Industry Board has actively pursued the improvement of each and every point suggested by the Office of Policy Analysis. The suggestions provided by the Office of Policy Analysis clearly outlined the hurdles which the Board must clear. While the Board does not currently believe a full evaluation is necessary, as it would be an increased budgetary consideration for both the Office of Policy Analysis and the Maryland Horse Industry Board, the Board welcomes the Office of Policy Analysis and will fully assist in the review process.

November 21, 2003

Mr. Earl F. Hance, Chairman
Maryland Tobacco Authority
50 Harry S. Truman Parkway
Annapolis, Maryland 21401

Dear Mr. Hance:

The Department of Legislative Services has completed its preliminary evaluation of the Maryland Tobacco Authority. As you know, this evaluation was undertaken to assist the Legislative Policy Committee in determining whether to waive the authority from full evaluation next year. The Department of Legislative Services has recommended that the authority undergo full evaluation.

Please note that your evaluation is one of several topics which will be discussed during the Legislative Policy Committee's meeting on Tuesday, December 16. At that meeting, the committee will act on our recommendations. You are welcome to attend; however, there is no need for the authority to be represented at the hearing as there will not be an opportunity for comments.

Again, we appreciate the cooperation and assistance provided by the authority and its staff throughout the preliminary evaluation process and look forward to working with you over the coming year. The authority's comments have been reflected in the enclosed evaluation. Additional copies are being provided to Mr. Hutchins for distribution to authority members and key staff.

Sincerely,

Karl S. Aro
Executive Director

KSA/LJM/mll
Enclosure
cc: Mr. Lewis R. Riley
Mr. Raymond E. Hutchins
Mr. Warren G. Deschenaux

Preliminary Evaluation of the Maryland Tobacco Authority

Recommendation: Full Evaluation

The Sunset Review Process

This preliminary evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-400 *et seq.* of the State Government Article), which establishes a process also known as sunset review. Enacted in 1978, the Maryland Program Evaluation Act requires the Department of Legislative Services (DLS) to periodically evaluate certain State agencies according to a statutory schedule. The agencies subject to review are usually subject to termination unless legislative action is taken to reauthorize them. The Tobacco Authority is one of 68 entities currently subject to evaluation. The Legislative Policy Committee decides whether to waive an agency from full evaluation. If waived, legislation to reauthorize the agency must be enacted. Otherwise, a full evaluation of the organization is completed the subsequent year.

The authority last underwent a full evaluation as part of sunset review during 1999. In the October 1999 sunset evaluation report, DLS concluded that the authority should exist as long as it remains the policy of the State to promote a stable market for tobacco. The report also recommended that the authority be involved with the implementation of the Tri-County Council for Southern Maryland's (TCC) strategic plan for tobacco and provide the General Assembly with an annual report on the status of tobacco growing in the State. DLS recommended that legislation be enacted to continue the authority for five years. The General Assembly concurred with this recommendation and extended the termination date to July 1, 2006 (Chapter 589, Acts of 2000).

In conducting this preliminary evaluation, DLS staff reviewed annual reports and minutes for authority meetings for the past three years, complaint data, legal powers relating to the authority, the 1999 sunset evaluation report of the authority, and authority financial data. In addition, DLS staff conducted in-person interviews with the authority's executive secretary, a member of the authority, and Maryland Department of Agriculture (MDA) staff.

The authority reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document.

The Tobacco Authority

The Tobacco Authority was created by Chapter 61, Acts of 1947 to license and regulate tobacco producers, buyers, and sellers for the purpose of alleviating the disorderly conditions surrounding the marketing of leaf tobacco in the State. Before the creation of the authority, the market was unproductive and chaotic. One major problem concerned moving the tobacco inventory on and off the warehouse floors during market in a timely manner. Sold tobacco often lingered on the floor, prompting delays in auction activities and causing buyers to withdraw from tobacco sales. As a result, competition among buyers was reduced and farmers received lower prices for their crop. Before 1947 State involvement in the industry was limited to State tobacco inspectors who graded tobacco and supervised the operations of the State Tobacco Warehouse. The authority now operates pursuant to Title 7 of the Agriculture Article and is funded through license fees and a fee imposed on each pound of tobacco auctioned, commonly referred to as the "poundage tax."

