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VOLUME

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LEGISLATIVE  
HANDBOOK

MARYLAND STATE PERSONNEL,  
PENSIONS, AND PROCUREMENT

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# **Maryland State Personnel, Pensions, and Procurement**

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Volume V  
2010**

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## Foreword

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In Maryland, one of the largest areas of fiscal impact to the State relates to salary and benefits for employees of the State who are hired to carry out the many duties and responsibilities of State government. To assist in carrying out these responsibilities, the State additionally spends hundreds of millions of dollars every year through procurement contracts with the private sector for goods and services.

The State of Maryland's public employee workforce consists of approximately 79,500 regular positions. In fiscal 2011, the State will spend \$7.8 billion on wages and benefits (including retirement benefits for local school systems), which amounts to 24.4% of the total State operating budget for that year. In addition, there are almost 368,000 individuals who are enrolled as members of the State Retirement and Pension System (which includes active members, vested former members, and beneficiaries). These numbers include all public school teachers in Maryland. These teachers are employees of local government, but their retirement is overseen by the State. In fiscal 2011, the projected payment the State will make to the State Retirement and Pension System on behalf of all its members is almost \$1.4 billion. As of June 30, 2010, the State Retirement and Pension System investment portfolio had a market value of \$31.8 billion which represents the State's largest public pool of capital.

State law and regulations detail all aspects of the procurement process which begins with the solicitation and award of procurement contracts and continues through all phases of procurement contract administration. The General Assembly passed the procurement law to ensure that State contracts are immune from inappropriate influences and are awarded on the basis of technical merit and price after effective competition between vendors.

This volume provides a broad overview of the State's workforce and compensation, the personnel policies and procedures relating to management of the workforce, retirement benefits afforded to the State workforce, and the system under which retirement benefits are provided. Additionally, this volume will provide a summary of the process and procedures governing the State's procurement of goods and services with the private sector. The laws governing these matters are quite complex, and this volume is intended to provide general information to assist in the consideration of legislation affecting the State's personnel, retirement, and procurement laws.

This is the fifth in a series of nine volumes of the 2010 Legislative Handbook Series prepared prior to the start of the General Assembly term by the staff of the Department of Legislative Services' Office of Policy Analysis. The material for this

volume was assembled and prepared by Dylan Baker, Jaclyn Hartman, Josh Watters, Anne Gawthrop, Michael Rubenstein, Lisa Simpson, David Smulski, and Patrick Tracy. Supervision and review of the volume was provided by Patrick Frank, Ted King, and Claire Rossmark. The manuscript was prepared by Kim Landry and Kamar Merritt.

The Department of Legislative Services appreciates the cooperation and assistance received from State agencies and other interested parties and hopes that this volume will be of use to all persons interested in Maryland State government.

Karl S. Aro  
Executive Director  
Department of Legislative Services  
Maryland General Assembly

Annapolis, Maryland  
November 2010

# Contents

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<b>Foreword</b> .....	iii
<b>Exhibits</b> .....	xv
<b>Chapter 1. Profile of Maryland’s State Workforce</b> .....	1
<b>Chapter 2. Evolution of the State Merit System – Historical Perspective</b> .....	7
Historical Federal Influence.....	7
1939 Social Security Act Amendments.....	8
Civil Service Reform Act of 1978.....	9
Maryland’s Efforts .....	9
Pre-1900s.....	9
Early 1900s.....	10
Evolution of Maryland’s Merit System Law .....	10
Modern Reform Efforts.....	12
1996 Reforms .....	13
<b>Chapter 3. Personnel Policies and Practices in the Executive Branch</b> .....	15
Definitions.....	15
Administration .....	16
Department of Budget and Management.....	17
Independent Salary Setting Authorities.....	18
Independent Personnel Systems .....	19
University System of Maryland Personnel System .....	19
Other Higher Education Institutions Personnel Systems.....	19
Department of Transportation Personnel System .....	19
Types of Positions .....	20
Creation of Positions .....	21
State Personnel Management System .....	21
Recent Reforms to the State Personnel Management System.....	22
Recruitment .....	23
Selection, Credits, and Examination for Candidates.....	25
Probation.....	27
Employee Performance Appraisals .....	27
Performance-based Pay .....	28
Transfer of Employees into State Service .....	29
Compensation of Employees .....	29
Standard Pay Plan.....	30

Adjustments/Amendments to the Standard Pay Plan .....	30
Special Pay Provisions .....	31
Executive Pay Plan .....	31
Gubernatorial Compensation.....	33
Overtime Compensation.....	34
Employee Rights and Protections .....	35
Equal Opportunity Program .....	35
Whistleblower Law .....	37
State Substance Abuse Policy .....	37
Grievance Procedures in State Personnel Management System .....	39
Grievance Procedure.....	40
Peer Review and Other Appeal Procedures.....	41
Remedies Available to Grievants .....	41
Sovereign Immunity and Satisfaction of Awards.....	41
Disciplinary Actions, Layoffs, and Employment Terminations .....	42
Disciplinary Actions.....	42
Layoffs.....	45
Separations .....	45
Reinstatements.....	45
Contractual Employment in State Government.....	46
<b>Chapter 4. Leave Policies and Benefits.....</b>	<b>49</b>
Leave.....	49
Paid Leave .....	49
Holidays.....	49
Annual Leave .....	51
Personal Leave .....	52
Sick Leave.....	52
State Employees' Leave Bank and Employee-to-employee Donations .....	53
Work-related Accident Leave.....	54
Compensatory Leave .....	54
Military Administrative Leave.....	54
Other Paid Leave.....	55
Unpaid Leave.....	55
Leave of Absence.....	56
Emergency Release Time .....	56
Family Leave.....	56
Fringe Benefits.....	57
Health Insurance Plans and Other Related Benefits.....	57
Health Insurance Plans.....	58
Other Related Benefits.....	59

Enrollment and Funding .....	61
Retiree Health Insurance.....	65
Social Security.....	65
Pension/Retirement Contributions .....	66
Workers’ Compensation.....	66
Unemployment Insurance.....	66
Employee Programs .....	67
Employee Assistance Program.....	67
Deferred Compensation Plan.....	67
Employee Transit Benefit.....	67
Employee Training and Awards Programs .....	68
Employee Training Programs .....	68
Incentive Awards Programs.....	68
Teleworking Program.....	69
Day Care Services .....	69
Miscellaneous Benefits.....	69
<b>Chapter 5. Collective Bargaining.....</b>	<b>71</b>
History of Collective Bargaining in Maryland .....	71
Collective Bargaining in State Government .....	72
Service Fees .....	74
Collective Bargaining for Child Care Providers.....	75
Collective Bargaining for Teachers .....	75
Collective Bargaining in Higher Education.....	76
<b>Chapter 6. Personnel Policies and Practices in the Legislative Branch .....</b>	<b>79</b>
Compensation.....	79
Members of the General Assembly .....	79
Staff.....	80
Personnel Policies and Procedures.....	80
<b>Chapter 7. Personnel Policies and Practices in the Judicial Branch .....</b>	<b>83</b>
Judicial Compensation .....	83
Additional Judges.....	85
Clerks of the Court.....	88
District Court Employees.....	88
Personnel Policies and Procedures.....	88
<b>Chapter 8. Introduction to the State Retirement and Pension System .....</b>	<b>89</b>
Board of Trustees .....	89
Maryland State Retirement Agency.....	91
Joint Committee on Pensions.....	92



