

December 16, 2008  
9:30 a.m.  
Joint Hearing Room, Legislative Services Building

## **Agenda**

### **Part I: Maryland Program Evaluation Act (Sunset Process)**

The “Sunset Process” is defined by the statute as “the process by which the Legislative Policy Committee determines whether a governmental activity shall undergo an evaluation”. The fourth cycle began during the 2008 interim. During this time DLS conducted 11 preliminary evaluations. These evaluations have been consolidated into 9 preliminary evaluation reports. The Legislative Policy Committee will consider whether to waive or perform full evaluations of the following agencies:

- State Board of Cosmetologists
- State of Dental Examiners
- Maryland Tobacco Authority
- State of Well Drillers
- State Board of Barbers
- State Board of Veterinary Medical Examiners
- State Athletic Commission
- State Racing Commission, Maryland Bred Race Fund Advisory Committee and Standardbred Race Fund Advisory Committee
- State Board of Waterworks and Waste Systems Operators

### **Part II: 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 2008.

### **Part III: Legislative Staff Agency Budget**

Consideration of the fiscal year 2010 budget for the Department of Legislative Services.

### **Part IV: *Guidelines for Compensation and Expenses for Legislators, Maryland General Assembly, Effective January 1, 2009***

#### **Non-substantive Changes:**

The Department of Budget and Management has notified the General Assembly of changes to meal and mileage and lodging reimbursements for expenses under the Standard State Travel Regulations, as provided in the State budget.

#### **Substantive Changes:**

Recommendations of the Department of Legislative Services, Finance and Administrative Services

- Reimbursements
  - Receipts
  - Airline Baggage Charges
- Travel Arrangements
- Communication
  - Books and Publications
- Limitations on encumbered funds for purchase of district office furniture or equipment
- Office Rent

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**Part I**  
**Maryland Program Evaluation Act**  
**(Sunset Process)**

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Department of Legislative Services  
Annapolis, Maryland

December 2008

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## Summary of Sunset Review in 2008

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The 2008 interim marked the official beginning of the fourth “cycle” of sunset review under the Maryland Program Evaluation Act.

- 11 agencies underwent preliminary evaluation – DLS findings and recommendations for the LPC’s consideration are consolidated into 9 preliminary evaluation reports (see summary chart on next page).
  - 4 agencies are recommended for full evaluation during the 2009 interim.
    - Recommendations for evaluation committee designations are also shown in a summary chart.
  - 6 agencies are recommended for a waiver from further evaluation at this time.
    - Recommendations for 10-year extensions and follow-up reports are made for 3 agencies.
    - A recommendation for a 3-year delay is made for the other 3 agencies – the State Racing Commission and its advisory committees (consolidated in one report).
  - 1 agency is no longer needed; a recommendation is made to remove it from statute. The Maryland Department of Agriculture already has proposed departmental legislation to do so.
- No agencies underwent full evaluation.

## DLS Recommendations on Preliminary Evaluations

<u>Preliminary Evaluation of Agency</u>	<b>DLS Recommendation</b>	
	<u>Full Evaluation in 2009 Interim</u>	<u>Waive or Take Other Action</u>
<b>Department of Health and Mental Hygiene – Board</b>		
State Board of Dental Examiners	<b>X</b>	
<b>Department of Labor, Licensing, and Regulation – Boards, Commissions, and Committees</b>		
State Racing Commission		<b>X<sup>1</sup></b>
Maryland-Bred Race Fund Advisory Committee		<b>X<sup>1</sup></b>
Maryland Standardbred Race Fund Advisory Committee		<b>X<sup>1</sup></b>
State Athletic Commission		<b>X<sup>2</sup></b>
State Board of Barbers	<b>X</b>	
State Board of Cosmetologists	<b>X</b>	
<b>Maryland Department of Agriculture – Board and Authority</b>		
Maryland Tobacco Authority		<b>X<sup>3</sup></b>
State Board of Veterinary Medical Examiners		<b>X<sup>2</sup></b>
<b>Maryland Department of the Environment – Boards</b>		
State Board of Waterworks and Waste Systems Operators	<b>X</b>	
State Board of Well Drillers		<b>X<sup>2</sup></b>

<sup>1</sup>The consolidated evaluation of the State Racing Commission and its associated advisory committees recommends that they be waived from full evaluation at this time. Instead, their termination dates will be extended by three years, with a requirement that they undergo full evaluation during the 2012 interim.

<sup>2</sup>DLS recommends waiving these agencies, extending their termination dates by 10 years, and requiring follow-up reports and other actions as specified in the evaluations.

<sup>3</sup>DLS recommends repealing the authority as obsolete as tobacco auctions are no longer being held in Maryland.

Source: Department of Legislative Services

## DLS Recommendations on Evaluation Committees

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<u>Agency to Undergo Full Evaluation</u>	<u>Senate Committee</u>	<u>House Committee</u>
<b>In 2009 Interim</b>		
State Board of Dental Examiners	EHE	HGO
State Board of Barbers	EHE	ECM
State Board of Cosmetologists	EHE	ECM
State Board of Waterworks and Waste Systems Operators	EHE	ENV
<b>In 2012 Interim</b>		
State Racing Commission	FIN	W&M
Maryland-Bred Race Fund Advisory Committee	FIN	W&M
Standardbred Race Fund Advisory Committee	FIN	W&M

ECM = House Committee on Economic Matters

EHE = Senate Education, Health, and Environmental Affairs Committee

ENV = House Committee on Environmental Matters

FIN = Senate Finance Committee

HGO = House Committee on Health and Government Operations

W&M = House Committee on Ways and Means

Source: Department of Legislative Services

Note: Recommendations approved by the Legislative Policy Committee at its December 16, 2008 meeting.

# Preliminary Evaluation of the State Board of Cosmetologists

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**Recommendation: Full Evaluation**

## The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Cosmetologists last underwent a preliminary evaluation as part of sunset review in 1998, having undergone a full evaluation in 1989 and a limited “mid-cycle” review in 1995. Based on the DLS recommendation in 1998 to waive a full evaluation, the General Assembly extended the termination date of this board to July 1, 2011.

In conducting its preliminary evaluation, DLS staff reviewed previous evaluations of the board; minutes of the board’s meetings for the last five years; licensing, exam, inspection, fiscal, and complaint data; as well as related laws and regulations. DLS also examined data on national industry trends, attended a board meeting, and conducted interviews with board staff and board members.

The State Board of Cosmetologists 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 State Board of Cosmetologists

The State Board of Cosmetologists was created by Chapter 282 of 1935 and, under current law, its functions include:

- establishing qualifications for and providing approval of apprenticeships, licenses, and permits for services under the board's authority;
- regulating the examination process;
- disciplining licensees who have violated laws or regulations;
- establishing fees to recover the cost of the board's services; and
- regulating sanitary conditions in schools and salons.

The board derives its authority from Title 5 of the Business Occupations and Professions Article. Its primary focus is to protect the public by licensing individuals practicing cosmetology, with the intent of preventing harm caused by tools and chemicals and ensuring the sanitary condition of shops, salons, and schools. (The Maryland State Department of Education oversees the licensing for cosmetology and barber schools.) As defined by statute, the practice of cosmetology includes:

- arranging, bleaching, cleansing, coloring, curling, cutting, dressing, singeing, permanent waving, waving, or other procedures intended to beautify, clean, or embellish hair;
- arching or dyeing eyebrows;
- dyeing eyelashes;
- providing esthetic services, which means cleansing, exercising, massaging, or stimulating skin with electrical, mechanical, or other means; applying to the face an alcohol, cream, lotion, astringent, or cosmetic preparation; and removing superfluous hair by use of a depilatory, tweezers, or wax; or
- nail technician services, including manicures, pedicures, and application or maintenance of artificial nail enhancement products.

The board does not regulate certain services such as shampooing or braiding of hair. Licensed cosmetologists can provide all of the services listed above, while estheticians and manicurists practice under a limited license that restricts the scope of services to esthetic and nail services, respectively.

The board consists of seven members, four of whom must be licensed cosmetologists who have actively practiced for at least five years prior to the appointment. The remaining three

members have to be two consumers and a private cosmetology school owner or teacher. All board positions are unpaid. Board members serve three-year terms and cannot serve more than two consecutive terms. However, board members serve until they are replaced; for example, the current chairman has served two terms, with her last term ending in 2004. One of the consumer member positions is currently vacant.

The board is housed within the Department of Labor, Licensing, and Regulation's (DLLR) Division of Occupational and Professional Licensing. DLLR provides staff for the board, which consists of an executive director (who must be a licensed senior cosmetologist or master barber), an assistant executive director, administrative personnel, and 12 authorized inspector positions (some of these positions are not filled). All of these individuals support both this board and the State Board of Barbers.

## **Statutory and Regulatory Changes**

Since the preliminary evaluation in 1998, the Maryland General Assembly has adopted several laws that affect licensees, including certain safety restrictions, license and exam changes, and modifications of the disciplinary process. **Exhibit 1** provides an overview of those changes. Proposals have surfaced in recent years to require continuing education as a condition of renewing a cosmetology license (House Bill 405 of 2004 and House Bill 1296 of 2005); however, they have failed. (Only 12 states currently require continuing education for nail technicians and cosmetologists.)

Chapter 392 of 2005 authorizes inspectors for both the Board of Barbers and Board of Cosmetologists to issue citations and impose civil penalties. Chapter 392, proposed by DLLR, replaces a system in which a licensee was notified of observed violations. If the board determined that the violation did not warrant a formal hearing, no penalty was imposed. Even so, an informal conference occasionally has been required. (As discussed later in this report, Chapter 392 has not yet been implemented.)

In addition to these legislative changes, the board has undertaken regulatory changes under its own authority; most of the regulations promulgated since the last sunset evaluation have altered fees or established new fines, while a few have addressed operational practices. Major changes are listed in **Exhibit 2**. Significant changes included the establishment of a schedule of citation fines that board inspectors may issue to violators (salons or individual licensees) and the expansion of allowable practices to include medical spa services such as chemical peels and microdermabrasion, but only if the practitioner holds a valid health occupations license. A chemical peel uses a chemical solution to improve and smooth the texture of facial skin by removing its damaged outer layers. Microdermabrasion is a nonsurgical procedure that involves removing the top surface layer of skin with crystals to reduce the

appearance of aging or pigmentation. Training requirements have also been expanded since the previous sunset review.

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**Exhibit 1**  
**Major Legislative Changes Since 1998 Evaluation**  
**State Board of Cosmetologists**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
1999	388	Prohibits the use of methyl methacrylate liquid monomer as a nail acrylic in beauty salons.
	405	Extends the termination date of the board by 10 years to July 1, 2011.
	441	Expands the settings for the practice of cosmetology to include hospitals, nursing facilities, and hospices.
	455	Increases the hours of instruction required to obtain a nail technician and esthetician license.
	487	Allows the board to ban the use of lasers in beauty salons.
2001	187	Authorizes the board to impose civil penalties against nonlicensees for practicing without a license.
	264	Creates a temporary license for a person to practice cosmetology under supervision of a senior cosmetologist for two years only.
2003	125	Alters the examination requirements for a cosmetology license.
2005	392	Authorizes board inspectors to issue citations to, and impose civil penalties on, licensees and permit holders for violations of laws and regulations.
2006	306	Authorizes the board to reinstate an expired salon permit, subject to a fee and satisfaction of renewal requirements.
2007	470	Allows licensed estheticians and nail technicians to provide services in specified medical facilities.
2008	18	Eliminates the regulation and licensing of makeup artist services.

Source: Laws of Maryland

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**Exhibit 2**  
**Major Regulatory Changes Since 1998 Evaluation**  
**State Board of Cosmetologists**

**Year   Change**

**Fee or Citations**

- 2000   Repealing the proration of license fees.
- 2003   Increasing fees for seven examinations and reducing the cost of one exam.
- 2006   Establishing a citation schedule, pursuant to Chapter 392 of 2005.
- 2008   Authorizing the board to reinstate an expired shop permit, subject to a fee and satisfaction of renewal requirements, pursuant to Chapter 306 of 2006.

**Operational**

- 2000   Increasing the total number of apprenticeship training hours required to qualify for an examination for esthetician and nail technician licenses.
- 2002   Clarifying requirements for supervision of apprentices and lowering the number of weekly training hours for apprentices from 30 to 20.
- 2002   Establishing sanitation standards for certain procedures and implements used in beauty schools.
- Requiring a minimal passing score of 75 percent for the examination.
- 2003   Increasing examination fees.
- 2005   Prohibiting use or possession of a Credo blade, laser, microdermabrasion equipment, or other devices used to remove skin; also prohibiting procedures or chemicals that cause tissue destruction or penetrate the blood fluid barrier.
- 2008   Reversing in part the 2005 regulation to allow possession and use of the above devices or procedures by individuals who hold a valid health occupations license.

Note: Exhibit does not include nonsubstantive regulations, such as terminology changes.

Source: Code of Maryland Regulations

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## National Trends in the Cosmetology Industry

### Increased Employment Demand

Cosmetology is a thriving industry, according to the projections of the U.S. Department of Labor's Bureau of Labor Statistics (BLS). In the *Occupational Outlook Handbook*, BLS estimates that the number of personal appearance workers (including barbers and cosmetologists) in the United States will increase by 14 percent (on average) between 2006 and 2016, from 825,000 to 942,000. Employment growth will vary considerably by service. BLS estimates that employment of nail technicians will grow by 28 percent by 2016, compared to a 12 percent growth rate predicted for hairdressers and cosmetologists. The largest expansion within the industry is expected for makeup artists (40 percent), followed by estheticians and other skin care specialists (34 percent). The lower growth rate anticipated for hair stylists stems from the decline in barbering as more shops offer unisex services. Higher demand for estheticians follows the increased popularity of day spas that offer skin care services such as chemical peels and microdermabrasion.

BLS observes that, while the employment picture is positive, applicants for jobs at higher paying salons can expect competition from experienced licensees, particularly those able to perform a broad range of services. This observation is consistent with job demand surveys conducted by the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS). Its 2007 survey of Maryland salons found that almost 80 percent of salon owners who attempted to hire new employees in 2006 were unable to find properly trained applicants.

The average annual salary for a salon professional in Maryland is approximately \$38,600, without tips, according to the NACCAS survey. However, that survey does not distinguish salaries for various services. The median national hourly wage for hairstylists and cosmetologists, according to BLS, is \$10.25, excluding tips; skin care specialists earn slightly more, \$12.58 per hour; while manicurists and pedicurists earn slightly less, \$9.23 per hour.

Though industry growth was observed in the last evaluation, one employment trend – frequent turnover – has begun to subside. The results of the NACCAS national survey shows a 15 percent decline in new hires since 2003, as well as a 13 percent decline in the number of employees who leave their positions.

### Practice and Services

One of the most significant industry trends is the move away from haircutting salons toward full-service salons or day spas that provide massages, wraps, and other specialized body treatments, in addition to nail and hair care. According to the NACCAS survey, 67 percent of salon owners in Maryland describe their business as full service. The *2008 Trend Watch*, produced by the International Spa Association, notes that salons are focusing more on overall wellness, either by expanding services, serving healthy food, or selling environmentally friendly

products. They also offer technological amenities such as Wi-Fi and are beginning to cater to teenagers, who are a growing part of spa clientele.

## **Licensing Activity – Shortage on the Horizon?**

Consistent with national trends, the cosmetology industry in Maryland has experienced considerable growth. Between fiscal 2003 and 2008, the number of new licenses issued to senior cosmetologists doubled and new licenses for cosmetologists rose by approximately 70 percent as shown in **Exhibit 3**. The board now licenses over 23,000 cosmetologists and approximately 7,500 senior cosmetologists. Nail technician licensing has remained fairly steady; however, esthetician licensing has increased, which corresponds to the rise in full-service salons that provide skin treatments.

New licenses for full-service salons grew by 25 percent during the last five years, to a total of 4,220 in fiscal 2008, while fewer limited-service salons opened, which also reflects a national trend. Despite these increases, the overall number of new apprentice registrations has declined by over 30 percent between fiscal 2003 and 2008. The decline is highest among esthetician registrations (40 percent). Maryland salon owners may have greater difficulty obtaining new hires and/or expanding their businesses if this decline continues.

## **Cosmetology Education**

An individual who wants to become a licensed cosmetologist, esthetician, or nail technician has two options for learning the trade – enrolling in an approved cosmetology school or training as an apprentice in a salon under a senior cosmetologist, an esthetician with two years of experience, or a nail technician with two years of experience, depending on the license that the individual seeks. An apprentice must train at least 20 hours per week and receives credit for hours served if the supervisor submits a monthly report to the board. An apprentice can renew a registration for one year; only two renewals are permitted.

The qualifications required for a license vary according to profession:

- ***cosmetologist***: two years as a registered apprentice or at least 1,500 hours of instruction;
- ***senior cosmetologist***: two years as a licensed cosmetologist and passage of a written exam;
- ***nail technician (limited license)***: eight months as a registered apprentice or at least 250 hours of instruction; and
- ***esthetician (limited license)***: 12 months as a registered apprentice or at least 600 hours of instruction.

**Exhibit 3**  
**Cosmetology Licenses, Permits, and Registrations – New and Renewal**  
**Fiscal 2003-2008**

<b>Type</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Owner – Full-service Salon</b>						
New	599	683	627	716	687	751
Renewal	1,192	1,388	1,240	1,377	1,245	1,537
<b>Owner – Limited-practice Salon</b>						
New	179	205	182	153	140	119
Renewal	174	228	213	238	234	252
<b>Senior Cosmetologist</b>						
New	79	123	110	123	120	161
Renewal	3,841	3,731	3,687	3,630	3,590	3,676
<b>Cosmetologist</b>						
New	1,049	1,331	1,475	1,495	1,603	1,809
Renewal	8,400	8,931	8,710	9,682	9,354	10,525
<b>Esthetician</b>						
New	175	236	234	294	315	349
Renewal	697	730	816	861	996	1,093
<b>Nail Technician</b>						
New	438	575	529	463	156	457
Renewal	3,410	3,523	3,439	3,695	3,460	3,734
<b>Apprentice Registration</b>						
New	686	703	618	579	454	522
Renewal	221	232	238	243	245	223
<b>Total</b>	<b>21,140</b>	<b>22,619</b>	<b>22,118</b>	<b>23,549</b>	<b>22,599</b>	<b>25,208</b>

Note: Apprentice figures includes all apprentices – beauty culture, nail technicians, and estheticians.

Source: State Board of Cosmetologists

Currently, 58 private and public cosmetology schools operate in Maryland. Oversight of the schools is divided. The Maryland State Board of Education is responsible for reviewing applications for new schools and issuing a certificate of approval for a school to operate, add new locations or programs, or change ownership. (The Maryland Higher Education Commission has delegated the authority to approve private career schools to the Secretary of Education.) The board retains authority over sanitation inspections of the schools, as well as the contract with the exam vendor, including the content of the examinations.

### Exam Passage Rate

Applicants for a license or limited license must pass an examination, which consists of a theory and practical portion; however, an applicant for a senior cosmetologist license is only required to take the theory portion. An applicant can take the written (theory) portion after completing 1,380 of the 1,500 hours of training required.

As **Exhibit 4** demonstrates, in 2003, the passage rates for nail technicians and cosmetologists were particularly low, at 35 and 36 percent, respectively. The passage rate for the theory portion of all the exams has increased considerably since then. However, half of the cosmetologist and senior cosmetologist applicants and 40 percent of the nail technician applicants are failing the theory portion of the exam. Difficulty with the English language is considered a major factor behind this failure rate – applicants are permitted the use of a bilingual dictionary but, under a departmental policy, interpreters are not permitted. Furthermore, according to DLLR, some applicants are enrolled in cosmetology schools in other states where instruction in other languages is provided. DLS notes that comprehension of manufacturer’s instructions for the handling of chemicals is important for the consumer’s health and safety.

However, the failure rate of senior cosmetologist applicants could lead to a shortage of experienced individuals who are eligible to supervise apprentices. Esthetician applicants have consistently higher passage rates on the written exam than the other license applicants; 70 percent passed in 2008.

**Exhibit 4**  
**Passage Rate for Cosmetology Licensing Exams**  
**Calendar 2003-2008**

<u>Type</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>Cosmetologist</b>						
Practical	89%	92%	93%	92%	90%	88%
Theory	36%	43%	47%	48%	47%	48%
<b>Senior Cosmetologist</b>						
Theory	46%	52%	56%	51%	57%	51%
<b>Esthetician</b>						
Practical	98%	100%	97%	99%	99%	98%
Theory	51%	69%	68%	68%	72%	70%
<b>Nail Technician</b>						
Practical	92%	96%	94%	95%	92%	91%
Theory	35%	49%	47%	51%	61%	58%

Source: Thomas Prometric (exam vendor)

## **Exam Vendor**

The board has periodically experienced problems with the third-party vendor that administers the exams. Some of these problems have been significant. For example, the previous contractor, Experior Assessments, required applicants at one time to take the test in Alexandria, Virginia; no legal remedies were available as the contract allowed for testing in the Washington metropolitan area and did not specify Maryland. Experior also did not have enough seats to schedule applicants in a timely manner and was not responsive to board complaints. The current contractor, Thomson Prometric, has been more efficient and responsive; however, the board has expressed concern with the delay in testing results and other operational issues. The board appears to be closely monitoring the vendor's performance.

## **Disciplinary Action**

The board has the statutory authority to deny, reprimand, or revoke a license under several circumstances that pertain to violations of regulations or law or the licensee's character or fitness to perform the service.

## **Citation Program Delayed**

In 2005 the General Assembly authorized the board's inspectors to issue citations to licensees for certain violations. The licensee has the option of sending a payment or requesting a hearing before the board. Failure to pay or contest the penalty associated with the citation within 60 days results in doubling of the penalty and potential license suspension or revocation. The maximum fine for all violations cited against an establishment is \$300 a day. The board has developed a schedule of penalties to implement the law, as shown in **Exhibit 5**.

However, this citation program, which applies to both cosmetology and barber licensees, has yet to be implemented. The program is intended to relieve the board and staff of the workload associated with scheduling informal conferences or hearings and executing orders for minor violations. The department initially decided to implement an electronic citation system, which accounted for some of the delay. Due to problems with implementation, DLLR has since decided to use a mail-in citation program instead and anticipates that it will be in place by May 1, 2009.

In the absence of an active citation program, the board generally holds an informal conference with the licensee for less serious violations to educate the licensee. Given the board's limited schedule, these informal conferences may not involve the entire board. More serious violations require a formal hearing before the full board; the board routinely holds two formal hearings each month. (The board only assesses a penalty if a formal hearing is held.) Over the last six fiscal years, the board has denied 2 license applications, suspended 7 licenses, and revoked 48 licenses. Most of the 48 revocations were related to one large-scale fraud operation involving

reciprocal licenses issued to individuals from Pennsylvania who submitted fraudulent documents regarding their eligibility for a license.

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**Exhibit 5**  
**Citation Schedule for Cosmetology Violations**

**\$50 Penalty**

- Failure to meet various, specified sanitary or cleanliness standards (failure to wash hands, absence of hot or cold running water, etc.)

**\$100 - \$150 Penalty**

- Presence of an animal
- Improper storage or disinfection of implements
- No photo on license

**\$300 Penalty**

- Operating without a license/permit or beyond the scope of a license
- Improper removal of corns, calluses
- Sale of used hairpieces

**Formal Hearing**

- Unauthorized services or performance of services by operator with infectious disease
- Interference with inspector
- Improper procedure for cut or blood-related incidents
- Use of certain prohibited devices

Note: The statute also authorizes the board to impose a civil penalty of \$1,000 for any violation of the title. A criminal penalty of up to \$100 or 30 days imprisonment or both is also authorized but rarely imposed.

Source: Code of Maryland Regulations 09.22.01.16

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## **Interpreter Availability Hampers Process**

Chapter 141 of 2002 requires certain State agencies to provide equal access to public services for people with limited English proficiency, including interpreter services and translation of vital documents. However, the board has experienced difficulty with obtaining an interpreter to translate for licensees at disciplinary hearings who speak limited or no English, which forces the board to cancel the hearing, often on the same day it was scheduled. For example, two hearings were postponed in January 2008, and one was postponed in August 2008. The board relies on services from Lionbridge Global Solutions, which was awarded a five-year contract in 2007 to provide interpretation services for the State. Under the terms of the contract, if an on-site interpreter is not available from either the primary or secondary contractor, a telephone interpreter will be provided through another contractor; however, this has not been feasible to implement for a disciplinary hearing.

## **Disciplinary Actions Publicized**

The board will begin posting (on its web site) disciplinary actions taken against licensees that resulted in a formal order against the licensee. The posting will include actions taken during the last four calendar years and only the more serious violations, such as providing unauthorized services, that require a formal hearing. The posting is intended to educate consumers and act as a deterrent and is similar to ones provided by boards such as the State Real Estate Commission. The State Board of Barbers has agreed to adopt an identical procedure.

## **Complaint Volume Is Low**

State law requires that a complaint regarding a salon or licensee be submitted in writing and mailed or personally delivered and that the board notify the licensee of the complaint, who then has 10 days to correct the problem. The board now docket anonymous complaints but cannot take action on them. If the complaint relates to a potential violation related to sanitation or unlicensed activity, the board assigns an inspector to investigate. Other types of complaints, such as dissatisfaction with services, are directly assigned to a complaint panel consisting of one or two board members and an assistant Attorney General. The complaint panel may dismiss the complaint, request a reinspection, recommend an informal conference, or recommend that formal charges be brought by the Attorney General's Office.

As shown in **Exhibit 6**, the number of complaints submitted to the board has steadily increased over the past six fiscal years but is still low compared to the number of businesses and licensees. Exhibit 6 does not include anonymous complaints, which the board began tracking in 2007, or routine violations that are cited by a board inspector, including any board action taken on routine violations.

**Exhibit 6**  
**Cosmetology Consumer Complaint History**  
**Fiscal 2003-2008**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Complaints Received	48	63	91	119	188	181
<b><u>Type of Complaint</u></b>						
Operating without a License	19	25	42	41	88	65
Operating outside Scope of License	3	11	6	18	18	13
Sanitation	20	14	42	44	56	66
Dissatisfaction with Service	3	6	7	17	32	29
Fraud/Monetary	3	1	1	2	5	7
Beyond the Board's Jurisdiction	0	0	0	2	9	3
Not Identified	0	6	0	0	0	0
<b><u>Board Action</u></b>						
Dismissed	45	60	89	93	125	55
No Disposition/Still Under Investigation	0	0	1	21	54	116
Formal Hearing	0	1	0	5	2	2
Informal Hearing	0	0	0	0	2	5
Consent Order	3	2	1	0	5	3

Notes: A complaint may include more than one type or data regarding the type of complaint may be missing; therefore, the total number of complaints in a fiscal year may not correspond to the numbers listed below the total. Dismissed complaints include those that were not within the board's jurisdiction.

Source: State Board of Cosmetologists

## Significant Drop in Inspections – Some Turnaround Expected

As shown in **Exhibit 7**, the number of inspections declined dramatically between fiscal 2003 (7,563 inspections) and 2008 (3,061), a 40 percent drop. This decline corresponds to a drop in the number of inspectors on staff from 11 at the end of fiscal 2003 to just 2 in fiscal 2007. This drop is even greater compared to the number of inspectors (20) employed when the 1998 preliminary evaluation was conducted.

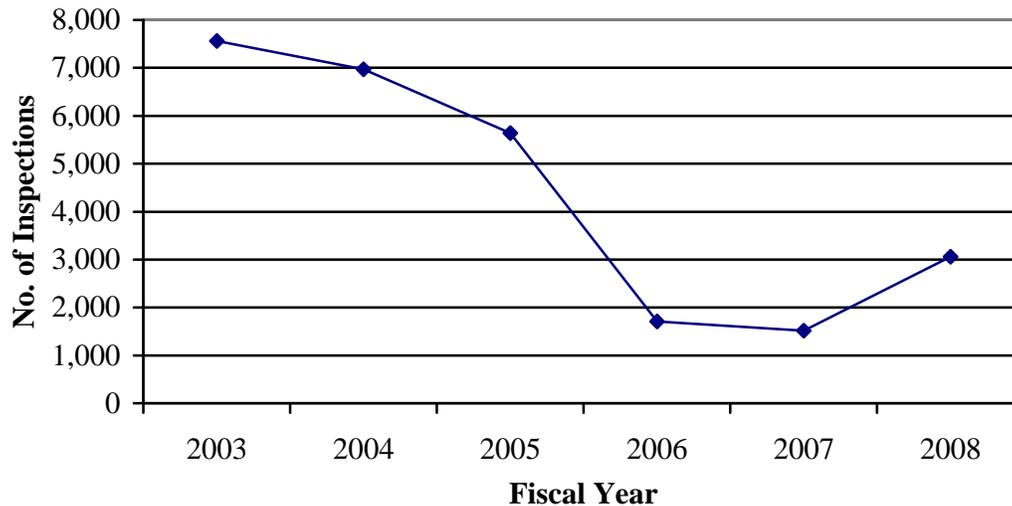
Inspection activity began an upswing in fiscal 2008 and will likely continue to increase as DLLR has recently filled vacancies and has funding available to fill additional positions, for an authorized total of 12 inspectors. In fiscal 2008, eight inspectors worked for both the State Board of Barbers and the Board of Cosmetologists. The board altered the experience requirement for inspectors to allow substitution of industry experience for investigative

experience, which has been successful in attracting more applicants; however, turnover remains a problem. Most of these positions are now contractual (paid up to \$93 per diem), which may account for some of the turnover as some individuals prefer a more reliable source of income in the long term.

The fluctuation in the number of inspectors may translate to a significant level of violations that are not being detected, which raises consumer protection concerns, particularly if unlicensed or poorly trained individuals are providing services. (The majority of complaints to this board relate to operating without a license and sanitation.) As the cosmetology industry is expanding rapidly, a consistent level of inspection support will be needed.

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**Exhibit 7**  
**State Board of Cosmetologists Inspection Activity**  
**Fiscal 2003-2008**



Source: State Board of Cosmetologists

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## **Budget and Personnel**

The State Board of Cosmetologists is funded by general fund appropriations. Board revenues generated through license, renewal, and inspection fees as well as fines are credited to the general fund. The board issues licenses for a two-year period. Examinations and inspections occur throughout every year. Current fees charged by the board are shown in **Exhibit 8**. The initial and renewal license fees have not changed since 1997; however, the board raised the exam fees in 2003, following the selection of a new exam vendor.

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**Exhibit 8**  
**Licensing and Examination Fees**

<u>License Type</u>	<u>Original Fee</u>	<u>Renewal Fee</u>	<u>Reinstatement Fee</u>	<u>Examination Fee</u>
Cosmetologist	\$25	\$25	\$25	\$75
Senior Cosmetologist	25	25	25	45
Esthetician	25	25	25	75
Nail Technician	25	25	25	75
Owner – Full-service Salon	50*	50	25	N/A
Owner – Limited-practice Salon	50*	50	25	N/A
Apprentice**	10	10	N/A	N/A

\*Owners must also pay a \$150 pre-opening inspection fee.

\*\*Cosmetologist, Esthetician, and Nail Technician

Notes: The board also charges a \$25 fee to certify the licensing, registration, or permit status and qualifications of licensees. Examination fees are paid directly by the applicant to the testing vendor. An examination fee is required to retake a portion of an examination.

Source: Code of Maryland Regulations 09.22.01.13

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As shown in **Exhibit 9**, the board's revenues have outpaced the costs attributed to it, with excess revenues of 30 to 40 percent in recent years. The exception is fiscal 2005, when the revenue gap was almost \$205,000 because the department implemented electronic licensing and had higher information technology costs than usual.

In large part, the magnitude of excess revenues has been related to the lower staffing levels in recent years. Staff consists of 2 administrators, 3 clerical positions (including 1 supervisor), and 12 authorized inspectors; 10 of the 17 positions are contractual. The size of the administrative staff has not increased since the 1998 evaluation. The previous preliminary evaluation indicated a significant reduction in board staff from the last full sunset evaluation in 1989; that reduction corresponded with a lower workload due to the narrowing of the board's regulatory authority and the implementation of third-party testing. However, given the projected growth of the cosmetology industry, the staff is not sufficient to administer licensing and process disciplinary action for the number of licensees served.

**Exhibit 9**  
**Fiscal History of the State Board of Cosmetologists**  
**Fiscal 2003-2008**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Total Attributable Costs	\$347,552	\$684,087	\$1,086,612	\$735,116	\$696,118	\$692,783
Direct Costs	347,552	513,274	726,149	462,951	399,459	405,246
Indirect Costs	N/A	170,363	360,463	272,165	296,659	287,537
Revenues	830,877	895,460	881,702	935,997	910,388	992,496
<b>Excess Revenue/(Gap)</b>	<b>\$483,325</b>	<b>\$213,373</b>	<b>(\$204,910)</b>	<b>\$200,881</b>	<b>\$214,270</b>	<b>\$299,713</b>

Notes: Indirect costs in fiscal 2004 only reflect cost allocation of services provided to the board by the Division of Occupational and Professional Licensing. Indirect costs from fiscal 2005 through 2008 reflect both divisional cost allocation and other departmental indirect costs.

Source: Department of Labor, Licensing, and Regulation

## Recommendation

There is a continued need for regulation of the cosmetology industry in the State to protect the public. DLS also observes that, in the absence of an organized industry group for either this board or the Board of Barbers, a heavier burden is placed on these boards to monitor developments and pending problems in the industry and to educate consumers. For example, while this board should prevent any barriers to entry within its scope of regulatory or statutory authority, it is the industry's responsibility to monitor and address the potential shortage of professionals, evidenced by the decline in apprenticeships and exam failure rate.

**The board is meeting its statutory obligations; however, the Department of Legislative Services recommends a full evaluation of the State Board of Cosmetologists to address the following issues:**

- Finances and Staffing:** The level of administrative staff is not sufficient to handle licensing, complaints, and other issues for both the barber and cosmetology boards. For example, only one full-time position is handling both apprenticeships and reciprocal licensing. The excess revenues for this board could finance up to 2.5 additional administrative positions. The full evaluation would assess the need for additional staff and the most appropriate types of staff to address any gaps. Other options could be explored as well, such as dedicating a portion of an individual's time to examinations and consumer education. The board receives a fairly high volume of complaints outside its

jurisdiction. The law requiring translation of vital documents does not specify web sites; however, translation of web site information for the core languages would be helpful to licensees and possibly alleviate burden on the staff.

And, as noted in this report, the level of inspection staff for both boards has not been consistent. Due to the inherent risk of infection or skin or hair damage, particularly as cosmetology services become more advanced, a permanent viable approach is needed to ensure that public health is adequately protected. Additional ways to recruit and retain new inspectors need to be explored.

- ***Exam Oversight:*** DLS has concerns about the failure rate on the theory portion of the exam. Previous problems with the prior exam vendor suggest the need for additional oversight and/or contractual safeguards. An additional administrator could be useful in monitoring the exam results and the contract with the exam vendor and providing recommendations to the board.
- ***Disciplinary Actions and Hearings:*** The full evaluation would assess early implementation of the citation program in conjunction with the anticipated upswing in inspections. Additional review of consumer complaint data and related actions would also be undertaken. The unreliability of interpreter services for formal hearings creates unnecessary delay and imposes an undue hardship on licensees. The full evaluation should evaluate whether the penalties in the current contract could be assessed and what options are available to address this problem.
- ***Statutory Barriers and Inconsistencies:*** The full evaluation would also address whether statute should be amended in the following areas:
  - altering the requirements for an executive director to remove the qualification that the individual must be a licensed barber or cosmetologist as no other DLLR board has a similar requirement;
  - removing language requiring that a complaint be signed, which prohibits electronic transmission of complaints – the law for several other boards, including foresters, architects, and interior designers, does not require that a complaint be signed;
  - removing language that requires a \$25 fee for licensure or renewal of a license, which is not consistent with the board’s regulatory authority to set fees; and
  - updating the apprenticeship requirements to be consistent with the regulatory requirements.



**Appendix 1. Written Comments of the  
State Board of Cosmetologists**

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December 2, 2008

Laura J. McCarty  
Legislative Manager  
Office of Policy Analysis  
Department of Legislative Services  
90 State Circle  
Annapolis, Maryland 21401-1991

Dear Ms. McCarty:

On behalf of the Department of Labor Licensing and Regulations and the Board of Cosmetologists ("the Board") I wish to acknowledge receipt of your letter and the draft copy of the Preliminary Evaluation of the State Board of Cosmetologists.

My staff has provided your senior legislative analyst, Ann Marie Maloney with factual corrections of the report. My staff and I would like to express our appreciation for the candor and professionalism provided by Ms. Maloney and your office. We look forward to working with the Legislative staff addressing issues that were raised in the report as well as future issues which may arise.

If your office should require additional information or a clarification as to the corrections, please do not hesitate to contact my assistant, Brian Logan at (410)230-6194.

Sincerely,



Robert Wood  
Executive Director  
Maryland State Board of Cosmetologists

Cc: Secretary Thomas E. Perez  
Commissioner Stan Botts  
Deputy Commissioner Harry Loleas  
Board of Cosmetologists Chairperson Marie Wallace

# Preliminary Evaluation of the State Board of Dental Examiners

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**Recommendation: Full Evaluation**

## The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Dental Examiners (BDE) last underwent a full evaluation as part of sunset review in 2004. The 2004 full evaluation determined that the board and its staff had made significant progress in implementing recommendations of the 1998 full sunset evaluation. As a result, DLS recommended an extension of the board’s termination date to July 1, 2011. Chapter 373 of 2005 did extend the termination date to July 1, 2011, and required the board to report on its progress implementing recommendations of the 2004 evaluation.

More recently, the board has been under a great deal of scrutiny surrounding an Office of the Inspector General’s (OIG) review of board disciplinary operations and sanctioning outcomes. The OIG report, released in December 2007, found inconsistencies in the sanctioning process and other logistical challenges that impede the disciplinary process within BDE. That report will be discussed in more detail later in this report. In addition, the board is undergoing a transition in staff leadership, with a new executive director and new dental compliance officer having joined the staff in early 2008.