Authority Structure and Responsibilities

The authority is housed in MDA's Office of Marketing, Animal Industries, and Consumer Services and consists of eight members appointed by the Governor for three-year terms. Five of these members are tobacco producers appointed from nominees selected by the Maryland Farm Bureau, Inc., and at least two of them represent the minority political party (defined as the one receiving the second highest number of votes in the preceding gubernatorial election). In addition, all five tobacco producer members must be residents of different counties. The remaining members include one person in the business of selling leaf tobacco, one person in the business of buying leaf tobacco, and one person familiar with the economics and marketing of tobacco who is selected from three nominees submitted by the Secretary of Agriculture. Typically this person has been a University of Maryland faculty member. The authority members select a chairman. Each member who is not a regular employee of the State is paid $750 annually, and all members are compensated for reasonable travel expenses in accordance with standard State travel regulations.

The authority currently operates with two part-time contractual employees: the executive secretary and an administrative secretary. The executive secretary works as needed throughout the year, with the bulk of his time devoted to the weeks of market. The work of the administrative secretary is seasonal – lasting approximately four weeks in 2003 – with general support activities falling to MDA during the balance of the year. Prior to the 2002 market, the authority employed a market inspector. However, the executive secretary assumed the inspector's responsibilities in 2002 due to the significant reduction in tobacco being grown and auctioned in Maryland.

The authority is empowered to regulate marketing practices for Maryland-grown tobacco by licensing auction participants and overseeing auction activities. As part of this regulation and oversight activity, the authority:

- allocates daily sales quotas and selling times during market season among commission selling agencies (warehouses);
- prescribes conditions for display of tobacco on the sales floor of any leaf warehouse;
- prescribes terms and conditions for withdrawal of baskets of leaf tobacco from the sales floor of any private warehouse;
- determines the information to be placed on the tickets of the baskets of tobacco on the sales floor of any private warehouse; and
- makes inspections to determine the accuracy of weights or measures used by any commission selling agency.

As shown in **Exhibit 1**, few legislative changes have affected the authority since the 1999 sunset evaluation report.

Exhibit 1
Tobacco Authority Legislative Changes
2000 through 2003

Year	Chapter	Change
2000	589	Extended the authority's termination date by five years, to July 1, 2006.
		Required the authority to submit a report to the General Assembly by December 1 of every year on the status of tobacco growing in the State.

Source: Department of Legislative Services

Few Complaints Filed

The authority has received few formal complaints from tobacco market participants over the past ten years. However, when issues arise, the authority holds meetings before the market season to ensure the continued cooperation of all parties. Since the last sunset evaluation, three items have been addressed by the authority: equitable allocation of daily sales quotas, misrepresentation of out-of-state tobacco, and a nesting incident.

In January 2003, a complaint concerning warehouse daily sales quotas was brought to the attention of the authority. The authority is responsible for regulating warehouse daily sales quotas – or the poundage each licensee is licensed to sell daily – at auction during the market season. Farmers Tobacco Auction Warehouse, Inc. submitted a request to the authority to move its sales quota from a warehouse in Waldorf to another building in Hughesville. A competing warehouse in Hughesville – Hughesville Warehouse – voiced concerns about this shift and sought an increase in its own daily sales quota. Hughesville Warehouse argued that the allocation would not be fair or equitable, as Farmers would have 67 percent of the daily sales quota compared to Hughesville's 24 percent. The authority secured an opinion from the Office of the Attorney General which concluded that nothing in the authority's statutory powers or regulations prohibits a licensee from moving the quota from one sales location to another and it had been the authority's practice to allow a licensee to move quota.

Out-of-state tobacco, primarily from Pennsylvania, is an issue of significant concern to all participants in the Maryland tobacco market. Pennsylvania tobacco may be sold in Maryland, but it must be marked as being grown outside of the State. The authority and buyers have suspected commingling and wrongful labeling of Pennsylvania and Maryland tobacco. While the authority has the power to remove Pennsylvania tobacco from the warehouse floor if it is not appropriately labeled, it is difficult to track and prove the geographic origin of tobacco. In addition, the authority has limited resources available to exercise this authority. In 2001 a warehouse operator attempted to market Pennsylvania tobacco as Maryland tobacco. The authority identified the questionable tobacco and notified the warehouse operator and potential buyers. The warehouse closed after this incident, so the authority did not issue a penalty.

During the 2000 market, a nesting incident was brought to the attention of the authority. "Nested tobacco" means any lot of tobacco which has been packed, loaded, or in any way arranged to conceal foreign matter or tobacco of inferior grade or quality. In this case, the Export Leaf Tobacco Company purchased tobacco containing 459 pounds of concealed lumber and lesser quality tobacco at the bottom of each basket. Since the company bought this tobacco for $1.80 to $2.00 per pound, it essentially bought $882.30 in lumber. When this nesting incident was discovered, the grower was contacted and agreed to pay Export Leaf $882.30 to settle the incident. Export Leaf concurred with this arrangement, and the authority sent a letter to the grower expressing concern about such a serious nesting incident.