<b>Chapter 9. Historical Background</b> .....	95
Origin .....	95
Administrative History .....	100
Financial and Actuarial History .....	101
<b>Chapter 10. System Membership</b> .....	105
Participating Governmental Units .....	109
<b>Chapter 11. Plan Summaries</b> .....	115
Teachers' Retirement System .....	116
Member Contributions .....	117
Full Service Retirement Eligibility and Allowances .....	117
Early Retirement .....	118
Cost-of-living Adjustments .....	118
Death Benefits .....	119
Optional Forms of Payment .....	119
Ordinary Disability Retirement Allowances .....	120
Accidental Disability Retirement Allowances .....	121
Post Retirement Health Insurance .....	121
Vesting .....	121
Teachers' Pension System .....	122
Member Contributions .....	122
Full Service Retirement Eligibility and Allowances .....	123
Early Retirement .....	124
Cost-of-living Adjustments .....	124
Death Benefits .....	125
Optional Forms of Payment .....	125
Ordinary Disability Retirement Allowances .....	125
Accidental Disability Retirement Allowances .....	126
Post Retirement Health Insurance .....	126
Vesting .....	126
Employees' Retirement System .....	127
Member Contributions .....	128
Full Service Retirement Eligibility and Allowances .....	129
Early Retirement .....	129
Cost-of-living Adjustments .....	130
Death Benefits .....	130
Optional Forms of Payment .....	131
Ordinary Disability Retirement Allowances .....	131
Accidental Disability Retirement Allowances .....	131
Post Retirement Health Insurance .....	132

Vesting.....	132
Employees’ Pension System.....	132
Member Contributions.....	133
Full Service Retirement Eligibility and Allowances.....	134
Early Retirement.....	135
Cost-of-living Adjustments.....	135
Death Benefits.....	136
Optional Forms of Payment.....	136
Ordinary Disability Retirement Allowances.....	136
Accidental Disability Retirement Allowances.....	137
Post Retirement Health Insurance.....	137
Vesting.....	137
State Police Retirement System.....	138
Member Contributions.....	139
Full Service Retirement Eligibility and Allowances.....	139
Early Retirement.....	139
Cost-of-living Adjustments.....	139
Death Benefits.....	140
Optional Forms of Payment.....	140
Ordinary Disability Retirement Allowances.....	141
Special Disability Retirement Allowances.....	141
Post Retirement Health Insurance.....	141
Deferred Retirement Option Program.....	141
Vesting.....	142
Correctional Officers’ Retirement System.....	142
Member Contributions.....	143
Full Service Retirement Eligibility and Allowances.....	143
Early Retirement.....	143
Cost-of-living Adjustments.....	143
Death Benefits.....	144
Optional Forms of Payment.....	144
Ordinary Disability Retirement Allowances.....	144
Accidental Disability Retirement Allowances.....	145
Post Retirement Health Insurance.....	145
Vesting.....	145
Law Enforcement Officers’ Pension System.....	146
Member Contributions.....	148
Full Service Retirement Eligibility and Allowances.....	148
Early Retirement.....	149
Cost-of-living Adjustments.....	149
Death Benefits.....	150

Optional Forms of Payment .....	151
Ordinary Disability Retirement Allowances .....	151
Accidental Disability Retirement Allowances .....	151
Post Retirement Health Insurance .....	152
Deferred Retirement Option Program .....	152
Vesting.....	152
Judges' Retirement System.....	152
Member Contributions.....	153
Full Service Retirement Eligibility and Allowances.....	153
Early Retirement.....	154
Cost-of-living Adjustments .....	154
Death Benefits .....	154
Optional Forms of Payment .....	154
Disability Retirement Allowances.....	154
Post Retirement Health Insurance .....	155
Vesting.....	155
The Optional Retirement Program.....	155
Legislative Pension Plan .....	156
Member Contributions.....	156
Full Service Retirement Eligibility and Allowances.....	157
Early Retirement.....	157
Cost-of-living Adjustments .....	157
Death Benefits .....	157
Optional Forms of Payment .....	158
Disability Retirement Allowances.....	158
Post Retirement Health Insurance .....	158
Vesting.....	159
Forfeiture of Benefits .....	159
Retirement Provisions for Governors, Lieutenant Governors, and Constitutional Officers .....	159
<b>Chapter 12. Actuarial Aspects.....</b>	<b>161</b>
Funding Method.....	161
Accrued Liabilities .....	162
Actuarial Assumptions .....	162
Asset Valuation.....	164
Unfunded Liabilities and Contribution Rates .....	165
Public vs. Private Pension Plans .....	165
Actuarial Funding and the "Corridor" Funding Method .....	166

<b>Chapter 13. Investment Overview .....</b>	<b>171</b>
Investment Advisors .....	171
External Manager Oversight .....	172
Asset Allocation .....	172
Terra Maria Program .....	175
Public Equities .....	175
Fixed Income Securities .....	176
Real Estate Holdings .....	177
Private Equity .....	178
Alternative Asset Classes .....	179
Investment Performance Overall .....	179
<b>Chapter 14. Maryland Teachers’ and State Employees’ Supplemental Retirement Plans .....</b>	<b>183</b>
Administration .....	183
457 Program – Deferred Compensation .....	184
403(b) Program – Tax Sheltered Annuities .....	185
401(k) Program – Savings and Investment .....	185
401(a) Program – Employer Matching Plan .....	185
Investment Options .....	186
Program Administration and Fees .....	187
All Plans – Assets, Deferrals, Participants, and Average Accounts .....	189
<b>Chapter 15. Retiree Health Insurance .....</b>	<b>191</b>
Governmental Accounting Standards Board Issues New Accounting Standards ..	193
The Advantages of Pre-funding .....	196
Effort to Prefund Other Post Employment Benefits Liability Interrupted by Budget Crisis .....	197
Commissions Established to Address Other Post Employment Benefits Liability .....	198
Blue Ribbon Commission .....	198
Benefit Sustainability Commission .....	199
<b>Chapter 16. Overview of Procurement .....</b>	<b>201</b>
Introduction to the Procurement Process .....	201
Origins of the Current Maryland Procurement Law .....	202
Purposes of the Procurement Law .....	202
Exemptions from the Procurement Law .....	203
<b>Chapter 17. Organization of State Procurement .....</b>	<b>207</b>
Board of Public Works .....	207

Primary Procurement Units.....	207
Components of the State Procurement Process .....	214
Procurement Advisory Council .....	214
Procurement Advisor.....	215
General Counsel to the Procurement Advisory Council .....	215
Maryland Green Purchasing Committee.....	216
<b>Chapter 18. Source Selection .....</b>	<b>217</b>
Methods.....	217
Competitive Sealed Bidding.....	217
Competitive Sealed Proposals .....	218
Noncompetitive Negotiation .....	219
Sole Source Procurement .....	219
Unsolicited Proposals .....	219
Emergency Procurement .....	220
Small Procurement .....	221
Auction Bids .....	221
Procedures .....	222
Administrative .....	222
Prequalification.....	222
Rejection and Cancellation of Bids .....	222
Bid Security.....	222
Security.....	223
Unlawful Conduct and Conflict of Interest.....	223
<b>Chapter 19. Contract Formation .....</b>	<b>225</b>
Contract Method and Preference .....	225
Contract Provisions .....	225
Preferences .....	226
In General .....	226
Small- and Veteran-owned Business Programs .....	227
Preference Programs .....	227
Reserve Programs .....	227
Minority Business Enterprise Program .....	228
Miscellaneous Purchasing Preferences .....	230
Resident Bidders .....	230
Paper Procurement by the Department of General Services .....	231
Low Noise Supplies .....	231
Coal in Heating Systems.....	231
Biodiesel Fuel for State Vehicle Fleet.....	231
Recycled Products.....	231