In conducting its preliminary evaluation, DLS staff reviewed annual reports for the past five years, minutes for board meetings, the Maryland Dentistry Act and related regulations, the prior full sunset reviews of the board, and the operating budget of the board. In addition, DLS staff conducted interviews with the executive director and staff, attended two board meetings, and reviewed the OIG report.

BDE reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 2**. Appropriate factual corrections and clarifications have been made throughout the document.

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Prepared by: Sarah Volker and Kathleen Wunderlich  
Department of Legislative Services • Office of Policy Analysis • December 2008

## The Practice of Dentistry in Maryland

The mission of the State Board of Dental Examiners is to protect the public's health through the licensing and regulation of the dental industry. Dental care is typically provided by dentists, dental hygienists, and dental assistants. The board is authorized to regulate all of these practitioners as well as the practice of dentistry itself. As shown in **Exhibit 1**, in fiscal 2008, about 17,500 licenses, registrations, and certificates were held by dentists, dental hygienists, dental radiation technologists, and other dental professionals, up from about 15,000 in fiscal 2005.

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### Exhibit 1 Regulated Dental Professionals Fiscal 2005-2008

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Dentist	4,888	5,146	5,347	5,576
Dental Teacher	17	19	20	21
Limited Dental	23	33	21	36
Dental Hygienist	2,763	2,819	2,916	3,068
Dental Radiation Technologist	4,492	4,595	4,802	5,285
Qualified Dental Assistant	2,817	3,026	3,284	3,513
Retired Volunteer Dentist	3	2	2	2
Volunteer Dentist	1	2	2	2
<b>Total</b>	<b>15,004</b>	<b>15,642</b>	<b>16,394</b>	<b>17,503</b>

Source: State Board of Dental Examiners

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Dentists and dental hygienists must be licensed by the board. Dentists are the proprietors of dental practices who perform diagnosis, treatment, and dental services both within and between the teeth. Dentists typically hold a Doctor of Dental Surgery (DDS) or Doctor of Dental Medicine (DMD) 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 National Board Dental Examination, the Northeast Regional Board examinations, and a Maryland jurisprudence examination offered by the board in order to qualify for licensure.

Dental assistants are employed by dentists to assist in the performance of dental services within the mouth under the direct supervision of dentists. Though not licensed by the board, dental assistants are issued a Maryland registration card after successfully passing the Dental Assisting National Board examination. This card is issued one time only, upon passage of the examination, and is not subject to renewal. Since the card is only issued one time and has no

expiration date, it is unclear how many card holders are active dental assistants. Therefore, the number of dental assistants shown in Exhibit 1 is a likely overstatement of the actual number of practicing dental assistants.

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

The State Board of Dental Examiners is composed of 16 members, of whom 9 are licensed dentists, 4 are licensed dental hygienists, and 3 are consumers. Board members serve staggered terms of four years and may not be appointed for more than two consecutive terms.

### **Statutory and Other Changes Affecting the Board Since 2004 Sunset Review**

Since the full evaluation in 2004, several statutory changes have affected board operations. As shown in **Exhibit 2**, one significant change occurred through Chapter 373 of 2005, which, in addition to extending the termination date of the board to July 1, 2011, added another licensed dental hygienist to the board membership.

Chapter 212 of 2008, which resulted from the OIG report briefly mentioned above, requires significant changes in the board's disciplinary process. As shown in Exhibit 2, the law requires the board to establish a new process to nominate licensee board members and requires the board to adopt new regulations to guide the disciplinary process. Since the board has until December 31, 2008, to report on its progress in meeting these requirements, an update on implementation is not included in this review. Chapter 212 also establishes the Task Force on the Discipline of Health Care Professionals and Improved Patient Care, staffed by the Department of Health and Mental Hygiene and health occupations boards in conjunction with the Office of the Attorney General (OAG). The task force held its first meeting on September 26, 2008.

In addition, Chapter 357 of 2004, which passed prior to the publication of the 2004 sunset review, required the board to develop regulations concerning the administration of sedation by licensed dentists. The board adopted its proposed regulations in June 2008.

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**Exhibit 2**  
**Major Legislative Changes Since the 2004 Sunset Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2005	373	<p>Extends termination date of the board by five years to July 1, 2011.</p> <p>Adds another licensed dental hygienist to board membership, whose term ends in 2009.</p> <p>Requires the board to report on its progress in implementing recommendations in the 2004 sunset evaluation report.</p>
2006	469	Changes the requirements for limited licenses to practice dentistry, examinations, teacher's licenses, and hearing notifications as well as board members' terms.
2007	165	Allows a dental hygienist authorized to practice under a licensed dentist's general supervision in a government-owned and -operated facility or public health department to apply fluoride, mouth rinse, or varnish. The facility in which the dental hygienist is authorized to practice does not have to first satisfy existing statutory requirements related to the diagnosis and treatment of the patient.
2008	212	<p>Establishes a new process to nominate licensee board members to serve on the State Board of Dental Examiners and requires the board to adopt new regulations to guide the disciplinary process and meet other requirements, including reporting on its implementation of the bill by December 31, 2008. Board members must be appointed from a list of names submitted by the board, and individuals appointed to the board have to reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State.</p> <p>Establishes a Task Force on the Discipline of Health Care Professionals and Improved Patient Care, staffed by the Department of Health and Mental Hygiene and health occupations boards in conjunction with the Office of the Attorney General.</p>

Source: Laws of Maryland

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## **Board Complaint Resolution**

The board investigates and acts upon complaints against licensees. After a complaint has been considered by the board, it may be referred for substantive investigation. However, not all cases are handled by the board investigator; the board has the option to close a complaint without taking any disciplinary action or resolve the case informally based on the information received

from the complaint file alone. If a complaint is referred for substantive investigation, the board's investigator or other designated personnel examines the case and presents the findings to the board. The board then decides if the complaint is within its jurisdiction and either closes the case without action, takes disciplinary action, or refers the case to the Office of the Attorney General for prosecution.

**Exhibit 3** shows actions taken by the board on complaints that were received in fiscal 2004 through 2008. The numbers listed do not reflect the total number of actions taken by the board in that particular year. Rather, they only reflect action taken on *complaints received during that particular fiscal year*. For example, at the close of fiscal 2005, 31 complaints *that had been received* in fiscal 2005 were referred to OAG for prosecution. The total number of complaints referred to OAG in fiscal 2005 should be much higher, since referrals to OAG were likely made on complaints received prior to fiscal 2005.

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**Exhibit 3**  
**Action Taken by the Board on New Complaints Received**  
**Fiscal 2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Total New Complaints Received	343	275	253	316	295
Closed Initially	45	46	24	31	52
Forwarded to Peer Review	36	9	9	17	20
Additional Records Requested	135	99	53	141	155
Referred for Investigation	51	30	51	57	27
Referred to OAG for Prosecution	20	31	24	16	12
Sent Advisory Letter/ Education Letter	46	60	58	33	36
Referred to Case Management	8	22	12	27	7
Closed After Investigation	91	138	117	89	49

Notes: Numbers listed in this exhibit do not reflect the total number of actions taken by the board in that fiscal year. Rather, they only reflect action taken on complaints that were *received during that particular fiscal year*. In addition, the actions taken do not sum to the number of complaints received as multiple actions may have been taken on a complaint.

Source: State Board of Dental Examiners

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As shown in **Exhibit 4**, on average, the board has received about 296 new complaints annually over the past five years. In fiscal 2008, the board received 295 new complaints against licensees while it continued to investigate 182 complaints carried over from the previous year. The board has made a concerted effort to adjudicate complaints in a timely manner, but it still carries a significant backlog. Though this backlog is due at least in part to the board's investigative staff retention history and a vacant compliance officer position for most of fiscal 2008, an examination of the entire complaint process should be conducted in a full evaluation to examine additional ways to expedite the process in an equitable manner.

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**Exhibit 4**  
**Complaint Volume – State Board of Dental Examiners**  
**Fiscal 2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
New Complaints	343	275	253	316	295
Pending Complaints	176	115	142	126	182
<b>Total Complaints</b>	<b>519</b>	<b>390</b>	<b>395</b>	<b>442</b>	<b>477</b>

Source: State Board of Dental Examiners

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### **Limited Investigative Staff**

Over the past four years, the board generally has been operating with only one full-time investigator to handle complaints that often involve complex standard-of-care issues, insurance fraud, Centers for Disease Control and Prevention violations, or sexual assault charges. Filling and keeping qualified investigators has been a chronic problem for the board and many other health occupations boards. During the 2004 sunset review, BDE had only one full-time investigator on staff. In March 2006, a second investigator was hired, and a third in May 2006. However, two of the investigators resigned in May and September 2007, again leaving the board with only one investigator. In September and October 2008, two new investigators began working for BDE, bringing the total to three.

The board believes that it loses potential applicants to the Board of Physicians, which offers higher investigator salaries than other health occupations boards, including BDE. Unlike other health occupations boards, the Board of Physicians has independent salary-setting authority that is vested in the Secretary of Health and Mental Hygiene. In 2007 the Secretary of Health and Mental Hygiene reclassified the investigative positions at the Board of Physicians, which effectively increased the salaries for its investigative staff. The Board of Physicians cited hiring difficulties as well as complex medical malpractice issues which made the reclassification necessary. However, the change exacerbated already existing salary differentials between the Board of Physicians and other health occupations boards.

## **Triage Committee**

In June 2007, the board created a Triage Committee in an effort to expedite the complaint resolution process. The Triage Committee meets once a month on board disciplinary meeting days to review complaints and make action recommendations to the Disciplinary Review Committee. Triage Committee recommendations include requesting a response and patient records from the licensee, referring the case for investigation, closing the case without action, sending an advisory letter to the licensee, or referring the case to peer review for mediation. The board hopes the Triage Committee will accelerate the complaint resolution process by taking some of the initial complaint review load from the Disciplinary Review Committee. A full evaluation should include an assessment of how the Triage Committee is expediting the complaint resolution process.

## **License 2000**

According to the executive director, the board recently made a decision to purchase software to update its automated licensure system (License 2000). While the current system works relatively well for initial licensing activities, it does not work as well for complaints and compliance, where it can be cumbersome for board staff to navigate. In addition, since the license renewal system that licensees can use to renew online is not compatible with License 2000, renewal data have to be entered manually. The board plans to integrate the renewal system with License 2000, saving staff time and reducing possible entry errors.

The board reports that it returns an incomplete application to the applicant immediately. However, the board does not record when it receives the incomplete application, when it sends one back to the applicant, or what is missing in the application. This could cause problems in the event that an applicant disputes the timing or completeness of his or her application. The board has identified this as a problem and plans to start recording this information in License 2000. The executive director indicates that the new record will include a checklist of documents missing from the application packet.

In addition, complaints that are referred to case management are handled in a separate software system and are no longer tracked in License 2000 once referred to case management. Thus, it is difficult to track a complaint that has been referred to case management from inception to closure. OIG also found that License 2000 does not effectively capture and reflect the life cycle of cases processed.

Given that the board recently decided to purchase an updated software system to be installed by January 2009, a full evaluation should look at how the updates are helping board staff improve licensing and complaint resolution activities. The board estimates the updates to cost about \$75,000.

## **Redacting Policy**

Another issue related to the complaint resolution process is a redaction policy recently implemented by the board. In response to a recommendation made in the OIG report, the board implemented this new redaction policy to alleviate concerns about inequalities in board sanctions across racial lines. The policy, first implemented in July 2008, requires the Compliance Secretary to black out the names and addresses of all dental professionals named in the initial complaint documents to eliminate bias when making sanctioning decisions. Since the Triage Committee handles initial complaints, it does not see the names of licensees on which a complaint has been made when it makes its recommendation to the board on whether to request a response and records from the licensee, refer the case for investigation, close the case without action, send an advisory letter to the licensee, or refer the case to peer review.

However, if the board requests additional records from the licensee to help make a disciplinary decision, the records received from licensees cannot be altered. Therefore, complaints that require further investigation *do* include the name of the licensee involved. When the board votes on how to handle a complaint at this stage, the licensee in question is known to all board members. Because of this restriction, DLS believes that a full evaluation should take a closer look at the redaction policy in relation to the record restriction and how it is affecting the sanctioning process and its outcomes.

## **Board Fund Balance**

The board became self supporting in 1992 when the General Assembly established special funds for most of the health occupations boards. The board's special fund is supported entirely by fees collected from licensees and certificate holders. The 2004 sunset review noted that the board's fund balance of \$882,164 in fiscal 2004 was excessively high. As shown in **Exhibit 5**, the board's fund balance remains above the generally recommended 20 percent threshold for health occupations boards of its size. The fiscal 2008 ending fund balance is \$1,105,991, which is about 71 percent of the board's expenditures for that year. By year-end fiscal 2009, the balance is expected to be less, at \$812,871, but still more than adequate to handle board activities.

**Exhibit 5**  
**Fiscal History of the State Board of Dental Examiners**  
**Fiscal 2003-2009**

	<u>2003</u>	<u>2004</u>	<u>2005*</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Projected 2009</u>
Beginning Fund Balance	\$177,122	\$547,847	\$858,626	\$1,205,724	\$1,286,762	\$1,345,509	\$1,105,991
Revenues Collected	1,702,175	1,618,044	1,744,123	1,583,259	1,699,697	1,325,351	1,584,365
<b>Total Funds Available</b>	<b>\$1,879,297</b>	<b>\$2,165,891</b>	<b>\$2,602,749</b>	<b>\$2,788,983</b>	<b>\$2,986,459</b>	<b>\$2,670,860</b>	<b>\$2,690,356</b>
<b>Total Expenditures</b>	<b>\$1,331,448</b>	<b>\$1,283,727</b>	<b>\$1,397,025</b>	<b>\$1,502,220</b>	<b>\$1,640,950</b>	<b>\$1,564,869</b>	<b>\$1,877,485</b>
Direct Costs	998,614	962,272	1,039,232	1,163,969	1,298,111	1,219,368	1,562,737
Indirect Costs	332,834	321,455	357,793	338,251	342,839	345,501	314,748
<b>Ending Fund Balance</b>	<b>\$547,847</b>	<b>\$882,164</b>	<b>\$1,205,724</b>	<b>\$1,286,762</b>	<b>\$1,345,509</b>	<b>\$1,105,991</b>	<b>\$812,871</b>
Balance as % of Expenditures	41%	69%	86%	86%	82%	71%	43%
Target Fund Balance	\$266,290	\$256,745	\$279,405	\$300,444	\$328,190	\$312,974	\$375,497

\*The beginning balance for fiscal 2005 is lower than the closing balance for fiscal 2004 due to an accounting change beginning in fiscal 2005.

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

Source: State Board of Dental Examiners; Department of Health and Mental Hygiene

Maintaining a fund balance is important to allow the board to keep fees at the same level for several years. This way fees do not have to be raised for each renewal period to keep pace with inflation. Further, because BDE's licensure activity occurs on a biennial basis, revenues are alternately high in one year and low in another. The ability to carry over a fund balance allows the board to cover its direct costs as well as the indirect costs charged by the Department of Health and Mental Hygiene in both years of the licensing cycle. Accordingly, revenues and expenditures for the board should be assessed on a two-year basis. A fund balance also allows the board to make necessary software upgrades, which the board plans to purchase and install by January 2009 at a cost of \$75,000. However, a surplus of *around* 20 percent should be sufficient for a board of this size – well below BDE's surplus which has exceeded 40 percent since 2003.

As part of the 2004 sunset review report, DLS recommended that the board examine its schedule of fees, and if necessary, reduce licensure fees to spend down its excessive fund balance. DLS further recommended that the board pay particular attention to initial application fees for dental hygienists, which seemed prohibitive for that profession. The board did such an examination but did not reduce its fees until 2007, when it reduced dental hygienist application and renewal fees from \$375 to \$275 and from \$185 to \$135, respectively. The board also reduced the renewal fee for dental radiation technologists from \$75 to \$50 that same year. License and renewal fees assessed by the board are shown in **Exhibit 6**. The fee reductions have reduced the board's fund balance over the past few years and will continue to reduce the fund balance over time, eventually below the 20 percent recommendation, necessitating another fee increase or spending reduction.

As mentioned above, maintaining a fund balance that is neither deficient nor excessive is not an easy task without adjusting fees every year. Given that such frequent adjustments are undesirable and impractical, it is expected that the board's balance will swell and deflate over time. However, given the board's excessive fund balance over the past five years, a full evaluation should review the board's approach to keeping the fund balance within a reasonable range.

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**Exhibit 6**  
**Schedule of Fees – State Board of Dental Examiners**

<u>Type of License, Certificate, or Permit</u>	<u>Fee in 2008</u>	<u>Fee in 2004</u>
Dentist Application	\$450	\$450
Dentist Limited License	225	225
Dentist Teacher's License	225	225
Dentist License Renewal	365*	415
Dentist Inactive License	150	150
Dental Hygienist Application	275	375
Dental Hygienist Teacher's License	225	225
Dental Hygienist License Renewal	135	185
Dental Hygienist Inactive License	75	75
Dental Radiation Technologist Certification	20	20
Dental Radiation Technologist Renewal	50	75
General Anesthesia Permit Application	1,050	1,050
General Anesthesia Permit Renewal	450	450
Parenteral Sedation Permit Application	1,050	1,050
Parenteral Sedation Permit Renewal	450	450
Facility Permit Application	1,050	1,050
Facility Permit Renewal	450	450

\*The board reduced this fee for the 2008 and 2009 renewal period only. The reduction will be eliminated beginning with the 2010 renewal cycle, reverting back to the \$415 fee.

Source: State Board of Dental Examiners; Code of Maryland Regulations

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## Customer Service

In the 2004 sunset evaluation report, DLS noted that the board had difficulty responding to licensees. The board had received complaints from licensees about their inability to contact board staff, and several professional associations indicated that they had received complaints from their licensees about difficulty in reaching the board. In addition, the board's web site was not conducive to making inquiries to the board.

The board's executive director recognizes that, since no one person is dedicated to answering the phone, individuals calling the board to make inquiries frequently get the board's voicemail. DLS experienced this same problem when calling the board's main number, which was

often directed to voicemail. However, the board recently hired a new telephone operator, the position of which was unfrozen by the Department of Budget and Management in July 2008. The operator began work in October 2008. The executive director also indicates that the board is in the process of updating the web site in order to make the site more user friendly and facilitate licensee inquiries. A full evaluation should look at how the new telephone operator and updated web site are affecting customer service.

## **Report of the Office of Inspector General**

Pursuant to the directive of Governor Martin O'Malley, the Department of Health and Mental Hygiene's Office of the Inspector General audited the disciplinary records of the Maryland State Board of Dental Examiners for the period of January 1, 2002, through December 31, 2006. The purpose of the audit was to determine whether any bias or inequities exist in the disciplinary process and sanctioning outcomes produced by the board. In order to accomplish this task, four main questions were posed:

- (1) Did the board award licenses within the bounds of legislative statutory authority?
- (2) Were sanctions and remedial measures imposed uniformly upon licensees regardless of race?
- (3) Did race or ethnicity factor into the severity of sanctions, particularly for similar violations?
- (4) Are there other operational constraints within the disciplinary process that contribute to disciplinary inequities?

OIG found the board to be in compliance with licensing procedures for qualified individuals; however, the report found inconsistencies with the way in which sanctions were imposed across racial lines, staffing shortages that contribute to prolonged processing time of cases, software inefficiencies that limit proper documentation of the life cycles of cases, as well as operational challenges that impede the disciplinary process.

Among the central findings of the report, OIG found that the board's collection system is not well suited for analyzing patterns in the handling of complaints which may lead to inequality in the sanctioning process along racial lines. For example, between fiscal 2002 and 2007, African Americans received disciplinary sanctions at a rate of 1.9 times higher than Caucasians. The report concluded that either there is inequality in the severity of the allegations by race or there is inequality in the sanctioning process by race.

In response to the findings of the OIG report, the legislature ordered that a task force be formed to study the disciplinary practices across all health occupations boards. As mentioned earlier, Chapter 212 of 2008 establishes the Task Force on the Discipline of Health Care Professionals and Improved Patient Care and requires it to issue recommendations that will improve and enhance the disciplinary practices of the boards and further protect the public and health care professionals in Maryland. The task force, which held its first meeting in September 2008, will directly address many of the issues raised in the OIG report on the board.

For a full summary of the findings, recommendations, and corrective BDE actions that resulted from the OIG study, see **Appendix 1**.

## **Recommendations**

There is a continued need for regulation of the dental industry in the State to protect the public. **However, given the concerns raised in this evaluation and in the OIG report, the Department of Legislative Services recommends a full evaluation of the State Board of Dental Examiners to address the following issues:**

- ***Complaint Resolution Process:*** A full evaluation should look at the complaint resolution process to assess whether board efforts to expedite the complaint resolution process are effective and equitable. This would include an assessment of the Triage Committee, License 2000 updates, redaction policy, and the fully staffed investigative team. The evaluation should look at how these policies, updates, activities, and staffing levels are either improving or hindering the complaint resolution process. A full evaluation could also examine the chronic problem of investigator recruitment and retention within the board. In addition, a full evaluation could assess further impacts on the board related to the OIG report and the pending task force report.
- ***Fund Balance:*** A full evaluation should look at how the board is balancing its finances, taking into account expenditures on three new staff members whose positions had been vacant for a year or more (two investigators and one telephone operator). In addition, the evaluation should look at how the board is accounting for the cost of implementing the software updates it recently decided to purchase. While the board's current fund balance is high, it could be quickly reduced by paying the salaries of new staff and the costs associated with software updates.
- ***Customer Service:*** A full evaluation should look at customer service issues given the addition of a full-time telephone operator and updated web site.

DLS notes that new staff leadership is working to make improvements that address OIG concerns and improve board functions. For example, the board recently created a welcome packet for new board members. The packet contains a great deal of information that members need to understand board functions and the licensees they regulate.

## Appendix 1. **OIG Findings, Recommendations, and Related Board Actions**

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### **OIG Findings**

- The board’s tracking system is not well suited for analyzing patterns in the processing of complaints, which may lead to inequality in sanctioning outcomes, both in total number and severity, across racial lines.

### **OIG Recommendations**

- The board should collect ethnicity and race data on all licensees upon application.
- The board should utilize the Maryland official standard method for collecting race and ethnicity data.
- The board should develop a concise methodology of tracking the status of all allegations from start to finish, including specific written guidelines and standard definitions.
- The board should develop a database with a software program that analyzes the data in a multivariate manner to reduce subjectivity and individual bias.
- The board should consider a case-audit process that studies selected cases, de-identifying files, and using outside experts.
- All health occupations boards may need to review their process for handling allegations and develop a similar system.

### **Board Actions**

- Applications for new and renewal licenses have been revised to include race and ethnicity data.
- Race and ethnicity data will be stored in the licensure databank.
- New redaction policy has been implemented which requires the Compliance Secretary to black out the names and addresses of all dental professionals named in the initial complaint documents.
- Task Force on the Discipline of Health Care Professionals and Improved Patient Care, established by Chapter 212 of 2008, sets up a framework for discussing and developing measures that will enhance and improve the disciplinary programs of the health occupations boards.
- The board is still considering substantive changes to its licensing and complaint collection software, License 2000.

**OIG Findings**

- Staffing shortages impede the board’s ability to properly process cases.

**OIG Recommendations**

- The board should fill the vacant dental compliance officer position as well as the two vacant investigative staff positions.

**Board Actions**

- The board has since filled both the dental compliance officer as well as the executive director positions.
- A contractual paralegal was hired in February 2008 to help alleviate the workload on other members of the discipline unit. However, that position was vacated in August 2008.
- Two new investigators have been hired.
- An additional office assistant position was unfrozen by the Department of Budget and Management in July 2008 and filled in October 2008.

- 
- License 2000 does not effectively capture and reflect the life cycle of cases processed.

- The board should explore the possibility of re-engineering License 2000 to more accurately track and report the full life cycle of disciplinary cases handled.

- The board has not yet made a decision as to how to update or modify License 2000.

- 
- Lag time of caseloads is not properly monitored or reported to the full board.

- The board should institute the development, use, and routine review of a comprehensive status report as a monitoring tool for all disciplinary cases processed.

- A Backlog Committee has been established and reports monthly to the board.
-

**OIG Findings**

- No “statute of limitations” is required on the processing of cases.

**OIG Recommendations**

- Legislation should be enacted that allows the board to demonstrate delays outside of its control but requires disciplinary actions to be completed within a given time period.

**Board Actions**

- Task Force on the Discipline of Health Care Professionals and Improved Patient Care will address this issue to identify appropriate timeframes in which to process complaint cases.

- 
- There is no formal sanctioning guideline or scoring tool in place that would facilitate similar sanctions for similar violations.

- The board should work with Attorney General’s Office and DLS to develop and implement sanctioning guidelines.

- Task Force on the Discipline of Health Care Professionals and Improved Patient Care will address this issue.

Source: Department of Health and Mental Hygiene, Office of the Inspector General, *Review of the Maryland State Board of Dental Examiners FY 2002 through FY 2007*; State Board of Dental Examiners



**Appendix 2. Written Comments of the  
State Board of Dental Examiners**

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STATE OF MARYLAND

**DHMH**

Maryland State Board of Dental Examiners

Maryland Department of Health and Mental Hygiene  
Spring Grove Hospital Center • Benjamin Rush Building  
55 Wade Avenue/Tulip Drive • Catonsville, Maryland 21228

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

December 3, 2008

Ms. Laura J. McCarty  
Legislative Manager  
Department of Legislative Services  
Office of Policy Analysis  
Maryland General Assembly  
Legislative Services Building  
90 State Circle  
Annapolis, Maryland 21401-1991

Re: Preliminary Evaluation of the State Board of Dental Examiners

Dear Ms. McCarty:

On behalf of the Maryland State Board of Dental Examiners ("the Board") we would like to thank the Department of Legislative Services, Office of Policy Analysis, and their legislative analysts for the Preliminary Evaluation of the State Board of Dental Examiners under cover of November 18, 2008. Please accept this letter as the response of the Board to several of the issues discussed in the evaluation.

As noted in the Board's responses below, the Board is pleased that it has made significant progress toward implementing many of the recommendations of the evaluation. (Page numbers in the Board's responses refer to the page number of the Preliminary Evaluation.)

Preliminary Evaluation Comment:

**License 2000**

"The Board reports that it returns incomplete applications to the applicant immediately. However, the Board does not record when it receives the incomplete applications, when it sends one back to the applicant, or what is missing in the application." (p.7)

#### Board Response:

The Board is now tracking the process of returning incomplete applications. It's licensing unit makes copies of incomplete applications, records when they are received, notes the items missing as well as the date when the application is returned to the applicant.

#### Preliminary Evaluation Comment:

"In addition, complaints that are referred to case management are handled in a separate software system and are no longer tracked in License 2000 once referred to case management. This makes it difficult to track a complaint that has been referred to case management from inception to closure. OIG also found that License 2000 does not effectively capture and reflect the life cycle of cases processed.

Given that the board recently decided to purchase an updated software system to be installed by January 2009, a full evaluation should look at how the updates are helping board staff improve licensing and complaint activities." (p.7)

#### Board Response:

The Preliminary Evaluation notes that "While the Current system [License 2000] works relatively well for initial licensing activities, it does not work well for complaints and compliance, where it can be cumbersome for board staff to navigate." The Board agrees with this assessment of the current system's limitations. The Board will make every effort to ensure that the updated software adequately captures the life cycle of its disciplinary cases, including those in case management.

#### Redacting Policy

#### Preliminary Evaluation Comment:

"Another issue related to the complaint resolution process is a redaction policy recently implemented by the Board. In response to a recommendation made in the OIG report, the Board implemented this new redaction policy to alleviate concerns about inequalities in board sanctions across racial lines. The policy, first implemented in July 2008, requires the Compliance Secretary to black out the names and addresses of all dental professionals named in the initial complaint documents to eliminate bias when making sanctioning decisions. Since the Triage Committee handles initial complaints, it does not see the names of the licensees on which a complaint has been made when it makes its recommendations to the board on whether to request a response and records from the licensee, refer the case for investigation, close the case without action, send an advisory letter to the licensee, or refer the case to peer review.

However, if the Board requests additional records from the licensee to help make a disciplinary decision, the records received from licensees cannot be altered. Therefore, complaints that require further investigation *do* include the name of the licensee involved, meaning that when the board votes on how to handle a complaint at this stage, the licensee in question is known to all board members. Because of this restriction, DLS believes that a full evaluation should take a

closer look at the redaction policy in relation to the record restriction and how it is affecting the sanctioning process and its outcomes.” (p.8)

#### Board Response:

The Board has implemented the redaction policy on initial complaints as a result of the OIG recommendations. Once the Board receives the response to a complaint from a licensee and the patient’s original records, it could redact the licensee’s name from both a copy of the response and a copy of the records. Ultimately however, the Board would be at a disadvantage if it was unaware of the identity of the licensee since the licensee’s past disciplinary history is significant in determining if disciplinary action was justified in the matter before it. For example, a licensee with a history of formal or informal disciplinary action for the same offense may justifiably be treated differently than a licensee with no prior violations. In addition, knowledge of the severity of past offenses is also significant in determining the appropriate disciplinary action.

#### Board Fund Balance

##### Preliminary Evaluation Comment:

“The fiscal 2008 ending fund balance is \$1,105,991, which is about 71 percent of the board’s expenditures for that year. By year-end fiscal 2009, the balance is expected to be less, at \$812,871, but still more than adequate to handle board activities.” (p.8)

“However, a surplus of *around* 20 percent should be sufficient for a board of this size – well below BDE’s surplus which has exceeded 40 percent since 2003.”

“...[The Board] did not reduce its fees until 2007, when it reduced dental hygienist application and renewal fees from \$375 to \$275 and from \$185 to \$135 respectively. The Board also reduced the renewal fee for dental radiation technologists from \$75 to \$50 that same year. The fee reductions have reduced the board’s fund balance over the past few years and will continue to reduce the fund balance over time, eventually below the 20 percent recommendation, necessitating another fee increase or spending reduction.”

However, given the board’s excessive fund balance over the past five years, a full evaluation should review the board’s approach to keeping the fund balance within a reasonable range.” (p.10)

#### Board Response:

As the Preliminary Evaluation acknowledges, the Board has already reduced its more significant fees to help reduce its fund balance. The Board’s reduction in licensing and renewal fees for dental hygienists, reduction in renewal fees for dental radiation technologists, as well as its reduction in renewal fees for dentists will aid in reducing the fund balance. In addition, the Board’s hiring of additional needed staff as recommended in the OIG report, will aid in this effort. The Board will continue to monitor its fund balance and future projections in an attempt to keep the balance within an acceptable range.

## **Customer Service**

### **Preliminary Evaluation Comment:**

“In the 2004 Sunset evaluation report, DLS noted that the board had difficulty responding to licensees. The board had received complaints from licensees about their inability to contact board staff, and several professional associations indicated that they had received complaints from their licensees about the difficulty in reaching the board.” (p.11)

“[The] Board recently hired a new telephone operator, the position of which was unfrozen by the Department of Budget and Management in July 2008. The operator began work in October 2008.” (p.12)

### **Board Response:**

The Board has implemented the recommendation. Telephone calls are being handled in an efficient manner by a dedicated telephone operator. Any prior difficulties in communicating with Board staff should now be greatly reduced.

## **Appendix 2. OIG Findings, Recommendations, and Related Board Actions**

### **OIG Findings:**

“The board’s tracking system is not well suited for analyzing patterns in the processing of complaints, which may lead to inequality in sanctioning outcomes, both in total number and severity, across racial lines.” (p.17)

### **Board Response:**

As recommended by the OIG and as mandated by SB 764 and HB 811 (Chapters 211 and 212 respectively of the Laws of 2008) the Board has already begun to collect race, gender, and ethnicity information on all renewal applications based on the Maryland official standard method for collecting race, gender, and ethnicity information. The Board is in the process of changing its initial applications to incorporate the change. In addition, the Board’s new redaction policy will ensure that the Board’s Triage Committee will be unaware of the licensee’s identity prior to the Board’s vote on its initial action.

The Board’s purchase of new software should help make its data collection efforts more efficient.

### **OIG Findings:**

“Applications for new and renewal licenses have been revised to include race and ethnicity data.” (p.17)

Board Response: As previously stated, the Board has revised its renewal applications to capture the requested data and is in the process of revising its initial applications to do so.

“Staffing shortages impede the board’s ability to properly process cases.” (p.18)

Board Response:

The Board has recently filled several vacancies and added additional staff. A new Executive Director and Dental Compliance Officer have been hired, as well as two additional investigators bringing the total number of investigators to three. The Board has also hired a telephone operator and an Administrative Aide.

OIG Findings:

“License 2000 does not effectively capture and reflect the life cycle of cases processed.” (p.18)

Board Response:

As previously noted the Board’s present software system does not allow the Board to adequately track the life cycle of its disciplinary cases. The Board is exploring other alternatives.

OIG Findings:

“No statute of limitations” is required on the processing of cases.” (p.19)

Board Response:

The Board is required to follow the existing law regarding its investigation of complaints. Because there is no existing statute of limitations regarding the filing of complaints with the Board, the Board would be in violation of the law if it refused to accept a complaint based upon the date of the underlying occurrence. With respect to the processing of complaints, the Board hopes to expedite the handling of its backlog of cases with the hiring of two new investigators.

*Please note the following are the corrections to or inaccuracies contained in the Preliminary Evaluation:*

The present Board President is J. Timothy Modic, D.D.S. (November 18, 2008 cover letter)

Both dentists and dental hygienists must pass the National Board Dental Examination, the Northeast Regional Board examinations as well as a Maryland jurisprudence examination offered by the Board in order to qualify for licensure. (p.2)

The Board issues a registration card to dental assistants, not a certification card. (p.3)

The two Board investigators recently hired began work in September and October 2008 respectively. (p.6)

The contractual paralegal was hired but is no longer working for the Board (p.18)

In addition to the new hires identified in the Preliminary Evaluation, the Board also hired an Administrative Aide. The following is the complete list of recent hires and their present status:

Second investigator began work in September 2008;

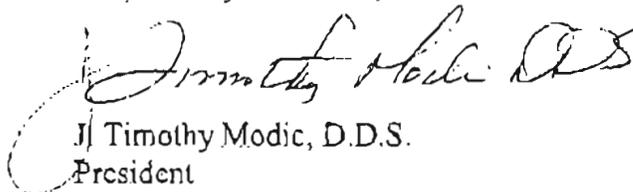
Third investigator began work in October 2008;

Telephone operator began work in October 2008;

Administrative assistant began work in October 2008; and

Contractual paralegal was hired in February 2008 but is no longer working for the Board.

Respectfully submitted,

Handwritten signature of J. Timothy Modic, D.D.S. in cursive script, enclosed in a circular stamp.

J. Timothy Modic, D.D.S.  
President

Handwritten signature of Larry J. Gray, Sr. in cursive script.

Larry J. Gray, Sr.  
Executive Director

cc: Secretary John M. Colmers  
Mr. Richard A. Proctor  
Mr. Karl S. Aro  
Mr. Warren G. Deschenaux  
Richard Bloom, Esq.

# Preliminary Evaluation of the Maryland Tobacco Authority

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**Recommendation:        Remove from Statute due to Obsolescence**

## **The Sunset Review Process**

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The Maryland Tobacco Authority last underwent full evaluation as part of sunset review in 2004. That evaluation made seven recommendations, one of which was to extend the authority’s termination date by five years. During the 2005 session, the termination date of the authority was extended to July 1, 2011.

In conducting its preliminary evaluation, DLS staff interviewed staff of the Maryland Department of Agriculture (MDA) and University of Maryland Cooperative Extension. DLS staff also reviewed annual reports and the legislative history of the authority.

MDA reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 3**. Appropriate factual corrections and clarifications have been made throughout the document.

Additional context related to the tobacco industry and Maryland’s tobacco buyout program is included as **Appendices 1** and **2**, respectively.

## **The Maryland Tobacco Authority**

The Maryland Tobacco Authority was created by Chapter 61 of 1947 to license and regulate tobacco producers, buyers, and sellers in order to alleviate the disorderly conditions surrounding the marketing of leaf tobacco in the State. Prior to 1947, State involvement in the industry was limited to State tobacco inspectors who graded tobacco and supervised the operations of the State Tobacco Warehouse. Under the provisions of Title 7 of the Agriculture Article, the authority is empowered to regulate marketing practices by licensing auction participants and overseeing auction activities. In addition to regulating the tobacco auctions, the authority may issue allocation and administrative penalties and has subpoena powers. The authority has been funded through license fees and a fee imposed on each pound of tobacco auctioned, commonly referred to as the “poundage tax.”

Statute, as amended by Chapter 530 of 2005, specifies that the authority consist of six members appointed by the Governor for three-year terms. Three of these members must be tobacco producers appointed from nominees selected by MDA. 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. Authority members are responsible for selecting a chairman. Each member is compensated for reasonable travel expenses in accordance with standard State travel regulations.

Currently, the authority is essentially defunct with no staff undertaking activities related to its responsibilities. In addition, no new appointments have been made since the expiration of the last member term in 2007, and the chair position is vacant. These changes have mirrored the shifts in tobacco production and auction activity. In 2006 the authority operated with two part-time contractual employees: the executive secretary and an administrative secretary. The executive secretary worked as needed through the year, with the bulk of his time devoted to the weeks of market. The work of the administrative secretary was seasonal – lasting only a couple of weeks in 2006 – with general support activities falling to MDA during the balance of the year. Prior to the 2002 market, the authority also 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.

Despite its inactivity and the lack of an auction, the authority still is empowered to regulate marketing practices for leaf tobacco grown in Maryland by:

- allocating daily sales quotas and selling times during market season among commission selling agencies (warehouses);
- prescribing conditions for display of tobacco on the sales floor of any leaf warehouse;

- prescribing terms and conditions for withdrawal of baskets of leaf tobacco from the sales floor of any private warehouse;
- determining the information to be placed on the tickets of the baskets of tobacco on the sales floor of any private warehouse; and
- making inspections to determine the accuracy of weights or measures used by any commission selling agency.

However, these activities relate to tobacco auctions which are no longer held. It is no surprise then that the authority has received no formal complaints from tobacco market participants since the 2004 full evaluation.