Recommendations from the Previous Sunset Evaluation Have Been Partially Addressed

The 1999 sunset evaluation report contained three recommendations. The first recommendation was to extend the authority's sunset date by five years. The two remaining recommendations have been partially addressed, as discussed below.

The Authority Was Not Formally Involved with the Regional Strategy Action Plan for Agriculture

The second recommendation in the 1999 sunset evaluation report stated that the "….Maryland Department of Agriculture should take advantage of the experience of the members of the authority and involve them more in implementing the strategic plan of the Tri-County Council for Southern Maryland for tobacco." The Tri-County Council is a nonprofit, quasi-governmental body that was created by the Southern Maryland Agricultural Development Commission to develop a program to stabilize the region's agricultural economy as Maryland growers transition away from tobacco production. Members of the authority did participate in the development of the Regional Strategy Action Plan for Agriculture. However, this involvement was not formal as it was simply the result of overlapping individual members. Two members of the authority are also members of the Southern Maryland Agricultural Development Commission. Therefore, while the authority had an indirect role in the development and implementation of the plan, a formal consultative process did not take place.

An Annual Report Has Not Been Submitted

The third recommendation in the 1999 sunset evaluation report stated that the "….Maryland Department of Agriculture in consultation with the Tobacco Authority should report to the General Assembly, by October 1 of each year, on the status of tobacco growing in the State." This report should provide information about:

- acres of tobacco being farmed;
- pounds of tobacco expected to be produced and sold; and
- the implementation and status of transition or buyout programs established in the State.

A consolidated report on the status of growing tobacco in the State has not been submitted by MDA since this statute went into effect. While the authority has developed brief annual reports, these reports have not addressed all three issues described above. The information for this report could have been easily obtained from TCC and the University of Maryland.

The Tobacco Buyout Program Has Prompted a Dramatic Reduction in Maryland Tobacco

On November 23, 1998, the five major tobacco companies agreed to settle all outstanding litigation with 46 states, five territories, and the District of Columbia. Under the Master Settlement Agreement, the tobacco manufacturers will pay the litigating parties approximately

$206 billion over the next 25 years. In anticipation of receiving the tobacco settlement revenue, the State of Maryland established the Cigarette Restitution Fund (CRF) in Chapter 173, Acts of 1999 to be used for a variety of programs and initiatives. CRF funds are earmarked for nine health and tobacco-related priorities, including programs to reduce tobacco growing in Maryland. Under the legislation, the CRF is to fund the "….implementation of the Southern Maryland Regional Strategy Action Plan for Agriculture adopted by the Tri-County Council for Southern Maryland (TCC) with an emphasis on alternative crop uses for agricultural land now used for growing tobacco." Funds are appropriated to MDA, which issues grants to TCC.

TCC's Regional Strategy Action Plan for Agriculture has three main components: tobacco buyout, infrastructure/agricultural development, and agricultural land preservation.

- The tobacco buyout component is a voluntary program that provides funds to (a) support all eligible Maryland tobacco growers who choose to give up tobacco production forever while remaining in agricultural production and (b) restrict the land from tobacco production for 10 years should the land transfer to new ownership.

- The infrastructure/agricultural development program seeks to foster profitable natural resource-based economic development for Southern Maryland by assisting farmers and related businesses to diversify, develop, and/or expand market-driven agricultural enterprises in the region through economic development and education.

- The agricultural land preservation component seeks to provide an incentive to tobacco farmers to place land in agricultural preservation, enhance participation in existing preservation programs, and assist in the acquisition of land for farmers' markets.

The tobacco buyout program has been more successful than originally anticipated, as illustrated in **Exhibit 2**. As of August 28, 2003, 6.8 million pounds of tobacco (82 percent of cumulative total) and 712 growers (70 percent of cumulative total) had been taken out of tobacco production for human consumption. Growers who participate in the buyout program are paid $1.00 per pound of tobacco for ten years. The last date growers could indicate intent to take the buyout was July 15, 2003, and approximately 90 people expressed interest as illustrated in the "2005 Estimated" column. The authority advises that a majority of the growers not participating in the buyout are members of the Amish community.