Mercury Free Products.....	232
Maryland Food Growers.....	232
Steel.....	232
Compost.....	232
<b>Chapter 20. Dispute Resolution.....</b>	<b>233</b>
In General.....	233
Complaints.....	233
Types of Complaints.....	233
Protest.....	233
Contract Complaint.....	234
Complaint by Contractor.....	234
Complaint by Agency.....	234
Procurement Officer’s Duties.....	235
Protests.....	235
General Procedures.....	235
Requests for Additional Information.....	235
Discussions or Negotiations.....	235
Recommended Decisions.....	236
Contract Claim.....	236
General Procedures.....	236
Requests for Additional Information.....	236
Discussions or Negotiations.....	236
Recommended Decisions.....	237
Duties of the Reviewing Authority.....	237
Protest and Contract Complaints.....	237
Construction Contract Complaints.....	237
Maryland State Board of Contract Appeals.....	238
In General.....	238
Appeals.....	239
<b>Chapter 21. Penalties for Noncompliance.....</b>	<b>241</b>
In General.....	241
Void Contracts.....	241
Voidable Contracts.....	241
Debarment.....	242
Criminal Penalties.....	243
Collusion.....	243
Falsification, Concealment, or Suppression of Material Facts.....	244

<b>Chapter 22. Miscellaneous Requirements</b> .....	245
Energy Performance Contracts .....	245
Architectural and Engineering Services.....	245
In General .....	245
General Professional Services Selection Board .....	245
Transportation Professional Services Selection Board .....	246
<b>Appendix 1</b> Summary of Personnel Data by Major Areas of Government Regular Full-time Equivalent Positions, Fiscal 2006-2010.....	247
<b>Appendix 2</b> Salary Setting Authorities and Personnel Systems Independent of the State Personnel Management System.....	249
<b>Appendix 3</b> Creation and Abolition of State Positions through the Budget .....	253
<b>Appendix 4</b> State of Maryland Salary Schedule, Fiscal 2011, Annual Rates Effective July 1, 2010 .....	257
<b>Appendix 5</b> General Salary Increases, Increments, and Other Compensation Fiscal 2003-2011 .....	259
<b>Appendix 6</b> Contractual Full-time Equivalent Positions, Fiscal 2006 Actuals to 2010 Working Appropriation .....	261
<b>Appendix 7</b> Comparison of Maryland State Retirement Plans .....	263
<b>Appendix 8</b> State and Participating Municipal Corporations – Contribution Rates by System, Fiscal 2002-2011.....	265
<b>Appendix 9</b> Comparison of Plan Provisions of 457, 401(k), and 403(b) Payroll Deferral Plans .....	267
<b>Appendix 10</b> State Contract Dollars Awarded by Agency, Fiscal 2007 through April 2010.....	269
<b>Index</b> .....	271

# Exhibits

---

<b>Exhibit 1.1</b>	State Population – State Employment .....	2
<b>Exhibit 1.2</b>	State Employees by Length of Service .....	2
<b>Exhibit 1.3</b>	State Positions by Department/Service Area .....	3
<b>Exhibit 1.4</b>	State Workforce Highlights .....	4
<b>Exhibit 1.5</b>	Average Salaries of State Employees .....	5
<b>Exhibit 3.1</b>	State Employment Applications, Testing, and Appointments .....	25
<b>Exhibit 3.2</b>	Executive Pay Plan .....	32
<b>Exhibit 3.3</b>	Disciplinary Actions and Grievances .....	44
<b>Exhibit 3.4</b>	Contractual Conversions in State Agencies .....	47
<b>Exhibit 4.1</b>	Paid Holidays – State Personnel Management System Employees .....	50
<b>Exhibit 4.2</b>	Annual Leave – State Personnel Management System Employees .....	51
<b>Exhibit 4.3</b>	Employee Participation in Health and Life Insurance Plans .....	61
<b>Exhibit 4.4</b>	Summary of Health Insurance Reimbursable Fund.....	62
<b>Exhibit 4.5</b>	Payments for Prescription Coverage and Other Health Coverage .....	63
<b>Exhibit 4.6</b>	Total Claims for Health, Prescription, and Dental Benefit .....	64
<b>Exhibit 5.1</b>	Bargaining Units and Representatives.....	73
<b>Exhibit 5.2</b>	Unions Certified for Exclusive Representative Election by the State Higher Education Labor Relations Board and Number of Employees in Each Bargaining Unit .....	78
<b>Exhibit 7.1</b>	Judicial Salaries .....	84
<b>Exhibit 7.2</b>	District Court Judgeships.....	86
<b>Exhibit 7.3</b>	Circuit Court Judgeships .....	87
<b>Exhibit 10.1</b>	Membership .....	106
<b>Exhibit 10.2</b>	Active and Former Vested Membership Data by System .....	107
<b>Exhibit 10.3</b>	Retiree and Beneficiary Data by System.....	108
<b>Exhibit 10.4</b>	Governmental Units Participating in the Employees’ Retirement and Pension System.....	110
<b>Exhibit 10.5</b>	Withdrawn Governmental Units.....	112
<b>Exhibit 11.1</b>	Membership in the Teachers’ Retirement System.....	116
<b>Exhibit 11.2</b>	Membership in the Teachers’ Pension System.....	122
<b>Exhibit 11.3</b>	Membership in the Employees’ Retirement System .....	128
<b>Exhibit 11.4</b>	Membership in the Employees’ Pension System .....	133
<b>Exhibit 11.5</b>	Membership in the State Police Retirement System .....	138
<b>Exhibit 11.6</b>	Membership in the Law Enforcement Officers’ Pension System .....	147
<b>Exhibit 11.7</b>	Membership in the Judges’ Retirement System .....	153
<b>Exhibit 12.1</b>	State Retirement and Pension System of Maryland Actuarial Funding Status .....	167



<b>Exhibit 12.2</b>	Annual State Pensions Contributions, Corridor vs. Full Actuarial Funding.....	169
<b>Exhibit 13.1</b>	Asset Allocation Targets, State Retirement and Pensions System of Maryland.....	174
<b>Exhibit 13.2</b>	Equity Performance Comparisons .....	176
<b>Exhibit 13.3</b>	Fixed Income Performance Comparisons .....	177
<b>Exhibit 13.4</b>	Real Estate Funds and Direct Estate.....	178
<b>Exhibit 13.5</b>	State Retirement and Pension System Annual Investment Returns .....	180
<b>Exhibit 13.6</b>	State Retirement and Pension System Market Value of Assets .....	181
<b>Exhibit 13.7</b>	Annualized Rates of Return by Asset Class .....	182
<b>Exhibit 14.1</b>	Assets and Participants' Fees and Agency Operating Budgets .....	188
<b>Exhibit 14.2</b>	All Plans – Assets, Deferrals, Participants, and Average Account Values .....	189
<b>Exhibit 15.1</b>	Retiree Health Plan Enrollment as a Percentage of Total Plan Enrollment .....	192
<b>Exhibit 15.2</b>	Health, Prescription, Mental Health, and Dental Claims Costs on a Per Enrollee Basis.....	193
<b>Exhibit 15.3</b>	Calculation of Maryland's Net Other Post Employment Benefits Obligation.....	195
<b>Exhibit 15.4</b>	Maryland's Other Post Employment Benefits Liabilities and Annual Required Contribution .....	197
<b>Exhibit 16.1</b>	Total State Contract Dollars Awarded by Fiscal Year .....	201
<b>Exhibit 16.2</b>	Agencies Exempt from the Maryland Procurement Law .....	205
<b>Exhibit 17.1</b>	Procurement Authority Delegated to Agencies .....	209
<b>Exhibit 17.2</b>	Areas of Procurement Authority.....	210

# Chapter 1. Profile of Maryland's State Workforce

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As of December 31, 2009, Maryland's public employee workforce consists of 79,735 regular full-time equivalent positions located in various agencies, departments, and commissions in State government. A summary of the number of employees in each of the major areas of State government is found in Appendix 1. In addition, approximately 9,074 full-time equivalent positions are in the other major category – contractual employment. The State will spend in excess of \$6.6 billion on salaries, wages, and benefits during fiscal 2010, which amounts to 20.4% of the total State operating budget.