The authority also can issue licenses to the various parties that participate in a tobacco auction, with the exception of tobacco producers. A tobacco buyer may be a representative of a tobacco company or may be an independent buyer that purchases tobacco for several tobacco companies. **Exhibit 1** compares the number of licenses issued by the authority in 1999, 2004, 2005, and 2006. According to MDA, issuing licenses to transfer buyers is the only authority function that still applies. Nevertheless, MDA notes that this function does not serve a purpose out of the context of the auction market system because the transfer buyer license was intended to establish equity between auction floor buyers and the people who bought tobacco directly from farmers. If auction floor buyers had been required to purchase a license but direct buyers had not (the transfer buyer license), then there would have been incentive to buy directly from the tobacco farmer and circumvent the tobacco auction process. Thus, the two known transfer buyers as of August 2008, Philip Morris USA and a Virginia company, are not licensed as such.

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**Exhibit 1**  
**Licenses Issued by the Tobacco Authority**  
**1999 and 2004-2006**

<u>License Category</u>	<u>Number Issued</u>				<u>Fee Amount</u>
	<u>1999</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	
Commission Selling Agency (Warehouse)	5	2	2	1	\$525
Transfer Buyer	3	1	1	0	300
Sales Floor Buyer	5	4	5	3	300
Sales Floor Buyer's Agent	19	5	4	2	15
Sales Floor Seller	2	0	0	0	300
<b>Total</b>	<b>34</b>	<b>12</b>	<b>12</b>	<b>6</b>	

Source: Maryland Department of Agriculture

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## 2004 Sunset Review Recognized Shifts in the Market Affecting the Authority

The 2004 sunset review made seven recommendations. Most of these recommendations were acted upon via Chapter 530 of 2005, which also required a report from the authority on the status of their implementation. **Exhibit 2** shows the recommendations, the relevant statutory change made in Chapter 530, and the MDA report on behalf of the authority about the implementation status.

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### Exhibit 2 2004 Sunset Review Recommendation, Statutory Change, and Implementation

<u>2004 Sunset Review Recommendation</u>	<u>Chapter 530 of 2005 Statutory Change</u>	<u>MDA Report on Implementation</u>
1. Amend statute to extend termination date from July 1, 2006 to July 1, 2011 and require a report on status of recommendations	Amended the termination date to July 1, 2011 and required the report	N/A
2. If only one tobacco warehouse remains in operation, MDA should submit legislation dissolving the authority and transferring remaining responsibilities to the department	N/A	Determines there is no need for MDA to assume the responsibilities of the authority because of the transition from the auction system to the contract purchase system
3. MDA should convene a workgroup on alternative ways of running a tobacco auction	N/A	Silent on convening a workgroup on alternative ways of running a tobacco auction
4. Amend statute to eliminate the annual compensation payment of \$750 to nongovernmental members	Eliminated the payment	N/A
5. Increase poundage tax to 25 cents per 100 pounds and consider legislation to increase licensing fees	Amended the poundage tax to 25 cents per 100 pounds	Silent on considering legislation to increase licensing fees
6. Amend statute to modify the composition of the authority as follows: reduce producer members from five to three; eliminate producer geographic and political party requirements; and change producer nominator to MDA	Amended the composition of the authority as recommended	N/A
7. Amend statute to repeal required study on tobacco production and marketing	Eliminated the study language	N/A

Source: Department of Legislative Services; Maryland Department of Agriculture

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## **Fiscal Status of the Authority**

The authority has been funded through license fees and the fee imposed on each pound of tobacco auctioned, commonly referred to as the “poundage tax.” The licensing fees are set in statute as is a ceiling on the poundage tax rate. The authority may set a lower rate for the poundage tax before the beginning of the market season, if that lower rate would be sufficient to recover its expenses. The authority may also decrease the license fees for commission selling agencies, transfer buyers, or sales floor buyers. Per Recommendation 5 of the 2004 sunset evaluation, Chapter 530 of 2005 increased the poundage tax from 20 to 25 cents per 100 pounds. However, increasing license fees, part of Recommendation 5, was not adopted by the authority because of the assumption that the auction would end in a short period of time.

In addition to the poundage tax, the authority may impose either allocation or administrative penalties, with administrative penalties paid into the general fund. Allocation penalties may be levied against sellers for exceeding their daily sales quota. However, the authority has only imposed one allocation penalty – in March 1996. No administrative penalties have been imposed.

The fiscal history of the authority is shown in **Exhibit 3**, which shows a general trend of decreasing operations. While the authority began to show a fund balance again in fiscal 2006, this was due to a lack of expenditures rather than an increase in revenues. MDA notes that \$9,000 in general funds was required in fiscal 2003 in order to cover expenses, and \$3,445 in Tobacco Trust special funds was required for the same purpose in fiscal 2004. MDA also notes that in fiscal 2004 the board members voted to discontinue their annual compensation, which anticipated the statutory change of Chapter 530 of 2005 and helped to eliminate the need for new revenue infusions. Reduced activities in fiscal 2005 and the final auction in fiscal 2006 meant that a small fund balance accrued in these years, which has been maintained due to the lack of expenditures. The authority did not auction any tobacco in fiscal 2007 and 2008, and any authority work was done voluntarily. Thus, there were no expenses in fiscal 2007 and only a \$15 postage/phone expense in fiscal 2008. MDA plans to spend down the fund balance of \$1,625 in fiscal 2009 by applying this funding to travel and other expenses related to the National Tobacco Grower Settlement Trust lawsuit. However, the Maryland General Assembly’s Assistant Attorney General advises that expenditures for the National Tobacco Grower Settlement Trust lawsuit are not within the statutory purposes of the authority because the authority was not a party to the lawsuit.

**Exhibit 3**  
**Fiscal History of the State Tobacco Authority**  
**Fiscal 2002-2009**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Beginning Balance	\$5,201	\$0	\$0	\$0	\$1,503	\$1,640	\$1,640	\$1,625
Revenues								
General Funds	0	9,000	0	0	0	0	0	0
Special Funds								
License Fees	5,355	2,700	2,425	3,209	1,455	0	0	0
Poundage Tax	8,052	5,178	3,237	3,675	887	0	0	0
Tobacco Trust	0	0	3,445	0	0	0	0	0
<b>Total Revenues</b>	<b>\$18,608</b>	<b>\$16,878</b>	<b>\$9,107</b>	<b>\$6,884</b>	<b>\$3,845</b>	<b>\$1,640</b>	<b>\$1,640</b>	<b>\$1,625</b>
Operating Costs	18,608	16,878	9,107	5,381	2,205	0	15	1,625
<b>Total Expenses</b>	<b>\$18,608</b>	<b>\$16,878</b>	<b>\$9,107</b>	<b>\$5,381</b>	<b>\$2,205</b>	<b>\$0</b>	<b>\$15</b>	<b>\$1,625</b>
<b>Ending Balance</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,503</b>	<b>\$1,640</b>	<b>\$1,640</b>	<b>\$1,625</b>	<b>\$0</b>

Note: Fiscal 2009 numbers are projected.

Source: Maryland Department of Agriculture

### Status of Tobacco Sales in Maryland Today

Tobacco is an annual crop grown from seed. Two types of tobacco are grown in Maryland: Type 32 (Maryland) and Type 31 (burley). The types are designations given by the U.S. Department of Agriculture's classification system. Both Maryland tobacco and burley tobacco are light air-cured, which means that the whole stalks are cut and hung to dry (air-cured), as opposed to the leaves being stripped from the stalk and an external heat source being applied for curing. Cigarettes have been the traditional use of both Maryland and burley tobacco. Differences between the two include fertilizing needs, height (burley tobacco grows taller than Maryland tobacco in the field), leaf chemistry, color when ripe (burley is a lighter color than is Maryland), and brittleness when harvested.

According to the Maryland Cooperative Extension, there are approximately 125 leaf tobacco growers in Maryland today. The growers are located in Anne Arundel, Calvert, Cecil, Charles, and St. Mary's counties and are predominately Amish and Mennonite with some "English" (non-Amish or Mennonite) growers.

The 125 growers produced approximately 1.5 million pounds of burley tobacco and 25,000 pounds of Maryland tobacco in calendar 2008. These two types of tobacco are being grown under contract production directly with two companies (for instance, Philip Morris USA is buying the burley tobacco). In calendar 2006, burley tobacco growers in Maryland sent their tobacco to a Philip Morris USA buying station in New Holland, Pennsylvania, which is the center of Pennsylvania Dutch country. European leaf tobacco purchasers, who predominately bought Maryland tobacco in recent years because of its milder aroma than burley tobacco, have shifted their purchasing to places such as Brazil.

Anecdotal evidence suggests that the direct contract production purchases of burley tobacco by Philip Morris USA have resulted in a more reliable price going into the season for tobacco growers. In addition, the burley tobacco is selling for more per pound than the Maryland tobacco sold in the last few years of the auction. Burley tobacco also yields more pounds per acre than Maryland tobacco, which translates to more income for the remaining tobacco farmers in Maryland.

### **Tobacco Auctions and Authority Activities Have Ceased but Estimates of Direct Contract Sales of Tobacco Are Increasing**

The final meeting of the authority was held November 28, 2005. At this meeting it was decided that despite the small Maryland Type 32 leaf tobacco crop the authority should continue through calendar 2006. No decision was made at the time about new appointments for the authority being made.

Subsequently, one tobacco warehouse, Farmers Warehouse, opened for three days between March 21 and 23 in 2006 for what turned out to be the last tobacco auction in Maryland. The other remaining auction warehouse, Hughesville Warehouse, remained closed. The last auction was held to sell 321,107 pounds of Maryland Type 32 leaf tobacco as shown in **Exhibit 4**. Despite the decrease in Maryland Type 32 leaf tobacco sales in Maryland, estimated tobacco production in Maryland increased between the 2005 and 2006 crop years due to the growing of burley Type 31 tobacco under direct contract.

**Exhibit 4**  
**Maryland Tobacco Production**  
**1997-2008**

<b>Crop Production Year</b>	<b><u>Net Pounds Sold</u> at Auction in Following Year</b>	<b><u>Average Price per Pound</u></b>	<b><u>Total Value of Sale</u></b>
1997	11,985,234	\$1.72	\$20,571,581
1998	9,586,842	1.63	15,627,725
1999	9,443,245	1.66	15,656,598
2000	8,081,999	1.69	13,676,108
2001	3,577,450	1.68	6,001,427
2002	2,337,666	1.48	3,460,235
2003	1,324,496	1.73	2,297,076
2004	1,406,266	1.43	2,006,497
<b><u>at Auction/in Direct Contracts (Estimated)</u></b>			
2005	821,107 (321,107 MT/500,000 BT)	1.52	1,243,560
<b><u>in Direct Contracts (Estimated)</u></b>			
2006	1,050,000 (25,000 MT/1,025,000 BT)	1.50	1,575,000
2007	1,275,000 (25,000 MT/1,250,000 BT)	1.65	2,103,750
2008	1,525,000 (25,000 MT/1,500,000 BT)	N/A	N/A

Key: MT = Maryland Tobacco; BT = Burley Tobacco

Note: Years reflect the year in which a crop was grown and the value received in the auction the following year. For crop production in year 2005, the Maryland tobacco was sold at the last auction held in the State and the burley tobacco reflects the estimated amount sold under direct contract. Starting in 2006, numbers reflect estimates of burley tobacco and Maryland tobacco sold only under direct contract.

Source: Maryland Department of Agriculture; University of Maryland Cooperative Extension

## **Recommendations**

**The Department of Legislative Services recommends that the Legislative Policy Committee waive the Maryland Tobacco Authority from full evaluation and that legislation be submitted in the 2009 legislative session to (1) remove the Maryland Tobacco Authority from statute; and (2) revert the \$1,625 fund balance to the general fund.**

The authority is no longer needed since auctions of Maryland tobacco have ceased. Legislation should be submitted in the 2009 legislative session to remove the authority from statute. The legislation should revert the authority's \$1,625 fund balance to the general fund because (1) MDA's planned use of the funding for expenses related to the National Tobacco Grower Settlement Trust lawsuit is not within the statutory purposes of the authority; and (2) the fund balance may not be transferred for other purposes.

Tobacco *production* data will continue to be collected by the Maryland branch of the National Agricultural Statistics Service; there has not been an official estimate of tobacco *sales* since the demise of the auction system.



# **Appendix 1. Two Major Policies Impacting the Tobacco Industry in Maryland**

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## **1. Lawsuits and Law Changes Created Compensation and Tobacco Buyout Programs**

### **Description**

Lawsuits filed by individual states in the mid-1990s claimed violation of consumer protections by the tobacco companies. The lawsuits were settled in November 1998 by the 5 major tobacco companies with 46 states, 5 territories, and the District of Columbia. Under the Master Settlement Agreement (MSA) the tobacco companies will pay the parties \$206 billion over 25 years. In addition, language in the MSA required discussion of impacts to farmers due to increased cigarette costs and subsequent reduced demand due to the MSA.

As an outgrowth of the MSA requirement to discuss impacts to farmers, the tobacco companies agreed upon the National Tobacco Grower Settlement Trust (trust). The trust negotiation was for \$5.1 billion to be paid to qualifying tobacco growers and quota holders over 12 years with allowance for adjustments to this amount. The payment to tobacco growers in Maryland was approximately \$32.0 million for 12 years. However, the trust states that the tobacco companies' payment may be discontinued if the federal government required further payments.

In 2004 the Fair and Equitable Tobacco Reform Act (FETRA) passed as a component of the American Jobs Creation Act of 2004. FETRA created a federal tobacco buyout program, which is funded by an assessment placed on tobacco companies. The tobacco companies claim that no more payments into the trust are required because of the new payments required by FETRA.

Two other lawsuits have been filed relative to the tobacco companies' refusal to pay into the trust. The first lawsuit concerned whether the tobacco companies had to pay into the trust through 2004. Because the tobacco companies lost the lawsuit, the payments were continued through 2004 but have been suspended since then. The second lawsuit concerns whether the trust was negotiated with each state individually or all states as a whole. Maryland has not been involved in the federal price support system since 1965 and argues that the trust was negotiated with each state individually. Therefore, Maryland (along with North Carolina and Pennsylvania) filed a lawsuit stating FETRA did not apply and that trust payments should be continued. The second lawsuit is pending before the North Carolina Supreme Court.

## **Impact**

Maryland set up the Cigarette Restitution Fund from the monies received from the MSA and uses it to fund the Southern Maryland Regional Strategy Action Plan for Agriculture (plan). A component of the plan is the State Tobacco Transition Program which was created to compensate tobacco farmers willing to commit to stop growing tobacco. The impact of the Tobacco Transition Program has been the reduced acres in tobacco production.

The Maryland Department of Agriculture notes that the Maryland Tobacco Transition Program was created with the understanding that farmers would be able to receive both MSA payments and trust payments. Therefore, if the trust payments are not reinstated, the intent of the Maryland Tobacco Transition Program would be undermined.

## **2. Shift to Direct Contracting**

### **Description**

In 2000 Philip Morris initiated direct contracting for burley and flue-cured tobacco.

### **Impact**

Philip Morris' shift to direct contracting shut down a number of auctions in tobacco growing areas; however, the federal price support system kept the tobacco price high. Maryland tobacco was initially unaffected by this shift. However, with the phase out of Maryland tobacco auctions – primarily due to the success of the Maryland Tobacco Transition Program, direct contracting has allowed growers of burley tobacco and the remaining growers of Maryland tobacco to sell their crop.

## Appendix 2. Tobacco Buyout in Maryland

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As a result of the Master Settlement Agreement (MSA), the State of Maryland established the Cigarette Restitution Fund (CRF) in Chapter 173 of 1999 to be used for a variety of programs and initiatives, including programs to reduce tobacco growing in Maryland. Chapter 173 included the following language concerning the use of CRF moneys for the tobacco buyout: “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.”

CRF moneys are appropriated to the Maryland Department of Agriculture, which issues grants to TCC for the tobacco buyout, infrastructure/agricultural development, and agricultural land preservation.

- The tobacco buyout component is a voluntary program that provides funds to support all eligible Maryland tobacco growers who choose to give up tobacco production forever while remaining in agricultural production. It also restricts 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.

Growers who participate in the buyout program are paid \$1.00 per pound of tobacco for 10 years. The sign-up period for the buyout program lasted from 2000 until 2004, a five-year time period, and so the 2005 auction year reflects the final participation in the buyout program. The tobacco buyout program originally was anticipated to have a program participation of around 68 percent of eligible growers, but as of the 2005 auction year – the final participation number – the program participation actually has been 83 percent as shown below.

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**Actual Participation in Tobacco Buyout Program  
(by Auction Year)**

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<b>Growers Out of Tobacco</b>					
Cumulative Number	560	656	714	781	854
Cumulative Percent	55	64	70	77	83
<b>Pounds of Eligible Tobacco Out of Production (millions)</b>					
Cumulative Number	5.44	6.41	6.79	7.33	7.65
Cumulative Percent	66	78	83	90	94

Source: Southern Maryland Agricultural Development Commission of the Tri-County Council for Southern Maryland

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The 2004 sunset review notes two overstatements of participation. First, Amish and Mennonite farmers were not included in the estimates for eligible farmer participation in the buyout and, second, eligible farmers included anyone vested in a farm. However, since data are not available on the number of farms that stopped growing tobacco, the numbers do provide a proxy for the amount of participation in the program.

Chapter 103 of 2001 authorized the issuance of up to \$5 million in general obligation bonds per year for six years for use in implementing the tobacco buyout plan if the funding provided by CRF was not sufficient; the amount of money budgeted in total for the tobacco buyout plan is \$57,944,000. However, to meet the early requirements, bonds were planned to be issued in the amount of \$26,585,000. In fiscal 2008 a plan was devised to repay the bonds within 10 years. When the repayment plan was devised, the Southern Maryland Agricultural Development Commission of TTC requested that the plan be revisited in fiscal 2010 in order to determine the status of CRF payments.

The 2008 *Capital Improvement Program* (the State's five-year capital improvement plan) reflects the beginning of the planned bond repayment of \$3,323,000 in fiscal 2011. The tobacco buyout payments began in fiscal 2001 and are expected to end in fiscal 2014, which reflects the five-year rolling start of the sign-up and the 10-year overall time period in which any one tobacco farmer is eligible to receive payments. The bond repayment is scheduled to begin in fiscal 2011 and end in fiscal 2018. After the bond repayments are completed and assuming that the CRF revenue estimate does not change significantly in the out-years, TCC's agricultural land preservation program, infrastructure grants program, and administrative expense needs appear to be funded at no less than \$3.0 million annually.

The Southern Maryland Agricultural Development Commission expressed concern about what will happen in fiscal 2011 once the tobacco buyout payments end for the first group of recipients. The average age of tobacco farmers at the beginning of the program was 62, but is now 68. The concern is that these farmers most likely will not transition to other forms of agricultural production and may sell their land for nonagricultural uses.



## **Appendix 3. Written Comments on Behalf of the Maryland Tobacco Authority**

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# Maryland Department of Agriculture

Agriculture | Maryland's Leading Industry

## Office of Marketing, Animal Industries & Consumer Services

Martin O'Malley, Governor  
Anthony G. Brown, Lt. Governor  
Roger L. Richardson, Secretary  
Earl F. Hance, Deputy Secretary

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December 3, 2008

Ms. Laura McCarty  
Maryland General Assembly  
Department of Legislative Services  
90 State Circle, Room 300  
Annapolis, MD 21401

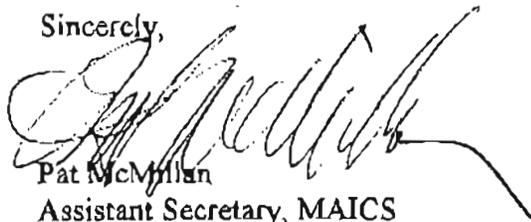
Dear Ms. McCarty:

I am writing to advise you that the Maryland Department of Agriculture concurs with the analyst's recommendations in the preliminary evaluation of the Maryland Tobacco Authority.

The Department will amend proposed Departmental legislation to abolish the Tobacco Authority so that the fund balance reverts to the General Fund in FY'09.

We appreciate Mr. Gray's thoughtful analysis of this matter and thank you for giving us the opportunity to comment.

Sincerely,



Pat McMillan  
Assistant Secretary, MAICS

cc:

Roger Richardson, Secretary  
Earl Hance, Deputy Secretary  
Doug Wilson, Director Admin. Services  
Andrew Gray, Analyst

# **Preliminary Evaluation of the State Board of Well Drillers**

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## **Recommendations: Waive from Full Evaluation**

**Extend Termination Date by 10 Years to July 1, 2021**

**Require Board to Increase Fees through Regulation**

**Require Follow-up Report by October 1, 2009**

## **The Sunset Review Process**

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Well Drillers last underwent a full evaluation as part of sunset review during 1989. The board also underwent a preliminary evaluation in 1998. The 1998 preliminary evaluation concluded that the board was fulfilling its statutory responsibilities to the best of its abilities and had an excellent working relationship with the well drilling industry. Thus, the preliminary evaluation recommended that the board be waived from further evaluation at that time and that the termination date of the board be extended to July 1, 2011. The General Assembly followed the recommendation and extended the termination date of the board accordingly. DLS also recommended in the 1998 preliminary evaluation that the board submit a report to LPC to justify an additional position and explore the expansion of board authority to unlicensed individuals. While the board concluded in its follow-up report that the revenue structure could not support an additional position, it did submit legislation to expand its regulatory authority over unlicensed individuals.

In conducting this preliminary evaluation, DLS staff reviewed minutes from board meetings from the past five years, Title 13 of the Environment Article, associated regulations, the prior full and preliminary sunset reviews of the board, and the operating budget of the board. In addition, DLS staff conducted interviews with the executive director of the board and board members, attended a board meeting, and reviewed data provided by the board.

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 5**. Appropriate factual corrections and clarifications have been made throughout the document.

## **Well Drilling in Maryland**

A well is any hole made in the ground to (1) explore for groundwater; (2) obtain or monitor groundwater; (3) inject water into any underground formation from which groundwater may be produced; or (4) transfer heat to or from the ground or groundwater. While well drillers operate the machinery to drill wells to supply groundwater to users, they are also authorized to install any equipment necessary to draw or purify water from a well.

Well drillers also estimate water needs of localities to determine locations and depths of drilling. Due to the geological diversity in Maryland, different methods and equipment for drilling are used based on the location of the site. Drillers on the Eastern Shore, for instance, drill wells in sand and unconsolidated aquifer materials and line the hole with a pipe called “well casing” to prevent caving and shut out water of undesirable quality. They also install well screens which prevent sand from entering the water supply. Drillers in Western Maryland, however, must drill through rock formations. As a result, well screens are not needed and, for that part of the hole which extends into the rock formation, no casing is needed.

Well drilling is an important industry in Maryland. The Maryland Department of the Environment (MDE) issues approximately 10,000 well permits per year. The total wells drilled may exceed 10,000 as more than one well may be authorized under a permit. A list of well drilling permits issued for each county between 2005 and 2007 can be found in **Appendix 1**. The majority of the State’s population receives its water from public water systems. However, the use of ground water for public water supplies is a common practice in Maryland. Where no public water systems exist, residents obtain water from underground supplies through the use of private wells.

Even if there is a pre-existing well on a homeowner’s lot, a well driller or well drilling company must be contracted with and the necessary permit(s) obtained before new well construction can begin. In newer, larger developments, however, it is more common for developers themselves to contract with well drillers to construct any wells necessary to serve the development. Currently, 599 individuals hold a total of 619 licences to actively practice in Maryland as shown in **Exhibit 1**.

**Exhibit 1**  
**Number of Licenses Held to Practice Well Drilling in Maryland**  
**October 2008**

<u>Class</u>	<u>Category</u>	<u>Licenses Held</u>
Master Well Driller	Geotechnical	53
Master Well Driller	Water Supply	107
Master Well Driller	General*	92
Journeyman Well Driller	Geotechnical	28
Journeyman Well Driller	Water Supply	48
Journeyman Well Driller	General*	35
Apprentice Well Driller	-	91
Well Rig Operator	-	24
Pump Installer	-	56
Apprentice Pump Installer	-	18
Water Conditioner Installer	-	54
Apprentice Water Conditioner Installer	-	13
<b>Total</b>		<b>619</b>

\*General license holders must meet the requirement for both geotechnical and water supply.  
Source: Maryland Department of the Environment.

## **The State Board of Well Drillers**

Well drillers in Maryland became regulated 40 years ago when the State Board of Well Drillers was created by Chapter 584 of 1968. Prior to passage of that legislation, only well construction had been regulated as a means of protecting the State's water resources. Regulation of the practitioners of well drilling was instituted to further protect not only the State's water supplies but also the public health.

Well drillers in Maryland are licensed and regulated by the board. The board determines the circumstances under which an individual may engage in the practice of well drilling which includes making, altering, repairing, or disconnecting well system equipment for profit. Properly licensed well drillers who have obtained the necessary permits may construct wells for any of the following purposes:

- to explore for groundwater;
- to obtain or monitor groundwater;

- to inject water into any underground formation from which groundwater may be produced; and
- to transfer heat from the ground or groundwater, if the hole extends more than 20 feet below the surface of the ground and is **not** a well for obtaining geothermal resources under § 5-601 of the Environment Article.<sup>1</sup>

The board was originally established in § 8-601 of the Natural Resources Article and was transferred to the Department of Health and Mental Hygiene in 1980 under § 21-101 of the Health Occupations Article. In 1987 the board was moved to the newly created Maryland Department of the Environment pursuant to § 13-101 *et seq.* of the Environment Article. Currently, the board functions within MDE and is grouped with two other boards: the State Board of Environmental Sanitarians and the State Board of Waterworks and Waste Systems Operators.

## **Need for Regulation Continues**

Regulation of well drillers is premised on the need to ensure that consumers receive quality well drilling workmanship and to ensure that safe drinking water is delivered from the wells of consumers. Regulation was instituted to establish and enforce certain minimum standards of competence and behavior within the industry. With increased concern over groundwater contamination, regulation of well construction and sealing techniques protects aquifers from being contaminated by surface sources or cross contamination from less desirable aquifers. Regulation of well drillers is further justified by the following:

- Well drilling is expensive. Consumers lack the knowledge needed to evaluate the qualifications of the drillers that are hired.
- The practice of well drilling requires considerable skill and judgment that can only be obtained through training and documented through evaluation.
- Many well drillers operate without supervision. Regulation allows for some oversight of an individual's workmanship.

Moreover, groundwater contamination concerns have altered both the need for and nature of regulation, with an increase in monitoring wells being drilled in the State. A monitoring well

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<sup>1</sup> The Annotated Code defines geothermal resources as the natural heat of the earth higher than 120 degrees Fahrenheit or 49 degrees centigrade, or the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may be extracted from, this natural heat, the natural or artificial medium containing that heat, and all the minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth. This definition does not include oil, hydrocarbon gas, and other hydrocarbon substances.

is a shallow well drilled so the resulting water can be sampled and tested to detect and measure groundwater contamination. In certain instances, these monitoring wells are required by the laws of the State. An example of a monitoring well is one that is drilled near leaking underground storage tanks. Monitoring wells are drilled to ensure that contaminants do not enter the water supply. Monitoring wells are often drilled on property prior to sale to test for hazardous wastes. This practice helps protect buyers from bearing the costs of removing contaminants for which they are not responsible.

## **Board Structure and Operations**

The board is composed of seven members appointed by the Governor with the advice of the Secretary of the Environment and the advice and consent of the Senate. They are:

- one licensed master well driller from Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, or Worcester County;
- one licensed master well driller from Baltimore City or Baltimore, Carroll, Harford, Howard, or Montgomery County;
- one licensed master well driller from Anne Arundel, Calvert, Charles, Prince George's, or St. Mary's County;
- one licensed master well driller from Allegany, Frederick, Garrett, or Washington County;
- an employee of the Maryland Department of the Environment;
- an employee of the Department of Natural Resources; and
- a public member who is required by law to serve as board chairman.

The size and composition of the board have played a major role in determining how effectively the board operates. The four industry members represent the different geographic regions of the State and are required to be licensed master well drillers who actively practice well drilling. As a result, they bring both expertise and insight to the board regarding drilling techniques used in their particular region. The two State employee members help ensure that both the quantity and quality of the State's water resources are protected. The remaining member is the public member who serves as board chairman to ensure that the public is represented and has a voice in the activities and decisions of the board.

Board members serve two-year terms. The board employs one full-time staff person (executive director) and shares an office secretary with the two other boards housed within MDE.

The board is strictly a licensing board and is charged with the responsibility of licensing well drillers working in Maryland. The purpose of licensure is to protect the public from unqualified or incompetent practitioners. Qualifications for both examination and licensure are determined by the board. The board also administers continuing education requirements and disciplines licensees. With respect to licensing and examination, the board functions with a great deal of autonomy. However, its enforcement and disciplinary functions are affected by interaction between the board, MDE, and the local health departments.

As shown in **Exhibit 2**, the major legislative changes since the last evaluation affect service of process, authorized unlicensed installations, regulation of unlicensed individuals, civil penalties, and continuing education requirements.

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**Exhibit 2**  
**Major Legislative Changes Since the 1998 Preliminary Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
1999	239	Extends the termination date of the board by 10 years to July 1, 2011.
	673	<p>Authorizes the board, on complaint or on its own motion, to investigate allegations of practicing well drilling without a license.</p> <p>Authorizes the board to impose a civil penalty on a person who practices without a license or misrepresents authorization to practice well drilling.</p> <p>Requires the board to give any person against whom action is contemplated an opportunity for a hearing before the board. In addition, any person aggrieved by a final decision of the board in a contested case may take an appeal for judicial review as allowed under the Administrative Procedures Act.</p> <p>Requires holders of well drilling apprentice licenses to comply with the same continuing education requirements as other license holders.</p>
2005	248	<p>Authorizes a person who has not been licensed by the board, after notifying the county board of health, to install a temporary dewatering device to facilitate the installation of underground utilities under certain conditions.</p> <p>Requires a person installing such a dewatering device to restore the subsurface conditions of the installation area as nearly as possible to the conditions that existed before the installation.</p>
2007	366	Authorizes service of process of any instrument issued by MDE by any method allowed for service of a summons under the Maryland Rules.

Source: Laws of Maryland

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## **Licensure Process**

The board currently licenses well drillers in three classes: master, journeyman, and apprentice. Within these classes of license are three categories: general, geotechnical, and water supply. There are also three types of restricted licenses (water conditioner installer, water pump installer, and well rig operator). These restricted license categories also have an apprentice class.

Before being issued a license, individuals must first apply for examination by submitting a completed application form and paying the \$50 application fee. Adequate experience for a particular classification or category of license must also be demonstrated. The requirement for experience can be met either by demonstrating a given amount of experience in the practice of well drilling or by being licensed in the next lower category for a specified amount of time. License fees, experience, performance bond, and insurance requirements for the various classifications and categories of licenses appear in **Appendix 2**.

Upon approval, the applicant must pass an examination. The licensing examination is offered quarterly and is developed and administered by the board. The exam is given in written form. Although legislation enacted in 1997 (Chapter 547) gave the board the authority to administer practical exams to supplement the written exam, the board does not administer a practical exam. Instead, the board continues to revise its written exam to incorporate questions that demonstrate an applicant's ability and competency to engage in well drilling or installing well system equipment.

Over the past five years, approximately 57 percent of applicants taking a well drilling exam passed. The number of applicants taking the examination and the associated pass and fail rates since February 2003 are shown in **Appendix 3**. There are no limits to the number of times an applicant may take the exam. If an applicant, however, fails an examination two consecutive times, the applicant must obtain 20 hours of board-approved training prior to retaking the examination. While the board has expressed concern over the pass and fail rates, the board views its exam as a fair measure of a candidate's knowledge and ability with respect to experience and minimum standards of safe and acceptable practices. Currently, 48 other states in the country require practitioners to pass an exam before being issued a well drilling license.

Those applicants who pass the examination must present the board with acceptable evidence that their bonding and liability requirements have been met as set forth by the Code of Maryland Regulations (COMAR) 26.05.02.05. They must pay the board the appropriate licensing fee set forth in COMAR 26.05.02.10 to receive their licenses. License renewal occurs biennially – at which time the licensee must submit an application for renewal including satisfactory evidence of compliance with the bonding, insurance, and continuing education requirements and pay the fee required for the particular license class and category. A complete list of fees charged by the board is shown in **Appendix 4**.

## **Enforcement of Well Drilling Laws and Regulations**

Enforcement of the State's well drilling laws, rules, and regulations is a cooperative effort between the board, MDE, and local health departments. Any person in the State may file a complaint with the board for alleged violations committed by a licensee or an applicant for a license. On receipt of a complaint or at its own discretion, the board is required to investigate each allegation to determine whether formal action will be taken against the licensee or applicant. The board has the authority to revoke or suspend a license. The board is required to suspend or revoke a license if the licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for himself or another;
- fraudulently or deceptively uses a license; or
- is guilty of gross negligence, incompetence, or misconduct while practicing well drilling.

The board also has the authority to deny a license for any of these reasons. The board may deny a license to any applicant, reprimand a licensee, or suspend or revoke a license if it finds that the applicant or licensee has violated any law, rule, or regulation that applies to the practice of well drilling.

Prior to 1999, the board did not have the authority to take action against unlicensed individuals. Additionally, fines could only be levied in District Court as a result of criminal charges being brought against the individual. Chapter 673 of 1999, however, authorized the board, on complaint or on its own motion, to investigate allegations of practicing well drilling without a license. Chapter 673 also authorized the board to impose a civil penalty, in lieu of or in addition to other penalties, of up to \$1,000 per day for all violations cited on a single day. In setting the amount of the penalty the board must consider various factors. If the violator fails to pay a penalty within 30 days, the matter must be forwarded to the Central Collection Unit (CCU), located within the Department of Budget and Management, for collection. The board has utilized this authority and has imposed civil penalties exceeding \$40,000. While not every violator has paid the civil penalty, the board has collected most of the penalties imposed. Additionally, some penalties are currently being recovered by CCU through repayment plans.

The board receives very few consumer complaints; for example, consumer complaints over the past five years have ranged from one to seven. Over that period, only one consumer complaint has resulted in a disciplinary action by the board – a civil penalty was imposed for unlicensed practice. For the most part, the board does not get involved in consumer complaints as they tend to deal with contract disputes between the consumer and the well driller, and the board has no statutory authority in dealing with such contract disputes.

The board also receives notice of potential violations from local health departments but again takes relatively few disciplinary actions against licensed practitioners. In the past five years, the board has suspended one license as a result of a well drilling violation. Such

violations more often are related to unlicensed practice or well-construction concerns and may result in the imposition of civil penalties.

The board maintains consumer complaint files but does not track complaints through a database or spreadsheet. Disciplinary actions can be tracked through board meeting minutes, which include correspondence related to licensure matters and well-construction problems as well as consumer complaints.

### **Current Fee Structure Insufficient to Cover Board Costs**

The appropriation for the board comes from the general fund. Likewise, all revenue collected by the board is deposited into the general fund. These revenues are generated through the collection of application, licensing, and license renewal fees. In addition, civil penalties are paid into the general fund. The various fees collected by the board are established by the board through regulation. Revenue and expenditure data from fiscal 2003 through 2009 are shown in **Exhibit 2**.

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**Exhibit 2**  
**Fiscal History of the State Board of Well Drillers**  
**Fiscal 2003-2009**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Expenditures	\$85,706	\$84,543	\$90,056	\$93,449	\$97,227	\$99,587	\$91,201
Revenues	111,100	22,325	114,130	49,465	116,065	15,450	120,000
Surplus/(Gap)	\$25,394	(\$62,218)	\$24,074	(\$43,984)	\$18,838	(\$84,137)	\$28,799

Notes: The revenues for fiscal 2006 reflect collection of more than \$33,000 in civil penalties. The fiscal 2009 expenditure is the appropriation for fiscal 2009; fiscal 2009 revenues are estimates. Board expenditures typically exceed the legislative appropriation due to underfunding; in such cases, the shortfall is covered with available funding from another Water Management Administration Program.

Source: Maryland Department of the Environment

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Due to the biennial license renewal process, the board collects most fees in odd-numbered years – more than enough to cover costs associated with the board in those years. However, revenues generated in the even-numbered years are not sufficient to cover operating costs for those years. On a biennial basis, the board has been able to generate revenue to cover at least two-thirds of its operating expenses. Even though there is no requirement that the revenues generated by the board cover its expenditures, the General Assembly has a policy of regulatory boards and commissions being self-supporting to the extent possible. While the board has the authority to set reasonable fees, it has not raised its licensing and renewal fees since 1994.

Consequently, the current fee structure has not been sufficient to cover expenses incurred by the board on a biennial basis.

## **Recommendations**

There is a continued need for regulation of well drillers. DLS is satisfied that the board is appropriately vested with this authority and that it fulfills this function in a fair and efficient manner. **Therefore, DLS recommends that the Legislative Policy Committee waive the State Board of Well Drillers from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2021.** Thus, another preliminary evaluation would be conducted in 2018.

However, the board does not generate sufficient revenues to cover its expenditures on a biennial basis. **DLS recommends that the board increase fees to the appropriate level to cover associated costs. The board, in conjunction with MDE, should report, by October 1, 2009, to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee on its plans to increase fees and its ability to generate sufficient fee revenue for the general fund to cover its expenditures.**

Finally, although the board maintains complaint files and tracks consumer complaints and subsequent actions through board meeting minutes, it does not maintain a complaint database or spreadsheet. The current tracking method presents an unnecessary obstacle to obtaining information on board disciplinary actions. **DLS recommends that the board track consumer complaints and related disciplinary actions within a database or spreadsheet. The board should include its plan to track consumer complaints and related disciplinary actions in its October 1, 2009 report.**

## Appendix 1. Total Number of Well Permits Issued Calendar 2005-2007

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<u>County</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Allegany	919	863	680
Anne Arundel	56	72	51
Baltimore	886	700	380
Baltimore City	139	285	160
Calvert	434	330	284
Caroline	309	218	191
Carroll	481	391	240
Cecil	632	486	357
Charles	511	395	326
Dorchester	255	266	173
Frederick	550	503	385
Garrett	306	321	199
Harford	656	528	333
Howard	369	573	588
Kent	204	210	123
Montgomery	345	308	355
Prince George's	370	355	359
Queen Anne's	344	373	342
St. Mary's	657	553	494
Somerset	171	184	247
Talbot	262	302	224
Washington	298	280	200
Wicomico	633	588	548
Worcester	330	342	245
<b>Totals</b>	<b>10,117</b>	<b>9,426</b>	<b>7,484</b>

Note: 2007 total includes only those permits issued where completion reports have been returned as of August 2008. Totals may not account for every well drilled as some permits may include more than one well.