Until recently, Maryland tobacco experienced fairly consistent levels of sales, yield, and value, with annual variations occurring due to weather conditions such as drought. However, the tobacco buyout has had a significant impact on Maryland tobacco production. As illustrated in **Exhibit 3**, the pounds sold and acreage grown of tobacco are approximately 70 percent less than they were two years ago. This dramatic shift has prompted the closing of four tobacco warehouses since 1998 – only two tobacco warehouses remain. Also, concerns about the tobacco companies' willingness to buy such a small amount of tobacco have surfaced.

Exhibit 2
Tobacco Buyout Program
(As of August 28, 2003, By Calendar Year)

	2001 Actual	2002 Actual	2003 Actual	2004 Estimated	2005 Estimated
Growers Out of Tobacco					
Cumulative Number	558	654	712	779	869
Cumulative %	55	64	70	76	85
Pounds of Eligible Tobacco Out of Production (millions)					
Cumulative Number	5.44	6.41	6.79	7.33	7.74
Cumulative %	66	78	82	89	94

Source: Tri-County Council for Southern Maryland

Exhibit 3
Maryland Tobacco Industry Statistics
Crop Years 1997 through 2002

Crop Year	Acreage	Pounds Per Acre	Net Pounds Sold	Total Dollar Value	Average Dollar Value Per Pound
1997	8,000	1,500	11,985,234	$20,571,581	$1.72
1998	6,500	1,472	9,586,842	$15,627,725	$1.63
1999	6,500	1,452	9,443,245	$15,656,598	$1.66
2000	6,000	1,347	8,081,999	$13,676,108	$1.69
2001	2,500	1,430	3,577,450	$6,001,427	$1.68
2002	1,700	1,375	2,337,666	$3,460,235	$1.48

Notes: The table above identified tobacco production and sales for the crop year. Thus, figures for a given year reflect tobacco produced in the year but sold the following year. Estimates for the 2003 crop year are not yet available.

Source: Tobacco Authority

Authority Revenues Do Not Cover Operating Costs

The dramatic reductions in Maryland tobacco have had a significant impact on the authority's finances. **Exhibit 4** shows a nine-year fiscal history of the authority's expenditures and revenues. Annual and carry-over revenues have provided adequate funds to support the authority's core responsibilities until recently. However, the authority has been spending down its fund balance since 1997. As the exhibit illustrates, to cover the authority's fiscal 2003 operating costs, MDA provided $9,000 in general funds or more than 50 percent of the authority's annual operating budget. MDA currently estimates a $10,000 special fund revenue shortfall for fiscal 2004.

While licensing fees and the poundage tax rate are set in statute, the authority has the power to decrease some license fees and decrease the poundage tax rate before the beginning of the market season. However, if the poundage tax rate is decreased, sufficient funds must be secured to support the authority's operations. The poundage tax is currently set at 20 cents per 100 pounds of tobacco. Since the authority was forced to rely on MDA for operating funds in fiscal 2003, an increase in licensing fees and the poundage tax rate may be required. Also, the authority may be required to identify ways to reduce operating expenses by, for example, ending the $750 annual compensatory payment provided to each nongovernment authority member. Over the past three years, these payments have cost the authority $4,500 annually. While adjusting revenues and expenditures could generate sufficient operating funds for the authority, the financial picture suggests that a new mechanism for regulating the market is required.

Exhibit 4
Fiscal History of the State Tobacco Authority
Fiscal 1996 – 2004

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Beginning Balance	$46,208	$46,779	$37,753	$27,577	$18,893	$12,364	$5,201	$0	$0
License Fees	6,690	6,885	6,201	5,385	6,200	6,200	5,355	2,700	1,740
Poundage Tax	20,684	11,212	14,435	14,761	19,466	20,492	8,052	5,178	4,060
General Funds	0	0	0	0	0	0	0	9,000	0
Total Revenues	*73,582*	*64,876*	*58,389*	*47,723*	*44,559*	*39,056*	*18,608*	*16,878*	*5,800*
Operating Costs	22,254	22,678	25,892	26,029	25,952	27,218	18,608	16,878	15,800
Indirect Costs	4,549	4,445	4,920	2,801	6,243	6,637	0	0	0
Total Expenses	*26,803*	*27,123*	*30,812*	*28,830*	*32,195*	*27,218*	*18,608*	*16,878*	*15,800*
Ending Balance	$46,779	$37,753	$27,577	$18,893	$12,364	$5,201	$0	$0	($10,000)

Note: Fiscal records differ in some publications due to different methods for accounting for indirect costs. This table reflects actual fiscal reports for the beginning fund balance as well as actual Tobacco Authority expenditures and the amounts transferred for indirect costs.