The following exhibits provide a demographic and functional “snapshot” of the State Personnel Management System and Maryland Department of Transportation workforce:

- Exhibit 1.1 compares the State's population with the number of budgeted State employees from fiscal 2005 to 2010.
- Exhibit 1.2 compares the distribution of State employees by length of service in fiscal 2009.
- Exhibit 1.3 shows the distribution of State employees by department/service area in fiscal 2011. Appendix 1 presents a historical table of this distribution.
- Exhibit 1.4 is a demographic profile of the State workforce for fiscal 2009.
- Exhibit 1.5 lists average salaries of State employees from fiscal 1991 to 2009.

**Exhibit 1.1**  
**State Population – State Employment**  
**(Includes Contractual and University System of Maryland Employees)**  
**Fiscal 2005-2010**

<u>Fiscal Year</u>	<u>Population<sup>1</sup></u>	<u>% Change</u>	<u>Authorized State Positions<sup>2</sup></u>	<u>% Change</u>	<u>Employees as % of State Population</u>
2005	5,538,989		86,688		1.6%
2006	5,575,552	0.66%	87,311	0.7%	1.6%
2007	5,602,258	0.48%	89,314	2.3%	1.6%
2008	5,618,899	0.30%	90,084	0.9%	1.6%
2009	5,633,597	0.26%	90,159	0.1%	1.6%
2010	5,699,478	1.17%	88,810	-1.5%	1.6%

<sup>1</sup>Estimated population as of July 1 of the fiscal year.

<sup>2</sup>Full-time equivalent positions; number of positions on the last day of the fiscal year except fiscal 2010, which is as of December 31, 2009.

Source: U.S. Census Bureau; Department of Legislative Services; Department of Budget and Management

**Exhibit 1.2**  
**State Employees by Length of Service<sup>1</sup>**  
**Fiscal 2009**

<u>Years of Service</u>	<u>Distribution of Employees Fiscal 2009</u>
Less than 1 year	8%
1 – 5 years	42%
6 – 10 years	15%
11 – 15 years	11%
16 – 20 years	10%
21 – 30 years	12%
Over 30 years	3%

<sup>1</sup>Includes employees covered by the State Personnel and Management System and the Maryland Department of Transportation.

Source: Department of Budget and Management

**Exhibit 1.3**  
**State Positions by Department/Service Area**  
**Authorized Full-time Equivalent Regular Positions**  
**Fiscal 2011 Legislative Appropriation**

<u>Department/Service Area</u>	<u>FTE</u>	<u>Percent</u>
Legislative Branch	747	0.9%
Judicial Branch	3,581	4.5%
<b>Executive Branch:</b>		
Legal	1,492	1.9%
Executive and Administrative Control	1,617	2.0%
Financial and Revenue Administration	1,966	2.5%
Budget and Management	451	0.6%
Retirement	207	0.3%
General Services	593	0.8%
Transportation	8,963	11.3%
Natural Resources	1,284	1.6%
Agriculture	413	0.5%
Health and Mental Hygiene	6,570	8.3%
Human Resources	6,692	8.5%
Labor, Licensing, and Regulation	1,669	2.1%
Public Safety and Correctional Services	11,304	14.3%
MSDE and Other Education	1,951	2.5%
Housing and Community Development	311	0.4%
Business and Economic Development	236	0.3%
Environment	970	1.2%
Juvenile Services	2,240	2.8%
Police and Fire Marshal	2,421	3.1%
<b>Executive Branch Subtotal</b>	<b>51,347</b>	<b>65.0%</b>
<i>Section 45 Reduction</i>	<i>-500</i>	<i>-0.6%</i>
<b>Higher Education</b>	<b>23,857</b>	<b>30.2%</b>
<b>Total</b>	<b>79,032</b>	<b>100.0%</b>

MSDE: Maryland State Department of Education

Note: Contractual employees not included. Numbers may not sum to total due to rounding.

Source: Department of Legislative Services; Department of Budget and Management

**Exhibit 1.4**  
**State Workforce Highlights**  
**Fiscal 2009**

	<u>SPMS</u>	<u>MDOT</u>
● <b>State Government Employees by Bargaining Status:<sup>1</sup></b>		
Included in a Collective Bargaining Unit	63.3%	63.8%
Excluded from Collective Bargaining Units	36.7%	36.2%
● <b>State Government Employees by Service Classification:<sup>2</sup></b>		
<b>At-will:</b>	<b>13.1%</b>	<b>8.7%</b>
Executive Service	0.5%	8.1%
Management Service	4.1%	0.5%
Special Appointment <sup>3</sup>	8.6%	0.1%
Other At-will	0.0%	0.1%
<b>Not At-will:</b>	<b>83.2%</b>	<b>91.3%</b>
Professional Service	7.0%	n/a
Skilled Service <sup>4</sup>	76.1%	n/a
Career Service	n/a	91.3%
<b>Other:</b>	<b>3.7%</b>	<b>0.0%</b>
● <b>Work Location of State Employees:<sup>1</sup></b>		
Baltimore City	36.7%	31.4%
Anne Arundel County	13.5%	32.5%
Baltimore Metro Area	18.0%	10.2%
Western Maryland	13.7%	6.7%
Eastern Shore Area	10.3%	4.0%
Washington Metro Area	4.8%	9.5%
Southern Maryland Area	2.6%	2.6%
● <b>The Statewide Civilian Labor Force Is:</b>	<b>...while the State Employee Workforce Is:</b>	
50.9% Male	44% Male	
49.1% Female	56% Female	
35.6% Minority	18% Minority	
● <b>The average SPMS employee is 45 years old and has 12 years of service, while the average MDOT employee is 47 years old with 15 years of service.<sup>1</sup></b>		

<sup>1</sup>Excludes information from the University System of Maryland, the Injured Workers' Insurance Fund, the Maryland Transportation Authority, the union employees of the Maryland Transit Administration, and employees of the Legislative and Judicial branches.

<sup>2</sup>Excludes higher education and nonbudgeted agency positions.

<sup>3</sup>A small percentage of special appointments have limited job protections; however, most employees with special appointment status serve completely at the pleasure of the appointing authority.

<sup>4</sup>MDOT includes 2,351 (27.3% of total) Maryland Transit Administration union employees.

MDOT: Maryland Department of Transportation

SPMS: State Personnel and Management System

Source: Department of Legislative Services; Department of Budget and Management; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation

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**Exhibit 1.5**  
**Average Salaries of State Employees**  
**Fiscal 1991-2009**

<u>Fiscal Year</u>	<u>Average Salary</u>
1991	\$28,587
1992	28,633
1993	28,786
1994	29,946
1995	30,978
1996	31,858
1997	32,426
1998	33,885
1999	35,432
2000	36,767
2001	39,014
2002	41,261
2003	41,191
2004	42,505
2005	42,746
2006	44,464
2007	46,080
2008	47,490
2009	48,530

Note: Averages reflect salaries paid to employees covered by the State Personnel and Management System.

Source: Department of Budget and Management

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## **Chapter 2. Evolution of the State Merit System – Historical Perspective**

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Civil service reform was accomplished at the federal level in 1883, but Maryland did not follow suit until 37 years later. Chapter 41 of 1920 established the State merit system, making Maryland the ninth state to adopt civil service reform. Civil service or merit systems comprise the laws and rules developed to uphold principles of fairness, equality, and open competition in all areas of public-sector personnel management.

### **Historical Federal Influence**

As at the national level, the electorate eventually voiced its distaste for a continuance of the “spoils system” that linked public employment with political party affiliation. Proponents of reform argued that the patronage system deprived taxpayers of an impartial and responsive public workforce.

“Every four years the whole machinery of government is pulled to pieces. The business of the nation and the legislation of Congress is subordinated to the distribution of plunder among eager partisans.” The preceding quote by President Chester Arthur described the “spoils system” that characterized the personnel practices of federal and state governments for decades. Beginning with President Andrew Jackson’s election in 1828, the patronage system was common practice for obtaining public employment.