Source: Maryland Department of the Environment



## Appendix 2. Requirements by Class and Category of License

<u>Class and Category of License</u>	<u>Experience Requirement</u>	<u>License Fee</u>	<u>Written Exam</u>	<u>Performance Bond</u>	<u>Insurance</u>
<p><b><i>Master Well Driller:</i></b></p> <p>General Geotechnical Water Supply</p>	7 years practicing well drilling or 2 years as a journeyman in same category	\$150	Required	\$5,000 Aggregate	<p><b>Bodily Injury:</b> \$100,000 each person \$300,000 each occurrence</p> <p><b>Property Damage:</b> \$50,000 each occurrence \$50,000 aggregate</p>
<p><b><i>Journeyman Well Driller:</i></b></p> <p>General Geotechnical Water Supply</p>	5 years practicing well drilling or 3 years as an apprentice well driller	\$100	Required	None – but must be covered under bond of Master Well Driller	None – but must be covered by company policy
<p><b><i>Pump Installer:</i></b></p>	3 years installing pumps or 2 years as an apprentice pump installer	\$150	Required	\$2,000 Aggregate	<p><b>Bodily Injury:</b> \$100,000 each person \$300,000 each occurrence</p> <p><b>Property Damage:</b> \$50,000 each occurrence \$50,000 aggregate</p>

<b><u>Class and Category of License</u></b>	<b><u>Experience Requirement</u></b>	<b><u>License Fee</u></b>	<b><u>Written Exam</u></b>	<b><u>Performance Bond</u></b>	<b><u>Insurance</u></b>
<b><i>Water Conditioner Installer:</i></b>	3 years installing water conditioning equipment or 2 years as an apprentice water conditioner installer	\$150	Required	\$2,000 Aggregate	<b>Bodily Injury:</b> \$100,000 each person \$300,000 each occurrence <b>Property Damage:</b> \$50,000 each occurrence \$50,000 aggregate
<b><i>Apprentice:</i></b>  Well Driller Pump Installer Water Conditioner Installer	1 year related experience	\$50	Required	None – but must be covered under bond of the Master Well Driller, Pump or Water Conditioner Installer Sponsor	None – but must be covered by Master or company policy

Source: Annotated Code of Maryland; Code of Maryland Regulations

### Appendix 3. Examination Results (2004-2008)

<u>Date</u>	<u>Number Tested</u>	<u>Number Passed</u>	<u>Number Failed</u>	<u>% Passed</u>	<u>% Failed</u>
Aug. '08	29	20	9	69.0	31.0
May '08	14	5	9	35.7	63.3
Feb. '08	23	15	8	65.2	34.8
Nov. '07	17	6	11	35.3	64.7
Aug. '07	6	4	2	66.7	33.3
May '07	19	10	9	52.6	47.4
Feb. '07	37	26	11	70.3	29.7
Nov. '06	17	9	8	52.9	47.1
Aug. '06	22	15	7	68.2	31.8
May '06	21	11	10	52.4	47.6
Feb. '06	30	19	11	63.3	36.7
Nov. '05	14	7	7	50.0	50.0
Aug. '05	22	13	9	59.1	40.9
May '05	20	11	9	55.0	45.0
Feb. '05	40	20	20	50.0	50.0
Nov. '04	28	12	16	42.9	57.1
Aug. '04	19	6	13	31.6	68.4
May '04	29	24	5	82.8	17.2
Feb. '04	43	25	18	58.1	41.9
<b>Total</b>	<b>450</b>	<b>258</b>	<b>192</b>	<b>57.0</b>	<b>43.0</b>

Source: State Board of Well Drillers



## Appendix 4. Fees by License Class and Category

<u>License Class and Category</u>	<u>Initial Fee</u>	<u>Renewal Fee</u>	<u>Temporary Fee</u>
Master (General)	\$150	\$200	\$600
Master (Geotechnical)	150	200	600
Master (Water Supply)	150	200	600
Journeyman (General)	100	150	450
Journeyman (Geotechnical)	100	150	450
Journeyman (Water Supply)	100	150	450
Well Rig Operator	100	150	450
Water Conditioner Installer	150	200	600
Water Pump Installer	150	200	600
Apprentice (Well Driller)	50	100	300
Apprentice (Water Conditioner Installer)	50	100	300
Apprentice (Water Pump Installer)	50	100	300

<u>Other Fees</u>	<u>Amount</u>
Late Renewal Fee	\$100
Inactive Status Fee	25
Reinstatement Fee	200
License or Card Replacement Fee	25
Roster	75

Source: Code of Maryland Regulations 26.05.02.10



**Appendix 5. Written Comments of the  
State Board of Well Drillers**

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**MARYLAND DEPARTMENT OF THE ENVIRONMENT**

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Martin O'Malley  
Governor

Shari T. Wilson  
Secretary

Anthony G. Brown  
Lieutenant Governor

Robert M. Summers, Ph.D.  
Deputy Secretary

**STATE BOARD OF WELL DRILLERS**

December 2, 2008

Ms. Laura J. McCarty  
Legislative Manager  
Department of Legislative Services  
Office of Policy Analysis  
Legislative Services Building  
90 State Circle  
Annapolis MD 21501-1991

Dear Ms. McCarty:

Thank you for providing the State Board of Well Drillers with an exposure draft copy of the Department of Legislative Services' preliminary sunset evaluation of the Board and the opportunity to respond to the recommendations contained therein prior to its presentation to the Legislative Policy Committee later this month.

During its review to confirm presentation of the information it provided to sunset staff, the Board found no factual errors or inaccurate statements within the report on which to provide written comments. Thus, the Board decided to accept the report as written.

The Board will shortly initiate plans to implement the actions recommended by DLS to improve the Board's operations and activities and will continue to search for further improvements.

Sincerely,

Willie M. Everett  
Executive Director

cc: Secretary Shari T. Wilson  
Mr. Karl S. Aro



# **Preliminary Evaluation of the State Board of Veterinary Medical Examiners**

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**Recommendations: Waive from Full Evaluation**

**Extend Termination Date to July 1, 2021**

**Require Follow-up Report by October 1, 2009**

## **The Sunset Review Process**

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Veterinary Medical Examiners (SBVME) last underwent a full evaluation as part of sunset review during 1989. The board also underwent a preliminary evaluation in 1998. SBVME was waived from full evaluation in 1998, though a follow-up report was required to be submitted by the board by October 1, 1999, regarding its plan to computerize complaint data and expand public outreach efforts. That follow-up report was submitted in September 1999. Legislation (Chapter 531) was enacted in 1999 to reauthorize the board, extending its termination date to July 1, 2011.

In conducting its preliminary evaluation, DLS staff reviewed applicable State law and regulations, recent relevant legislative and regulatory actions, prior full and preliminary sunset reviews of the board, SBVME portions of the Maryland Department of Agriculture’s (MDA) past two annual reports, the board’s recent operating budget history, board meeting minutes, disciplinary action data, and other information provided by the board. In addition, DLS staff met with and further communicated by phone with the board’s president and executive director, attended a portion of the board’s August 28, 2008 meeting, and solicited input from representatives of the Veterinary Technician Committee (VTC) and the Maryland Veterinary Medical Association.

SBVME 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 State Board of Veterinary Medical Examiners**

The Maryland General Assembly created SBVME in 1894. SBVME's stated mission is to protect the public and animal health and welfare through:

- (1) effective licensure of veterinarians, veterinary technicians, and veterinary hospitals under its jurisdiction;
- (2) effective discipline of veterinarians, veterinary technicians, and operators of veterinary hospitals under its jurisdiction, when warranted; and
- (3) adoption of reasonable standards for the practice of veterinary medicine in the State of Maryland.

SBVME regulates just over 2,400 veterinarians, just over 500 veterinary hospitals, and approximately 315 registered veterinary technicians. Veterinarians and veterinary hospitals must be licensed by the board. Veterinarians must also register annually with the board. A person *may* register with the board as a veterinary technician.

SBVME consists of seven members. Five are veterinarians licensed and registered in Maryland who are Maryland residents, are in good standing, are qualified, and have actively practiced veterinary medicine for at least five years. At least two of the five veterinarian members must have practices treating predominantly large animals. The remaining two members cannot be veterinarians. The Governor appoints, with the advice and consent of the Senate, all board members. Board members may not serve more than two successive five-year terms.

A Veterinary Technician Committee operates under the jurisdiction of the board with seven members appointed by the board, subject to approval by the Secretary of Agriculture. VTC is given prescribed duties under statute, including evaluating, examining, and determining the qualifications for applicants for registration as a veterinary technician; establishing continuing education requirements for registered veterinary technicians; defining the duties and responsibilities of registered veterinary technicians; and generally assisting the board in registering and regulating veterinary technicians. The committee's duties are subject to the board's approval.

SBVME is housed within MDA's Marketing, Animal Industries, and Consumer Services Office and operates under the provisions of Title 2, Subtitle 3 of the Agriculture Article. The staff of SBVME consists of an executive director, an administrative specialist, an office secretary, two agricultural inspectors who split their time between the Maryland Horse Industry Board and

SBVME, an investigator, and a part-time assistant Attorney General.

## **Legislative Action Has Provided SBVME with More Resources and Flexibility**

Since its last evaluation in 1998, SBVME has transitioned to being a special-funded entity pursuant to Chapter 245 of 2004. Chapter 245 established a State Board of Veterinary Medical Examiners Fund into which all fees charged by the board are deposited and from which all costs of the board are paid. SBVME has to set fees to produce funds that approximate the cost of maintaining the board. This change, along with an increase in fees in 2004, has increased the funding available to the board. With the increased funding, staff have been added – an executive director in August 2005, and more recently, a part-time assistant Attorney General and an investigator in July and November 2007, respectively.

A more recent legislative action, Chapter 58 of 2008, amended a statutory requirement that every veterinary hospital be inspected each year, instead requiring that each hospital be inspected once every two years. The change is expected to allow inspectors to conduct more follow-up inspections when needed and to better document inspections in the event they lead to enforcement actions.

Another recent legislative action, Chapter 697 of 2008, authorizes SBVME to license animal control facilities (defined as humane societies or county or municipal designated animal shelters) to administer drugs needed to sedate and/or euthanize animals. The U.S. Drug Enforcement Agency determined in 2006 that animal control facilities that did not employ a veterinarian on a full-time basis did not have the authority to prescribe sedatives considered controlled dangerous substances commonly used in the practice of euthanasia. The new license under Chapter 697 will provide board authorization for animal control facilities to use those sedatives. Under State law, a person must also be registered with the Department of Health and Mental Hygiene before dispensing (including administering) a controlled dangerous substance.

**Exhibit 1** identifies these and other legislative changes since 1998 that have affected the board.

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**Exhibit 1**  
**Legislative Changes Since the 1998 Preliminary Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
1999	531	Extends the board's termination date by 10 years to July 1, 2011.
	61	Eliminates an exemption for licensed veterinarians in other states that did not have an office in the State from having to comply with Maryland's laws and regulations governing the practice of veterinary medicine, including licensure and registration requirements.  Adds an exemption from the State's laws and regulations for a veterinarian licensed in another jurisdiction who consults with a veterinarian licensed in Maryland.
2002	193	Requires SBVME to adopt regulations encouraging veterinarians to report suspected animal cruelty, including animal fighting, to a local law enforcement or county animal control agency.  Establishes immunity for veterinarians from civil liability resulting from such reports made in good faith.
2004	245	Establishes a State Board of Veterinary Medical Examiners Fund into which all fees charged by the board are deposited and from which costs of the board are paid, making the board a special funded agency.  Requires the fees charged to be set so as to produce funds to approximate the cost of maintaining the board.
2008	58	Requires SBVME to inspect each veterinary hospital facility once every two years, rather than once each year.
	697	Authorizes SBVME to license animal control facilities to administer drugs needed to sedate and/or euthanize animals.

Source: Laws of Maryland

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## **SBVME Regulatory Changes**

SBVME has promulgated several regulatory changes since its last evaluation in 1998. The board eliminated board/Veterinary Technician Committee-administered examinations for veterinarians and veterinary technicians in 2001 and 2006, respectively. An applicant still must pass the national licensing examination and submit a notarized signature affirming that the applicant has read and comprehends applicable State laws and regulations. (Reading and comprehending applicable State laws and regulations, and signing a notarized statement attesting to having done so, is now referred to under the board's regulations as the State Board Examination for veterinarians and veterinary technicians.)

The board examination for veterinarians, at the time it was eliminated, tested an applicant's knowledge of applicable State laws and regulations. The reasoning behind the elimination of the exam, according to the recollections of the president of the board at the time, was to alleviate problems relating to the timing of the exam and the cost associated with travel across the country to take the exam that kept some candidates from following through with their applications. The examination administered by the Veterinary Technician Committee, prior to its elimination, addressed the practice of veterinary technology but was not regularly revised. The Veterinary Technician National Examination (VTNE) is regularly revised and is now considered under the board's regulations to be sufficient, along with other requirements, to qualify a veterinary technician for registration.

The board has also made changes with respect to continuing education requirements for veterinarians and veterinary technicians. Formal guidelines for the submission of continuing education credits by veterinary technicians have been established, and the extent to which credits submitted by veterinarians may be obtained through online continuing education programs (up to 50 percent of the required number of credit hours submitted each year) has been specified.

Other changes provided for alternative, more flexible, clinical experience requirements applicable to veterinarians licensed in another state or a foreign jurisdiction or veterinarians that have been outside the United States due to government service. The clinical experience requirements allow those veterinarians to qualify for licensure without having to retake the national licensing examination. Clinical experience requirements were added to the board's regulations for veterinary technicians registered in another state or a foreign jurisdiction who graduated from a program accredited by the American Veterinary Medical Association (or a comparable program approved by VTC). Similar to those for veterinarians, the clinical experience requirements allow out-of-state veterinary technicians to qualify for registration without having to take VTNE.

Further changes include the establishment and clarification of requirements for prescribing and dispensing prescription drugs and controlled dangerous substances by veterinarians, increases in fees following the board's transition to being special funded, establishment of certain advertising and customer notice requirements, modifications to professional conduct and recordkeeping requirements, and amendments to construction standards and licensing and minimum sanitary requirements for veterinary facilities.

The board has also recently promulgated emergency regulations implementing Chapter 697 of 2008. The regulations establish terms and conditions related to the newly established animal control facility license and training requirements for facility employees authorized to administer sedation and euthanasia drugs as well as the individuals responsible for the drugs. As of early October 2008, the board had issued nine animal control facility licenses and had received additional incomplete applications that the board's staff was addressing.

## **Licensing the Veterinary Medicine Community**

SBVME is responsible for licensing and registering veterinarians, licensing and inspecting veterinary hospitals, and registering veterinary technicians. As mentioned above, SBVME is also in the process of beginning to license animal control facilities to administer sedation and perform euthanasia pursuant to Chapter 697 of 2008. The license will *replace* permits SBVME had previously issued to animal control facilities to use sodium pentobarbital, a euthanasia drug. While a significant amount of work was put into drafting the legislation enacted as Chapter 697 and the subsequent regulations, it does not appear that, on an ongoing basis, issuing animal control facility licenses in place of the sodium pentobarbital permits will significantly affect the administrative workload of the board.

In fiscal 2008, SBVME issued 2,475 veterinarian registrations and 155 new veterinarian licenses. The number of new licenses issued each year has been relatively consistent over the past five fiscal years, generally in the range of 120 to 170 new licenses. The number of hospital licenses issued in fiscal 2008 was 509. Veterinary technician new registrations and renewal registrations each totaled 46. Because these registrations are renewed every three years, SBVME advises that there are approximately 315 registered veterinary technicians in Maryland. **Exhibit 2** shows the numbers of licenses, registrations, and permits issued by the board over the last five fiscal years.

## **Veterinarian Requirements**

To become licensed as a veterinarian in the State, an applicant has to submit a diploma or transcript from veterinary medical school, a recent North American Veterinary Licensing Examination (NAVLE) score (within five years of taking the exam), an application fee, and a complete application. The application includes a notarized signature affirming that the applicant has read and comprehends the laws and regulations governing the practice of veterinary medicine in Maryland. Foreign applicants who have graduated, or will graduate, from a school that is not approved or accredited by the AVMA also have to submit a certificate from the Educational Commission for Foreign Veterinary Graduates (ECFVG), which operates a program that assesses the educational readiness of graduates of nonaccredited schools. Applicants licensed in another state, or in a foreign jurisdiction, who graduated from an AVMA-accredited school, and whose licensing examination scores are more than five years old, may also qualify for licensure by meeting clinical experience requirements (in place of retaking the national licensing examination).

**Exhibit 2**  
**Licenses, Registrations, and Permits Issued**  
**Fiscal 2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b><u>Veterinarians</u></b>					
New Licenses	133	166	123	170	155
Registrations <sup>1</sup>	2,275	2,376	2,385	2,412	2,475
<b><u>Veterinary Technicians</u></b>					
New Registrations <sup>2</sup>	N/A	N/A	45	40	46
Renewal Registrations <sup>3</sup>	69	86	75	80	46
<b><u>Veterinary Hospital</u></b>					
Licenses	481	495	492	508	509
<b><u>Sodium Pentobarbital</u></b>					
Permits <sup>2</sup>	N/A	N/A	27	27	30
<b>Total Issued<sup>4</sup></b>	<b>2,825</b>	<b>2,957</b>	<b>3,024</b>	<b>3,067</b>	<b>3,106</b>

<sup>1</sup>Renewed annually. The number of veterinary registrations issued represents the total number of licensed and registered veterinarians in the State in each year since all licensees must also be registered.

<sup>2</sup>Fiscal 2004 and 2005 data are not available for these items because record keeping procedures had not been established.

<sup>3</sup>Renewed triennially.

<sup>4</sup>The total does not include new veterinarian licenses to avoid double counting. It also does not include any new veterinary technician registrations or sodium pentobarbital permits issued in fiscal 2004 and 2005 since data are not available for those years.

Note: Sodium pentobarbital permits are issued to animal control facilities that, for the most part, do not employ full-time veterinarians.

Source: State Board of Veterinary Medical Examiners

Upon becoming licensed, a veterinarian must also register annually with the board and pay the annual registration fee. A licensed veterinarian generally has to earn 12 credit hours of continuing professional education each year to renew the registration. (The board has submitted a proposal for MDA departmental legislation for the 2009 session that will allow it to require more than 12 credit hours of continuing professional education each year. According to the board's executive director, on average, other states require 15 to 20 credit hours per year.)

An initial applicant for licensure and registration has to pay a \$175 license application fee<sup>1</sup> and a \$140 registration fee that must be paid initially and annually thereafter. (See **Exhibit 3** for the current fee schedule.) The current cost to take NAVLE is \$500, which is paid to the National Board of Veterinary Medical Examiners (NBVME). NBVME also charges an additional \$50 fee for processing paperwork.

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**Exhibit 3**  
**SBVME Fee Schedule**

Veterinarian Initial License Fee*	\$140
Veterinarian Registration Fee (annual)	\$140
Veterinarian Late Registration Fee (additional)	\$40
Veterinarian State Board Examination Fee	\$175
Veterinary Technician Application Fee	\$60
Veterinary Technician Registration Fee (triennial)	\$50
Veterinary Hospital License Fee (annual)	\$100
Veterinary Hospital Late Fee (additional)	\$40
Letter of Good Standing** Fee	\$15
Animal Control Facility License Fee	\$100

\*This fee is somewhat misleading. An initial applicant for a veterinarian license and registration pays only a \$175 license application fee (referred to in the above schedule as the Veterinarian State Board Examination Fee) and a \$140 registration fee, which continues to be paid annually thereafter. An initial applicant does not pay an additional \$140 license fee.

\*\*Issued by the board upon request, generally to be provided to boards in other states where a Maryland licensee/registrant is seeking to be licensed.

Note: Board fees were increased in 2004, just prior to the board becoming special funded, in order to provide sufficient revenue to cover the board's expected operating costs. Prior to the increase, an initial applicant for licensure and registration as a veterinarian paid a \$75 application fee and an \$80 registration fee (an applicant now pays a \$175 application fee and \$140 registration fee) and an initial applicant for registration as a veterinary technician paid a \$50 application fee (an applicant now pays a \$60 application fee and a \$50 registration fee).

Source: COMAR 15.14.12.02; Annotated Code, Agriculture Article, §2-305

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<sup>1</sup> Referred to in the board's regulations as a State Board Examination fee; as noted above, the applicant's notarized signature affirming that the applicant has read and comprehends the laws and regulations governing the practice of veterinary medicine in Maryland, considered the State Board Examination, is included on the application.

## **Veterinary Technician Requirements**

Veterinary technicians are not licensed by SBVME, but a person *may* register with the board as a veterinary technician through an application process similar to that applicable to veterinarians for licensure. Thus, an applicant has to submit a diploma or transcript (from a veterinary technician program approved by the AVMA, a program otherwise approved by VTC, or a bachelor's or master's degree program in an agricultural, life, or physical science), a recent passing score on VTNE (within five years of taking the exam), an application fee, and a completed application. The application includes a notarized signature affirming that the applicant has read and comprehends the laws and regulations governing registered veterinary technicians in Maryland. As for veterinarians, veterinary technicians registered in another state or foreign jurisdiction may qualify for registration by meeting clinical experience requirements with older exam scores rather than retaking VTNE.

A registered veterinary technician must renew the registration with the board every three years. A registered veterinary technician generally has to earn 24 credit hours of continuing professional education during the previous three years in order to renew registration.

An initial applicant for registration has to pay a \$60 application fee as well as a \$50 registration fee paid initially and upon renewal every three years. The cost to take VTNE is \$130, paid to SBVME, which in turn pays the American Association of Veterinary State Boards, which owns and administers the exam.

## **Veterinary Hospital Requirements**

An owner of a veterinary hospital (defined as any building or portion of a building which is regularly used for the treatment of animals by a veterinary practitioner) or mobile veterinary clinic must apply for a veterinary hospital license each year and pay a \$100 fee. State regulations require a new veterinary hospital to pass a board inspection before a license may be issued. The owner of a hospital is required to post, in a conspicuous location in the hospital readily accessible by the public, the current registrations of its veterinarians and veterinary technicians and the hospital license.

## **Processing Times Are Generally Improving**

According to SBVME, most of the licenses and registrations are processed from May through July (licenses and registrations expire on June 30 of the applicable year), which can be administratively challenging for the board's staff. SBVME advises that the average processing times for fiscal 2009 licenses and registrations were 5 days for veterinarian registrations, 11 days for veterinary hospital licenses, and 25 days for veterinary technician registrations. These average processing times were improved from those for fiscal 2008 licenses and registrations of 8 days for veterinarian registrations, 15 days for veterinary hospital licenses, and 45 days for veterinary technician registrations. These processing times encompass the period from receipt of an application to mailing the license or registration. Having the Veterinary Technician Committee assist the board in reviewing veterinary technician registration applications has resulted in longer processing times

for those applications, though there was a notable improvement in the processing of the fiscal 2009 registrations as compared to the fiscal 2008 registrations.

The board and VTC appear to be able to process licenses and registrations in a timely manner. Even so, the board's president and executive director would like to explore multi-year licensing for veterinarians to alleviate the administrative burden of processing annually a large number of licenses and registrations in a short time period. The board is also interested in implementing online registration for veterinarians and veterinary technicians and licensing for veterinary hospitals, which would lessen the administrative burden. Online registration has also been requested by members of the regulated community. MDA's information technology department, however, has generally indicated that it does not have the capability for an online system that would accept credit card numbers. The board does not have information on the potential cost of implementing such a system.

### **Veterinary Technician Registration Is Limited**

In comparison to the number of licensed and registered veterinarians in Maryland, the number of registered veterinary technicians in the State is limited. The National Association of Veterinary Technicians in America (NAVTA) identifies veterinary technicians/technologists as "educated to be the veterinarian's nurse, laboratory technician, radiography technician, anesthetist, surgical nurse and client educator." NAVTA identifies graduates of two-year, AVMA-accredited programs as veterinary technicians and graduates of AVMA-accredited bachelor degree programs as veterinary technologists. Maryland law does not differentiate between applicants graduating from two-year and bachelor degree programs for the purposes of registration as a veterinary technician.

A 2004 AVMA policy on veterinary technology "recognizes the value of veterinary technicians as an integral component of veterinary medicine and urges full utilization of veterinary technicians." A 2008-2009 U.S. Department of Labor job outlook for veterinary technologists and technicians indicates that employment of veterinary technologists and technicians is expected to grow 41 percent from 2006 to 2016, much faster than the average for all occupations. However, despite the expected demand for veterinary technicians, a 2003 NAVTA survey of veterinary technicians and a recent survey of registered veterinary technicians in Maryland conducted by VTC indicate concerns among veterinary technicians of low pay, burnout, and competition with assistants trained on the job (or assistants performing registered veterinary technician duties).

Veterinary technician registration in Maryland verifies an applicant's education, requires passing scores on a licensing/registration examination, and requires that an applicant read and comprehend the laws and regulations governing registered veterinary technicians in Maryland. Members of the public may expect these sorts of qualifications of veterinary hospital employees assisting veterinarians in providing health care to their animals. However, based on the number of registered veterinary technicians (approximately 315) in comparison with the number of registered veterinarians (2,475), many assisting employees presumable are not registered veterinary technicians.

Under State law and the board's regulations, registered veterinary technicians are specifically authorized to induce anesthesia, apply casts and splints, and perform other specified procedures under the direct supervision of a licensed and registered veterinarian. They can also administer medication and render auxiliary and supporting assistance, just like other veterinary employees are authorized to do. Under the board's regulations, however, a veterinarian cannot allow certain other veterinary employees to perform the procedures that registered veterinary technicians are specifically authorized to perform. It is unclear to what extent the veterinary community adheres to the distinction between procedures registered veterinary technicians and other veterinary employees are authorized to perform.

SBVME's president has indicated the board would like to increase the number of registered veterinary technicians in the State. One obstacle to doing so, however, is that there is only one AVMA-accredited veterinary technician program in the State, at the Essex Campus of the Community College of Baltimore County, which graduates a limited number of students each year. While there are AVMA-accredited distance learning programs, and registration applicants in Maryland can also qualify with a bachelor's or master's degree in an agricultural, life, or physical science, establishing an additional accredited program or programs in Maryland seems to be an important step in increasing the number of registered veterinary technicians in the State. The board has been involved in efforts to encourage the establishment of an additional program or programs, yet the cost of establishing a program has apparently been a significant factor in limiting progress to this point.

VTC has become more involved in the registration and regulation of veterinary technicians in recent years – now assisting in reviewing registration applications. The committee also helped draft the regulations that established formal guidelines for the submission of continuing education credits by veterinary technicians and sent out a comprehensive survey to registered veterinary technicians (mentioned above), the results of which were presented to the board at its August 28, 2008 meeting. The views of VTC regarding necessary education requirements for registered veterinary technicians and the procedures registered veterinary technicians are (or should be) authorized to perform may differ somewhat from what is prescribed under State law and the board's regulations.

### **Hospital Inspection Rates Have Improved**

Two inspectors split their time between inspections for SBVME and the Maryland Horse Industry Board. The board's investigator has also conducted inspections. As mentioned previously, Chapter 58 of 2008 relaxed the veterinary hospital inspection requirement under State law from each hospital being required to be inspected each year to, instead, every two years.

As shown in **Exhibit 4**, the board apparently had the capacity to inspect every hospital in the State in fiscal 2008. Even so, SBVME indicates that the change in the law will allow the inspectors more flexibility to conduct follow-up inspections when needed. In addition to veterinary hospitals that fail an inspection, those that pass inspection can also need follow-up for reasons such as a current license not being posted in the veterinary hospital (as required by SBVME regulations) or a renovation in progress at the time of a first inspection that would need to be inspected once the

renovation is completed. Initial inspections of new hospitals, prior to licensure, can also require follow-ups to ensure issues pointed out in the first inspection have been addressed.

Until recently, with the requirement of inspecting every veterinary hospital each year, follow-up inspections generally could not be conducted unless there was a particularly egregious violation. The inspector met with the hospital's owner or manager (or their designee) and reviewed the areas of concern with the individual, relying on the hospital owner to act in good faith to address the areas of concern. Under Chapter 58, inspectors can conduct more follow-ups to ensure areas of concern are addressed. The additional flexibility is also expected to allow the inspectors to do more comprehensive reporting to aid the board's assistant Attorney General in the event charges are drafted; occasionally, information provided by the inspectors had been insufficient to move forward with drafting charges.

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**Exhibit 4**  
**Hospital Inspection Pass Rates**  
**Fiscal 2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Licensed Veterinary Hospitals	481	495	492 <sup>1</sup>	508 <sup>1</sup>	509 <sup>1</sup>
Hospitals Inspected	365	491	456	470	517
Inspected Hospitals Passing	85%	99%	98%	99%	100%

<sup>1</sup>These numbers reflect licensing information provided by SBVME and are slightly different than total hospital numbers submitted for, or included in, the Governor's Budget Books. This causes a discrepancy in fiscal 2008, when the number of hospitals inspected is higher than the number of licensed hospitals.

Source: Governor's Budget Books; State Board of Veterinary Medical Examiners

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## **Complaints and Formal Charges Increase**

From fiscal 2004 through 2008, 332 consumer complaints were received, and the board initiated 45 additional disciplinary cases. The total number of complaints/board-initiated cases has increased in recent years, and the board has pursued formal charges in more cases as shown in **Exhibit 5**. The board reserves license suspensions/revocations for more egregious violations, which have been relatively rare in comparison to the board's use of civil penalties, stayed suspensions, and probation to discipline licensees. For example, over that five-year period, five veterinarians were ordered to serve suspensions and one veterinarian's license was revoked. The board's president indicates that suspensions in instances where a veterinarian has made a mistake or exercised bad judgment, while having a punitive effect, do not necessarily help the board in fulfilling its mission of protecting the public and animal health and welfare where the veterinarian is not deemed to be a

threat to the public or to animal health or welfare. Stayed suspensions are often imposed along with probation and serve as a consequence of a subsequent violation during the probationary period.

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**Exhibit 5**  
**Resolution of Complaints Received Since Fiscal 2004**  
**Fiscal 2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
New Complaints	62	61	87	74	93
<i>Complaints Resolved</i>					
Within 6 Months	46	35	34	27	24
Required More than 6 Months	16	26	49	44	18
Average Months for Resolution	5-6	7-8	9-10	8-9	N/A
<i>Complaints Unresolved as of August 2008</i>	0	0	4	3	51
<i>Disposition of Resolved Complaints</i>					
Dismissed/Closed without Action	23	23	30	21	18
Dismissed with Letter of Advice	27	17	25	23	6
Letter of Admonishment/Censure*	3	6	7	2	9
Formal Charges/Consent Agreement	9	15	21	25	9

\* The board recently began issuing letters of censure, rather than letters of admonishment, pursuant to its existing authorization under State law. Letters of censure are considered to be formal action and are available to the public, whereas letters of admonishment were not.

Note: Twenty-nine complaints from fiscal years prior to fiscal 2004 were pending at the start of fiscal 2004. Almost all of those complaints were resolved in fiscal 2004.

Source: Department of Legislative Services review of State Board of Veterinary Medical Examiners complaint records.

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With consumer complaints, after obtaining relevant records and a response from the subject of the complaint and offering the complainant the opportunity for a rebuttal, the board reviews the complaint and generally votes for either a dismissal, dismissal with a letter of advice, letter of censure (issued when allegations are found to merit charges, but the board chooses not to draft charges for reasons such as an offense being minor or a person having a good history), or the drafting of formal charges. The board often solicits expert opinions in cases where the veterinary care provided by a licensee/registrant is questioned.

Board-initiated cases generally arise from inspections or instances where veterinarians or veterinary hospitals fail to renew their registration/license but continue to practice or operate. Not involving a complainant, the board generally addresses these cases once sufficient information/evidence regarding a violation has been gathered by the board's inspectors.

## **Complaint Resolution Appears to Be Improving with More Staff**

The average time it has taken to resolve complaints/cases has increased since fiscal 2004, jumping from an average resolution time of 5 to 6 months for those complaints/cases received or initiated in fiscal 2004 to 9 to 10 months in fiscal 2006. The resolution time has dropped slightly more recently – to 8 to 9 months in fiscal 2007. (The average resolution time for fiscal 2008 is 5 to 6 months, but over half of those cases have not been resolved yet.) The longer time frames for resolution could be the result of factors such as higher case loads, increased complexity of complaints, and a greater number of cases in which formal charges are drafted.

Some complaints/cases take an extended period of time to resolve. Over the five-year period reviewed, 45 cases took more than one year to bring to a resolution, the majority of which resulted in formal charges. In addition, seven cases initiated in fiscal 2006 and 2007 were still pending as of August 2008 (the board had voted to dismiss one of these cases at its June 2008 meeting, but letters to be sent to involved parties were pending; another case was pending due to the serious illness of the subject veterinarian). The hiring of an investigator and part-time assistant Attorney General in fiscal 2008 has helped the board investigate complaints and serve subpoenas when needed and to bring pending cases to a resolution. For example, almost two-thirds of the 45 extended, but now resolved, cases mentioned above were resolved after the board hired its part-time assistant Attorney General.

## **Complaint Data Have Been Computerized**

The 1998 preliminary evaluation recommended that the board computerize all complaint data, which would allow it to assess trends more quickly and comprehensively. The board's complaint data are now computerized, along with licensing and inspection information. Thus, board staff can quickly access disciplinary information for a given licensee and generate certain reports. The reports, however, relate more to issues such as disciplinary cases that are pending or registrations or licenses that have not been renewed rather than identifying trends in licensing, inspection, or complaint activity.

## **Transition to Special Funding Has Afforded the Board More Resources**

The board's transition from a general-funded to special-funded entity in fiscal 2005, pursuant to Chapter 245 of 2004, has provided the board with more resources to fulfill its responsibilities. As shown in **Exhibit 6**, the change has allowed the board to increase its expenditures since fiscal 2004, and 2.5 positions have been added since that time (the board's executive director, investigator, and

**Exhibit 6**  
**Fiscal History of SBVME**  
**Fiscal 2003-2009**

	<b>Fully Special-funded</b>						
	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Authorized Positions	3	3	5 <sup>1</sup>	5	5	5	5.5
Beginning Special Fund Balance	\$0	\$0	\$0	\$173,159	\$242,552	\$314,451	\$336,623
Special Fund Revenues	2,957 <sup>2</sup>	2,699 <sup>2</sup>	441,051	423,292	452,643	452,562	454,070
General Fund Revenues <sup>3</sup>	231,228	50,009 <sup>4</sup>	0	0	0	0	0
<b>Total Special Fund Revenues Available</b>	<b>2,957</b>	<b>2,699</b>	<b>441,051</b>	<b>596,451</b>	<b>695,195</b>	<b>767,013</b>	<b>790,693</b>
<b>Total Special Fund Expenditure</b>	<b>2,957</b>	<b>2,699</b>	<b>267,892</b>	<b>353,899</b>	<b>380,744</b>	<b>430,390</b>	<b>495,534</b>
<b>General Fund Expenditure</b>	<b>160,887</b>	<b>169,386</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Direct Costs	163,844	172,085	207,892	293,899	315,744	365,390	430,534
Indirect Costs <sup>5</sup>	0	0	60,000	60,000	65,000	65,000	65,000
<b>Ending Special Fund Balance</b>	<b>\$0</b>	<b>\$0</b>	<b>\$173,159</b>	<b>\$242,552</b>	<b>\$314,451</b>	<b>\$336,623</b>	<b>\$295,159</b>

<sup>1</sup> While two additional positions were authorized in fiscal 2005 and subsequent years, those positions were not filled until fiscal 2006 and 2008.

<sup>2</sup> Veterinary technician testing fees collected by the board from applicants and paid to the American Association of Veterinary State Boards.

<sup>3</sup> These numbers do not account for fines imposed by the board that are paid into the general fund.

<sup>4</sup> Fiscal 2004 general fund revenues are lower due to the fact that fees collected toward the end of fiscal 2004 for fiscal 2005 licenses and registrations were placed in an advanced deposit account (rather than the general fund) for the board's use in fiscal 2005, its first year as a special-funded entity.

<sup>5</sup> Paid to MDA's Office of the Secretary, Central Services.

Note: The fiscal 2009 expenditures are the appropriations for that year; the fiscal 2009 revenues are estimated. The fiscal 2008 expenditures and revenues are not finalized "for closing."

Source: Maryland Department of Agriculture, State Board of Veterinary Medical Examiners; Governor's Budget Books

part-time assistant Attorney General). Prior to the change, the board's staff was made up of an administrative specialist, an office secretary, and two inspectors whose time was (and still is) shared with the Maryland Horse Industry Board.

In making the board a special-funded entity, Chapter 245 authorized the board to set its fees so as to produce funds to approximate the cost of maintaining the board. The board increased its fees in 2004 to a level expected to generate enough revenue to sufficiently fund the board for at least five years before fees would need to be raised again to keep pace with rising operating costs. The fees were also set with the expectation of adding an executive director and investigator to the board's staff. A special fund balance has accumulated since the board's transition to special funding in fiscal 2005 and the increase in fees, in part due to the fact that the board's executive director and investigator were not hired until fiscal 2006 and 2008, respectively.

As shown in Exhibit 6, the board's special fund expenditures include both the direct costs of the board (salaries, wages, benefits, contractual services, communication, travel, motor vehicle operation and maintenance, etc.) and indirect costs paid to MDA's Office of the Secretary, Central Services, accounting for the administrative overhead of MDA from which SBVME benefits (office space, utilities, accounting services, personnel services, payroll services, etc.).