Source: Maryland Department of Agriculture

Authority Appointments Lag

As the tobacco market changed over the past three years, the authority's membership remained very much the same. As described earlier, the authority should be composed of eight members who serve three-year terms and represent specific geographic locations and occupations. However, appointments to the authority have lagged over the last few years, making the authority's membership inconsistent with the intended composition. For the reasons described below, the authority's membership needs updating.

- Since the last appointment to the authority was in 1999, all authority members have served terms that far exceed three years. While authority members may serve until a successor is selected and qualifies, the membership is clearly outdated.

- Due to a resignation, only seven of the eight membership positions have been filled since 2000.

- Only one of the five "tobacco producer" members of the authority still grows tobacco. The four remaining members are participating in the buy-out program.

- It is not clear whether two authority members represent the minority political party, as required in statute.

Recommendations

Due to the dramatic reduction in Maryland's tobacco market, the authority's role and workload has been greatly diminished. **Consequently, DLS recommends a full evaluation of the Tobacco Authority to:**

- **Provide contextual information about the status of Maryland's tobacco market, since an annual report has not been provided by MDA.**

- **Evaluate alternative mechanisms for regulating Maryland's tobacco market.** These alternatives should include transferring responsibilities to existing staff at MDA's Office of Marketing, Animal Industries, and Consumer Services; encouraging direct contracting between tobacco growers and buyers; and promoting a "self-regulating" mechanism similar to community farmers markets.

- **Assess the authority's ability to generate revenues sufficient to cover its expenses.** This assessment should address options such as increasing licensing fees and the poundage tax rate; ceasing the $750 annual payments to authority members; and securing funds through new sources.

- **Investigate whether new authority members should be appointed to chart out an updated strategy for regulating the State's tobacco market.**

MDA has begun to assess the authority's current role and responsibilities to determine whether changes should be made in the future. This assessment, which will include input from key constituencies, may generate useful information. **Therefore, MDA should (a) continue its assessment efforts and develop new mechanisms for ensuring a fair tobacco market in the State and (b) periodically apprise DLS of its deliberations on the future of the authority.**

Appendix 1. Written Comments of the Tobacco Authority

ROBERT L. EHRLICH, JR., *Governor*

MICHAEL S. STEELE, *Lt. Governor*

LEWIS R. RILEY, *Secretary*

JOHN R. BROOKS, D.V.M., *Deputy Secretary*

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STATE OF MARYLAND
DEPARTMENT OF AGRICULTURE

MARKETING, ANIMAL INDUSTRIES AND CONSUMER SERVICES

October 31, 2003

Warren G. Deschenaux
Department of Legislative Services
Office of Policy Analysis
Maryland General Assembly
Legislative Services Building
90 State Circle
Annapolis, MD 21401-1991

Dear Mr. Deschenaux:

Thank you for giving us an opportunity to comment on the preliminary evaluation of the Maryland Tobacco Authority which was so ably prepared by Ms. Amanda Mock. The constructive suggestions and accurate description of the Authorities activities are appreciated.

We are in agreement with most of the observations and analysis in the report with the few exceptions as noted below:

1. On page 5, under the section "An Annual Report Has Not Been Submitted", we would like to clarify that all the information requested by the General Assembly has been submitted by the Department although it was not compiled in a single report. The status of the Buyout program is based on information collected by the Tri-County Council for Southern Maryland which administers the program. In the future the Department will combine the Tobacco Authority and tobacco buyout information into a single report.

2. At the bottom of page 5, "Tobacco Settlement" should be "Tobacco Buyout Program" to avoid confusion with the National Tobacco Grower Settlement Trust.

Department representatives will be meeting with the Authority on November 13 for a full discussion of the issues and recommendations contained in the report. Both the Department and the Authority members understand that changes may be necessary in light of the dramatic reduction in leaf sales that have resulted from the buyout program. It is important to realize that there are still a significant number of producers, primarily in the Amish community, who

"SERVING YOU FOR 30 YEARS"
1973 - 2003

continue to grow tobacco. As a general matter, we believe the functions of the Authority should continue as long as it is in the best interest of the farmers who still rely on tobacco for income.

Thank you again for allowing us to comment. Please feel free to call our office, 410-841-5786, if you have any questions.