The assassination of President James Garfield in 1881 by a disappointed job seeker jump-started the reform process. In 1883, the Civil Service Reform Act, also known as the Pendleton Act, established the United States Civil Service Commission, which provided for the merit selection, retention, and promotion of federal employees. The Pendleton Act and other subsequent federal actions, along with state initiatives, started the movement towards comprehensive, modern personnel systems.

As a result of the Pendleton Act, within a few months, New York established a civil service commission to administer tests for individuals seeking state positions. Massachusetts followed with a similar system in 1884. Other states, however, did not start adopting merit systems until the early 1900s.



## **1939 Social Security Act Amendments**

In 1939, amendments to the federal Social Security Act again moved the states toward merit-based personnel systems by requiring states to place all federally funded state agency employees into merit systems. Therefore, states that did not have some type of merit coverage for most of their employees were now required to have this coverage.

Since 1939, there have been additional changes to merit system standards in the Social Security Act. Covered agency requirements were consolidated in 1948 and revised again in 1963 to bar discrimination on the basis of race, national origin, and other personal factors unrelated to merit. In 1971, additional revisions permitted state diversity in the design and operation of personnel systems. The most important changes were:

- providing affirmative action to achieve equal employment opportunity;
- adding specific prohibitions of discrimination based on age, sex, or physical disability; and
- providing stronger opportunities to appeal alleged discrimination.

In 1979, after a two-year congressional review, additional changes were made to the Social Security Act, including:

- requiring adoption of uniform selection guidelines to participate in grant programs;
- broadening standards for competition and choice for the handicapped and participants in congressional or state authorized employment/rehabilitation programs;
- specifying requirements for affirmative action programs; mandatory workforce analysis; goals and timetables; and race, sex, and ethnic data collection for applicants; and
- waiving local jurisdictions with fewer than 25 employees.

By 1982, the Social Security Act standards covered almost 20% of all state personnel.

## **Civil Service Reform Act of 1978**

Another potential federal influence on state and local personnel systems was the Civil Service Reform Act of 1978, which was based in part on personnel reforms already underway in state and local governments. The Act represented the most comprehensive reform of federal government service since the 1883 Pendleton Act.

The Act was largely based on the recommendations from a study conducted through President Jimmy Carter's Personnel Management Project. Major provisions included:

- protecting “whistleblowers” who disclose illegal or improper government activities;
- streamlining dismissal procedures for employees terminated for cause;
- replacing the Civil Service Commission with the Office of Personnel Management to manage the federal workforce; and
- designating a Merit Protection Board to insure compliance with merit system principles and laws.

## **Maryland's Efforts**

A review of Maryland's civil service reform efforts from the pre-1900s through the early 1900s follows.

### **Pre-1900s**

The “spoils” or patronage system was an established part of Maryland government in the late 1800s. The patronage system allowed political bosses and elected officials to reward individuals who supported them.

During the latter half of the 1800s, State politics was controlled by two powerful public figures: Freeman Rasin and Arthur Gorman. The extent of their influence was widespread. As detailed in the 1971 book, *The Old Line State*, based on a mutual agreement, Freeman Rasin had control of the City of Baltimore and Senator Arthur Gorman had control over the rest of the State. These two individuals controlled the Maryland political landscape from approximately 1870 to the mid-1890s. Both Freeman Rasin and Senator Gorman were noted opponents of civil service reform because it threatened to undermine the heart of the patronage system from which both

derived unmatched strength and influence. However, with their respective deaths in 1905 and 1906, coupled with the progressive era movement in Maryland, conditions were conducive for change.

### **Early 1900s**

The merit system bill adopted by the 1920 General Assembly was not an isolated attempt at governmental reform; it was part of a larger reform movement that swept Maryland in the early 1900s (*i.e.*, executive budget system, child labor laws, work safety, voting fraud, etc.).

Maryland's system of government in the early 1900s was a loose configuration of autonomous agencies. In 1914 Governor Emerson Harrington, realizing that a continuation of this arrangement was not in the State's best interests, appointed the Commission on Efficiency and Economy under the direction of President Frank J. Goodnow of The Johns Hopkins University. Its mandate was to examine the governmental operations and recommend changes to increase the efficacy of State government.

The Goodnow Commission was best known for its December 15, 1915 recommendation leading to the adoption of Maryland's current executive budget system. However, the commission recommendations were also responsible for the elimination of several agencies deemed to be of insignificant importance and the placement of many State institutions under central administrative control.

With the implementation of the Goodnow Commission's recommendations and Governor Albert C. Ritchie's subsequent Reorganization Commission's efforts, the wave of support for better government started the dismantling of the spoils system. Finally, with the introduction of House Bill 107, entitled "64-A, Merit System," and its subsequent enactment in 1920, Maryland's long engagement with the spoils system ended.

### **Evolution of Maryland's Merit System Law**

The purpose for which the State's merit system was established, as stated in Section 27 of Chapter 41 (later codified as Section 44 of Article 64A), was:

...to provide candidates for appointment to positions in the classified service after determining by practical tests of the fitness of such candidates for the positions which they seek, without regard to the political or religious opinions or affiliations of such candidates, or of any other standard except the business efficiency of the classified service, and to provide adequate

means for the prompt removal from positions in the classified service of all persons therein who may be indolent, incompetent, inefficient, or otherwise unfit to remain therein, and to keep in a workable state the provisions for the promotion of employees as provided in this article to the end that the same shall be so administered as to attract the best class of candidates to the classified service.

The original merit system law included provisions relating to the administration of the system and the enforcement of its rules; the establishment of position classes; the conduct of competitive examinations; the preparation of eligible lists; the separation of employees as laid off or suspended; and the allowance of vacation, sick, personal, and accident leave.

After 1920, the merit system law was the subject of piecemeal revision. Over the years, sections were added to prohibit discrimination; require employee disclosure and confidentiality protection; provide for the hiring of contractual employees; specify a probation period after promotion; specify reinstatement qualifications; allow temporary employees to become permanent; provide incentive awards; allow time off for religious observance and seasonal leaves of absence; allow participation of retired employees in the State Employees' Health Insurance Program; and specify grievance procedures.

One major subsequent change in the merit system law was the establishment of several independent personnel systems. As explained in Chapter 3, several State entities, including the Department of Transportation and the University System of Maryland, were granted the authority to establish their own policies and practices without regard to the Secretary of Personnel. Chapters 6 and 7 explain the independent policies and practices of the Legislative and Judicial branches, respectively. Other than providing more flexibility, these systems generally mirror the merit system law.

During 1993, as part of the Code Revision process, the merit system law was revised and reorganized. Effective October 1, 1993, Chapter 10 of 1993 recodified Article 64A into Division I of the State Personnel and Pensions Article. Although the revision was enacted as new language without substantive changes, one major change was made for clarification purposes. The name of the personnel system was changed from "Merit System" to "State Personnel Management System." In the former law, the term "Merit System" generally, although not universally, referred only to classified service employees. The new name refers to the personnel system that encompasses all the employees under the authority of the former Department of Personnel, now incorporated in the Department of Budget and Management.

## **Modern Reform Efforts**

Although merit system principles continue to have broad-based acceptance, civil service laws and rules that were adopted decades ago became increasingly seen as inefficient and incompatible with today's economic and social conditions. The situation led the federal government, as well as many state and local governments, to examine and modernize their personnel systems.

In Maryland, three significant review efforts stimulated modernization of the personnel system. During the 1987 through 1990 term of the General Assembly, the legislature reviewed the former Department of Personnel's efforts to reform the State personnel system. As a result of the legislature's work, several significant revisions were made to the State's personnel system. The process for certifying candidates and managing eligible lists was more clearly defined and expanded. Further, a family leave policy was established, the use of sick leave was expanded, certain types of leave that were authorized by regulation were codified, and several floating holidays were created.

During the 1991 through 1994 term, Governor William Donald Schaefer created a Commission on Efficiency and Economy (the Butta Commission) for the purpose of recommending changes to reduce costs and promote efficiency in State government. In 1993, after reviewing the 70-year-old personnel system, the Butta Commission made several recommendations to significantly restructure and modernize the system.