By the end of fiscal 2009, the goal of funding the board for at least five years without increasing fees will have been met. However, the board's expenditures have increased, while the board's revenues have remained relatively consistent. Beginning in fiscal 2009, the board's expenditures are expected to be higher than the board's annual revenues for the first time. Thus, assuming board staffing and revenues remain consistent, the special fund balance will be spent down to cover the board's costs each fiscal year. Fees will likely need to be raised prior to fiscal 2013 (accounting for increases in personnel costs and inflation); otherwise, board expenditures could be greater than the board's available revenues in fiscal 2013. A change in board staffing, such as a vacancy or an additional position, or other change in expenditures could accelerate or delay when fees would need to be increased. The board's executive director indicates the board could use another administrative staff person to handle complaint-related work, but the board does not have office space available for this purpose.

## **Integrative Veterinary Therapies**

The board has been confronted with the issue of integrative veterinary therapies or techniques. The AVMA's Model Practice Act defines "complementary, alternative, and integrative therapies" as:

[A] heterogeneous group of preventative, diagnostic, and therapeutic philosophies and practice, which at the time they are performed may differ from current scientific knowledge, or whose theoretical basis and techniques may diverge from veterinary medicine routinely taught in accredited veterinary medical colleges, or both. These therapies include, but are not limited to, veterinary acupuncture, acutherapy, and

acupressure; veterinary homeopathy; veterinary manual or manipulative therapy...; veterinary nutraceutical therapy; and veterinary phytotherapy.

The Model Practice Act includes these therapies under the definition of the “practice of veterinary medicine.” This differs somewhat from Maryland law, which excludes acupuncture from the definition of the “practice of veterinary medicine,” allowing a person to practice acupuncture without being a licensed and registered veterinarian (pursuant to specific conditions including requirements for training, licensure, and certification with the State Acupuncture Board and cooperation and consultation with a veterinarian). Aside from acupuncture, however, Maryland law does not specifically address integrative veterinary therapies.

SBVME recently was a co-defendant, along with the State Board of Chiropractic Examiners, in a lawsuit brought by a massage therapist who wanted to offer horse massage as a business. The massage therapist alleged that SBVME had violated her constitutional right to earn a living. SBVME, however, had not specifically addressed the massage therapist’s activities or issued a decision with respect to whether the activities would be in violation of State law or regulations. The lawsuit was dismissed because the massage therapist had not exhausted administrative remedies; thus far, the dismissal has not been appealed.

The board also met with another massage therapist at its August 28, 2008 meeting regarding the services she sought to offer. The massage therapist had also previously met with the board’s president and executive director. Based on the information she provided in those two meetings, the board was comfortable that the services she sought to offer would not constitute the practice of veterinary medicine. The massage therapist emphasized that she did not diagnose ailments or prescribe treatments.

It appears that, at least for the time being, the board will evaluate these services on a case-by-case basis to determine whether a person could be engaging in the unlicensed practice of veterinary medicine as defined under State law. Integrative veterinary therapies, however, could invite legislative or regulatory action in the future.

## **Recommendations**

SBVME plays an important role in regulating veterinary medical professionals and facilities, and its existence is necessary for the public interest. The board has benefited from the hiring of additional staff in recent years, yet the board’s administrative resources still appear to be utilized to their capacity. The board appears to nonetheless be effectively fulfilling its responsibilities with its current resources and, being special-funded, may have the ability to add administrative resources in the future through reasonable fee increases, if necessary. **Therefore, the Department of Legislative Services recommends that the Legislative Policy Committee waive the State Board of Veterinary Medical Examiners from full evaluation and that legislation be enacted to extend the board’s termination date by 10 years to July 1, 2021. DLS also recommends that SBVME submit a follow-up report to the Legislative Policy Committee by October 1, 2009, addressing**

**the following issues:**

- **Registered Veterinary Technicians:** As mentioned earlier, the establishment of additional veterinary technician programs in Maryland appears to be an important step toward increasing the number of registered veterinary technicians in the State, and the board has been involved in efforts to encourage the establishment of additional programs. The follow-up report should discuss any actions the board determines could be taken in addition to efforts to establish additional veterinary technician programs in the State, such as incentives for veterinarians/veterinary hospitals to encourage employees, through financial assistance or otherwise, to participate in veterinary technician programs (including accredited online programs).

In addition, the procedures that registered veterinary technicians are specifically authorized to perform under State law have been in place since 1994. The follow-up report should discuss the extent to which these procedures encompass the procedures registered veterinary technicians are trained to perform and whether it would be appropriate to add other procedures to that list.

- **Penalty Authority:** The board is not given specific authority under State law to impose civil penalties on a person that is not licensed by the board, but it does have the authority to seek an injunction in court against a person that violates State laws governing the practice of veterinary medicine. A person can also be subject to criminal penalties for such violations. The follow-up report should discuss the extent to which the board believes it would be beneficial to have civil penalty authority to address instances of unlicensed practice of veterinary medicine and to what extent it could utilize the authority given its existing resources available to investigate alleged instances of unlicensed practice of veterinary medicine.

In addition, it appears to be unclear under State law whether the board has the authority to impose civil penalties on registered veterinary technicians in a similar manner as it is authorized to with respect to licensed veterinarians. The board is authorized to suspend or revoke a veterinary technician's registration, reprimand and censure the veterinary technician, or place a veterinary technician on probation, but it is unclear whether the board may also impose civil penalties in lieu of or in addition to a suspension, or in addition to a revocation, as it is authorized to with respect to a licensed veterinarian. The follow-up report should discuss whether State law currently gives the board the authority to impose civil penalties on registered veterinary technicians, and if not, whether that authority would be beneficial.

- **Public Outreach:** The 1998 preliminary evaluation recommended that the board expand its public outreach efforts and mentioned including the board's phone number and availability as a resource for consumer complaints in the veterinarian listings in the phone book and

possibly at the bottom of veterinarian/veterinary hospital bills. It was noted how greatly the board depends on consumer complaints to find alleged violations of veterinary practices. The previous two sunset evaluations had also recommended that the board expand its public outreach efforts.

The board's September 1999 follow-up report to the 1998 preliminary evaluation indicated the board had re-registered its web site with various Internet search engines and was looking into including the board's information in the veterinarian listings in the phone book and on registration certificates and hospital licenses that are required to be posted in veterinary hospitals in a conspicuous location that is readily accessible by the public. The board's phone number, however, is currently not in the veterinarian listings in the phone book or printed on registration certificates and hospital licenses. The follow-up report should assess the extent of public outreach necessary to ensure consumer access to the board in instances where a veterinarian, veterinary technician, or veterinary hospital has violated State law or the board's regulations and what actions could be taken to achieve that level of public outreach.

- **Disciplinary Caseload:** With the number of complaints received/cases initiated increasing in the past few years, the expressed need for an administrative person that could handle complaint-related work, and the higher average resolution times for complaints in fiscal 2006 and 2007, the follow-up report should discuss to what extent additional resources continue to be needed for complaint work and whether that need can or will be addressed in the future, given the board's anticipated budget (assuming a fee increase as expected) and available office space.



**Appendix 1. Written Comments of the  
State Board of Veterinary Medical Examiners**

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### Comments of the State Board of Veterinary Medical Examiners

#### *Recommendation to waive full evaluation:*

The SBVME concurs with this recommendation and respectfully requests that the Legislative Policy Committee waive the full evaluation.

#### *Regarding lawsuit filed by massage therapist:*

On November 6, 2008, a judge for the Circuit Court for Montgomery County dismissed the massage therapist's lawsuit against the SBVME for the massage therapist's "failure to exhaust Maryland Administrative remedies before initiating action in the Montgomery County Circuit Court." It is uncertain at this time if the massage therapist will seek to appeal this decision.

#### *Registered Veterinary Technicians:*

The SBVME's president is interested in exploring the creation of a scholarship fund, in conjunction with the Maryland Veterinary Medical Association (MVMA), for individuals interested in pursuing a veterinary technology degree. A portion of the revenue the SBVME currently receives in the form of civil penalties could be deposited to the fund, which would be administered by the MVMA. This financial assistance may provide an incentive to individuals who otherwise would not pursue such a degree due to limited finances.

The SBVME may consider the administration of vaccinations, intubating patients, and the taking of vital signs as procedures acceptable for an RVT to perform. In September 2008, the SBVME and other member boards of the American Association of Veterinary State Boards requested that the AA VSB perform a review of all member boards and make recommendations for national standards for veterinary technicians. Concern has been expressed by member boards across the country that standardization is strongly needed.

#### *Penalty Authority:*

The SBVME's president is interested in pursuing legislation that would grant the SBVME the authority to impose civil penalties on an individual who is not licensed by the SBVME, but is found to be practicing veterinary medicine. Although the SBVME may forward a case to the States' Attorneys Office for criminal prosecution, the SBVME is concerned that the

States' Attorneys Office may not consider such a case important enough to pursue, based on the types of cases they typically handle. Additionally, the SBVME's president believes that there may be enough unlicensed activity occurring that consumers and their pets may be at risk of being harmed by individuals claiming to possess skills or knowledge in veterinary medicine that they do not possess.

The SBVME would be interested in having the authority to impose civil penalties on RVTs. This authority would give the SBVME latitude in issuing a less severe sanction than a suspension or revocation, but more severe sanction than a reprimand or censure.

*Public Outreach:*

The SBVME's staff is planning to include the SBVME's telephone number, facsimile number, and web address on all licenses and registrations it will have printed in the coming year. Registrations issued to veterinarians and veterinary technicians, and licenses issued to veterinary hospitals are to be posted in a conspicuous location that is readily accessible by the public. Including the SBVME's phone number in the yellow pages of each phone book throughout the State may be cost-prohibitive, however, the SBVME may be able to have it displayed under the Internet's business listings. The SBVME is concerned that if its phone number was included at the bottom of veterinary hospital bills, consumers would be given the mistaken impression that the SBVME somehow regulates fees charged by veterinarians. The SBVME does not set fees, but it is confident that consumers would seek to file complaints about their veterinarians' fees if the number was included on the bills.

The SBVME's webpage, which is included on the Maryland Department of Agriculture's website, was revised extensively in 2007. The webpage now includes, in part, applications with instructions for completion, instructions on submitting requests for continuing education approval and licensure verifications, easy accessibility to laws and regulations, a form for filing complaints, and information about the SBVME's and VTC's members.

*Disciplinary Caseload:*

The SBVME's executive director is currently reviewing the complaint process in an effort to determine whether cases could be handled more expediently. A revision of this process would likely impact the duties of half of the staff, but may be necessary due to the increased number of complaints received and cases initiated by the SBVME.

# Preliminary Evaluation of the State Athletic Commission

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**Recommendations: Waive from Full Evaluation**

**Extend Termination Date by 10 Years to July 1, 2021**

**Require Follow-up Report by October 1, 2013**

## The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Athletic Commission last underwent a full evaluation as part of sunset review during 1999. In conducting its preliminary evaluation, DLS staff reviewed relevant statute and regulations, minutes from board meetings from the past three years, prior full and preliminary sunset evaluations of the commission, budgetary information, and other files and data provided by the commission. DLS staff attended a commission meeting and observed two events regulated by the commission. In addition, DLS staff conducted interviews with the executive director of the commission, commission members, and numerous other parties with an interest in commission activities.

The commission 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.

## State Athletic Commission

The State Athletic Commission consists of five members appointed to six-year terms by the Governor with the advice and consent of the Secretary of Labor, Licensing, and

Regulation. The commission is located within the Department of Labor, Licensing, and Regulation's (DLLR) Division of Occupational and Professional Licensing. Granted statutory authority by Title 4 of the Business Regulation Article, the commission manages, supervises, and regulates the sports of boxing, kickboxing, professional wrestling, and mixed martial arts. Specifically, the commission is responsible for the supervision of all professional boxing, kickboxing, wrestling, and mixed martial arts events in the State. The commission promulgates and enforces regulations to govern these activities and also licenses all referees, managers, promoters, seconds (individuals who work the corners in a boxing contest), matchmakers, and participants in such activities. The commission was only recently extended regulatory authority over mixed martial arts – in October 2008. **Exhibit 1** summarizes the current licensing and performance requirements for the various individuals regulated by the commission, including the statutory requirements for mixed martial arts. However, regulations for mixed martial arts currently being drafted may include additional requirements.

## **Historical Perspective on Boxing and the Commission**

The commission was created in 1920 to provide safety guidelines for boxers and the general public with regards to boxing and to protect boxers from promoters, trainers, or managers who could take advantage of them in some way, primarily for financial gain. At that time, boxing – in particular – was saddled with a reputation for corruption; fake boxing matches and promotions were common occurrences, as were injuries to the viewing public.

While the sport of boxing is much “cleaner” today, it still suffers from a reputation for corruption and unethical behavior by managers, promoters, sanctioning organizations, and athletes. Well-known boxers have engaged in outrageous behavior and received minor punishments. Probably the most famous incident was when Mike Tyson bit off part of Evander Holyfield's ear during their championship bout in 1997; he was suspended for only one year. In 2000 the Administrator of the Virginia Boxing and Wrestling Association was terminated and investigated for taking bribes in exchange for rankings in his role as the International Boxing Federation (IBF) ratings chairman. The president and founder of IBF was sentenced to 22 months in prison for bribery; prominent boxing promoter Don King was an unindicted co-conspirator in the case.

Twenty years ago, as part of the sunset review process, DLS recommended the termination of the commission along with the regulation of boxing. That recommendation was rejected. Since then public awareness of the corruption surrounding the sport was raised, and there was a call from the general public to reform the sport. The U.S. Congress responded by enacting the Professional Boxing Safety Act of 1996, followed by the Muhammad Ali Boxing Reform Act of 2000.

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## Exhibit 1 Licensing Requirements

<u>Licensee</u>	<u>Requirements</u>
Boxers/ Kickboxers	<p>Be between 18 and 36 years of age, though special permission may be granted to individuals older than 36 based on a review of a boxer's experience and physical fitness</p> <p>Submit medical reports, including neurological and ophthalmological examinations as well as negative test results for the human immunodeficiency virus (HIV), Hepatitis B virus, and Hepatitis C virus, within 30 days of the date of application for initial licensure or license renewal; physical examinations must be submitted within 21 days of the date of application for licensure or license renewal</p> <p>Provide certification to the commission by a manager, trainer, or qualified individual of the applicant's physical competence as a boxer or kickboxer and possession of the skills of a trained boxer or kickboxer</p> <p>Submit current federal photo identification card issued by affiliate members of the Association of Boxing Commissions (for boxers only)</p>
Mixed Martial Artists	<p>Submit all medical reports required of a boxer or kickboxer</p>
Wrestlers	<p>Be at least 18 years of age</p> <p>Demonstrate proper training in the art of wrestling upon request (for individuals without professional or amateur wrestling experience)</p>
Judges	<p>Be at least 18 years of age</p> <p>Complete an approved training course</p> <p>Score at least 70 percent on an examination administered by the commission</p> <p>Successfully complete an annual ophthalmological exam</p>
Referees	<p>Be at least 18 years of age</p> <p>Complete an approved training course</p> <p>Score at least 70 percent on an examination administered by the commission</p> <p>Successfully complete an annual physical and ophthalmological exam</p>
Managers	<p>Provide the commission with a complete list of all Maryland boxers under the applicant's control and assume responsibility for the conduct of those boxers</p>
Matchmakers	<p>Must not (1) be a licensed manager or second; (2) directly or indirectly manage a boxer or kickboxer; or (3) have a financial interest in a boxer or kickboxer</p>
Promoters	<p>Submit an application with a properly certified or notarized financial statement including specified information</p> <p>Secure two surety bonds – expense bond and “boxing and wrestling tax” bond</p> <p>Provide, upon the commission's request, additional evidence to demonstrate that the applicant has the financial ability to pay expenses relating to the contest</p>

Note: Although licensed, there are no special licensing requirements for seconds; thus, they are not shown above.

Source: Annotated Code of Maryland; Code of Maryland Regulations

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## **Boxing Regulation throughout the United States**

The Professional Boxing Safety Act of 1996 provides general oversight of boxing at the federal level, while leaving the specific regulation of the sport to each of the states. The Act ensures responsible public oversight of all professional boxing events by requiring that each state hosting boxing events have either a boxing commission or a requirement that promoters bring in a boxing commissioner from another state. All boxers have to register with the commission in their state of residence and obtain a federal identification card, which is issued by the state commission. A boxing commission is required to uphold certain suspensions of a boxer imposed by another boxing commission.

The Muhammad Ali Boxing Reform Act of 2000 amends the Professional Boxing Safety Act and provides additional protections for boxers by focusing on the business side of boxing, rather than boxer safety. Specifically, the Act prohibits a promoter from having a direct or indirect financial interest in the management of a boxer or a manager from having a direct or indirect financial interest in the promotion of a boxer. A manager cannot be employed by or receive any compensation or benefits from a promoter, except for amounts received as consideration under the manager's contract with the boxer. These provisions only apply to boxers participating in a boxing match of 10 rounds or more. They do not prohibit a boxer from acting as his own promoter or manager.

Other provisions of the Act include prohibiting a sanctioning organization from receiving any direct or indirect compensation in connection with a match until certain guidelines are met; prohibiting a person from any involvement in a match unless all referees and judges participating have been certified and approved by the boxing commission responsible for regulating the match in the state where the match is held; requiring each boxing commission to establish procedures related to boxer suspension; and directing the Association of Boxing Commissions (ABC) to develop and approve minimum contractual agreements that should be included in bout agreements and boxing contracts and objective and consistent written criteria for the ratings of professional boxers. The Act also increases from two to four years the validity of federal identification cards.

All state and tribal boxing commissions, including the State Athletic Commission, use a boxing statistics company – Fight Fax, Inc. – as their official boxing database/registry. Fight Fax is the only boxing registry certified by ABC, a national organization of state and tribal boxing commissions, including Maryland. Fight Fax is used to maintain records and suspensions of all licensed boxers. The State Athletic Commission provides Fight Fax with fight results, suspension information, and other pertinent information relating to professional boxing cards in the State. This enables all boxing commissions to more efficiently and expeditiously research the backgrounds and records of boxers to determine the basic skills of those boxers, as well as the status of their licenses, in an attempt to avoid mismatches and prevent allowing a person to participate in a boxing match who is not authorized to do so.

## **Commission Continues to Have a Viable Role in the Regulation of Boxing**

One of the commission's primary purposes is to maintain the integrity of the sports under its jurisdiction by preventing mismatches between contestants. This protects the paying public (by assuring that they get fair value for their money) as well as the safety of the contestants. The commission ensures that all boxing events held in Maryland are fair, safe, and ethical for all individuals involved.

In an interview for this evaluation, a boxing promoter cited the commission as a very efficient and professionally run organization. Maryland's strict enforcement of safety regulations and careful scrutiny of proposed fights were referenced as examples of how the commission protects boxers. The commission also works closely with promoters to ensure that adequate security is in place for fights, a clear example of the commission working to protect the general public. The commission also has adopted "Professional Conduct Guidelines for Inspectors, Referees, Judges, Ringside Physicians, and Other Ring Officials." Adherence to these guidelines, including prohibiting ring officials from asking licensees or applicants for an autograph or photograph at or near an event and prohibiting ring officials from publicly criticizing or making public comment about any other ring official's decision further illustrate that the commission strives for and maintains a reputation as a professionally run organization.

In another evaluation interview, the president of ABC praised the commission for its active involvement in that organization. (The commission's executive director currently serves as the director of Region One for ABC – which includes state and tribal athletic commissions located on the East Coast, between Maine and West Virginia – and the senior assistant Attorney General and counsel to the commission serves as the chair of the ABC Legal Committee.) The president also praised the commission's conscientious and consistent efforts to obtain as much background on prospective boxers and matchups as possible in addition to the standard information available from Fight Fax. For example, he said the executive director always calls him whenever a fight in Maryland is proposed involving a fighter from Missouri (the president of ABC also serves as the administrator of the State of Missouri Office of Athletics). Further, ABC has never had a report that a fighter has fought in Maryland while on suspension.

According to ABC, Maryland's commission has some of the strictest medical policies in the country. **Exhibit 2** details the medical requirements for boxers and kickboxers. In addition to strict enforcement of the medical policies, the commission's chief physician, with the cooperation of the commission, is studying chronic traumatic brain injury in professional boxers. The study is being conducted at professional boxing weigh-ins held in Maryland and includes the voluntary participation of over 225 professional boxers. The study is the only prospective longitudinal study of its kind in the sport of professional boxing and is designed to prevent boxers from sustaining chronic traumatic brain injury by attempting to find and identify the "window of opportunity" in a boxer's career when the boxer should cease competing.

## **Exhibit 2**

### **Health and Safety Standards for Boxing/Kickboxing**

A boxer or kickboxer must have an ophthalmological evaluation within 30 days of applying for, or renewing, a license.

A boxer or kickboxer must have a physical examination within 21 days of applying for, or renewing, a license.

A boxer or kickboxer must have a neurological test on an annual basis – the boxer or kickboxer must be reexamined if (1) the boxer or kickboxer has participated as a contestant in more than 12 boxing matches; (2) the boxer or kickboxer was knocked out or received a technical knockout as a result of neurological injury in two consecutive matches; or (3) the ringside physician recommends such an examination.

A boxer or kickboxer must prove that he or she has tested negative for HIV, the Hepatitis B virus, and the Hepatitis C virus, within 30 days of applying for, or renewing, a license as well as when directed by the commission.

A test for controlled dangerous substances is required before each contest.

A pre-fight examination of the boxer or kickboxer must be conducted by the ringside physician.

A post-fight examination of the boxer or kickboxer must be conducted by the ringside physician.

A boxer or kickboxer is prohibited from participating in another contest for at least 14 days after a contest of four to eight rounds duration and for at least 28 days after a contest of more than eight rounds duration.

Mandatory minimum medical suspensions are required for lacerations, technical knockouts, knockouts or technical knockouts with loss of consciousness, poorly conditioned fighters, or a physically demanding contest or excessive blows to the head.

The presence of at least two physicians is required at any contest. A senior physician has the authority to (1) interrupt a match at any time to examine a boxer and (2) terminate a match at any time after determining that serious injury has or is immediately likely to occur to either boxer or when a boxer is bleeding enough to provide a health hazard to spectators and personnel. The senior physician is also given the authority to admit a boxer to a medical facility and require a boxer to submit to a blood test or urinalysis.

The presence of certain medical equipment is required at ringside.

The presence of an ambulance is required at any contest (provided by promoter).

The location of a boxing contest may not be more than 15 minutes by ambulance from a hospital providing neurosurgical evaluation and treatment facilities, with a neurosurgeon on call. The commission must notify the facility 24 hours before a contest of the time and location of the contest, with a request for a neurosurgeon to be on call.

Additional safety precautions are required for female boxers and kickboxers (*i.e.*, use of breast and abdominal guards, requirement of a pregnancy test at least five days before a contest, etc.).

Source: Annotated Code of Maryland; Code of Maryland Regulations

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## **Regulatory Authority for Wrestling**

Currently, at least 20 states regulate wrestling. Professional wrestling, unlike professional boxing or kickboxing, is primarily an entertainment event as opposed to a sporting event. Choreography that is planned in advance of a wrestling event is commonplace (moves, slaps, falls, etc.), and most people attending the events are aware of this and go to be entertained. The full sunset evaluation in 1999 was undertaken primarily to review whether it was appropriate for wrestling to continue to be regulated. Citing the fact that a wrestling event is “entertainment performed by athletes” and other such events (*e.g.*, circuses) are not regulated, as well as the argument that wrestling events were well controlled and offered little danger to wrestlers, the evaluation recommended removing regulation of professional wrestling from Maryland law.

The commission regulates wrestling primarily to ensure the safety of all wrestling participants. In Maryland a wrestler has to pass a pre-bout physical exam to ensure physical fitness to participate. Further, regulations established by the commission prohibit certain activities that are often seen in wrestling contests, such as the intentional self-infliction of a wound that produces blood (known as “blading”). These activities, while obviously unsafe to the participants, are common in the industry as wrestlers attempt to make a name for themselves. Wrestlers and a referee (himself a former wrestler) interviewed as part of this evaluation all admitted that there is great pressure within the industry to distinguish themselves from other participants, oftentimes with stunts that are not allowed by the commission. Interviews with commission officials also referenced times when national wrestling organizations have medically cleared participants to wrestle, but the Maryland pre-bout physical indicated an obvious injury or physical barrier that should restrict the individual from participating in wrestling activities. The commission’s physician has compiled a list of the range of potential injuries to professional wrestlers that includes bruises/contusions, intercranial bleeding, broken teeth, various fractures, neck injuries, torn anterior cruciate ligaments, herniated discs, and rotator cuff tears. Other regulations, such as a minimum distance between the audience seating area and the ring barrier, help to ensure the safety of the public.

Regardless of whether the promoter provides insurance coverage, regulations also require that each wrestler be insured through a group insurance policy provided by the commission. DLS staff spoke with a wrestler who was injured at a commission-sponsored event, incurred medical expenses of over \$1,000, and would not have had medical coverage without the policy provided by the commission.

Commission regulation of wrestling has consistently been affirmed by the General Assembly following previous evaluations. **This evaluation does not recommend the deregulation of wrestling.**

## **Mixed Martial Arts**

“Mixed martial arts” is defined as a competition in which contestants use interdisciplinary forms of fighting, including striking with the hands, feet, knees, or elbows and grappling by take-downs, throws, submissions, or choke holds. Mixed martial arts are regulated through statute or regulation in at least 26 states, including the District of Columbia and Virginia; regulations in Pennsylvania are pending approval. According to the Ultimate Fighting Championship, a prominent mixed martial arts organization, events have drawn up to 19,000 spectators, with events also attracting viewers on cable television.

Effective October 1, 2008, the commission is now regulating mixed martial arts. Regulations must still be approved prior to any such events occurring. The commission is drafting regulations, with the hope of having them proposed before 2009. Regulations from other states such as Pennsylvania and New Jersey are being studied. Regulations in these states are quite specific and include guidelines for round lengths, dress codes, scoring, and determining fouls. Plans are currently underway for the commission to hold training sessions for mixed martial arts judges and referees in two locations in Maryland. Given the experience in neighboring states, DLLR has previously estimated that 12 professional mixed martial arts events would be held in the first year. In Missouri 22 mixed martial arts events were held during a 15-week period between February and June 2008 in the state.

## **Legislative Changes**

**Exhibit 3** details the legislative changes affecting the commission since the 1999 sunset review. Chapter 187 of 2001 strengthened the commission’s ability to sanction violators by increasing from \$2,000 to \$5,000 the civil penalties that can be imposed on licensees and establishing the authority to impose civil penalties of up to \$5,000 against nonlicensees. Chapter 37 of 2005 strengthened safety standards for boxers and kickboxers by requiring that, prior to the issuance of a license, applicants submit evidence of having a negative test result for antibodies to the Hepatitis C virus. In addition to the pre-licensing requirement, the commission may direct an individual who holds a boxing or kickboxing license to submit similar evidence within 30 days of participating in a contest.

Most recently, Chapters 607 and 608 of 2008 extend the commission’s regulatory authority to include mixed martial arts contests and establish license fees and requirements. Licensing requirements do not apply to amateur mixed martial arts conducted under the supervision of an amateur kickboxing or mixed martial arts organization reviewed and approved by the State Athletic Commission; however, the commission has to adopt regulations to ensure the safety of individuals who participate in these events.

Chapters 607 and 608 extend the boxing and wrestling tax to gross receipts derived from admission charges for mixed martial arts events and their telecast. The commission has to impose a penalty of up to \$5,000 for failure to pay this tax, which also applies to gross receipts from boxing or wrestling contests.

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**Exhibit 3**  
**Major Legislative Changes Since the 1999 Full Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	70	Extends the commission's termination date by 10 years to July 1, 2011.
2001	187	Increases the civil penalties for licensees from \$2,000 to \$5,000 and authorizes imposition of a penalty instead of or in addition to reprimanding licensees. Grants the commission the authority to impose civil penalties of up to \$5,000 per violation against any person.
2005	37	Requires applicants for boxing and kickboxing licenses to provide evidence of negative blood tests for the Hepatitis C virus, in addition to the already required evidence of negative blood tests for HIV and the Hepatitis B virus. Extends to the commission the authority to require the same evidence of negative blood tests for the Hepatitis C virus within 30 days prior to participation in a contest.
2008	607/608	Extends the commission's regulatory authority to include mixed martial arts contests. Requires contestants to be licensed by the commission in order to participate in a regulated event. Extends the boxing and wrestling tax to gross receipts derived from admission charges to mixed martial arts events and their telecast.

Source: Laws of Maryland

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**Commission Statistics Indicate Consistent Licensing Activity and Few Complaints Lodged**

**Exhibits 4** and **5** provide statistics on a variety of the commission's activities between fiscal 2004 and 2008, including the total number of licenses issued and the total number of events held by the commission. Licensing activity has been fairly consistent over the five-year period examined in this evaluation, with the exception of wrestling licenses for fiscal 2006 when the number dropped. The commission offered two possible explanations for this anomaly. First, although the World Wrestling Entertainment held four shows in Maryland during the fiscal year, they were smaller shows with an average of 26 wrestlers participating and being licensed for the event, in contrast to other shows which often involve up to 50 wrestlers. Second, the number of

wrestling shows and incidents of wrestlers competing were fairly consistent with prior years, indicating that fewer wrestlers seemed to participate more often in the shows that occurred during that particular year. The number of licenses issued to wrestlers rebounded the following year to a high of 324 before leveling off again in the mid-200s. This could also indicate that the events for which wrestlers were being licensed did not correspond as easily with the fiscal year licensing “cycle” as on previous occasions. There is generally a gap between license expiration and renewal, as licensees often renew their licenses in preparation for a specific show and not always immediately upon the license’s expiration.

As both exhibits indicate, kickboxing has consistently not generated much interest in Maryland. **Nevertheless, since the regulation of kickboxing does not require any State expenditures when events are not being held, this evaluation does not recommend its deregulation.**

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**Exhibit 4**  
**Number of Licenses Issued by the State Athletic Commission**  
**Fiscal 2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Boxers	98	109	123	106	103
Kickboxers	0	14	0	0	15
Wrestlers	227	242	139	324	239
Managers	53	48	51	55	56
Matchmakers	4	5	3	1	3
Seconds	144	160	171	146	158
Promoters	8	10	6	8	8
Referees	24	27	17	25	28
Judges	1	1	1	2	3
<b>Total</b>	<b>559</b>	<b>616</b>	<b>511</b>	<b>667</b>	<b>613</b>

Source: State Athletic Commission

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**Exhibit 5**  
**Regulated Athletic Events and Related Medical Exams and Tests**  
**Fiscal 2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Total</u>
Boxing Shows	12	16	20	16	17	81
Boxing Bouts	66	89	106	89	95	445
Kickboxing Shows	0	1	0	0	1	2
Kickboxing Bouts	0	6	0	0	6	12
Wrestling Shows	28	22	23	31	26	130
Medical Exams	1,068	1,020	1,194	1,272	1,244	5,798
Drug Tests	132	190	212	178	202	914
Neurological Exams	132	190	212	178	202	914

Source: State Athletic Commission

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As **Exhibit 6** illustrates, few complaints are lodged regarding the activities governed by the commission. When the commission receives a complaint, it adheres to a formal administrative process. For example, if a boxer tests positive for a controlled substance, the commission immediately notifies Fight Fax, Inc. that the boxer's license is suspended indefinitely, pending the outcome of an administrative hearing. Commission staff gathers and examines pertinent evidence, then sends the evidence to the Attorney General's Office for review. If that office decides there is a valid case (generally within two to three days), the commission schedules a hearing for the involved parties to present their cases. The hearing is conducted by the commission itself, thus avoiding the costs associated with a hearing conducted by the Office of Administrative Hearings. Further, the commission reports that in most cases a consent order is negotiated with the involved parties, eliminating the need for a hearing altogether.

**Exhibit 6**  
**Number and Type of Complaints**  
**Fiscal 2004-2008**

<u>Type of Complaint</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Total</u>
Unsanctioned Events	3	2	2	0	6	13
Drug Cases	2	4	4	0	6	16
Protests	0	0	0	1	0	1
Boxing/Wrestling Infractions*	3	2	6	3	2	16
<b>Total</b>	<b>8</b>	<b>8</b>	<b>12</b>	<b>4</b>	<b>14</b>	<b>46</b>

\*For example, boxers fighting prior to the bell or verbal threats against a referee

Source: State Athletic Commission

If a hearing does take place, the cases of both the presenter (an assistant Attorney General assigned to the case on behalf of the commission) and the respondent are heard by commission members. The respondent may represent himself or be represented by an attorney of record. After each case is presented and all evidence and testimony are provided, the commission meets in closed session to deliberate and make a final decision. The commission has the authority to decide the length of any suspension and generally considers factors such as whether an individual has admitted wrongdoing and shown remorse. In drug cases, a boxer is required to forfeit the purse or other compensation from the contest if the boxer submits a urine specimen that tests positive for a controlled dangerous substance. In addition, the boxer's license is revoked or suspended and, if the boxer was the winner of a commission sanctioned contest, the boxer is disqualified and the decision of the contest changed to "no contest." This information is also forwarded to Fight Fax, Inc. The typical timeframe for a complaint resolution is between 30 and 60 days, depending on a number of factors, such as whether a consent agreement is reached.

The commission also works with local police and prosecutors to investigate unsanctioned events. The commission's working relationships with individuals in the boxing and wrestling community often lead to information that can be passed on to law enforcement for investigation and any appropriate action. The commission consistently acts within 48 hours when receiving information due to the time-sensitive nature of such complaints. Unregulated events could pose significant danger to the participants and the public, as the regulations enforced by the commission to ensure safety (*e.g.*, ensuring fair fights between participants who have fully met the commission's medical requirements or prohibiting the introduction of blood in wrestling matches) could be disregarded.

## Budgetary Issues

The commission is budgeted within DLLR's Division of Occupational and Professional Licensing. **Exhibit 7** details the commission's revenues and expenditures for fiscal 2003 through 2008. Activities regulated by the commission provide two separate revenue sources. Revenues come from licensing fees and a 10 percent "boxing and wrestling" tax that is assessed on the gross receipts for both boxing and wrestling matches as well as pay-per-view events. All revenues generated from licensing fees and the 10 percent tax are paid into the general fund. Licensing fees assessed by the commission are collected on an annual basis; these fees range from \$10 for boxers, kickboxers, seconds, and wrestlers to \$150 for promoters. According to ABC, Maryland's licensing fees are on par with the national average for licensing fees.

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**Exhibit 7**  
**Fiscal History of the Activities Regulated by the State Athletic Commission**  
**Fiscal 2003-2008**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>Total Attributable Revenues</b>	<b>\$400,409</b>	<b>\$380,952</b>	<b>\$337,323</b>	<b>\$417,425</b>	<b>\$568,481</b>	<b>\$414,965</b>
License and Fine Revenue	6,245	12,802	17,420	9,430	12,565	9,240
Boxing and Wrestling Tax	394,164	368,150	319,903	407,995	555,916	405,725
<b>Total Attributable Costs</b>	<b>\$129,400</b>	<b>\$200,010</b>	<b>\$217,518</b>	<b>\$258,061</b>	<b>\$211,864</b>	<b>\$238,205</b>
Indirect Departmental Costs			21,560	48,790	16,192	17,898
Indirect Division Costs		18,664	28,534	20,429	30,108	28,177
Direct Expenditures	129,400	181,346	167,424	188,842	165,564	192,130
<b>Surplus/(Gap)</b>	<b>\$271,009</b>	<b>\$180,942</b>	<b>\$119,805</b>	<b>\$159,364</b>	<b>\$356,617</b>	<b>\$176,760</b>

Notes: Fiscal 2006 does not include an estimated \$120,000 in salary costs unrelated to the commission that were incorrectly posted to the commission's budget and are still reflected in the official accounting for that fiscal year. The revenue from the boxing and wrestling tax is the total collected; the Comptroller's Office is permitted to assess an administrative fee for its services. The revenues attributable to the commission do not include those associated with sports agents.

Source: Department of Labor, Licensing, and Regulation

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Likewise, the commission's appropriation comes from the general fund. The commission's budget (direct expenditures) includes one position (executive director) as well as expenditures for approximately 29 per-diem employees, including event physicians, judges, and inspectors. The commission chairman receives an annual salary of \$6,000, while each of the other four members receives \$4,000 annually. DLLR also allocates, on paper only, indirect costs to boards and commissions for services provided at the departmental and division levels (e.g., information technology costs). These are referenced in Exhibit 7 as Indirect Division Costs and

Indirect Departmental Costs (the annual calculation for these components did not start until fiscal 2004 and 2005, respectively). Although not charged to the commission, these indirect cost allocations help determine the cost of regulation.

Generally, it is the policy of the General Assembly that the revenues generated by the State's regulatory entities cover their costs. With regard to the State Athletic Commission, revenues from fines and licensing fees are significantly below the costs attributable to the commission. However, there is clearly a logical relationship that exists between the boxing and wrestling tax and the activities of the commission, and when the tax is factored in, the revenues attributable to commission activities exceed attributable costs.

## **Recommendations**

The commission plays an important role in the regulation of boxing, kickboxing, and wrestling in Maryland. **Therefore, the Department of Legislative Services recommends that the commission be continued without undergoing further evaluation and that legislation be passed extending the commission's termination date by 10 years to July 1, 2021.** Thus, the commission would again undergo preliminary evaluation in 2018.

Evaluation of the commission's new role in regulating mixed martial arts is not possible at this time. **Nevertheless, to aid in future evaluations, DLS recommends that the commission maintain, at a minimum, the following information on mixed martial arts by fiscal year: (1) the number of licensees; (2) the number of shows; (3) any complaints regarding activities; and (4) the amount of revenue from the boxing and wrestling tax attributable to mixed martial arts events.** As an interim measure prior to the next evaluation, the commission should submit a written report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by **October 1, 2013, on its implementation of mixed martial arts regulation.** That report should include the fiscal year statistics for the five-year period from fiscal 2009 through 2013.