Sincerely,

Patrick McMillan,
Assistant Secretary

cc Lewis Riley
Earl Hance
Raymond Hutchins

TREASURER'S REPORT TO LEGISLATIVE POLICY COMMITTEE DECEMBER 16, 2003

Nancy K. Kopp
State Treasurer

Section §5-104 of the State Government Article of the Annotated Code of Maryland provides that, "The Treasurer shall address the Legislative Policy Committee of the General Assembly on a semi-annual basis and as necessary on issues of legislative importance, including the activities of the Board of Public Works, bond sales, and investment and procurement initiatives."

Accordingly, the following report is submitted:

State Treasurer's Office

As we enter the most challenging fiscal time in several years, the office is working diligently to become ever more efficient and effective in assisting agencies and the citizens of Maryland with State Treasury-related issues. This includes support for state agencies in working to limit insurance costs, and improving banking and cash management procedures. We are continuing to forge an alliance with the Comptroller's Office and we are building upon the reports of the Office of Legislative Audits in helping agencies improve their business practices. Additionally, we have initiated different workgroups made up of our STO staff and local government representatives to both address local needs and mutually utilize the experience and successes of various agencies. We are also holding small informative seminars for foreign dignitaries and other groups that will allow us to explain our role in state government. While we realize that we must do more with less, we will not allow our service to suffer due to fiscal considerations.

Investment

The average General Fund investment portfolio year-to-date totaled $3,445,800,013 on October 30, 2003. This represents a decrease of over $407 million from the average balance of $3,853,170,579 on October 30, 2002. Much of this decrease was due to reductions in various reserve funds, as well as a reduction in State revenue and in interest earned on investments.

On October 30, 2003, the portfolio was earning an average of 1.35% compared to 2.22% at the same time last year. The decline in interest rates and portfolio balance reduced gross interest earnings before interest allocation to the agencies to $17,166,143 compared with earnings of $30,158,795 for the same 4 month period for fiscal year 2002. That was a 43% decrease totaling $12.9 million.

Interest rates have been declining since the beginning of calendar year 2001, and will probably remain at these historically low levels through calendar year 2003 and well into the first part of calendar year 2004. This will result in continued lower interest earnings for all of fiscal year 2003 and into fiscal year 2004.

The Office continues to invest according to our adopted investment policy, which sets out our goals, priorities and constraints. Our overriding goal continues to be maintaining required liquidity to assure uninterrupted funding of State government and local payments. In the coming months we will continue to review our cash management practices to assure best returns.

Bond Sales/Leasing

The Moody's Investors service rating report issued in response to the July 16, 2003 Bond Sale included the following comments. "Maryland's Triple A rating reflects strong financial management policies, an economy that has slowed but is performing better than the national average, and an above average debt burden." Like many states in the country, Maryland's revenues have weakened as a result of the national recession. However, the State is better positioned than many states to address this weakening through its substantial reserves and other sources of financial flexibility. The State's credit outlook is stable. While a large number of other public entities have recently been down rated, all three major bond rating agencies continue to give the State of Maryland an "AAA" rating.

The State of Maryland's most recent bond sale was July 16, 2003 for $500,000,000. The true interest cost for the bond sale was 3.707%, which was the third lowest rate received. The next General Obligation bond sale is scheduled for February/March 2004. The capital lease-financing program allows State agencies to acquire equipment and pay for those items over a three-to-five year time frame. The current Master Equipment Lease-Purchase Agreement in the amount of $96,000,000 has a term of December 1, 2002 thru November 30, 2003 or until $96 million has been leased-financed. The current amount available is $56,548,740. Financing on this agreement began June 19, 2003 though First Municipal Credit Corporation. The Treasurer's Office also manages a $30,000,000 Energy Performance Master Lease-Purchase Agreement, which provides funding for energy conservation at State facilities. This program has currently funded $12,321,228.99 in projects. This is the same amount as reported in 2002; the office has not received a request for a new project. The Treasurer's Office also assists various municipalities and the Maryland Energy Assistance Program in their effort to improve energy efficiency in buildings and facilities.

Board of Public Works

The Treasurer represents the General Assembly on the Board of Public Works (BPW). During the past quarter, several thorny and contentious procurement issues have come before the BPW, requiring considerable research and consultation with members of the General Assembly. Multi-year, high-dollar contracts necessitate deep study to ensure that the procurement process is fair, open and competitive, and that the citizens of Maryland will continue to receive urgently needed services.