The commission concluded that (1) recruiting and hiring efforts of classified service employees were lengthy, costly, and resulted in many applicants being processed and tested but few hired; (2) the salary plan did not link pay to performance, was not competitive, and was not long-term career oriented; (3) investment in career development and training was insufficient; and (4) adjudicating grievances, suspensions, and terminations was costly.

The commission recommended modernizing the personnel system, resulting in a new distribution of functions between what was the former Department of Personnel and other State agencies. To reduce duplication and delay, the department would provide statewide policies, monitor and audit systems, develop training programs, operate the centralized service functions, and provide human resources support. Agencies would operate and administer key internal personnel functions and have authority over most personnel transactions.

On June 6, 1995, Governor Parris Glendening signed an executive order creating the Task Force to Reform the State Personnel Management System. The task force was charged with developing a personnel system that would streamline and simplify the

State's personnel policies, decentralize personnel management functions, and provide for the consistent application of human resources management principles throughout the Executive Branch of State government, with the ultimate goal of improving the quality of State services.

## **1996 Reforms**

The State Personnel Management System Reform Act of 1996 (Chapter 347) incorporated many of the task force's recommendations. For the first time in over 60 years, the State Personnel Management System was significantly restructured. Chapter 347 established a decentralized personnel management system where the unit, or agency, has most of the responsibility for the management of its workforce. The Act did not affect agencies with independent personnel authority or the Judicial or Legislative branches of State government.

Also during the 1996 session, the Department of Personnel was abolished as an independent unit within the Executive Branch of State government; the Department of Budget and Management (formerly the Department of Budget and Fiscal Planning) was designated as its successor (Chapter 347). The positions of the Secretary of Personnel and the Deputy Secretary of Personnel were also abolished, and the Secretary of Budget and Management was designated as the successor of the Secretary of Personnel. The Secretary of Budget and Management in turn created the Office of Personnel and Employee Benefits to oversee the management of the State's workforce.

Chapter 347 also eliminated the classified and unclassified services. Instead, the Act provided for four basic classes of regular employees: skilled service, professional service, management service, and executive service. Within each of the classes of regular employees, a category of "special appointment employees" was also established. Reform also provided for two categories of temporary employment, contractual and emergency. The Department of Budget and Management has responsibility for overseeing the development of positions and job classifications and, in some cases, still develops positions and classifications for smaller agencies.

The Act also altered the leave and holidays available to State employees; changed the procedures for hiring and evaluating employees; modified the provisions relating to discipline, layoffs, and separations; and altered the procedures for filing grievances. Chapter 3 includes a comprehensive discussion of the current features of the State Personnel Management System.

Collective bargaining for State employees was initiated in 1996 through an executive order issued by Governor Parris Glendening. Chapter 298 of 1999 codified the

executive order and Chapter 341 of 2001 gave collective bargaining rights to specified employees in Maryland institutions of higher education. Chapter 5 contains a comprehensive discussion of collective bargaining for State employees.

## **Chapter 3. Personnel Policies and Practices in the Executive Branch**

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This chapter reviews the personnel policies and practices in the Executive Branch established by statute and the Code of Maryland Regulations. While this chapter specifically addresses policies in the Executive Branch, many sections also apply to employees of the Legislative and Judicial branches of State government.

### **Definitions**

Before reviewing personnel policies and practices related to State employment, the meaning of certain terms should be clarified. The State Personnel and Pensions Article and Code of Maryland Regulations provide the following definitions:

- “Contractual employee” means an individual with whom the State has an employer-employee relationship to provide services for pay under a written agreement but who is not employed in the skilled, professional, management, or executive service or who is not an emergency employee.
- “Emergency employee” is a type of temporary employee whose employment cannot exceed six months.
- “Executive service” means a position in the Executive Branch that is the chief administrator of a principal unit or comparable position that is not the result of an election or required by the State Constitution, or a deputy or assistant secretary of the principal unit or similar position that has similar stature.
- “Management service” means a position in the Executive Branch that involves direct responsibility for oversight and management of personnel and financial resources, requires discretion and independent judgment, and is not in the executive service.
- “Position” means an employment assignment of duties and responsibilities requiring the full-time employment of one individual or less than full-time employment of one or more individuals.
- “Professional service” means a position in the Executive Branch that requires advanced knowledge in a field of science or learning acquired through special



courses and study, and that normally requires a professional license or an advanced degree.

- “Skilled service” means all positions for which persons are selected on a competitive basis in the Executive Branch not in the professional management or executive service.
- “Special appointments” means certain positions in the skilled or professional service that are exempted from the selection and termination provisions of that service and may be filled with regard to political affiliation, opinion, or belief.
- “Temporary employee” means an employee who is either a contractual employee or an emergency employee.

## **Administration**

Maryland’s personnel policies are developed primarily by the Legislative and Executive branches but in distinctly different manners. The General Assembly affects personnel policies by adopting legislation and taking action on the State budget. The Executive Branch develops personnel policies through legislation, regulation, and executive order. Often the Department of Budget and Management will submit departmental legislation to change the State’s personnel laws. The department also develops regulations to administer the laws, which must be published in the *Maryland Register* to provide for public review and comment and must be approved by the Administrative, Executive, and Legislative Review Committee. In addition, the Governor may issue executive orders to change personnel policies. Examples include State employee substance abuse (E.01.01.1991.16), an increase in the standard work week for State employees from 35.5 to 40 hours per week (E.0.01.01.1991.19), the State employee furlough and temporary salary reduction program (E.01.01.2009.11), and standards of conduct for Executive Branch employees ( E.01.01.2007.01).

The administration of Maryland’s personnel system rests with the Department of Budget and Management, various independent salary setting authorities, and agencies with independent personnel systems. The University System of Maryland, for example, administers a separate personnel system for its faculty members and employees, as does the Maryland Department of Transportation.

## **Department of Budget and Management**

Legislation enacted in 1996 (Chapter 347) abolished the Department of Personnel as an independent unit within the Executive Branch of State government and designated the Department of Budget and Management (formerly the Department of Budget and Fiscal Planning) as its successor. The Secretary of Budget and Management was designated as the successor of the Secretary of Personnel. The former Department of Personnel was created as a principal department by Chapter 98 of 1970. It was the successor department to the State Commissioner of Personnel, previously established by Chapter 310 of 1953, which was the successor to the Commissioner of Employment and Registration, previously established by Chapter 41 of 1920.

The Department of Budget and Management is responsible for:

- developing and enforcing the rules that govern the administration of the State Personnel Management System;
- developing and maintaining the State's system for classifying positions in the State Personnel Management System;
- developing the State's salary and wage system and governing salary transactions and activities;
- analyzing jobs and creating appropriate testing instruments to provide a ranking system for placement of candidates on eligibility lists;
- providing training and technical assistance for staff and managers of operating agencies in public-sector labor relations and performance evaluations;
- providing confidential and professional assessment and referral services for State employees who are experiencing personal problems that affect their work performance;
- coordinating equal employment opportunity and affirmative action activities for all agencies within the Executive Branch; and
- administering the sick leave bank and donations of leave to other State employees, administering State benefits programs, coordinating the Unemployment Insurance Program, and administering the Social Security Program.

## Independent Salary Setting Authorities

Independent salary setting authorities are State agencies with the legal authority to establish the salaries of employees independent from the Department of Budget and Management's pay plan. This authority exists in all three branches of government but is mainly found in the areas of higher education and transportation, which constitute 29.3% (23,768 full-time equivalent (FTE) positions) and 11.3% (9,135 FTE positions), respectively, of the total number of State positions. Some of the agencies with the authority to set salaries also have the authority to establish their own independent personnel systems.

Before 1986, there were over 30 independent salary setting authorities employing approximately 32,000 State employees. Based on recommendations from the Task Force to Study Independent Salary Setting Authorities in 1985, Chapter 173 of 1986 repealed the authority for many agencies to set salaries. The goal was to provide a more uniform salary schedule across State agencies.