**Appendix 1. Written Comments of the  
State Athletic Commission**

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# DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor  
ANTHONY G. BROWN, Lt. Governor  
THOMAS E. PEREZ, Secretary

Division of Occupational and Professional Licensing  
Stanley J. Botts, Commissioner

DLLR Home Page • <http://www.dllr.state.md.us>  
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December 2, 2008

Ms. Laura J. McCarty  
Legislative Manager  
Department of Legislative Services  
Office of Policy Analysis  
Maryland General Assembly  
Legislative Services Building  
90 State Circle  
Annapolis, Maryland 21401-1991

Dear Ms. McCarty:

Thank you for the opportunity to review the draft Preliminary Sunset Review Evaluation of the State Athletic Commission. We have advised Jennifer Botts, the Policy Analyst for the Department of Legislative Services who conducted the review, of certain factual corrections. We appreciate the highly professional and thorough manner in which Ms. Botts conducted this evaluation. We are pleased with the recommendation to the Legislative Policy Committee that a full evaluation of the State Athletic Commission is *not* required, and will fully cooperate with all follow-up activities and reports recommended by the evaluation.

If I can be of further assistance in regard to this matter, please feel free to call me at 410-230-6223.

Sincerely,



Patrick Pannella  
Executive Director  
Maryland State Athletic Commission

cc: Thomas E. Perez, Secretary  
Maryland Department of Labor, Licensing and Regulation (DLLR)  
Stanley J. Botts, Commissioner  
Division of Occupational and Professional Licensing, DLLR  
Harry Loleas, Deputy Commissioner  
Division of Occupational and Professional Licensing, DLLR  
David J. Norman, Chairman  
Maryland State Athletic Commission



# **Preliminary Evaluation of the State Racing Commission, Maryland-Bred Race Fund Advisory Committee, and Standardbred Race Fund Advisory Committee**

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**Recommendations: Waive from Full Evaluation at This Time**

**Require Full Evaluation on or before July 1, 2013**

**Extend Termination Date by Three Years to July 1, 2014**

## **The Sunset Review Process**

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Racing Commission and its two bred fund advisory committees last underwent a full evaluation as part of sunset review during 1999. The commission and advisory committees were authorized for another 10 years, with a termination date of July 1, 2011.

Department of Legislative Services staff undertook several research activities as part of this evaluation. Specifically, DLS reviewed applicable State laws and regulations, previous evaluations of the commission and other studies related to horse racing in Maryland, national literature, commission meeting minutes, annual reports, and other documents obtained from the commission. DLS also examined budgetary data; attended monthly commission meetings; conducted telephone interviews with three commissioners, including the chairman; had in-person and telephone discussions with the commission’s executive director; and visited commission offices and toured racing facilities.

The State Racing Commission and bred fund advisory committees reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 9**. Appropriate factual corrections and clarifications have been made throughout the document.

## **The Maryland Horse Racing Industry**

In Maryland, pari-mutuel wagering is permitted on thoroughbred, standardbred (harness), and steeplechase races. Maryland has two mile-thoroughbred race tracks: Laurel Park in Anne Arundel County and Pimlico Race Course in Baltimore City. Both thoroughbred tracks are owned by the Maryland Jockey Club (MJC), a subsidiary of Magna Entertainment Corporation. Magna Entertainment acquired a controlling interest in MJC in 2002 and exercised an option to acquire the remaining interest in MJC in November 2007. In addition to races held at Laurel Park and Pimlico Race Course, special thoroughbred racing is held during the Maryland State Fair in Timonium. The Allegany Racing Association was issued a mile-thoroughbred track license in 2001 for a track in Allegany County; however, a track is yet to be built.

Maryland has two harness race tracks: Rosecroft Raceway in Prince George's County and Ocean Downs in Worcester County. Rosecroft Raceway is owned by Cloverleaf Enterprises, Inc., a subsidiary of the Cloverleaf Standardbred Owner's Association. Ocean Downs is owned by Ocean Downs LLC, which acquired the track from Bally's Maryland, Inc. in 2001.

Maryland also has one steeplechase race course at which pari-mutuel wagering is permitted: Fair Hill in Cecil County. Steeplechase races are held at Fair Hill during a one-day race meeting each year.

In addition to betting on live races, an individual may bet on races simulcast from around the country to any of the State tracks or several off-track betting facilities (OTBs). Maryland has four OTBs: the Cracked Claw in Frederick County, NorthEast Racing and Sports Club in Cecil County, the Cambridge Turf Club in Dorchester County, and the Riverboat on the Potomac in Charles County. See **Appendices 1** through **4** for additional information on Maryland's race tracks and OTBs.

Betting on out-of-state races now accounts for a significant majority of all wagering conducted at State tracks. As **Exhibit 1** shows, simulcast betting on out-of-state races accounted for 84 percent of all betting at Maryland's thoroughbred and harness tracks during 2007.

In Maryland, wagering on horse races is also permitted through approved telephone account betting systems, which allow an individual to place bets by telephone or other electronic means. Telephone account betting systems provide opportunities to bet on horse races held in Maryland and in other states that permit interstate wagering. The commission adopted regulations authorizing telephone account betting systems in 2000.

**Exhibit 1**  
**Wagering at Maryland Race Tracks**  
**Calendar 2007**

<u>Track</u>	<u>Total Betting at Track</u>	<u>Betting on Out-of-state Races</u>	<u>Percentage of Total Wagering on Out-of-state Races</u>
Laurel	\$153,482,531	\$127,312,028	83%
Pimlico	103,862,604	84,131,719	81%
Timonium	2,084,295	885,211	42%
Rosecroft	97,478,956	88,680,723	91%
Ocean Downs	20,147,163	16,674,221	83%
<b>Total</b>	<b>\$377,055,549</b>	<b>\$317,683,902</b>	<b>84%</b>

Source: State Racing Commission, 2007 Annual Report

Racing licensees are required to pay taxes on the total amount of bets wagered. The revenue from racing taxes, along with license fees, certain uncashed pari-mutuel tickets, and other racing related fees, is credited to a horse racing special fund. Money in the special fund is used to pay several statutory grants and to provide impact aid to certain local governments. At the end of each fiscal year, any money remaining in the special fund is distributed to the Maryland Agricultural Education and Rural Development Assistance Fund (MAERDAF), the Maryland-Bred Race Fund, and the Standardbred Race Fund.

### **Legislative Efforts to Help Maryland's Horse Racing Industry**

The Maryland horse racing industry continues to face significant competition. Over the years, the industry's share of the legal gambling dollar has declined due to increased competition from state lotteries, casinos, slot machines, and card games. Maryland's horse racing industry also faces increased competition from tracks in neighboring states. The introduction of slot machine gambling in Delaware, West Virginia, and Pennsylvania, with a dedicated portion of the proceeds going to the respective state's horse racing industry, has resulted in significant increases in purse and bred fund amounts in those states. These measures have bolstered horse racing in neighboring states, which has led to increased pressure on Maryland's horse racing industry to stay competitive.

To help Maryland's horse racing industry compete with increased race purses in neighboring states, the General Assembly has, on occasion, provided funding to supplement purses in the State. In theory increased purses attract higher-quality horses, which aid the industry by increasing attendance and the betting activity on races.

In 1997 the General Assembly provided \$5 million in purse supplements from lottery revenues that would have otherwise gone to the general fund. Annual purse supplements of approximately \$10 million were also provided in each year for the next three years.

In 2000, in addition to the purse supplement, the General Assembly established a Maryland Racing Facility Redevelopment Bond Program to assist horse racing facilities with capital improvements. To carry out the bond program, the State Racing Commission and the Stadium Authority would have approved use of proceeds from bonds issued by the Maryland Economic Development Corporation (MEDCO) for capital improvements or related expenditures. To finance the debt service on the bonds issued by MEDCO, the legislation increased or reallocated the “takeout” (the amount that is deducted from betting pools) on thoroughbred and standardbred races and required additional takeout allocations from mile-thoroughbred licensees to be paid into a new special fund, the Racing Facility Redevelopment Bond Fund.

In 2002 a provision of the Budget Reconciliation and Financing Act authorized a transfer of up to \$3.50 million from the Racing Facility Redevelopment Bond Fund for purse and bred fund supplements. The fund was subsequently repealed during the 2004 legislative session. Legislation enacted in 2005 provided for the distribution of the cumulative receipts of at least \$1.04 million remaining in the former Racing Facility Redevelopment Bond Fund to a special fund to be used for purses for the running of the Pimlico Special and for purses at Rosecroft Raceway.

As shown in **Exhibit 2**, since 2003, the total amount in purses at Maryland tracks has declined. In 2003 purses totaled over \$47 million; in 2007 purses at Maryland tracks totaled less than \$44 million.

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**Exhibit 2**  
**Purses at Maryland Race Tracks**  
**Calendar 2003-2007**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
<b>Thoroughbred Tracks</b>					
Laurel	\$23,811,771	\$9,286,091	\$23,392,376	\$30,306,075	\$28,973,185
Pimlico	15,701,370	22,705,429	11,293,851	8,922,813	8,481,554
Timonium	906,820	955,675	935,975	929,235	739,170
<b>Harness Tracks</b>					
Rosecroft	6,472,340	4,874,030	4,184,330	5,392,600	4,592,400
Ocean Downs	663,630	923,680	974,810	820,265	902,500
<b>Total</b>	<b>\$47,555,931</b>	<b>\$38,744,905</b>	<b>\$40,781,342</b>	<b>\$46,370,988</b>	<b>\$43,688,809</b>

Note: The backstretch and racing surfaces at Laurel were closed from mid-June 2004 through January 2005; races scheduled for Laurel during that period were instead held at Pimlico. Thus, purses from Pimlico that year are much higher than for Laurel.

Source: State Racing Commission, Annual Reports

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## **Recent Developments in the Industry**

Citing increasing financial pressures, Maryland tracks recently have taken measures to cut operating expenses. Rosecroft Raceway, in June 2008, received approval from the State Racing Commission to temporarily cancel live racing at the track. Though the plan calls for the track to remain open for simulcast wagering, cancellation of live racing days eliminates the need to pay purses and allows the track to reduce overhead costs.

MJC, in August 2008, announced the cancellation of its graded stakes races at Laurel Park for the 2008 fall meet. MJC also announced the closure of the backstretch facilities at Pimlico (which include stables and dormitories for stable employees). MJC will relocate displaced horses and stable employees to facilities at Laurel Park and the Bowie Training Center. For the 2009 spring meet at Pimlico Race Course, MJC plans to temporarily open the backstretch facilities before and after the running of the Preakness Stakes.

Although the horse racing industry continues to struggle, the recent authorization of video lottery terminals (VLTs) is expected to provide significant financial assistance to the industry. As discussed in greater detail below, the authorization of VLTs could bring as much as \$140 million in annual assistance to the industry.

## **The State Racing Commission**

Prior to 1920, local jurisdictions regulated race tracks. In response to growing public concerns about the potential for wrong-doing within the horse racing industry, the General Assembly, in 1920, established the State Racing Commission to serve as a statewide regulatory and licensing body for the industry. The State Racing Commission regulates both harness and thoroughbred racing, as well as any steeplechase race at which pari-mutuel wagering is held. In this regulatory role, the commission is vested with the authority to prescribe the conditions under which all horse races are conducted within the State. The commission is authorized to:

- adopt regulations and conditions to govern racing and pari-mutuel betting in the State;
- approve specific types of betting and admission charges;
- operate a testing laboratory;
- assign racing dates;
- regulate satellite simulcast betting;

- license individuals employed at or connected with the race tracks;
- audit and supervise race track financial operations;
- administer and approve the activities of the Maryland-Bred Race Fund and the Standardbred Race Fund;
- administer the Maryland Jockey Injury Compensation Fund; and
- collect taxes and fees imposed under the Code of Maryland Regulations.

The State Racing Commission comprises nine members appointed by the Governor with the advice and consent of the Senate. Of the nine commission members, statute requires that at least three members have a background in thoroughbred racing and three members have a background in harness racing. In addition, no more than four members may have a financial interest in Maryland horse racing and no more than six members may belong to the same political party. Commissioners serve a four-year term and receive compensation and reimbursement for travel expenses as provided in the annual State budget.

The State Racing Commission is housed within the Division of Racing in the Department of Labor, Licensing, and Regulation (DLLR). The commission is one of two budgeted programs within the Division of Racing. The other budgeted program is Racetrack Operation Reimbursement. See **Appendices 5** and **6** for information on racing revenue sources and distributions, including the fiscal histories of the Racing Division, State Racing Commission, and Racetrack Operation Reimbursement.

Most of the commission's activities are carried out by an executive director and staff operating in the Division of Racing. Staff employed by the State Racing Commission include stewards, judges, veterinarians, licensing officials, and laboratory employees.

The Executive Director of the Division of Racing serves at the pleasure of the Secretary of Labor, Licensing, and Regulation and is responsible for:

- keeping the records and papers of the commission;
- administering the licensing of individuals connected with racing;
- the daily operations of the commission; and
- preparing, issuing, and submitting commission reports.

## **The Maryland-Bred Race Fund and the Maryland Standardbred Race Fund**

In addition to its regulatory activities, the State Racing Commission administers the Maryland-Bred Race Fund and the Maryland Standardbred Race Fund. The Maryland-Bred Race Fund was created in 1962 as an incentive program to encourage the improvement of thoroughbred horse breeding and racing in Maryland. The Standardbred Race Fund, created in 1971, serves as an incentive program to promote the breeding and racing of standardbred horses in Maryland.

The State Racing Commission administers the two bred funds with the assistance and advice of separate advisory committees. Each advisory committee recommends to the State Racing Commission the number, date, distance, and purse amount of fund races and the amounts of breeders' awards.

The Maryland-Bred Race Fund Advisory Committee consists of five members. Of the five members, two must be recommended by the Maryland Horse Breeders Association, one by the mile-thoroughbred racing licensees, and one by the State Fair and Agricultural Society. One member of the Maryland-Bred Race Fund Advisory Committee must also be a member of the State Racing Commission.

The Standardbred Race Fund Advisory Committee also consists of five members. Of the five members, one must be recommended by the standardbred breeding industry, one by the Cloverleaf Standardbred Owners' Association, one by the commercial breeders, and one by the harness track licensees. One member of the Standardbred Race Fund Advisory Committee must also be a member of the State Racing Commission.

The two bred funds receive a percentage of the daily handle collected at thoroughbred and harness race tracks; a percentage of the breakage (in pari-mutuel betting, the odd cents left over after paying the successful bettors to the nearest \$0.10); and revenues received from various fees paid by horse owners. Legislation enacted in 2005 requires an annual distribution of \$300,000 from the horse racing special fund to the two bred funds, with 70 percent of the distribution going to the Maryland-Bred Race Fund and the remaining 30 percent going to the Maryland Standardbred Race Fund. That legislation also specifies that any revenues remaining in the special fund, after all required deductions and allocations are made, be divided equally among the two bred funds and the Maryland Agricultural Education and Rural Development Assistance Fund (previously any funds remaining in the special fund were transferred to the two bred funds).

Revenues from the two bred funds are distributed as purse money and as awards to owners and breeders of Maryland horses. In 2007 distributions from the Maryland-Bred Race Fund totaled approximately \$3.30 million, and distributions from the Maryland Standardbred Race Fund totaled approximately \$1.44 million.

## **Commission Licensing and the Integrity of the Industry**

The State Racing Commission issues licenses to individuals employed at or connected with the race tracks. Racing industry participants licensed by the commission include the race track association, horse owners, trainers, jockeys, veterinarians, farriers (individuals who shoe horses), stable employees, track employees, and mutuel (betting) employees. OTB facility owners must also be licensed. As **Exhibit 3** shows, annual license fees for individuals typically range from \$5 to \$50.

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### **Exhibit 3 State Racing Commission Licensing Fees**

<u><b>Licensed Position</b></u>	<u><b>Annual License Fee</b></u>
Race track association	\$25 (per racing day)
OTB permit fee	500
Original owner or original (thoroughbred) trainer	50
Renewal owner, renewal trainer, original (harness) trainer, assistant trainer, jockey, jockey agent, driver, or veterinarian	25
Farrier	10
Stable employee, mutuel employee, track employee, exercise rider (thoroughbred), or vendor	5

Source: State Racing Commission

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Licensees must meet general requirements (financial responsibility, employer endorsement, and absence of a criminal record). Trainers, jockeys, and farriers must pass a standard examination that demonstrates their professional abilities. The State Board of Veterinary Medical Examiners also must approve veterinarians. As shown in **Exhibit 4**, the State Racing Commission issued approximately 7,800 licenses in 2007. **Appendices 7 and 8** provide more information on the number of licenses issued by position within each industry.

The commission may refuse to renew a license or may suspend or revoke a license if it finds that the holder, applicant, or any partner or associate of the applicant has been convicted of a crime, violated any rule of racing adopted by the commission, was denied a license in another state, or had his license suspended or revoked by another state.

**Exhibit 4**  
**Summary of State Racing Commission Licensing and Registration Activity**  
**Calendar 2003-2007**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
<b>Licenses Issued</b>					
Thoroughbred	6,617	6,413	6,434	6,281	5,790
Harness	2,770	2,507	2,367	2,345	1,982
<b>Total</b>	<b>9,387</b>	<b>8,920</b>	<b>8,801</b>	<b>8,626</b>	<b>7,772</b>
<b>Registrations</b>					
Thoroughbred	712	723	810	877	820
Harness	110	84	86	91	51
<b>Total</b>	<b>822</b>	<b>807</b>	<b>896</b>	<b>968</b>	<b>871</b>
<b>Revenue from Licenses and Registrations</b>					
Thoroughbred	\$180,430	\$177,325	\$190,885	\$196,195	\$175,910
Harness	\$84,695	\$76,015	\$72,730	\$74,825	\$62,995
<b>Total</b>	<b>\$265,125</b>	<b>\$253,340</b>	<b>\$263,615</b>	<b>\$271,020</b>	<b>\$238,905</b>

Source: State Racing Commission, Annual Reports

Stewards and judges monitor the conduct of races and take disciplinary actions on a daily basis at the race tracks. Parties may appeal the decisions of stewards and judges to the commission. In 2007 the commission issued 287 rulings on matters relating to the rules of thoroughbred racing and 123 rulings on matters relating to the rules of harness racing. This constituted an increase in total rulings from 2006, when the commission issued 235 thoroughbred racing rulings and 125 harness racing rulings.

In January 2008, the commission abandoned plans to join Delaware, Pennsylvania, and Virginia in implementing race-day testing and penalties for anabolic steroids. After groups representing horsemen cited unresolved concerns over the proposal, the commission decided to delay action until the completion of blood-plasma based research at Cornell University and the University of Florida. In August 2008, the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association declared that graded stakes races in states that did not adopt model guidelines developed by the Racing Medication and Testing Consortium (RMTC) would lose their graded status. In September 2008, a board member of RMTC reported that the blood-plasma based research was still being conducted and that a completion date was not known. Later that month, given the new information, the State Racing Commission reversed its decision and unanimously adopted emergency regulations to follow model guidelines and ban the use of anabolic steroids in racehorses beginning January 1, 2009. By banning steroids, the commission joined 14 other major racing states. Penalties are yet to be determined.

## Major Legislative Changes Affecting the Commission

Since the State Racing Commission's last evaluation in 1999, the General Assembly has passed legislation to:

- redevelop racing facilities (later repealed);
- grant the commission additional authority; and
- improve the financial health of the horse racing industry through purse and bred fund supplements.

The issue of whether to authorize VLTs, and, by extension, provide additional financial assistance to the State's horse racing industry, was a significant challenge for the General Assembly. The General Assembly authorized VLTs via constitutional amendment during the 2007 special session, and Maryland voters ratified the amendment on November 4, 2008. As a result, the horse racing industry could receive as much as \$140 million in annual assistance for purses, bred funds, and race track renewal. A summary of the VLT legislation, as well as other major legislative changes, appears in **Exhibit 5**.

After decades of deteriorating revenues and attendance, most, if not all, horse industry advocates in Maryland have linked the sustainability of Maryland's horse racing industry to the implementation of VLTs. While many neutral observers remain cautious about whether VLTs and the revenue they generate will provide a lasting solution for the financial condition of Maryland's horse racing industry, most agree that VLTs will provide significant assistance.

Under the VLT legislation, the State may grant licenses to operate a total of 15,000 video lottery terminals in five locations across the State. A purse dedication account, which will be used to enhance horse racing purses and provide funding to the horse breeding industry, will receive 7 percent of gross VLT revenues, limited to no more than \$100 million per year. Eighty percent of these funds will go to the thoroughbred industry. Also, VLTs will pay 2.5 percent of gross revenues for eight years, but no more than \$40 million per year, toward redeveloping race tracks. Eighty percent of these race track redevelopment funds will go to thoroughbred tracks.

The horse racing industry stands to benefit from the ratification of the VLT referendum, but the extent to which VLTs may sustain Maryland's horse racing industry is unknown. Although horse racing industry participants are not guaranteed to hold VLT licenses, and the State Lottery Commission will oversee the operation of VLTs, the fact that the State Racing Commission will have a member who serves as a liaison to the Lottery Commission, and vice-versa, demonstrates that VLTs and the horse racing industry are intertwined. The industry the State Racing Commission regulates in the coming years will likely be a stronger but different and more complicated one.

## Exhibit 5 Major Legislative Changes Since 1999 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	269	<p>Extends the termination date of the State Racing Commission and the two advisory committees by 10 years to July 1, 2011.</p> <p>Requires the State Racing Commission to inspect satellite simulcast facilities at least four times each year.</p>
	309	<p>Establishes the Maryland Racing Facility Redevelopment Program.</p> <p>Subject to expiration upon repayment of bonds issued under the program, increases the takeout for thoroughbred licensees, maintains the State wagering tax at 0.32 percent of the mutuel pool, increases the allocation of the takeout for purses, and requires an allocation of the takeout for payment to the Racing Facility Redevelopment Bond Fund.</p> <p>Requires a one-time \$10 million distribution of lottery revenues to the Racing Special Fund.</p>
2001	551	Establishes the Maryland Standardbred Horsemen's Assistance Fund, Inc.
2004	97	<p>Repeals the Maryland Racing Facility Redevelopment Program.</p> <p>Continues certain provisions of Chapter 309 of 2000 that were subject to sunset, including the State tax rate of 0.32 percent of the mutuel pool and the increased allocation for purses.</p>
2005	153	Increases from 22 to 25 percent the takeout for horse races at Fair Hill and from 8 to 9 percent the percentage of the takeout allocated to the Fair Hill Improvement Fund.
	410	<p>Distributes receipts of at least \$1.04 million from the Racing Facility Redevelopment Bond Fund to a special fund used only for purses at Rosecroft Raceway and the Pimlico Special race.</p> <p>Requires, after certain allocations, the following annual distributions from the Racing Special Fund: (1) \$300,000 to the Maryland-Bred Race Fund (70 percent) and the Maryland Standardbred Race Fund (30 percent); and (2) \$260,000 to MAERDAF, with \$130,000 of that amount allocated to support the operations of the Rural Maryland Council.</p> <p>Requires remaining money in the Racing Special Fund to be split evenly between MAERDAF and the two bred funds.</p>

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
	603	Establishes a Pimlico Community Development Authority to distribute funds received to pay for facilities and services in Baltimore City communities within two miles of the Pimlico Race Course.  Specifies that 80 percent of the local impact aid paid to Baltimore City from the Racing Special Fund is required to be distributed by the authority.
2006	81	Extends the period of time – from 75 to 90 days – within which a horse racing track licensee has to submit certain financial information to the State Racing Commission after the licensee’s fiscal year ends.
	180	Authorizes Maryland to join the Interstate Compact on Licensure of Participants in Live Racing with Pari-Mutuel Wagering to make Maryland owners and trainers eligible for a compact license that is honored by the racing commissions of the member states.
	590	Authorizes the State Racing Commission to approve the running of a Maryland-Bred Fund Race at a thoroughbred track outside the State.
2007	356	Repeals the prohibition on live thoroughbred racing after 9:00 p.m., but prohibits live racing at Pimlico Race Course after 10:00 p.m. unless circumstances beyond the control of the licensee cause a delay.  Requires MJC to hold meetings with Baltimore City and representatives of the neighborhoods in proximity to Pimlico Race Course to discuss security and lighting for the Pimlico Race Course property and the surrounding areas when live racing is scheduled after 6:15 p.m., except for Preakness Day.
2007*	4	Provides, subject to certain conditions, for the distribution of proceeds from VLTs to the horse racing industry, including 7.0 percent of gross revenue to a purse dedication account to enhance horse racing purses and bred funds, not to exceed \$100 million annually and 2.5 percent for an eight-year period to a Racetrack Renewal Fund, not to exceed \$40 million annually.
2008	22	Extends the time within which a mile-thoroughbred licensee must pay specified pari-mutuel racing taxes to the State Racing Commission from three to seven days after each racing day.
	161	Repeals the requirement that the State Racing Commission cancel a Maryland Standardbred Fund race if fewer than two separate qualified entries are in the race.
	326	Establishes a Task Force to Study Thoroughbred Horse Racing at Rosecroft Raceway.

\*2007 Special Session.

Source: Laws of Maryland

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## **Recommendations**

State regulatory activity aims to protect the health, safety, and welfare of those participating in and affected by the regulated industry. Controlled legalized gambling finances the racing industry; its continued regulation is appropriate. **The Department of Legislative Services recommends, however, a full evaluation of the State Racing Commission to:**

- **examine the State Racing Commission’s responsibilities in light of recent and expected future changes in Maryland’s horse racing industry; and**
- **examine the State Racing Commission’s performance in ensuring the health, safety, and well-being of horses and jockeys.**

Because the industry likely will undergo significant changes over the next few years, as a result of financial assistance from VLT revenues, the Department of Legislative Services recommends a deferral of the full evaluation in order to evaluate the State Racing Commission in an environment that reflects these anticipated changes. **The Department of Legislative Services, therefore, recommends that the termination date for the State Racing Commission be extended to July 1, 2014, and that a full evaluation be made on or before July 1, 2013, without benefit of another preliminary evaluation. Thus, a full evaluation would be undertaken during the 2012 interim rather than the 2009 interim.**

The additional justifications for and issues to be addressed in a full evaluation are discussed below.

### **Recent and Future Industry Changes Suggest the Need for a Full Evaluation**

Since the State Racing Commission last underwent a full evaluation in 1999, the horse racing industry has undergone significant changes. For years, the industry has struggled in the face of increased competition from other forms of legalized gambling, including state lotteries, casinos, slot machines, and horse racing in neighboring states. Despite periodic purse supplements provided by the General Assembly, the total value of purses awarded at Maryland tracks has declined over the past several years. Likewise, the number of live racing days and attendance at Maryland tracks is in decline.

With the ratification of the constitutional amendment authorizing video lottery terminals, however, as much as \$140 million per year will be allotted to the industry to supplement purses, fund the State’s horse breeding industry, and redevelop the State’s race tracks. This new source of funding will likely bring financial and regulatory changes to the environment in which the commission operates.

The Department of Legislative Services recommends that a full evaluation of the State Racing Commission be conducted to determine whether the commission, in this new environment, is effectively meeting its responsibilities and has the necessary authority to properly regulate the industry. This evaluation should:

- determine whether the commission's scope of authority reflects the State's objectives in promoting and fostering the industry;
- examine the efficacy of housing the commission within the Department of Labor, Licensing, and Regulation, particularly in light of the recent authorization of VLTs, which will be regulated by the State Lottery Commission within the State Lottery Agency; and
- assess whether the commission has the resources available to fulfill its responsibilities.

### **The Commission's Regulation of Horse and Jockey Safety Should Be Examined in Light of Recent Industry Developments**

Catastrophic accidents in major horse racing events like the Preakness and the Kentucky Derby have led to greater public scrutiny of issues of safety in the nation's horse racing industry. The national Jockey Club and the Grayson-Jockey Research Foundation convened Welfare and Safety of the Racehorse summits in 2006 and 2008. The Jockey Club also formed a Thoroughbred Safety Committee to study "every facet" of the industry. The Kentucky Horse Racing Authority acted by forming an equine safety committee to study racing conditions, medications and horseshoes, and jockey safety, and by pledging to work with other groups studying the same problems.

In the U.S. Congress, the House Subcommittee on Commerce, Trade, and Consumer Protection held a high-profile hearing on horse racing safety during which it, along with top-level officials from the nation's horse racing industry, debated the merits of regulating horse racing on a nationwide level. Meanwhile, the National Institute for Occupational Safety and Health (NIOSH) with the Centers for Disease Control and Prevention has been investigating work-related hazards for jockeys and other employees since concerns were raised about these issues at a U.S. House Energy and Commerce Subcommittee on Oversight and Investigations hearing in 2005. NIOSH will produce a technical document based on the results of its investigation.

Maryland too has acted in the area of horse racing safety. Outside of the commission, the Maryland Horse Council conducts an annual horse seminar and operates an Equine Health and Welfare Committee. Within the commission, in addition to adopting the recent steroid ban, the commission has required thoroughbred riders to wear safety vests in races at State tracks since January 1994. More recently, in October 2007, the commission acted on the work of its Safety

and Welfare Committee and approved the experimental use of 20 padded horse whips in races. The commission has also given preliminary approval to new toe grab regulations that reflect safety measures followed across the country. Two commissioners interviewed for this preliminary evaluation opined that the commission has done enough in the area of safety, but one commissioner dissented. This suggests that some level of disagreement exists as to whether the commission should do more in the area of safety.

The Department of Legislative Services recommends conducting a full evaluation of the State Racing Commission to determine whether the commission is meeting its responsibilities with respect to protecting the safety and health of horses and jockeys. This evaluation should:

- survey other states' practices regarding the health and safety of horses and jockeys;
- review the findings of organizations that have taken a significant role in investigating ways to protect the well-being and safety of horses and jockeys; and
- consider whether the State Racing Commission should do more to ensure the health and safety of horses and jockeys.



## Appendix 1. Race Track Descriptions

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### Thoroughbred Tracks

**Laurel Park:** The race track is located in Anne Arundel County, 20 miles from Baltimore, 20 miles from Washington, DC and 12 miles from the Baltimore/Washington International Thurgood Marshall Airport. The facility has a 7/8-mile turf track and a 1-1/8-mile dirt track. In 2007 total attendance at the track was 688,623, and the total handle was \$149.1 million.

**Pimlico Race Course:** The race track is located in Baltimore City and Baltimore County, 40 miles from Washington, DC and 12 miles from the Baltimore/Washington International Thurgood Marshall Airport. The facility has a 1-mile main track and a 7/8-mile turf track. In 2007 total attendance at the track was 524,994, and the total handle was \$101 million.

**Timonium:** The race track is located in Baltimore County, 14 miles from Baltimore City and 15 miles from the Baltimore/Washington International Thurgood Marshall Airport. The facility has a 5/8-mile track. Timonium conducts live racing during the Maryland State Fair. In 2007 Timonium held seven days of live racing. Total attendance at the track was 26,107, and the total handle was \$9.4 million.

### Harness Tracks

**Rosecroft Raceway:** The track is located in Prince George's County, five miles from Washington, DC and seven miles from Reagan National Airport. The facility has a 5/8-mile track. In 2007 total attendance at the track was 339,579, and the total handle was \$97.5 million.

**Ocean Downs Raceway:** The race track is located in Worcester County, five miles from Ocean City. The facility has a 1/2-mile track. In 2007 total attendance at the track was 132,902, and the total handle was \$20.3 million.

Source: State Racing Commission, Annual Reports



## Appendix 2. Annual Attendance at Maryland Race Tracks Calendar 2003-2007

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<u>Track</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Laurel	825,530	651,644	769,814	798,795	688,623
Pimlico	749,230	792,342	470,514	395,994	524,994
Timonium	N/A	N/A	37,548	27,548	26,107
Rosecroft	576,255	489,536	484,701	404,191	339,579
Ocean Downs	142,830	141,229	140,264	212,969	132,902
Fair Hill	10,441	14,050	15,000	15,000	14,000
<b>Total</b>	<b>2,304,286</b>	<b>2,088,801</b>	<b>1,917,841</b>	<b>1,854,497</b>	<b>1,726,205</b>

Source: State Racing Commission, Annual Reports



### Appendix 3. Racing Days at Maryland Race Tracks Calendar 2003-2007

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<u>Year</u>	<b>Thoroughbred Racing Days</b>		<b>Harness Racing Days</b>		<b>Total Racing Days</b>		
	<u>Live</u>	<u>Simulcast Only</u>	<u>Live</u>	<u>Simulcast Only</u>	<u>Live</u>	<u>Simulcast Only</u>	<u>Live &amp; Simulcast</u>
2003	217	129	162	580	379	709	1,088
2004	206	106	156	593	362	699	1,061
2005	204	99	137	584	341	683	1,024
2006	193	104	144	580	337	684	1,021
2007	187	114	136	585	323	699	1,022

Source: State Racing Commission, Annual Reports



**Appendix 4. Amounts Wagered at Maryland Satellite  
Simulcast Betting Facilities  
Calendar 2007**

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<b><u>Facility</u></b>	<b><u>In-state Thoroughbred Races</u></b>	<b><u>In-state Harness Races</u></b>	<b><u>Out-of-state Races</u></b>	<b><u>Total</u></b>
Cracked Claw	\$2,986,566	\$34,724	\$38,887,156	<b>\$41,908,446</b>
NorthEast	1,500,853	85,573	14,686,280	<b>16,272,706</b>
Cambridge	395,657	40,692	5,126,409	<b>5,562,758</b>
Riverboat	927,530	57,212	10,451,446	<b>11,436,188</b>
<b>Total</b>	<b>\$5,810,606</b>	<b>\$218,201</b>	<b>\$69,151,291</b>	<b>\$75,180,098</b>

Source: State Racing Commission, 2007 Annual Report



## Appendix 5. Racing Revenue Sources and Distributions Fiscal 2005-2009

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
<b><u>Sources of Revenue</u></b>					
Betting Taxes	\$1,577,962	\$1,677,320	\$1,717,691	\$1,730,000	\$1,609,600
Track Licensing	30,200	31,000	24,486	30,000	25,000
Occupational License Fees (GF Revs)	257,704	278,524	263,171	240,000	260,000
Impact Fund	329,000	336,000	367,837	350,000	368,000
Uncashed Pari-Mutuels	2,110,382	2,037,702	2,073,421	2,237,600	2,073,000
State Lab Service Fees	980,816	842,169	597,312	1,026,497	594,903
Racing Facility Redevelopment Fund				-	-
Transfer from Redevelopment Fund	1,319,520	548,996	522,165	-	-
Fair Hill	12,054	15,165	10,929	15,165	10,900
<b>Total Revenues</b>	<b>\$6,617,638</b>	<b>\$5,766,876</b>	<b>\$5,577,012</b>	<b>\$5,629,262</b>	<b>\$4,941,403</b>
<b><u>Distribution of Revenue</u></b>					
<b>Grants</b>					
Great Pocomoke Fair	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
Great Frederick Fair	40,000	40,000	40,000	40,000	40,000
MD Agriculture Ed Foundation	75,000	75,000	75,000	75,000	75,000
MD Agriculture Fair Board	825,000	825,000	825,000	825,000	825,000
MD State Fair & Ag Society, Inc.	500,000	500,000	500,000	500,000	500,000
Maryland Million	500,000	500,000	794,831	500,000	500,000
Standardbred Race Fund Sires Stakes	350,000	350,000	556,582	350,000	350,000

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
<b>Impact Aid</b>					
Anne Arundel County	\$425,000	\$457,200	\$345,000	\$521,000	\$345,000
Baltimore County	50,000	50,000	50,000	50,000	50,000
Howard County	106,250	132,500	86,250	130,250	86,250
Prince George's County	100,000	100,000	100,000	100,000	100,000
Baltimore City	548,800	588,000	554,400	588,000	554,400
Bowie	18,300	18,200	18,200	18,200	18,200
Laurel	63,750	79,500	51,750	78,150	51,750
<b>Other</b>					
Fair Hill Improvement Fund	12,054	15,165	10,929	15,165	10,900
Track Operations	980,816	842,169	597,312	1,026,497	594,903
Maryland-Bred Race Fund	7,451	334,746	227,349	210,000	210,000
Maryland Standardbred Race Fund	2,893	128,245	112,651	90,000	90,000
MAERDAF	-	404,389	348,587	252,000	260,000
Redevelopment Fund – Takeout	1,319,520	28,238	-	-	-
Transfer to General Fund	415,100	-	-	-	-
<b>Total</b>	<b>\$6,359,934</b>	<b>\$5,488,352</b>	<b>\$5,313,841</b>	<b>\$5,389,262</b>	<b>\$4,681,403</b>
Occupational License Fees (GF Revs)	257,704	278,524	263,171	240,000	260,000
<b>Total Distributions</b>	<b>\$6,617,638</b>	<b>\$5,766,876</b>	<b>\$5,577,012</b>	<b>\$5,629,262</b>	<b>\$4,941,403</b>
<b>Net Racing Revenue</b>	-	-	-	-	-
Less GF Expenditures	2,547,348	2,434,145	2,716,061	2,885,158	2,624,135
<b>Net to General Fund</b>	<b>(\$2,547,348)</b>	<b>(\$2,434,145)</b>	<b>(\$2,716,061)</b>	<b>(\$2,885,158)</b>	<b>(\$2,624,135)</b>

Note: Fiscal 2008 and 2009 revenues are estimates.