The BPW also is justifiably concerned about prudent use of public funds. This obligation entails detailed purview of all BPW agenda items. As would be expected, the Treasurer is sensitive to issues raised by the Legislature, to ensure that agency contracts are consonant with legislative policy.

In preparation for Board of Public Works meetings, the Governor, the Comptroller and the Treasurer meet for 15-30 minutes before to discuss general issues. Staffers for the three BPW members, along with the Secretary of the Board of Public Works, conduct pre-board staff meetings on the Mondays prior to the bi-weekly meetings. In addition, the staffers as well as the

BPW members participate in numerous briefings related to upcoming agenda items. The Treasurer retains a close working relationship with legislative fiscal staff and the budget committees.

Funds available for the Public School Construction Capital Improvement Program for fiscal year 2004 total $116.5 million. The FY 2004 program is funded by a $103.872 million bond authorization, $2.4 million in Stadium Authority funds and $10.228 million reallocated from the Public School Construction Program Statewide Contingency Account. For fiscal year 2005, funding for public school construction is anticipated to be $100 million.

The Task Force to Study Public School Facilities, established by the 2002 General Assembly and chaired by the State Treasurer, will issue its recommendations and final report to the Governor and the General Assembly by December 31, 2003, as stipulated in SB 498, passed by the General Assembly and signed by the Governor. One of the primary charges to the Task Force was to evaluate and make recommendations regarding the adequacy of school facilities to support educational programs funded through an adequate operating budget, as proposed by the Thornton Commission.

The Task Force developed fundamental standards for an adequate school facility and designed a facility assessment survey. Survey data for 1342 public schools was submitted by the Local Education Agencies (LEAs) between March and mid-July 2003 and made public on November 6, 2003. The second phase of the survey, estimates of the costs required to bring school facilities to standards that apply to new construction, is near completion and was reported to the Task Force on December 1, 2003.

Also, the Task Force is examining alternative funding and financing strategies for public school construction, such as lease-lease back, sale-lease back, performance-based contracting and public-private partnerships, and is reviewing the State/local cost share formula, the standards for State Rated Capacity, and other issues related to the State's school construction funding.

Insurance

Although the Insurance Division procures commercial insurance policies for certain risks, most of the coverage provided is self-insured through the State Insurance Trust Fund (SITF). This Fund is administered and managed by the Insurance Division.

Current Status of SITF

- Balance of SITF as of June 30, 2003 is $11.4 million
- Actuary recommended fund balance at June 30, 2003 to be $26.2 million (shortfall of $14.9 million)
- Est. Balance on June 30, 2004 to be $1.5 million – actuarial shortfall of $24.7 million
- Est. Balance on June 30, 2005 to be $5.0 million – actuarial shortfall of $21.1 million

Reasons for Shortfall

- FY 02 $5.0 million removed from SITF as part of BRFA
- FY 03 premiums collected $8.7 million
- FY 03 claims expenditures ($11.1) million
- FY 03 increase cost of property coverage ($4.0) million
- FY 03 expenses in excess of collections $6.4 million
- FY 03 claims submitted up 30% over FY 02
- FY 04 STO proposed premiums of $11.9 million. DBM reduced to $10.9 million
- FY 04 Hurricane Isabel projected to increase claims expenditures $4.5 million above original estimates.
- FY 05 STO recommended premiums of $34.0 million to start to bring Fund balance up to actuarial recommended balance (prior to Isabel)
- FY 05 STO submitted minimum premiums of $20.0 million, in recognition of State's current fiscal condition
- FY 05 DBM included minimum premium of $20.0 million

Current issues Further Impacting SITF

- Hurricane Isabel damage claims submitted from 36 State agencies estimated in excess of $17 million
- Hurricane Isabel creates exposure to SITF for $4.5 million in unanticipated losses; $2.5 million for the self-insured retention (deductible) under the State's commercial property excess insurance policy and $2.0 million in additional expenses.
- Damages not covered under SITF or commercial property excess insurance are eligible for FEMA funds. FEMA requires the State to demonstrate that insurance coverage is in place (either through SITF or commercial insurance) in an amount equal to the amount eligible to be paid by FEMA. This coverage must remain in place indefinitely, subject to federal sanctions.