Since the enactment of Chapter 173, however, several agencies that demonstrated a need for flexibility have been given the authority to independently set salaries, including Baltimore City Community College in 1990, the Maryland Insurance Administration in 1993, the Maryland Public Broadcasting Commission in 1998, and the Public Service Commission and the Office of People's Counsel in 2000.

The Judicial and Legislative branches (combined 5.3% of the total regular workforce or 4,316 FTE positions) have independent salary setting authority consistent with the constitutional doctrine of separation of powers. Agencies in the Executive Branch with independent salary setting authority tend to be either quasi-public agencies with self-generating funds (*e.g.*, the Maryland Automobile Insurance Fund) or agencies with some level of autonomy within the Executive Branch. The advantage of independent salary setting authority for an agency is threefold in that it (1) enables immediate response to salary problems; (2) allows freedom from regulatory oversight; and (3) does not require consideration of or comparison with other employees or jobs elsewhere in State service. Appendix 2 lists all agencies with independent salary setting authority and independent personnel systems as established by the Annotated Code of Maryland and the Maryland Constitution.

A disadvantage of independent salary setting authority is that pay increases granted to small groups of employees under independent authority can result in salary disparities among groups of employees performing similar tasks or functions.

## **Independent Personnel Systems**

Several agencies with independent salary setting authority have also been given the authority to establish their own personnel systems independent of the Department of Budget and Management and the State Personnel Management System (Appendix 2). The State's public higher education institutions and the Maryland Department of Transportation are among the largest entities with their own personnel systems.

### **University System of Maryland Personnel System**

Chapter 246 of 1988 reorganized Maryland's higher education structure. The University System of Maryland combines the university's campuses with the campuses of the former Board of Trustees of State Universities and Colleges.

Chapter 246 authorized the Board of Regents of the University System of Maryland to establish personnel policies and procedures independent of the Department of Personnel. Prior to the reorganization, the campuses of Bowie, Towson, Frostburg, Coppin, University of Baltimore, and Salisbury operated under a different personnel system closely aligned with the Department of Personnel. By 1990, the Board of Regents of the University System of Maryland had meshed the personnel systems of all its units and established personnel policies and procedures for all University System of Maryland employees independent of the Department of Budget and Management.

### **Other Higher Education Institutions Personnel Systems**

St. Mary's College (Chapter 209 of 1992), Morgan State University (Chapter 485 of 1994), and Baltimore City Community College (Chapter 220 of 1990) have their own personnel systems independent of the Department of Budget and Management. While these institutions participate in some State programs such as health benefits, retirement, and the Employee Assistance Program, most personnel policies and procedures are separate.

### **Maryland Department of Transportation Personnel System**

Chapter 168 of 1992 authorized the Maryland Department of Transportation to combine the personnel systems of the Maryland Port Administration, the Maryland Transportation Authority, the Mass Transit Administration, and the rest of the department's units into a personnel system independent of the Department of Budget and Management. The result was the establishment of the Transportation Service Human Resources System to encompass all the department's units.

## **Types of Positions**

There are two types of employment positions in State government: regular FTE positions and contractual positions. Regular FTE positions are further divided into four categories: skilled service, professional service, management service, and executive service. Most regular FTE positions are in the skilled service category, which are selected on a competitive basis and enjoy full employee protections inherent in a merit system. Professional service positions require advanced knowledge in a field of science or learning acquired through special courses and study often requiring a professional license or advanced degree. Professional service positions also enjoy full employee protections. A position is in the management service if the position involves direct oversight over personnel and financial resources and is not in the executive service. Executive service positions are generally political appointments at the highest levels of State government.

Within the skilled and professional services classes of regular employees, there is a category of special appointment employees. Special appointment positions consist of the following:

- positions filled by individuals appointed by the Governor that are not provided for by the State Constitution;
- positions filled by individuals appointed directly by the Board of Public Works;
- positions that perform significant policy roles or directly support members of the executive service;
- positions in the Government House;
- positions in the Governor's Office; and
- any positions specified by law as special appointments.

If the Secretary determines that the special appointment position relates to political interests or concerns, requires direct or indirect input into the policymaking process, or provides access to confidential information with a role in policymaking or providing direct advice or services, the positions may be filled with regard to political affiliation, belief, or opinion.

At-will employees serve at the pleasure of their appointing authority and may be terminated from employment for any reason, solely in the discretion of the appointing authority. There are several groups of at-will positions, which include positions in the executive and management services as well as positions across all services designated as special appointments. In addition, the Annotated Code of Maryland defines certain other positions that are considered at-will or special appointment. Chapter 690 of 2009 changed the at-will status of a number of positions and groups of positions previously classified as at-will in statute. These include Division of Correction chaplains, certain Department of Business and Economic Development employees, certain Maryland State Department of Education professional assistants, Child Support Enforcement Administration demonstration site employees, Maryland Historical Trust positions, and staff of certain health commissions. Changes to the at-will status of these positions were encumbered on October 1, 2009, and take effect when the position becomes vacant.

Approximately 6,300, or 14%, of State Personnel Management System employees are either at-will or special appointment positions. Some special appointments are at-will positions for the purposes of termination from service while others have job security as specified in statute.

## **Creation of Positions**

A summary of the process by which State positions are created and abolished through the budget process is contained in Appendix 3. This process may differ, however, by statute for certain nonbudgeted independent agencies such as the Maryland Food Center Authority, the Maryland Automobile Insurance Fund, and the Maryland Transportation Authority. For more information on how positions are created and funded, see *Volume IV – Maryland’s Budget Process*.

## **State Personnel Management System**

The State Personnel and Pensions Article sets forth the positions that are included in the State Personnel Management System. Unless specified otherwise (*e.g.*, positions covered by independent salary setting authority), all positions in the Executive Branch are included. The Maryland Code specifies which positions are included in the skilled service, professional service, management service, and executive service, and which positions are included in the services as special appointments. Contractual, emergency, and temporary employees are not included in any of these services.

In fiscal 2010, the State Personnel Management System covered approximately 42,850 budgeted positions. Of those positions not in special appointment status, approximately 0.5% are in the executive service, 4.1% are in the management service,

7.0% are in the professional service, and 76.1% are in the skilled service. Approximately 8.6% of the positions covered under the State Personnel Management System are in the special appointment status.

The following positions are excluded from the State Personnel Management System:

- any position to which an individual is elected by popular vote;
- any position to which an individual's election or appointment is provided for by the Constitution of Maryland;
- any position in a unit of the Executive Branch with an independent personnel system; and
- any position in the Legislative and Judicial branches.

Employment in the State Personnel Management System is governed by Title 7 of the State Personnel and Pensions Article. The recruitment and selection provisions apply primarily to skilled service and professional service employees. There is shared responsibility for recruitment and selection between Executive Branch agencies and the Department of Budget and Management for positions primarily in the skilled service, while agencies have responsibility for their specialized recruitment needs. Although the State has a decentralized, agency-level hiring process, the Department of Budget and Management maintains a list of eligible candidates for high volume positions. The department, if requested, will also provide recruitment assistance to agencies for specific positions. In addition, the Office of Personnel Services and Benefits within the department maintains a unit to aid small agencies with their ongoing recruitment and other personnel needs.

### **Recent Reforms to the State Personnel Management System**

During the 2005 interim, the Legislative Policy Committee appointed a Special Committee on State Employees Rights and Protections to examine numerous matters regarding the State Personnel Management System, as well as terminations and separations of at-will employees. Chapter 592 of 2007, the State Employees' Rights and Protections Act of 2007, implemented some of the recommendations made by the special committee. It provides that:

- special appointments may be filled with regard to political affiliation if the Secretary determines that the position relates to political interests or concerns and requires direct or indirect input into the policymaking process or provides access to confidential information;
- special appointments require the designation and written notification to employees of at-will positions in the State Personnel Management System and the Maryland Department of Transportation that must be filled with and without regard to political affiliation, belief, or opinion;
- clarifies that at-will employees cannot be terminated illegally or unconstitutionally;
- prohibits the termination of a management service employee or nonpolitical special appointment to create a position for an individual based on political affiliation, belief, or opinion; and
- requires the Department of Legislative Services to further study at-will employment and provide suggestions for reform.