Source: Maryland Governor's Budget Books, Fiscal 2006 through 2009

## Appendix 6. Division of Racing Fiscal History Fiscal 2005-2009

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
<b>Authorized Positions</b>					
Racing Commission	5.00	5.00	5.00	5.00	5.00
Race Track Operation Reimbursement	11.00	11.00	11.00	11.00	10.00
<b>Contractual Positions</b>					
Racing Commission	0.00	0.00	0.05	0.00	0.00
Race Track Operation Reimbursement	13.15	12.80	9.83	11.80	9.80
<b>General Fund Expenditures</b>					
Racing Commission	\$379,24	\$407,763	\$497,179	\$474,672	\$562,237
Race Track Operation Reimbursement	2,168,101	2,026,382	2,218,882	2,410,486	2,061,898
<b>Total</b>	<b>\$2,547,348</b>	<b>\$2,434,145</b>	<b>\$2,716,061</b>	<b>\$2,885,158</b>	<b>\$2,624,135</b>
<b>Special Fund Expenditures</b>					
Racing Commission	\$2,037,972	\$1,414,031	\$2,040,000	\$1,410,000	\$1,410,000
Race Track Operation Reimbursement	980,816	842,169	597,312	\$1,026,497	594,903
Local Subdivisions	1,312,100	1,425,400	1,205,600	1,485,600	1,205,600
Facility Redevelopment Program	141,892	-	-	-	-
<b>Total</b>	<b>\$4,472,780</b>	<b>\$3,681,600</b>	<b>\$3,842,912</b>	<b>\$3,922,097</b>	<b>\$3,210,503</b>
<b>Total Expenditures</b>	<b>\$7,020,128</b>	<b>\$6,115,745</b>	<b>\$6,558,973</b>	<b>\$6,807,255</b>	<b>\$5,834,638</b>
<b>Special Fund Revenues</b>					
Racing Commission	\$2,037,972	\$1,414,031	\$2,040,000	\$1,410,000	\$1,410,000
Race Track Operation Reimbursement	980,816	842,169	597,312	1,026,497	594,903
Local Subdivisions	1,312,100	1,425,400	1,205,600	1,485,600	1,205,600
Facility Redevelopment Program	141,892	-	-	-	-
<b>Total</b>	<b>\$4,472,780</b>	<b>\$3,681,600</b>	<b>\$3,842,912</b>	<b>\$3,922,097</b>	<b>\$3,210,503</b>

Notes: Fiscal 2008 and 2009 expenditures are the appropriations for those years. Fiscal 2008 and 2009 revenues are estimates. The State Racing Commission is housed within the Division of Racing and is one of two budgeted programs for the division. The other budgeted program is Racetrack Operation Reimbursement.

Source: Maryland Governor's Budget Books, Fiscal 2006 through 2009



## Appendix 7. Thoroughbred Licensing Summary Calendar 2003-2007

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Owners					
Original	540	566	642	666	480
Renewal	1,959	1,835	1,893	1,986	1,800
Trainers					
Original	58	61	78	60	42
Renewal	268	245	242	229	206
Assistant Trainers	99	114	117	101	104
Owner/Trainers	403	373	385	386	365
Jockeys and Apprentice Jockeys	240	211	254	248	246
Jockey Agents	24	30	26	32	29
Veterinarians	34	30	32	36	31
Farriers	38	36	28	34	30
Stable Employees	1,188	1,151	1,120	1,110	1,081
Track Employees	505	466	441	419	405
Exercise Riders	341	344	316	304	281
Mutuel Employees	704	739	675	489	531
Vendors	216	212	186	181	159
<b>Total</b>	<b>6,617</b>	<b>6,413</b>	<b>6,435</b>	<b>6,281</b>	<b>5,790</b>

Source: State Racing Commission, Annual Reports



## Appendix 8. Harness Racing Licensing Summary Calendar 2003-2007

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	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Owners					
Original	240	222	238	230	187
Renewal	958	845	742	785	673
Trainers					
Original	15	12	21	17	12
Renewal	85	77	79	64	61
Drivers	50	47	53	48	50
Trainer/Drivers	76	62	57	60	52
Owner/Trainers	226	219	197	220	194
Owner/Trainer/Drivers	218	197	191	193	181
Owner/Drivers	21	20	19	27	22
Veterinarians	14	15	16	16	13
Farriers	3	-	3	8	4
Stable Employees	468	392	387	346	263
Track Employees	199	210	200	173	157
Mutuel Employees	161	158	137	130	99
Vendors	35	30	24	28	14
Caterers	1	1	1	-	-
<b>Total</b>	<b>2,770</b>	<b>2,507</b>	<b>2,365</b>	<b>2,345</b>	<b>1,982</b>

Source: State Racing Commission, Annual Reports



**Appendix 9. Written Comments of the  
State Racing Commission**

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December 3, 2008

Laura J. McCarty  
Office of Policy Analysis  
90 State Circle  
Annapolis, Md. 21401

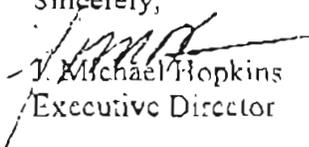
Dear Ms. McCarty:

I have read the draft report regarding the Maryland Racing Commission sunset review. I agree with you that it makes sense to put off the full review until the slots are operating. However I found two areas that I would like to bring to your attention:

- 1) On page 4 the report indicates that the tracks did not take advantage of the bond fund because the tracks never development a capital improvement plan. Not correct. The racetracks did not take advantage of the bond fund because the revenue being generated by the increased takeout was not sufficient to support the debt load of any bond that would have been issued; and
- 2) On page 9 the report asserts that the Racing Commission decided to implement the steroid ban because the Graded Stakes committee threatened to take away the graded status of all graded stakes in the State unless we adopted the model rules prohibiting the use of steroids. No. The reason why the Racing Commission decided not to go forward with the adoption of the rules in January 2008 was because Cornell University and the University of Florida were conducting research to determine what levels of the steroids found in the blood plasma would equate to the established levels found in urine. In September it was reported by Alan Foreman, Co-Vice Chairman of the Racing Medication and Testing Consortium (RMTC) that the research was not concluded and that it was unknown when it would be completed. At that point the Commission decided to go forward and adopt regulations prohibiting the use of the steroids with an effective date of January 1, 2009, which was consistent with national trends.

If you have any questions please feel free to give me call at any time.

Sincerely,

  
J. Michael Hopkins  
Executive Director

# Preliminary Evaluation of the State Board of Waterworks and Waste Systems Operators

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**Recommendation: Full Evaluation**

## The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Waterworks and Waste Systems Operators last underwent a full evaluation as part of sunset review in 1989. The board also underwent a preliminary evaluation in 1998. The 1998 preliminary evaluation concluded that the board was successfully fulfilling its statutory responsibilities and that it should be waived from full evaluation but also recommended that a loophole regarding temporary certification be addressed. Based on the preliminary evaluation recommendation, the General Assembly extended the board’s termination date to July 1, 2011.

In conducting its preliminary evaluation, DLS staff reviewed annual reports and minutes from board meetings from the past five years, Title 12 of the Environment Article, federal regulations, literature from affiliated professional associations, a prior preliminary sunset evaluation of the board, and the operating budget of the board. In addition, DLS staff conducted interviews with the secretary of the board and reviewed various files and data provided by the board.

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 4**. Appropriate factual corrections and clarifications have been made throughout the document.

## **State Board of Waterworks and Waste Systems Operators**

The State Board of Waterworks and Waste Systems Operators was created by Chapter 430 of 1957. The board was initially created to examine and certify the *supervisors* of waterworks and waste system facilities. A waterworks facility collects, stores, pumps, treats, or distributes water for human consumption. A wastewater facility collects, stores, pumps, treats, or discharges any liquid or waterborne waste.

In 1982 the board's regulatory purview increased to include *operators* in addition to the superintendents. An operator of either a waterworks or waste system facility participates in the control of the flow, treatment, or discharge of water or wastewater; a superintendent is certified as the individual who is in charge at the facility. By certifying operators, the State intends to more adequately protect the public from the harmful effects of ill-treated water.

The board operates under the provisions of Title 12 of the Environment Article and is housed within the Maryland Department of the Environment (MDE). Its general responsibilities include:

- reviewing and approving all applications for operator and superintendent certification and certification renewal;
- preparing and giving examinations to qualified applicants for certification;
- hearing appeals concerning certification requirements;
- investigating all reports of fraud or deception in obtaining or use of a certificate;
- investigating all reports of unsatisfactory performance in the operation or supervision of a waterworks, wastewater works, or industrial wastewater works facility;
- taking disciplinary action, including the reprimand of a certificate holder or suspension or revocation of a certificate; and
- recommending regulations for promulgation by the Secretary of the Environment.

The board consists of 11 members. The Secretary of the Environment appoints three members to the board: one engineer representative from MDE and two public members. With the advice and consent of the Senate and the Secretary of the Environment, the Governor appoints the other eight members, who represent one or more of the following:

- municipal government;
- county government;

- a sanitary or a metropolitan commission;
- waterworks supervision;
- wastewater works or industrial wastewater works supervision;
- agriculture;
- industrial wastewater works superintendents; and
- the Department of Natural Resources.

Members serve four-year terms, except for the MDE representative who serves at the pleasure of the Secretary. The board currently has three authorized staff members, one of whom is a support staff position shared among three boards.

## **Requirements for Certification**

Under Title 12 of the Environment Article, the board has to certify an individual before that individual may be employed by a waterworks, waste waterworks, or industrial wastewater facility as a superintendent or operator. Nevertheless, as discussed later in this evaluation, many operators are not certified. A violation of the certification requirement is a misdemeanor and subject to a fine of up to \$25 for each day of the violation.

To be certified, an individual must meet the continuing education and experience requirements and pass the appropriate written examination given by the board (for more details see **Appendix 1** and **Appendix 2**). For example, a certified superintendent must meet education and experience requirements, possess a valid operator's certificate from the State for each process used by the facility, and meet the appropriate training requirements. As shown in **Exhibit 1**, the board issues certificates for different positions based on several different categories of facilities. All certificates expire three years from the date of issuance.

Exhibit 1 also shows the five categories of facilities that the board oversees; two are waterworks and three are waste system facilities. Within these five broader categories are 24 different types of facilities, each with a unique certificate. As shown in **Appendix 3**, each of the 24 different types of facilities is defined by its treatment technology. In this way, each certificate is process specific, ensuring that operators are technically qualified for the process they are certified to operate. In total, the board oversees 3,800 certificate holders who hold approximately 8,100 certificates – with many individuals certified in multiple facility treatment technologies.

## **Exhibit 1 Certificates and Facility Categories**

### **Certificates**

**Operator Certificate:** Issued to an operator who has obtained the required education and experience and passed the appropriate examination.

**Temporary Certificate:** Issued to a newly hired operator or one transferring to a facility with a different classification. The temporary certificate holder must work under the direction of a holder of an operator or superintendent certificate.

**Grandparented Certificate:** Issued to an operator who was not required to be certified prior to February 5, 2001, and who meets the minimum education and experience requirements. The certificate is site-specific and also terminates if the facility changes to a different class.

**Limited Certificate:** Issued to an operator at a wastewater system who meets the minimum education and experience requirements for the particular waterworks or wastewater facility; the certificate is site-specific and terminates if the facility changes to a different class.

**Superintendent Certificate:** Issued to an operator who holds a valid operator certificate, has obtained the required education and experience for a superintendent, is appointed by an employer, and completes the mandatory superintendent training program. These certificates are issued for a specific category and facility.

### **Facility Categories**

Water Distribution

Water Treatment

Wastewater Treatment

Wastewater Collection

Industrial Wastewater Treatment

Note: The board advises that no limited certificates have been issued.

Source: Maryland Center for Environmental Training

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## Many Operators Are Temporarily Certified or Grandparented

An operator is granted a temporary certificate while undergoing training for full operator certification. Some operators have also been granted a grandparented certificate if employed at a facility not required to employ certified operators prior to February 2001 as shown in **Exhibit 2**. In 2001 regulations recognized grandparented certificates and specified their conferral and termination. Grandparented certificates ceased to be granted as of February 5, 2003; thus, the percentage of operators with grandparented certificates has steadily declined. However, because holders of a grandparented certificate may continue to *renew* their certificate indefinitely, it may be decades before the grandparented certificate is completely phased out.

**Exhibit 2**  
**Certified Waterworks Operators by Certificate Type**  
**Calendar 2002-2007**

<u>Year</u>	<u>Temporary Certificate</u>	<u>Operator Certificate</u>	<u>Grandparented Operator</u>
2002	31.1%	54.6%	14.3%
2003	30.8%	55.1%	14.1%
2004	32.4%	54.7%	13.0%
2005	36.4%	55.7%	7.8%
2006	38.1%	55.0%	6.9%
2007	38.1%	55.9%	6.0%

Source: Maryland Department of the Environment Water Supply Program, *Maryland Operator Certification Annual Report* (to the U.S. Environmental Protection Agency), Annual Reports for 2002 through 2007

The board has two reasons for allowing grandparented operators to renew their certificates without being required to take the examination necessary for full operator certification as holders of temporary certificates must do. First, the board has determined that most grandparented certificate holders have a good understanding of the systems employing them and the record of compliance with water-related regulations at their facilities is generally satisfactory. Second, the board has noted that the grandparented certificate is very limited in that the holder cannot transfer that certificate to another facility and the certificate terminates should the holder's facility change its classification. In 2005 the board undertook a campaign to instruct grandparented operators in how to maintain their certification status.

## **Certification Examination Passage Rates Remain Low**

Testing for operator certification is offered monthly at various locations across Maryland. To pass, an examinee must achieve a minimum score of 70 percent. An examinee who passes the exam and otherwise qualifies is certified for three years. When the certificate expires, the operator or superintendent must present evidence to the board that the continuing education requirements have been fulfilled prior to the board issuing the renewal certification.

At each board meeting, the board reviews test data from the previous six-month period. The average test score for all periods over the past five years is just under 35 percent. The average scores reported each month have ranged from a low of 30 percent to a high of 42 percent, with no clear trends emerging over the five-year span. The passage rate noted in the 1998 preliminary evaluation was 39 percent.

The board has recognized the low passage rates and has taken several actions to address the low rates. In 2005 the board conducted a survey of examinees on their opinions of the certification examinations. The survey indicated that available certification training is not specifically designed for test preparation. The survey also revealed that some examinees use their first administration of the exam as a learning experience to ascertain which subject areas they need to study further in order to pass. The board determined that, rather than attempting to alter the examination, it would prefer to ensure that the curriculum better prepares applicants for examination. New approaches to curriculum development have included week-long training sessions and new computer-based training products. In addition, the board continues to work closely with the three primary training centers to ensure progress in increasing passage rates.

The board has also studied the certification examination processes of other states to gain perspective on Maryland's shortcomings. The passage rate in Maryland is significantly lower than in surrounding states. The board has noted several potential reasons for this disparity. First, some states require a certain level of training to be completed before an operator is allowed to sit for an examination. Second, the board is not authorized to levy any sort of sanctions on operators who continue to fail the exam. Finally, many operators in Maryland have no financial incentive for becoming certified. The board has indicated, however, that the levying of sanctions and creation of financial incentives are actions best left to individual employers.

## **Board Oversees a Diverse Selection of Continuing Education Courses**

One of the board's principal functions is to review and approve training courses. To this end, the board established the Training Review and Evaluation Committee to review the hundreds of training courses that come before it. At each meeting of the board, this committee presents its recommendation regarding whether the board should approve each of the training courses it reviews.

Several years ago the board adopted a policy that requires 50 percent of most operators’ training to come from process-related courses. This change responded to the observation that many operators were satisfying the majority of their training requirements through the completion of federally mandated safety courses. Although it is beyond the scope of the board’s authority to address local or national water quality issues, the board notes that it has approved many courses designed to educate operators and superintendents on such issues, including pharmaceuticals and chemicals in the water supply, infrastructure financing, the effect of climate change on water availability, and nutrient removal from the Chesapeake watershed.

### **Community Waterworks Are More Likely to Maintain Certified Operators**

Public drinking water systems fall into three categories: community, nontransient noncommunity, and transient noncommunity. Community water systems serve year-round residents, nontransient noncommunity water systems serve consumers such as schools or daycare facilities, and transient noncommunity water systems serve different consumers each day, such as at a campground or restaurant.

As shown in **Exhibit 3**, the percentage of systems employing a certified operator is much greater for community water systems than for nontransient noncommunity water systems. The number of certified operators at all systems had been increasing steadily from 2002 through 2005. However, this number declined dramatically in 2006. According to the board, this abrupt decline may be attributed in part to the lapse of a large number of grandparented certificates issued in 2003. The most recent report indicates that the percentage of systems employing certified operators has increased from 59 percent of waterworks in the 2001 baseline to almost 80 percent of waterworks in 2007.

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**Exhibit 3**  
**Operator Certification at Water System Facilities**  
**Calendar 2002-2007**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Community	87.8%	88.8%	91.2%	99.2%	74.2%	86.2%
Nontransient Noncommunity	59.4%	70.0%	80.4%	80.3%	64.0%	74.4%
Both Systems	<b>72.7%</b>	<b>78.8%</b>	<b>85.4%</b>	<b>89.1%</b>	<b>68.7%</b>	<b>79.9%</b>

Source: Maryland Department of the Environment Water Supply Program, *Maryland Operator Certification Annual Report* (to the U.S. Environmental Protection Agency), Annual Reports for 2002 through 2007

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Though operators are required to be certified before being employed by a facility, it is not the responsibility of the board to ensure that all facilities employ certified operators. Despite this, the board does conduct outreach to notify facilities of their duty to ensure that operators are certified. In addition, the board notes that, despite the significant number of facilities without a certified operator, the percentage of persons served by a facility without a certified operator is very low.

### **Small Systems Are Less Likely to Maintain a Certified Operator**

The board has also noted a major disparity in the percentage of systems employing a certified operator between large systems and systems serving fewer than 100 people. Board statistics show that the larger the water system the more likely it is to be employing a certified operator. For example, all systems serving 10,000 or more people have employed a certified operator each year since 2002. The percentage of systems employing an operator decreases with smaller systems. **Exhibit 4** shows the disparity in operator certification at small systems as compared with the average of all systems for both community water systems and nontransient noncommunity water systems.

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**Exhibit 4**  
**Operators in Systems Serving Fewer than 100 Persons**  
**Calendar 2002-2007**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
<b><u>Community Systems</u></b>						
Serving < 100 Persons	69%	73%	81%	97%	28%	66%
All Such Systems	88%	88%	91%	98%	74%	84%
<b>Disparity</b>	<b>19%</b>	<b>16%</b>	<b>10%</b>	<b>1%</b>	<b>46%</b>	<b>18%</b>
<b><u>Nontransient Noncommunity Systems</u></b>						
Serving < 100 Persons	41%	55%	63%	61%	51%	49%
All Such Systems	60%	70%	76%	80%	64%	74%
<b>Disparity</b>	<b>19%</b>	<b>15%</b>	<b>13%</b>	<b>19%</b>	<b>13%</b>	<b>25%</b>

Source: Maryland Department of the Environment Water Supply Program, *Maryland Operator Certification Annual Report* (to the U.S. Environmental Protection Agency), Annual Reports for 2002 through 2007

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The board, as well as MDE, has focused significant attention on the failure of many small water systems to maintain certified operators. The board has requested assistance from the National Rural Water Association and has continued its campaign to notify operators at small systems in the State of their training and certification responsibilities. In 2008 the board contracted with a private firm to provide additional training opportunities for Eastern Shore small system operators, and MDE continues to provide funding to the Maryland Rural Water Association, which works with small systems in need of assistance. In addition, MDE has accepted the federal Operator Expense Reimbursement Grant. This multiyear grant is used to reimburse operators of small water systems for their certification expenses and to provide statewide training to assist small systems in educating and training operators.

## **Federal Regulatory Requirements**

The Safe Drinking Water Act Reauthorization of 1996 requires states to develop, implement, and enforce operator certification regulations for waterworks facilities. There is no comparable federal oversight of certification for waste system facilities, though the board has overseen the examination and certification of waste systems for decades. The Code of Maryland Regulations for the Operator Certification Program was revised in January 2001 in response to these federal guidelines. The U.S. Environmental Protection Agency (EPA) approved Maryland's Operator Certification Program on July 13, 2001.

Pursuant to the federal guidelines, each state is required to provide annual reports to update EPA on the state's implementation of the Operator Certification Program for the previous year. Included in the reports are data on the number and percentages of community water systems and nontransient noncommunity water systems employing a certified operator. Submission of these reports is required in order to receive the full federal allocation under the Drinking Water State Revolving Fund. Allocation of this funding is not, however, contingent on the state ensuring that all or a certain percentage of operators are certified. In fact, neither federal nor State regulations contain punitive provisions for systems that do not maintain certified operators.

## **Few Complaints Have Been Filed with the Board**

The board's general responsibilities include investigating reports of fraud or deception in obtaining a certificate and unsatisfactory performance in the operation or supervision of a waterworks or waste system facility. On finding a violation, the board may reprimand any certificate holder or suspend, revoke, or deny a certificate for any of the following reasons:

- if the certificate holder fraudulently or deceptively obtains, or attempts to obtain, a temporary or permanent certificate for himself or for another;

- professional incompetence;
- falsification of records;
- failure to submit required self-monitoring documents; or
- negligence in operation and maintenance of the works.

Between 2002 and 2008 only 10 complaints were filed for investigation by the board. This compares with eight complaints filed in the five years preceding the 1998 preliminary evaluation. As shown in **Exhibit 5**, complaints have included multiple reports of falsification of records and failure to submit required documents. Disciplinary measures by the board have included both actions taken against the subject's certificate as well as referral to the MDE Environmental Crimes Unit or the Office of the Attorney General.

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**Exhibit 5**  
**Complaints Filed with the Board**  
**Calendar 2002-2008**

<u>Year</u>	<u>Charge</u>	<u>Action</u>
2002	(1) Falsification of Records	Referral to MDE Environmental Crimes Unit
	(2) Mistaken Grant of Certificate	Temporary Certificate issued
	(3) Failure to Submit Required Documents and Reports	Attorney General Consent Order
	(4) Failure to Submit Required Documents and Reports	Attorney General Consent Order
2003	(1) Falsification of Records	Referral to MDE Environmental Crimes Unit
2004	(1) Falsification of Records	Certification not renewed
	(2) Drug Use	Reviewed sufficiency of relevant regulations
2005	(1) Falsification of Records	Certificate relinquished
	(2) Falsification of Records	Referred to MDE Environmental Crimes Unit
2006	None	
2007	None	
2008	(1) Falsification of Records	Case pending

Source: State Board of Waterworks and Waste Systems Operators

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The small number of complaints may be due in part to the nature of the self-reporting system in place. The board is tasked with investigating all reports of violations, but it is outside the scope of the board's mandate to proactively seek out violations. Therefore, the board is reliant upon the waterworks and waste systems facilities and others to report violations.

One-half of the cases investigated by the board involved a referral to the MDE Environmental Crimes Unit or legal action by the Office of the Attorney General. These cases often take many months or even several years to complete. However, cases handled internally may be prosecuted within several months. For example, one case in 2005 involving the falsification of records ended in the voluntary relinquishment of the operator's certificate fewer than five months after being reported to the board.

### Board Revenues Have Not Covered Costs

The appropriation for the board comes from general funds. All the revenue that the board collects is deposited into the general fund. Although the board is not required to cover its expenditures by law, the 1989 sunset evaluation recommended that the board fully cover its costs through the collection of fees. The 1998 preliminary evaluation noted that the board had begun to cover its costs fully beginning in fiscal 1996. As shown by **Exhibit 6**, revenues fully covered costs in fiscal 2003 but have failed to do so each year from fiscal 2004 through 2008. Most board revenues are derived from testing, license renewal, and certificate fees. **Exhibit 7** shows the board's current fees.

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**Exhibit 6**  
**Fiscal History of the Board of Waterworks and Waste Systems Operators**  
**Fiscal 2003-2008**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Expenditures	\$191,991	\$206,926	\$210,206	\$232,972	\$233,450	\$232,554
Revenues	\$227,759	\$188,030	\$191,109	\$208,636	\$213,415	\$227,759
Surplus/(Gap)	<b>\$35,768</b>	<b>(\$18,896)</b>	<b>(\$19,097)</b>	<b>(\$24,336)</b>	<b>(\$20,035)</b>	<b>(\$4,795)</b>
Coverage of Expenditures	118.6%	90.9%	90.9%	89.6%	91.4%	97.9%

Source: State Board of Waterworks and Waste Systems Operators

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**Exhibit 7**  
**Fee Schedule for the Board of Waterworks and Waste Systems Operators**

<u>Service</u>	<u>Types of Certificates</u>			<u>Grandparented/ Limited</u>
	<u>Operator</u>	<u>Temporary</u>	<u>Superintendent</u>	
Exam	\$75	N/A	N/A	N/A
Certificate (Initial and Renewal)	75	75	75	75
Replacement Certificate	25	25	25	25
Reciprocity	75	N/A	N/A	N/A
Replacement Renewal Card	15	15	15	15
Late Renewal	150	150	150	150
Reinstatement	150	N/A	N/A	N/A

Source: Code of Maryland Regulations

The General Assembly has had a policy of regulatory boards being self-supporting to the extent possible. The fees generated by the board typically account for more than 90 percent of the board's expenses. These fees are deposited in the general fund. A way to close the gap between the board's expenses and revenue would be to increase the license fees. The last time the renewal fee was increased was January 1, 1997.

While the fees could be increased to cover the gap, doing so would not necessarily be the best course of action with this board. Most operators and superintendents are in the public sector. Because these operators and superintendents are serving local governments, it is not unreasonable for the State to cover a portion of the costs of the board. However, if the General Assembly decides that the board should be self-supporting, it is the renewal fee that should be increased. Although there is already an expense related to the education and experience requirements that must be met, increasing the renewal fee would place the burden of an increased fee on those who could best bear the cost, those who are already actively employed in the field.

## Progress Since the 1998 Preliminary Evaluation

The 1998 preliminary evaluation recommended that the board address a loophole in the certification process. This loophole allowed an operator holding a temporary certificate to obtain a new temporary certificate as opposed to renewing the certificate, which requires the holder to be compliant with continuing education requirements. The board indicated that the loophole could be closed through a regulatory change. In 2001 the board promulgated a new regulation that prohibits the issuance of a temporary certificate to a holder who could have renewed an existing certificate. This and other regulatory and legislative changes are shown in **Exhibit 8**.

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### Exhibit 8

#### Legislative and Regulatory Changes Since the 1998 Preliminary Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Legislative Changes</u>
1999	240	Extends the board's termination date by 10 years to July 1, 2011.
2000	590	Extends the deadline for evaluation of the board by 10 years to July 1, 2010.
<u>Year</u>	<u>Section</u>	<u>Regulatory Changes</u>
2001	26.06.01.05B, .07D-E	Recognizes "grandfathered" and "limited" certificates and establishes associated fees.
	26.06.01.6B	Closes temporary certificate loophole.
	26.06.01.10A	Permits temporary certificate holders to submit late examination applications.
	26.06.01.13	Requires that training used to renew a certificate be completed during the three-year period that precedes the expiration date of the certificate or during the late period for an applicant applying for a late renewal certificate.
2006	26.06.01.13G	Defines process-related training and specifies that a unit of training may not be applied to renewal requirements for both operator and superintendent certificates.

Source: Laws of Maryland; Code of Maryland Regulations

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## **Recommendation**

There is a continuing need for effective oversight of those responsible for delivering the drinking water and treating wastewater in Maryland. The board faces a number of challenges including encouraging the certification of operators at small water systems and addressing the deficiencies in the exam preparation curriculum. **Although the board has shown a high level of efficiency and professionalism in considering these issues, DLS recommends a full evaluation of the State Board of Waterworks and Waste Systems Operators to examine the impact, if any, on health and safety posed by the significant number of uncertified operators – particularly at small facilities.** The board's ability to inspect facilities and enforce the requirement that operators be certified should be assessed as well as labor market factors related to operators and superintendents. The full evaluation should also address whether renewal fees should be increased to cover board expenses.

## Appendix 1. Experience and Renewal Training Requirements for Operators

<u>Category and Classification</u>	<u>Experience *</u>	<u>Operator Certificate Renewal Training Units**</u>	<u>Temporary, Limited, and Grandparented Certificate Renewal Training Units**</u>
Water Distribution	1 year	16	24
Wastewater Collection			
1	1 year	16	24
2	2 years	16	24
Water Treatment			
1	1 year	16	24
2	1 year	16	24
3	2 years	30	45
4	3 years	30	45
5	as determined by board	as determined by board	as determined by board
G	not specified	16	24
Wastewater Treatment			
1	1 year	16	24
2	1 year	16	24
3	2 years	30	45
4	3 years	30	45
5	3 years	30	45
6	as determined by board	as determined by board	as determined by board
S	3 years	16	24
A	3 years	16	24

<u>Category and Classification</u>	<u>Experience *</u>	<u>Operator Certificate Renewal Training Units**</u>	<u>Temporary, Limited, and Grandparented Certificate Renewal Training Units**</u>
Industrial Wastewater Treatment			
1	6 months	0	0
2	6 months	0	0
3	6 months	16	24
4	1 year	16	24
5	3 years	30	45
6	2 years	16	24
7	as determined by board	as determined by board	as determined by board

*Education Requirement – All operators must have completed high school or equivalency.*

\* For most classifications, 1,800 hours of actual work experience are equal to one calendar year of experience. The following operator classifications have special requirements that do not use this equivalency:

**Industrial Wastewater Treatment**

Class 1, 2, and 3: 250 hours or 6 months, based on 1 hour / day operation.

Class 4: 500 hours or 1 year, based on 2 hours / day operation.

**Water Treatment**

Class 1 and 2: 500 hours or 1 year, based on 2 hours / day operation.

Class 3: 1,800 hours or 2 years, based on 3.5 hours / day operation.

**Wastewater Treatment**

Class 1 and 2: 500 hours or 1 year, based on 2 hours / day operation.

Class 3: 1,800 hours or 2 years, based on 3.5 hours / day operation.

\*\*Training unit equivalencies = 1 unit per 1 hour training or 1.5 units per 1 hour training with successfully completed final examination

Note: To be consistent with facility classifications, “G” has been included with water treatment facilities rather than wastewater treatment facilities.

Source: Laws of Maryland; Code of Maryland Regulations

## Appendix 2. Education and Experience Requirements for Superintendents

<u>Category and Classification</u>	<u>Education</u>	<u>Experience *</u>
Water Distribution	Completion of high school or equivalency	1 year
Wastewater Collection		
1	Completion of high school or equivalency	none
2	Completion of high school or equivalency	1 year
Water Treatment		
1	Completion of high school or equivalency	none
2	Completion of high school or equivalency	1 year
3	1 year college	1 year
4	2 years college	2 years
5	as determined by board	as determined by board
G	not specified	not specified
Wastewater Treatment		
1	Completion of high school or equivalency	none
2	Completion of high school or equivalency	none
3	Completion of high school or equivalency	1 year
4	2 years college	2 years
5	2 years college	2 years
6	as determined by board	as determined by board
S	2 years college	2 years
A	2 years college	2 years
Industrial Wastewater Treatment		
1	Completion of high school or equivalency	none
2	Completion of high school or equivalency	none
3	Completion of high school or equivalency	none
4	Completion of high school or equivalency	none
5	2 years college	2 years
6	1 year college	1 year
7	as determined by board	as determined by board

*Superintendent Certificate Renewal Training Requirement – all superintendent certificates (except Industrial Wastewater Treatment Classes 1 and 2) require 7 units of “superintendent-approved” training review.*

\*For most classifications, 1,800 hours of actual work experience are equal to one calendar year of experience. The following superintendent classifications have special requirements that do not use this equivalency:

**Water Treatment**

Class 2: 500 hours or 1 year, based on 2 hours / day operation

Class 3: 900 hours or 1 year, based on 3.5 hours / day operation

**Wastewater Treatment**

Class 3: 900 hours or 1 year, based on 3.5 hours / day operation

Note: To be consistent with facility classifications, “G” has been included with water treatment facilities rather than wastewater treatment facilities.

Source: Laws of Maryland; Code of Maryland Regulations

## Appendix 3. Classification of Facilities

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### Water Treatment Plants

<u>Class of Plants</u>	<u>Type of Treatment Systems</u>	<u>Typical Processes Included in the System</u>
1	Disinfection	Chlorination
2	Chemical Treatment	Chlorination, pH control, and fluoridation
3	Simple Iron Removal	Chlorination, pH control, fluoridation, filtration, and iron removal utilizing ion exchange or contact oxidation processes
4	Complete Treatment	Chlorination, pH control, fluoridation, aeration, coagulation, sedimentation, filtration, and complex iron removal
5	Site Specific	Site specific: any alternative technological plants not covered under the classification system
G	No Chemical Treatment	Well, storage tanks, UV disinfection

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### Water Distribution Systems (one class only)

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### Industrial Wastewater Treatment Plants

<u>Class of Plants</u>	<u>Type of Treatment Systems</u>	<u>Typical Processes Included in the System</u>
1	Basic Treatment	Petroleum base oil separators, liquid cooling, and pH control
2	Physical Treatment	Sedimentation, screening, pH control, and solids removal
3	Land Treatment	Primary treatment, sedimentation, solids removal, pumping, and land treatment

<b><u>Class of Plants</u></b>	<b><u>Type of Treatment Systems</u></b>	<b><u>Typical Processes Included in the System</u></b>
4	Biological Lagoons	Aerobic or anaerobic waste stabilization lagoons, disinfection, and chemical addition
5	Activated Sludge	Primary treatment, sedimentation, activated sludge, and sludge handling
6	Physical Chemical Treatment	Reduction of chemical and toxic substances including but not limited to cyanide and chromium, acid-alkali neutralization, coagulation, and flocculation
7	Site Specific	Plants other than the first six types covered under these regulations

### **Wastewater Treatment Plants**

<b><u>Class of Plants</u></b>	<b><u>Type of Treatment Systems</u></b>	<b><u>Typical Processes Included in the System</u></b>
1	Lagoons	Aerated or nonaerated lagoons, filtration, disinfection, and land or wetland treatment
2	Physical/Biological	Primary treatment, sand filter, land or wetland treatment, and disinfection
3	Package Activated Sludge Plants	Screening, activated sludge, sedimentation, filtration, disinfection, chemical addition, sludge handling, pumping, and land or wetland treatment
4	Trickling Filters Rotating Biological Filters (RBC)	Preliminary treatment, primary treatment, sedimentation, trickling filters, RBC, chemical addition, disinfection, sludge handling, and pumping
5	Activated Sludge	Preliminary treatment, primary treatment, sedimentation, activated sludge, oxidation ditches, filtration, chemical addition, disinfection, sludge handling, and pumping

<b><u>Class of Plants</u></b>	<b><u>Type of Treatment Systems</u></b>	<b><u>Typical Processes Included in the System</u></b>
6	Site Specific	Other alternative technology systems not covered under this classification system
S	Solids Handling	Chemical conditioning, sludge thickening, sludge digestion, thermal treatment, chlorine treatment, filtration, dewatering, incineration, composting, and land application
A	Advanced Wastewater Treatment	Filtration, activated carbon adsorption, nitrification, denitrification, phosphorus removal, ammonia stripping, chemical feeding and conditioning, coagulation, and flocculation

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### **Wastewater Collection Systems**

<b><u>Class</u></b>	<b><u>Type of Collection Systems</u></b>
1	Gravity Flow
2	Gravity Flow and Pumped or Vacuum Flow

Source: Laws of Maryland; Code of Maryland Regulations



## **Appendix 4. Written Comments of the State Board of Waterworks and Waste Systems Operators**

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# MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Martin O'Malley.  
Governor

Shari T. Wilson  
Secretary

Anthony G. Brown  
Lt. Governor

Robert M. Summers, Ph.D.  
Deputy Secretary

December 2, 2008

Department of Legislative Services  
Office of Policy Analysis  
Attention: Ms. Laura J. McCarty, Legislative Mgr.  
Legislative Services Building  
90 State Circle  
Annapolis, Maryland 21501-1991

Dear Ms. McCarty:

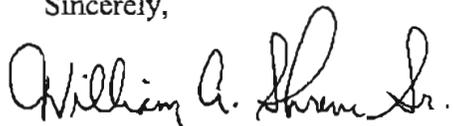
The Maryland Board of Waterworks and Waste Systems Operators has received the draft report of the preliminary evaluation of the Board that was prepared by the Department of Legislative Services (DLS). We appreciate the time and attention that was spent reviewing the Board's activities.

The report notes that there is a high level of efficiency and professionalism in the Board, but also concludes that the impact on health and safety of having a large number of small water treatment facilities without certified operators should be studied. The Board agrees such an investigation appears worthwhile. However, Environment Article Title 12, Annotated Code of Maryland does not give the Board power or authority to execute such an investigation. **The Board depends on the water programs in MDE which have the authority to require certified operators at facilities. Through ongoing enforcement efforts, MDE is assisting facilities with technical assistance (including free water operator training) to ensure compliance.**

Finally, the report notes "The Board's ability to inspect facilities and enforce the requirements that operators be certified should be assessed as well as labor market factors related to operators and superintendents." The Maryland Board of Waterworks and Waste Systems Operators is a licensing agency. Its legislative authority is to provide the process for determining whether an individual is capable of operating various water and wastewater treatment facilities. The DLS report has correctly noted the labor market issue that the Board and the federal Environmental Protection Agency have already noted. Many current water and wastewater treatment operators and superintendents are retiring from the field, and most will be able to leave during the next 3-5 years which is a common concern for many industries. This is of paramount concern for the Board, MDE, and the future of water and wastewater treatment operations in Maryland. The Board will continue to work with the MDE Water Management Administration to address these issues.

The draft report was reviewed and the Board's comments are enclosed for your consideration. If you have any questions, please contact Mr. E. Lee Haskins, the Board Secretary on 410-537-3594.

Sincerely,

A handwritten signature in cursive script that reads "William A. Shreve Sr.".

William A. Shreve, Chairman  
Maryland Board of Waterworks & Waste Systems Operators

Attachment

cc: Secretary Shari T. Wilson

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**Part II**  
**State Treasurer's Office**  
**Report of the Treasurer**

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Department of Legislative Services  
Annapolis, Maryland

December 2008

**TREASURER'S REPORT TO  
LEGISLATIVE POLICY COMMITTEE**

**December 16, 2008**

**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.*” This Report is in fulfillment of that law and covers the period since the report of June 10, 2008. I invite and welcome further discussion with the Committee at your convenience.**

The State Treasurer’s activities and responsibilities are of particular concern to the Legislature. One of five statewide Constitutional officers, and the only one elected by the General Assembly, the State Treasurer’s duties are multifaceted and extend throughout State government and higher education. The Treasurer’s duties include membership on the Board of Public Works and Board of Revenue Estimates and Chairmanship of the Capital Debt Affordability Committee. The Treasurer presently also serves as Chair of the Board of Trustees of the College Savings Plans of Maryland and the Board of Trustees of the State Retirement and Pension System. She is a member of the Teachers’ and Employees’ Supplemental Retirement Plans, the Maryland Health and Higher Education Facilities Authority, the Maryland Small Business Development Financial Authority and of the Maryland Agricultural Land Preservation Board. Several of these Boards work under the general oversight of legislative oversight committees which are in periodic receipt of reports and communications from the Office, as are the two legislative budget committees.