Proposed Solutions

- Increase premiums charged to State agencies to replenish SITF
- Institute loss control measures for State agencies
- Develop training programs for State agencies to improve risk management reporting and results
- Increase oversight of annual property surveys to improve Agency reporting of values

Insurance coverage includes real and personal State property, physical damage for State vehicles, and liability claims brought under the Maryland Tort Claims Act. The commercial policies that are procured cover professional liability exposures, transportation risks, excess property exposures and student athletes' accident programs. Commercial insurance placements for the current fiscal year are anticipated to be approximately $11 million in contract values. This increase is a result of updated property values and the continued hardening of the commercial insurance market. Additionally, several of our expiring policies had three year guaranteed rates, and we are encountering considerable premium increases. We have also noticed that mergers and acquisitions have reduced the number of insurance carriers marketing to the State. Finally, many insurers have reduced the limits of coverage they will offer, compelling us to involve more carriers to obtain the limits we require.

The Insurance Division developed a property survey to send out annually to each State agency so that the Division can obtain an accurate value of the State's property. We are investigating the possible conversion of the 2004 survey process to electronic transmission; sending the notice to the agencies via e-mail that the surveys are available on the Treasurer's web site and having them complete them on-line, thus speeding up the process and saving the costs currently associated with mailing the surveys.

This year, the Insurance Division's Claims Department will investigate and adjust nearly 4,400 claims, an increase of almost 34% over last year. The primary focus of the Claims Department is to provide superior service to its internal and external customers through prompt and accurate claims processing. Currently, there are approximately 1,700 claims under investigation. This represents an increase of approximately 38% over last year. Damage caused by Hurricane Isabel, liability resulting from a resurfacing project on Route 50, and a significant jump in routine claims submitted to the Treasurer's Office have contributed to this increase in open claims.

The Division continues to explore improvements to its technology systems, and use of the internet, to augment its ability to meet the needs of its customers, not only in terms of providing prompt claims service, but also to make available comprehensive loss history and analysis, and to assist State Agencies in establishing loss control and loss prevention programs. The Insurance Division has a Loss Prevention Department, which has, as its primary goal, working with all State Agencies to control and prevent losses. The Division maintains a continuing educational program, conducting periodic seminars for the Insurance Coordinators of each State Agency.

Banking Services

Banking Services continues to work toward its goal of providing efficient, accurate, and timely banking services to all State agencies and external customers through the use of new technologies and refined processes.

The Depository Plus implementation, noted in the June 17, 2003 report, has been completed and is working successfully. This new depository account structure provides accurate agency level transaction reporting with an automatic concentration of funds for cash management purposes. Each agency has been assigned a unique account for depository transactions, providing the ability to take full advantage of electronic transaction processing. In addition, each agency can access their detailed account transactions through the web based Bank of America "Direct" product, allowing them to more closely monitor deposit activity.

Work on the new automated account reconciliation package is also proceeding with an expected implementation date of April 2004. The new process, combined with the Depository Plus account structure, will include enhanced automated controls and will allow for more timely and accurate bank reconciliation.

We are continually working with State agencies to encourage the use of electronic funds transfers (EFT's) for both payment and receipt of funds, enhancing the ability to ensure timely and accurate recordation of State funds. We are working with the Comptroller's Revenue Administration Division to expand their direct debit capabilities, and will be assisting State agencies in their ability to accept internet payments through secure websites.

We anticipate other enhancements to our processes as we communicate with our peers in other states, as well as banking consultants, to discover how others are meeting today's banking challenges, and explore new financial products that will increase our capabilities to provide excellent cost-saving banking services to the Maryland State Agencies.

Information Technology

The Information Technology Division's mission is to support, maintain and enhance the technological capability and infrastructure of the State Treasurer's Office, in order to meet the diverse needs of both our internal divisions and the agencies we serve. The systems in place support multi-platform hardware, programs, applications and operating systems. The Data Processing area processes over twenty thousand transactions and checks per day.

The Information Technology group is currently working on various projects to improve productivity within the State Treasurer's Office and to assist in achieving the office's critical business objectives. A new State Treasurer's Internet website has been implemented which provides improved information to the public and other state agencies. A new Intranet website is in the process of being developed to improve internal communications and sharing of information. We have worked closely with the Banking Services Division to implement Depository Plus and are enhancing the current Account Reconciliation system in preparation for parallel and implementation of a new automated Account Reconciliation system. We will also be working with MEMA, DBM, and agency management to develop Business Contingency/Continuity Plans, including a Disaster/Recovery approach for STO. A Disaster/Recovery Quick Plan was developed and submitted to DBM in September 2003.

I appreciate the opportunity to provide this information to the Legislative Policy Committee. If the Committee members have any questions, please call me at (410) 260-7160 or Mr. Charles G. Williams, Chief Deputy Treasurer, on (410) 260-7390.