As we continue to face the most challenging fiscal times in several decades, the Office is working diligently to efficiently and effectively assist State and local agencies and the citizens of Maryland with State Treasury-related issues. The Office continues to be both a partner and reliable resource for State agencies and local government. The Office continues its work with State agencies to reduce insurance costs through risk management, to improve banking and cash management procedures, and assist in public debt related issues.

As fiscal steward for the State, the State Treasurer’s Office approaches its responsibilities in a prudent, deliberate way. As market conditions have worsened, we have taken great care to invest State funds carefully and conservatively to minimize risk to the Maryland taxpayers. We conduct our bond sales efficiently and effectively, while striving to maintain Maryland’s coveted AAA bond rating. We are pleased to announce that, for the first time in March, 2009, we will be offering State bonds in a negotiated sale limited to retail investors for two days prior to the regular competitive sale. This will allow our citizens the opportunity to directly purchase the State’s highly rated General Obligation Bonds, investing directly in their State.

While we continue to do more with less, we have witnessed important progress in many areas. The items set forth below detail a number of these achievements and we welcome questions regarding these and other issues.

## **BOARD OF PUBLIC WORKS**

The State Treasurer represents the General Assembly and citizens of Maryland on the Board of Public Works (BPW). Multi-year, high-dollar contracts representing the whole spectrum of Maryland State government require thorough detailed examination to ensure that the procurement process is fair, open and competitive. Land acquisitions and wetlands licenses also demand and receive extensive scrutiny from the Treasurer as well as the other BPW members, the Governor and the Comptroller.

Between June 11, 2008 and Nov. 30, 2008, the BPW acted on 942 transactions totaling \$2,959,160,172.34. The Treasurer appreciates the input and advice of the Department of Legislative Services (DLS) in reviewing and commenting upon the BPW agenda, ensuring that BPW items are consistent with legislative policy.

During the past six months, some of the more visible issues that have come before the BPW are: the shuttle bus contract at BWI Marshall Airport; the sale of \$415 million of General Obligation bonds; wetlands license for a pier and living shoreline at Easton Village in Talbot County; establishment of an international program in Alba, Italy, and acquisition of property adjacent to the college by St. Mary's College of Maryland; a contract for the renovation and expansion of Towson Arena at Towson University; new paratransit (mobility) contract for the Baltimore metropolitan area; contract to provide assistance to minority business enterprises interested in getting highway contracts; budget cuts in the fiscal year 2009 budget totaling nearly \$350 million; construction contract for a new residence hall (Oakland Hall) at the University of Maryland College Park; new information technology contract for the Department of Human Resources and a contract for construction of the new Rockville District Court House.

The Treasurer's Office continues to operate its constituent outreach system, initiated in October 2004, for informing legislators about the agenda and the Board's actions on items of specific interest to their districts. Feedback from legislators allows this Office to pose questions to State agencies both before and during BPW meetings and to inform the Governor and Comptroller about legislative interest in specific issues.

In preparation for Board of Public Works meetings, the staffs of the Governor, Treasurer and Comptroller, along with the Secretary of the Board of Public Works, conduct pre-board meetings and, accompanied at times by the BPW members, participate in site visits and numerous briefings related to upcoming agenda items. Briefings by State agencies are particularly helpful in providing in-depth analyses of often complicated, sometimes contentious contracts. These briefings are invaluable not only to BPW members and staffers, but also to the agencies, which receive insight into concerns that they may not have anticipated.

Transparency and accountability are critical components of the BPW process. While providing essential oversight to the State's procurement process, the Board of

Public Works shines light on contracts, wetlands licenses, land acquisitions, legal settlements and other transactions that might otherwise avoid public visibility.

## **School Construction**

One of the major responsibilities of the Board of Public Works is to approve the allocations of the State's share of public school construction funds based on recommendations made by the Interagency Committee on School Construction.

The Task Force to Study Public School Facilities, established by the 2002 General Assembly and chaired by the Treasurer, documented a finding that at least \$3.85 billion (in 2003 dollars) in State and local funds would be required to bring all Maryland public school facilities to 2003 minimum standards. This conclusion was endorsed in the Public School Facilities Act of 2004, which stated that "it is the intent of the Governor and the General Assembly that the State should pursue a goal of fully funding by fiscal 2013 a minimum of \$3.85 billion in school facility needs....Achieving this goal...will require a significant commitment by the State to provide approximately \$2 billion...over the next eight years for school construction projects." This finding was also acknowledged in the subsequent Capital Debt Affordability Committee Reports.

The high priority on school construction has resulted in over \$1.3 billion in funding since 2004, including over \$700 million in the past two fiscal years alone.

The Task Force to Study Public School Facilities also recommended introducing private sector efficiencies into the procurement, delivery and financing of public school construction projects. Again, subsequently, the Public School Facilities Act of 2004 authorized a broad array of innovative procurement, project delivery and financing methods to enhance the ability of the localities to effectively carry out their capital improvement programs and required the Board of Public Works, upon advice of the IAC, to develop regulations to implement these innovative techniques. These innovations have borne fruit in an alternatively financed school project initiated in Hagerstown, and in the growing use of Construction Management at Risk as a project delivery method.

The Public School Construction Program is currently engaged in a revision of its Administrative Procedures Guide (APG), including procedures for the review and approval of high performance schools, as required by SB 208 / HB 376 (Chapter 124, approved by the General Assembly in the 2008 session and recently enacted by the Governor). The revised APG not only will include current practices and procedures, but also will be coordinated with the newly adopted regulations. The regulations for the Administration of the Public School Construction Program are also under review for possible amendments to reflect developments since May 2007 in areas of project eligibility requirements, project categories, high performance schools and the revised Minority Business Enterprise program.

In August 2005, in response to concerns raised by the Capital Debt Affordability Committee, the IAC approved a number of initiatives to improve the maintenance of

public schools in Maryland. Among the most significant are improvements to the methodology and the personnel used to carry out annual surveys of schools, the State's principal means of monitoring the maintenance of schools. In 2006, the General Assembly approved two new maintenance supervisor positions for the Public School Construction Program, a change that allowed consolidation of the inspection and monitoring program into a single agency and a significant increase in the number of surveys conducted each year. A total of approximately 230 schools were surveyed in FY 2007 and FY 2008, leading in a number of cases to immediate identification and correction of deficiencies. In addition, in response to a requirement of the FY 2008 capital budget bill, the IAC has developed maintenance guidelines for use by the local educational agencies (LEAs). We believe that this increased emphasis on maintenance has saved taxpayer dollars and, at the same time, improved the learning environments.

In response to concerns raised by the Board of Public Works in January 2008, the IAC has revised its Minority Business Enterprise procedures, with the goal of substantially increasing MBE participation in State-funded school construction projects and reducing the number of waivers granted by the LEAs. The change from a reporting to a compliance role on the part of the PSCP has entailed revision of the MBE procedures that must be adopted by each.

## **INVESTMENT DIVISION**

The Office's conservative investment policy and practices have served the State's portfolio well during these turbulent financial times. Since June 20, 2008, the Federal Reserve Open Market Committee has lowered the Federal Funds Target Rate twice. The Federal Government has placed the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Association (FHLMC) in Conservatorship. The Federal Farm Credit Bank (FFCB) has provided a loan to the Federal Agricultural Mortgage Association (FAMAC). Therefore, all the Agency Debt securities in the portfolio are more secure than in June and all debt securities held have improved in market value. The book value of the General Fund investment portfolio for November 30, 2008 was \$5,922,129,624.98. This is \$220,015,089.78 less than the book value of \$6,142,144,714.76 for November 30, 2007 and \$768,457,655.60 less than the previous quarter end of \$6,690,587,280.58 at September 30, 2008.

On November 30, 2008, the portfolio was earning an average of 3.986%, compared to 5.105% for the same date in 2007. The Federal Open Market Committee lowered the Fed Funds Target rate an additional 100 basis points to 1.00% this quarter. Since June of 2008 the rate has dropped from 2% to 1%.

The General Fund interest earnings received were \$46,764,947 for FY 2009 as compared with \$65,527,285 received for the same time period in FY 2008. The \$18,762,388 decline in interest received was directly attributable to the fact that FY 2009 had an average \$450 million less daily to invest at much lower rates.

The securities lending program continues to be highly successful. The program has earned \$239,465 so far in FY 09. This compares with \$842,552 for the same period in FY 08. The Federal Reserve's expansion of acceptable collateral combined with the Treasury's TARP program has eased the unprecedented liquidity crisis and thereby decreased the need for the securities in the portfolio. For comparison the amount earned for the same period in FY2007 was \$157,257.

The Office continues to increase MBE participation in the investment of State funds. Fourteen MBE broker/dealers are on the Office's approved list for FY 09 and they have handled investments of \$376,809,799. This compared to FY 08, when the Office had 8 approved broker/dealers and FY 07 which included only 2 firms.

The Office continues to invest according to the officially adopted State Treasurer's Investment Policy, which sets out investment goals, priorities and constraints. The overriding goal is to assure sufficient liquidity to maintain uninterrupted funding of State government and legislated payments. The STO continues to review and compare our cash management and investment policies and practices with those of peer AAA-rated states to ensure best practices.

## **Banking Services Division**

The Banking Division's mission of providing efficient, accurate and timely banking services to all State agencies and external customers is critical in the current economic environment. Constant changes in banking products and services offered, direct us to continually explore new financial products and improved data delivery methods that will provide efficient cost-saving banking services while anticipating the State's future banking needs. The Division must maintain the capacity to contain costs while accommodating for the growth, diversity, and complexity of banking transactions.

The Division's persistent processing and reconciliation advancements allow the Treasurer's Office to be proactive in identifying and solving agency banking issues. These processes and controls ensure the timely, accurate, and completely documented reconciliation of the State's cash accounts. Current highlights of the results of the Division's efforts include:

- Total cash receipts and disbursements each were almost \$110 billion for FY08
- The State's bank accounts are reconciled daily to the State's general ledger within 4 days,
- There are no un-reconciled differences.
- Average time required to clear bank initiated deposit adjustments is now less than 10 days, down from 15 days in Dec '07.

The deposit reconciliation group has been persistent in ensuring agencies' deposit posting processes remain timely and accurate. It is the responsibility of the Division to ensure bank deposits equal recorded general ledger deposits. Accurate outstanding deposits totals are vital to precise cash reconciliation.

We remain actively involved in enhancing the revenue collection process in many agencies, including working with DHMH Office of Health Care Quality to create an efficient method of collecting several fees and assessments through the use of lockbox services. We are also exploring the use of remote deposit products and are assessing its cost effectiveness. We are committed to enthusiastically working with agencies to develop and strengthen their internal processes. Recently the Office worked jointly with DLLR on a procurement for prepaid debit cards for unemployment benefits. **All new applicants for benefits are now receiving their payments through the use of prepaid debit cards, saving the State an estimated \$400,000 annually.** In addition to the monetary savings, the cards will reduce the inefficiencies inherent with check issuance and, more importantly, provide unemployment recipients with a quick, secure and convenient method to access their benefits.

We are progressing with the development of a more automated environment that will enhance the current tracking, processing and reconciling of all bank related transactions for the State's cash accounts. In the current tenuous financial environment, the Division priority must be to enhance the ability to recover in the event of a disaster and to change banks if required by market conditions or the procurement process.

## PROCUREMENT

The Office is responsible for procuring a wide range of financial services for State agencies. These services include the State's banking needs, bond counsel, financial advisors, electronic bidding, underwriters, arbitrage rebate compliance consultants, broker services for insurance coverages, and lease agreements.

The Office awarded seven Insurance broker services contracts to represent the State for its insurance coverage needs. Responsibilities for these services include marketing the accounts, competitive quotes with recommendations, placement of coverage and servicing the policies each year including any additions or replacements.

Six financial institutions were awarded contracts to participate in a new Linked Deposit Program with the intended purpose to stimulate opportunities for certified minority business enterprises by providing these businesses with discounted interest rate loans from participating financial institutions through the Maryland Department of Housing and Community Development.

Agency Bank Account Contracts were awarded to 20 national and regional banks to provide banking services to agency operating accounts located throughout Maryland.

Currently, the Office is working on procuring underwriting services for the State's General Obligation Bonds, investment and administrative services for the Local Government Investment Pool, general banking services for the Department of Human Resources and Child Support Enforcement Administration, to process and disburse monies collected on behalf of individuals who receive child support services. Within the next few months, the Office will begin the procurement process for Paying Agent and Bond Counsel Services.

## **INSURANCE**

The Insurance Division is responsible for administering the State's Insurance Program, which is comprised of both commercial and self-insurance. Commercial insurance policies are procured to cover catastrophic property and liability losses, and other obligations derived from State contracts, statutes and regulations. Among the several exposures covered by commercial policies are: State maintained toll bridges and tunnels, rail operations, assorted professional liability exposures and student athlete accidents. The State also self-insures a significant portion of its exposures and maintains the State Insurance Trust Fund (SITF) to pay claims and the costs associated with handling those claims. Self-insurance coverage includes State owned real and personal property, vehicles and liability claims covered under the Maryland Tort Claims Act.

Over the past several years, we have kept you advised of concerns related to the SITF. This year, because of our proactive underwriting management and loss prevention efforts there continues to be a surplus.

The revised FY 2008 and 2009 projected balances are stated below:

### **Current Status of SITF**

- Balance of SITF as of June 30, 2008 - \$ 35.9 million
- Actuarial recommended fund balance - \$28.2 million
- *Estimated* balance on June 30, 2009 - \$33.8 million
- Actuarial recommended fund balance - \$27.4 million

### **Underwriting**

The Insurance Division procures broker services for the purchase of commercial insurance to protect the State Insurance Trust Fund from catastrophic loss, to meet statutory or regulatory requirements and for compliance with agency contractual agreements. The Underwriting Unit consists of a manager and an underwriter with 60

years of collective experience in the underwriting field in both the public and the private sectors. Underwriting highlights for the past six months include the following:

- Members of the Underwriting Unit consulted with eight State agencies from late June through mid November including the Maryland Transportation Authority, Saint Mary's College of Maryland, the Maryland State Police, the Maryland Fire and Rescue Institute and the Maryland Port Administration. In addition to addressing all insurance questions and concerns, meetings were arranged at various State facilities to allow the State's brokers to tour and familiarize themselves with each agency's safety program and operations. On one such visit, the Unit traveled to Strawberry Point with the broker and the insurance carrier to meet the Maryland State Police Aviation Command, including their newly appointed Risk Manager. On this visit, the Unit had the opportunity to tour the MSP Mobile Incident Command Vehicle which it insures.
- The State Treasurer's Office solicited, evaluated, approved, and awarded five insurance broker services contracts between July and October. Three of these awards were for broker services for the State's liability exposures including port liability, bridges and tunnels liability and dental school professional liability. The fourth award was for broker services for public official bonds and the fifth was an award for broker services for the State's property/package policies which include blanket excess property coverage and blanket boiler and machinery coverage. For these awards, the annual broker fees only increased by \$4,625 from the prior awards in 2003.
- The State has benefited from some valuable insurance services in this years broker services awards at no additional cost. The winning broker for the Maryland Transportation Authority's toll bridges and tunnels liability coverage has provided the State with access to its Catastrophe Alert Plan. This Plan will provide the State Treasurer's Office with updated weather information about approaching storms, their potential paths and any other pertinent information. Another broker has included 40 hours of service over the term of the contract with a program called Rapid Response. Rapid Response can be activated in the event of a large property loss to State-owned buildings, and will provide the State with on-site response by a highly skilled loss mitigation/claim expert within 48-72 hours. The broker offers pre-loss planning, risk engineers, forensic accountants, construction estimators and other specialists as needed.
- The State's aviation policies for airport liability and State-owned aircraft coverages renewed in FY 09 and the **cost of both policies decreased by 37% saving premium in excess of \$600,000.**

- The Maryland Transportation Authority's liability policy for toll bridges and tunnels **renewed with a premium reduction of \$88,000. At the same time, the State benefited from an increased limit of liability by 50%, or \$50,000,000. The deductible was also reduced from \$5,000,000 to \$3,000,000. In addition, \$7,000,000 in terrorism coverage was added to that coverage.**
- The State's premium for terrorism coverage on State-owned buildings and contents was **reduced by \$57,464 in FY 09 with no reduction in coverage.**
- The coverage for State-owned computer equipment was consolidated with the Excess Property policy with the same broad coverage and the same deductible which **saved \$25,000 in annual premium plus the annual broker fee of \$4,500 for a total savings of \$29,500.**
- The Maryland Port Administration crane coverage renewed in November with a **premium savings of \$59,000.** The crane values were updated for the FY 09 renewal and the Port plans to have a probable maximum loss (PML) study done with a small amount of premium savings. If the PML study results are as expected, the MPA may be able to safely reduce the limit of coverage they purchase, thus saving additional premium dollars.
- **The boiler and machinery coverage was renewed in FY 09 with a 16% rate reduction with values that increased 11%. This managed to save the State \$16,000 in premium.** In addition to the premium savings, we negotiated an increase in the number of annual thermographic inspection days from 10 to 15. These thermographic inspections illuminate problems with hot electrical connections and equipment so that immediate repairs can be made to prevent fires.
- The annual insurance survey is underway, and this year the Underwriting Unit streamlined the survey process for all State agencies.

## Claims

The Claims Unit's primary function is to investigate and settle claims governed by the Maryland Tort Claims Act, §12-101, *et seq.*, of the State Government Article and by COMAR Title 25. The Insurance Division's Deputy Director oversees a staff of 7 insurance professionals whose duties include claims adjusting, litigation management, and administrative support. Claims highlights in the past six months include:

- In response to the Maryland State Police helicopter crash in September, 2008, the Insurance Division notified the broker who, in turn, deployed an aircraft disaster specialist. Within 48 hours of the crash, the specialist had

reported to the scene and had obtained vital information on the crash details from the National Transportation Safety Board and other agencies with jurisdiction over the crash investigation. By October 28, 2008, the State was fully compensated by the commercial carrier in the amount of \$4.01 million dollars for the totaled helicopter hull.

- In the event of a loss of this magnitude, the Insurance Division has instituted a protocol for emergency communication with State agencies and their representatives. Under the protocol, Insurance Division senior staff will be available daily and on weekends and holidays to consult and to quickly facilitate an agency's restoration or replacement of its damaged property. The Division personnel also have the ability to report claims immediately to commercial carriers. This procedure also provides the Division with early notification of claimants who may have received life threatening or fatal injuries.
- To further aid the Division's claims adjusters, a claims library has been established to provide investigative aids to the staff. The library includes such resources as the Maryland Tort Law Handbook, the Maryland Civil Pattern Jury Instructions, Maryland Automobile Accident Desk Book and NADA and Red Book auto pricing guides.

## Loss Prevention

The aim of loss prevention is to help State agencies develop specific action plans and safety practices that mitigate or eliminate State agencies' most frequent or severe sources of preventable losses.

- The current Loss Prevention Manager came to the State Treasurer's Office in June of this year. During her short tenure, the Insurance Division has conducted a detailed analysis of the claims' handling process resulting in the identification and implementation of practices and procedures that not only streamlined the overall process, but allowed for a more efficient and effective operation. The project entailed the performance of individual claim audits and desk reviews to pinpoint improvement opportunities.
- We are continuing our comprehensive review of State agencies' loss histories to identify problem areas and help agencies take corrective measures. These efforts are expected to continue to significantly reduce loss frequency and severity of damage sustained to State-owned buildings and contents. **In FY 08 the State recognized a decrease in real property losses of \$405,383.** The positive impact is partly attributed to the implementation of Infrared Thermographic Imaging, Boiler and Machinery and general property inspection

programs. We believe that the trends will continue to migrate in a positive direction as the programs mature.

- In FY09, Loss Prevention will begin tracking the potential loss exposures (the estimated maximum dollar value that could be lost in the event of an incident), the cost of preventive maintenance repairs and the actual savings to the State. The aim is to document the cost effectiveness and savings from the implementation of specific loss prevention measures recommended by our commercial brokers' engineers and inspectors.

## **INFORMATION TECHNOLOGY DIVISION**

The Information Technology (IT) Division provides an integrated platform of systems and programming to support the Office's daily cash receipts, disbursements, accounting, reconciliations and insurance claim management. IT ensures that appropriate hardware and up to date software is provided to the agency staff to ensure timely and accurate disbursements, record keeping and account reconciliation for over seven million payments totaling almost \$110 billion of State funds over a fiscal year.

IT also manages local area networking, internet access, email, application development, website management, software evaluation, alternative data communications, training, technical assistance, and other technology services to all divisions in the State Treasurer's Office. IT provides electronic funds transfer, check printing, positive pay and ARP services for the Comptroller's Office's: General Accounting Division, Revenue Division, Central Payroll Bureau as well as DHR's Child Support & CARES, and the State Retirement Agency.

### **Deposit Processing & Posting**

IT receives daily ACH deposit transactions from the State's depository bank and posts those general ledger entries of electronic and printed check payments to the State's accounting system. IT offers the choice of an automated fax or data file to be transmitted to each agency for use by their proprietary systems for reconciliation processing.

### **Payment Processing**

The IT Division services include the retrieval of warranted check disbursement files that feed a high speed customized check printing process for the General Accounting Division, Revenue Division, Central Payroll Bureau as well as DHR's Child Support & CARES and the State Retirement Agency. For each of these agencies IT provides for a unique check design, signature, MICR encoding and the delivery of an electronic positive pay file to the State disbursement bank.

The Office has developed a payment processing system that is flexible enough to allow the Treasurer to make payments for any agency in the State. The use of blank secure paper stock precludes the need to maintain preprinted checks for each account. It also is protected with several security features to eliminate or detect forgery or fraud. The checks are printed in a presorted zip code order to comply with the State's presort vendor requirements that lower postage expense.

### **Electronic Funds Transfer (EFT)**

The State Treasurer is ultimately responsible for all disbursements made by the State. The IT Division supports the State's initiative to move away from paper checks over to electronic funds transfer. Electronic payments or direct deposits are run through a conversion program that transforms the agency's payment information into a CCD+, CTX or Electronic Data Interchange format (EDI). Payments are sent in these formats to the State disbursement bank which then forwards them to the Federal Reserve's Automated Clearing House (ACH). The payment can then be deposited to any payee's bank account in the country.

### **Receipt Processing**

The State Treasurer's Office's receipt processing system complements the payment processing system by allowing any State agency to receive electronic payments from taxpayers, credit card processors and federal programs. Currently, most of the taxes collected by the State, all credit card receipts, lockbox (used for high-volume, mail-in collections) and all federal funds come in through the "Depository Plus" process. Agencies without direct access to the State's depository bank use the FDGS phone transfer system to allow them to transfer their deposits made at local banks that are affiliated with the State's depository bank. Funds are electronically transferred from the local bank over to the State's main account at the depository bank.

### **IT Accomplishments for 1<sup>st</sup> Half of FY 09**

- The IT Division continued to enhance the reliability of all of our IBM i5 daily operations with changes to program workflows and recovery options. IT has more recently focused on stronger validation of incoming check and ACH files. The programs have been enhanced with automated comparisons and system operator prompts for validation of processing dates, total record count, settlement date and total dollar amounts of the incoming files prior to processing and transmission. The new messaging process permits the operator to know when an incoming file is stale or a duplicate of a previous date. The new messaging allows the operator to stop the process and restart after the appropriate file is ready for processing.
- The IT Division has developed, and is continuing to test, an automated synchronization of data and program files between our IBM i5 Production System and our IBM i5 Development System. The nightly synchronization provides the

Treasurer's Office with the option to fail-over to our Development System if our Production System becomes disabled.

- The IT Division has acquired new IBM i5 hardware to be utilized as our Contingency System. The new system is not yet online, but when fully functional, it will supersede our Development System as the primary backup system. The new hardware will permit the IT Division to free up the storage of contingency files now on the Development System and to instead have them reside on the Contingency System. The Development System will need the additional space to support future projects for the Banking and Insurance Divisions.
- The IT Division rolled out new programming and check advice formatting for the State Retirement Agency to support new deduction choices available to State retirees.
- The IT Division continues to provide specific agencies with a customized electronic file of their transactions posted to the State's accounting system. IT is developing a new transaction file to be sent to the MVA for their ARS System.
- The IT Division has completed the installation of our remaining three new Windows servers onto the STO network. Two of our older servers have been retired and their applications have been converted over to the new hardware. The upgraded hardware will host the new MdTime system, as well as future application enhancements that will be introduced into the Banking, Administration and Insurance systems.

## **DEBT MANAGEMENT DIVISION**

### **Financing Activities - Ratings**

Since 1961, Maryland has had a continuous rating of AAA from Moody's Investors Service. Similarly, S&P has continuously rated Maryland AAA since 1973 and Fitch since 1993. Only 6 other states currently have ratings that are equivalent to our State.

The State Treasurer's Office maintains frequent contact with the rating agencies and schedules conference calls with each of them prior to every bond sale as we did prior to the bond sale on July 16, 2008. Participating in the most recent conference call were the Treasurer, Secretary of Budget and Management, Director of the Bureau of Revenue Estimates and the Director of Policy Analysis for the General Assembly and staff.

The Rating Agencies are generally uniform in their assessment of Maryland's credit. In its most recent report on Maryland General Obligation Bonds dated July 11, 2008, Standard & Poor's stated, "The stable outlook reflects the strength of Maryland's

economy and its historically strong financial and debt management policies. The State has proactively responded to a recent structural budget imbalance and has improved its long-term financial outlook. We expect it will continue focusing on maintaining structure [*sic*] budget balance in the future. There has been a steady commitment to funding reserves over time, which enhances flexibility in the current economic environment.”

Since July the rating agencies have contacted the State Treasurer’s Office with inquiries regarding revenue estimates and collections and budget cuts by the Board of Public Works. The next conference call with the rating agencies is scheduled for February 2009, prior to the sale of the 2009 First Series General Obligation Bonds.

### **Financings - General Obligation Bonds**

The State’s second bond sale for calendar year 2008 was held on July 16, 2008. The 2008 Second Series General Obligation Bonds were all tax exempt and were sold in the par amount of \$415 million plus a gross premium of approximately \$38.0 million. The interest rate on these bonds was 3.857%.

The next General Obligation bond sale is scheduled for March 4, 2009, in a projected amount of \$395 million, which will again be tax exempt with fixed rates. Historically, Maryland has sold its general obligation bonds in a public, competitive sale at meetings of the Board of Public Works. **For the first time, we are proposing to sell a portion of the bonds in a negotiated sale to retail investors only for two days prior to the regular competitive sale.** Any bonds remaining after the retail sale will be sold through the State’s competitive bidding process.

A negotiated sale to retail investors accomplishes two goals. In prior competitive sales, retail investors generally could only purchase the State’s bonds in the secondary market because essentially all of the bonds were purchased by institutional investors in the competitive sale. This sale should satisfy the strong interest by the citizens of Maryland to purchase the State’s highly rated General Obligation Bonds. Furthermore, with recent market disruptions, retail investors have been large purchasers of highly rated municipal debt and this sale should take advantage of that momentum. To generate as much interest as possible in the retail sale, the State Treasurer’s Office is planning the creation of a website and the use of radio and print advertising.

### **Leasing**

The capital lease-financing program allows State agencies to acquire equipment and pay for those items over a three, five, or ten year time frame. Between June 1, 2008 and October 31, 2008, \$1.6 million in capital equipment was leased by State agencies through the State Treasurer’s Office with approximately \$100 million remaining under the current contracts as of the end of October.

The Treasurer's Office also finances Energy Performance leases in cooperation with the Department of General Services (DGS), providing funding for energy conservation at State facilities. The program finances significant up-front investments in conservation projects and the lease is paid for using the savings in operating costs. An energy lease in the amount of \$17.7 million for the Annapolis Government Complex, District Courts/Multi-Services Centers and other DGS Facilities was approved by the BPW on December 3, 2008, and is expected to close in early January 2009.

### **Variable Rate Debt**

The State Treasurer's Office has been reviewing its debt management practices to position the State to realize future interest savings. Specifically, the Treasurer has initiated a review of variable rate debt that should result in the realization of debt service savings on General Obligation Bonds. To enable the State to issue variable rate debt, the Treasurer's Office has a draft comprehensive debt policy in review and has budgeted for the initial costs of variable rate debt in FY 09 and FY 10.

### **Status of the Annuity Bond Fund**

Debt service on General Obligation Bonds is paid from the Annuity Bond Fund (ABF) and the primary source of revenue for this fund is real property tax receipts. If the real property tax rate continues at the current level of 11.2¢ per \$100 of assessed valuation and future debt is issued at the rates projected in the 2008 CDAC Report, subsidies of general funds will be necessary to support the debt service on General Obligation (GO) Bonds in future years. For the 4 year period beginning in FY 10 through FY 13, \$294.5 million of general funds will need to be appropriated to the Annuity Bond Fund for the payment of debt service on GO Bonds.

### **CDAC Affordability Criteria**

The CDAC met during the summers of 2007 and 2008 to evaluate and review its self-imposed affordability criteria for tax-supported debt. When the affordability ratios were established in 1979, they were solely for general obligation debt. Since then, while the ratios remained unchanged, the scope of tax-supported debt increased with the inclusion of Consolidated Transportation Bonds, Stadium Authority Bonds and most recently, GARVEE Bonds and Bay Restoration Revenue Bonds. After consultation with the State's financial advisor and rating agencies, informal surveys of other states, and extensive financial analysis, the Committee voted to retain the 8% debt service to revenues criterion and to change the debt outstanding to personal income criterion from 3.2% to 4.0%. A complete summary of these evaluations and analyses can be found in Section VII of the 2007 CDAC Report and Section V in the 2008 CDAC Report. In September, the Committee also recommended \$1.11 billion in general obligation authorizations for the 2009 Legislative Session and \$27 million in authorizations for new academic facilities bonds for the University System of Maryland.

Using financial data as of September 2008 and as reported in the 2008 CDAC Report, the ratio of debt outstanding to personal income peaks at 3.43% in 2012. By 2017, the ratio is projected to fall below 3.2%. The ratio of annual debt service to revenues increases from 5.60% in fiscal year 2008 to 6.57% in fiscal year 2012 and 7.51% in fiscal year 2018. The ratio remains below the affordability criterion of 8.0%, but nevertheless is increasing each year. See the attached charts for detailed information on debt outstanding and debt service.

Updates to the status of these affordability criteria will be available in early 2009. We expect that there will be volatility in these measurements as a result of current financial conditions. For instance, declining transportation revenues may limit the issuance of Consolidated Transportation Bonds thereby reducing the total tax supported debt outstanding and consequently, the debt outstanding to personal income ratio. Conversely, personal income and general fund revenues will also be updated in early 2009 and expected declines may increase the ratios reported in September.





*We appreciate the opportunity to provide this information to the Legislative Policy Committee. If the Committee members would care to pursue further these or other STO developments, or any other aspects of the Treasurer's activities, please call the Treasurer at (410) 260-7160 or Ms. Bernadette T. Benik Acting Chief DeputyTreasurer, at (410)260-7390.*

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**Part IV**  
**Proposed Changes to Guidelines for  
Compensation provided in the State  
budget and Expenses for Legislators**

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Department of Legislative Services  
Annapolis, Maryland  
December 2008

## **NON-SUBSTANTIVE CHANGES**

### **Mileage**

The Department of Budget and Management has notified the General Assembly of changes to mileage reimbursements for expenses under the Standard State Travel Regulations, as provided in the state budget. The reimbursement rate is decreased from 58.5 cents to 55.5 cents as of January 1, 2009.

#### **2-204. MILEAGE.**

- (a) The rate of mileage reimbursement shall conform to the equivalent rates in the Standard State Travel Regulations. The current rate of reimbursement is 55 cents per mile if the travel is by automobile. The rate of reimbursement may not exceed 55 cents per mile if the travel is by other means.

#### **2-304. TRANSPORTATION.**

- (d) Automobile.
  - (1) If a member chooses to travel in a privately owned vehicle, the member shall be reimbursed at a rate of 55 cents per mile or at the rate provided in the Standard State Travel Regulations.

### **Lodging**

The Department of Budget and Management has notified the General Assembly of changes to lodging reimbursements for expenses under the Standard State Travel regulations, as provided in the State budget. The maximum per diem reimbursement rate is increased to \$126 from \$123.

#### **2-203. LODGING.**

- (e) Rate of reimbursement.

The maximum rate of reimbursement for lodging may not exceed the maximum per diem amount specified for lodging in Annapolis prescribed by the Internal Revenue Service. The current maximum per diem amount is \$126. Finance and Administrative Services will advise members as to changes in the federal per diem allowance made by the Internal Revenue Service and the effective date of the change.

# SUBSTANTIVE CHANGES

## Reimbursements

### Receipts-Clarification of the Procedures for Reimbursement

**Issue:** Requiring an itemized receipt, further clarifying items for which members can be reimbursed in terms of out-of-state travel, is in keeping with the intent of the *Guidelines*.

#### Recommendation:

### 2-303. PROCEDURES FOR REIMBURSEMENT

(c) Reimbursements.

- (5) A member shall submit actual **itemized** receipts with requests for reimbursement of expenses incurred for out-of-state travel covering lodging, meals, plane travel, and registration fee.

### Airline Baggage Charges

**Issue:** A recent change in airline policy regarding baggage has resulted in a charge for checked baggage in some instances. The General Assembly recognizes this change and will reimburse members for a maximum of 2 checked bags, however other additional charges e.g. excessive weight, will not be reimbursed.

#### Recommendation:

### 2-304. TRANSPORTATION.

(h) **Airline baggage charges.**

**A member may be reimbursed for airline baggage charges actually incurred in connection with authorized out-of state travel for a maximum of two (2) checked bags. Any additional baggage charges (such as charges for additional baggage or for excess baggage weight) will not be reimbursed.**

### Travel Arrangements

**Issue:** Making changes to reservations often results in substantial additional fees. In such cases, any additional fees incurred by members will not be reimbursed to the member unless the additional fees are approved by the President or the Speaker.

**Recommendation:**

**2-304. TRANSPORTATION.**

- (a) Travel arrangements.  
Member travel arrangements should be finalized at least 30 days before an event to ensure that members receive a competitive rate. **In the event that a member subsequently chooses to cancel or modify previously made travel arrangements, the costs, if any, associated with such cancellations or changes will not be reimbursed to the member. An exception to this general limitation may be authorized by the President or the Speaker in an emergency or unusual instance where travel arrangements were modified due to unforeseeable circumstances that were beyond the member's control.**

**Communication**

**Issue:** Member subscriptions to newspaper and magazines related to their legislative work has increased. The recommendation to increase the line item from \$200 to \$300 takes into account increased subscription prices.

**Recommendation:**

**3-302. COMMUNICATION**

- (d) Books and Publications.
- (1) A member's allowance may be used to purchase newspapers if the member finds the purchase is necessary for fulfilling the member's legislative responsibilities. These purchases shall be limited to **\$300** per fiscal year.

**Limitations on encumbered funds for purchases of district office furniture or equipment.**

**Issue:** In the past, there were no provisions relating to the encumbrance of funds relating to purchases of equipment and furniture. However, it is necessary to establish such a policy for clarification. This recommendation establishes that the ability of members to encumber funds pertains to furniture and equipment and limited contractual services, e.g. repairs for furniture and equipment, only, and does not apply to operational expenses. Further, these encumbrances must be spent by September 30<sup>th</sup> or the funds will revert back to the General Assembly.

**Recommendation:**

**3-102. GENERAL PROVISIONS.**

- (b) Limitations.
- (3) A member may encumber funds only if that member has a valid purchase document for an **approved purchase of district office furniture or equipment. Funds may not be encumbered for recurring or routine operating expenses such as payroll, rent, utilities, postage or supplies. All funds encumbered from the preceding fiscal year must be expended for their originally intended purpose no later than September 30<sup>th</sup> of the following fiscal year. Any district office funds encumbered by a member from a prior year appropriation that have not been disbursed on or before September 30<sup>th</sup> of any fiscal year will be reverted by the Finance Office to the appropriate Maryland General Assembly general fund account.**

**Approved Office Furniture**

**Issue:** Spending history indicates that members are no longer purchasing certain items and wish to make purchases of other certain items. Members are no longer purchasing dictation and transcription devices. However, members are increasingly interested in purchasing paper shredders. Also, some changes reflect market increases for those items. These recommended changes are reflected below.

**Recommendation:**

**3-502. APPROVED LIST OF FURNITURE AND EQUIPMENT.**

Desk	\$ 1,500
Desk Chair	\$ 550
Desk Lamp	\$ 150
Side Chair	\$ 300
Table	\$ 370
Table Lamp	<b><u>\$ 250</u></b>
File Cabinet	<b><u>\$ 700</u></b>
Bookcase	\$ 450
Telephone Answering Device	\$ 250
Credenza	\$ 1,000
Copier	\$ 1,400
<b><u>Paper Shredder</u></b>	<b><u>\$ 250</u></b>

Typewriter (nonmemory)	\$	800
Typewriter (memory) (price decrease from \$1,100)	\$	<u>500</u>
<b>DELETED ITEMS INCLUDE DICTATION DEVICES (deleted \$550) AND TRANSCRIPTION DEVICES (deleted \$450)</b>		
Portable Note Taker (1 per member)	\$	250
Calculator or Adding Machine	\$	200
Telephone or Basic Telephone System	\$	300
Table(s) or Stand(s) for Data Processing Equipment	\$	<u>500</u>
Facsimile (Fax) Machine, Accessories and Associated Connection Fees	\$	600

### **Office Rent**

**Issue:** In an effort to minimize the State's exposure to building repair costs, members' office leases should not contain provisions obligating the Maryland General Assembly to pay for structural building repairs or component replacements.

### **Recommendation:**

#### **3-301. OFFICE RENT.**

**(d) A lease entered into by the member should not contain any provision which could have the effect of obligating the Maryland General Assembly or the State of Maryland to paying for the cost, or any portion thereof, to repair or replace any structural building component (such as roof, ceiling, floor, or walls) or integral building service system (such as heating, ventilation and cooling / HVAC, plumbing, electrical or telecommunications systems), except to the extent that such damages are shown to have been directly caused by or attributable to the member's occupation and use of such premises.**