In 2008, the Department of Legislative Services issued a report on its findings. Chapter 690 of 2009 implemented many of the recommendations of the report. The bill repealed the automatic at-will status of a number of groups of employees throughout State government; allows for flexibility in recruiting for certain skilled and professional service positions; repeals the Legislative Joint Committee on Fair Practices and establishes the Joint Committee on Fair Practices and State Personnel Oversight; requires submission of a report each gubernatorial election year on the total number of individuals employed with regard to political affiliation, belief, or opinion in the State; and requires the Secretary of Budget and Management to evaluate all skilled and professional services positions considered special appointments to determine whether these positions should continue to be considered special appointments.

## **Recruitment**

If a need is identified by an agency or a position is open, the agency must develop a “position selection plan.” Such a plan must include (1) a description of the duties for which the position is responsible; (2) minimum qualifications of the position; (3) any limitations on selection for the position; and (4) the process for submitting and reviewing applications as well as applicable timeframes, if appropriate. Agencies may either select candidates from existing lists of eligible candidates or recruit for the position. If the



agency decides to recruit for the position, recruitment must proceed based on the position selection plan. Job announcements for positions must include position descriptions, minimum qualifications, descriptions of the tests that will be used, deadlines and locations for submitting applications, and the duration of the list of eligibles derived from the announcement. Job announcements should be made available to the public, within the agency, and to other State agencies at least two weeks before the application deadline. Department regulations allow applications to be rejected if received beyond the advertised closing date or if the minimum qualifications for the position are not met.

Exhibit 3.1 indicates the number of applications received, applicants tested, and appointments made for fiscal 2000 through 2010 by the Department of Budget and Management. The growth in applications and testing is attributed to a tighter labor market and the online automation of the application process for many jobs. As mentioned above, the Department of Budget and Management's recruitment function is limited to positions in the skilled service and professional service. The department is not actively involved in recruiting management service, executive service, and special appointment employees. In order to ensure that an agency's recruitment, examination, and certification procedures are being properly performed, the Office of Personnel Services and Benefits performs periodic compliance audits of individual agencies.

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**Exhibit 3.1**  
**State Employment Applications, Testing, and Appointments**  
**Skilled and Professional Services**  
**Fiscal 2000-2010**

<u>Fiscal Year</u>	<u>Applications Received</u>	<u>Applicants Tested</u>	<u>Appointments</u>
2000	46,697	31,300	5,275
2001	55,770	50,945	5,768
2002	31,700	20,972	5,191
2003	32,271	28,062	4,115
2004	41,784	36,334	3,972
2005	48,591	43,838	5,354
2006	51,567	47,381	6,717
2007	55,563	51,973	5,237
2008	47,719	43,921	4,448
2009	56,558	52,223	4,054
2010	59,502	55,156	2,887

Source: Department of Budget and Management

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### **Selection, Credits, and Examination for Candidates**

Once the closing date for a position announcement passes, agencies review the applications for completeness and to ensure that applicants meet the minimum qualifications. Agencies must notify applicants in writing if they are rejected because they did not meet the minimum qualifications. If a test is required, applicants must be notified at least 10 days before the testing date. If fewer than 10 but more than 2 applicants meet the minimum qualifications for a position, the appointing authority may select from this group without further selection testing, or readvertise the vacancy.

Agencies are required to develop appropriate selection processes to rate applicants. If a test is necessary, it must be administered free of charge to all qualified applicants. An applicant may be disqualified from taking a test for supplying false information on the application. If a test is taken, certain applicants may receive credits

that can be applied to the applicants' test scores to establish placement on the list of eligible candidates. Before a credit can be applied, applicants should at least exceed the minimum passing score. Current State employees can receive a quarter point for each year of State service up to a maximum of 5 points for 20 years of service. State residents are entitled to 5 points toward their scores. There are also credits available for positions at qualified prison facilities and at the Baltimore Juvenile Justice Center for residents living in or adjacent to counties with high unemployment rates. As a result of reforms made to the personnel system (Chapter 347), the absolute hiring preference for veterans was eliminated. However, a credit of 10 points is given to eligible veterans, spouses of disabled veterans, and surviving spouses of deceased veterans. Two additional points are given to disabled veterans and former prisoners of war.

After the application of the selection criteria, certain applicants will be identified as candidates for the position. A candidate who is a veteran must be identified as such on any lists. Rather than hiring a candidate with the highest combined score, agencies now "broad band" or place most candidates in the following categories: best qualified, better qualified, qualified, or unsatisfactory. In certain circumstances, candidates may be placed in the following additional categories: certified by the Division of Rehabilitative Services, eligible for reinstatement after layoff or separation, eligible for reinstatement, or eligible for transfer. Upon request, the agency must notify a candidate of the candidate's standing on the list. Agencies are required to file their lists of eligible candidates with the Department of Budget and Management for use by other agencies. The department is required to share its lists of eligible candidates with all requesting agencies.

Depending on the number of available candidates, agencies may appoint candidates from lower rated categories. Specifically, Section 7-209(a) of the State Personnel and Pensions Article provides that:

- If there are at least five candidates rated best qualified, the appointment must be from that rating category.
- If there are fewer than five candidates rated best qualified, the appointment must be from the candidates in the best qualified and better qualified categories.
- If there are fewer than five candidates rated best qualified and better qualified, the appointment must be from candidates in best qualified, better qualified, and qualified categories.

In making a selection, agencies may interview any of the candidates in the rating category from which the selection will be made. However, if interviews are conducted, at least three candidates must be interviewed.

## **Probation**

The last step of the hiring process is probation. While on probation, employees must demonstrate their ability to perform the duties of the job for which they were hired. All employees in the skilled service and the professional service must complete a six-month probation period after initial appointment, reinstatement, or competitive promotion. The probationary period may be extended at the discretion of the agency if the agency decides that additional time is necessary to allow the employee to demonstrate proficiency in his or her duties, the agency decides that more time is required due to an employee's approved absence, or if the employee requests it. Employees in salary grade seven or higher may have their probations extended up to six more months, while employees in salary grades one through six may have their probations extended up to three months. An employee reinstated into the same classification within one year after leaving State service, after already serving probation, does not have to serve another probationary period.

At the start of probation, a supervisor must give a new employee a written position description that describes the duties and functions of the position. At the end of the first 90 days of probation, the employee receives a written evaluation by the supervisor, and if probation is extended, the employee must receive an evaluation at the end of the initial probation and at the midpoint of the extended period. An employee on initial probation may be disciplined or terminated, with limited appeal rights. An employee on probation because of reinstatement or promotion may not be terminated because of performance; rather, the employee may be returned to the employee's former position, reassigned, or demoted. A more detailed explanation of appeals for disciplinary actions follows later in this chapter.

## **Employee Performance Appraisals**

Subtitle 5 of Title 7 of the State Personnel and Pensions Article requires that all employees in the skilled service, the professional service, and the management service have their performance evaluated every six months. However, results from the Department of Budget and Management's Managing for Results program show that these statutory guidelines are not being met, with only 36.9% of the required mid-cycle reviews taking place in fiscal 2008 and only 59.2% of the end cycle reviews taking place. In November 2008, the Performance Appraisal Task Force was established as a result of collective bargaining negotiations between the State and the exclusive bargaining representatives of State employees. The task force was charged with reviewing the current employee performance appraisal procedures and suggesting changes to increase effectiveness and to increase the completion rate of the performance appraisals by

supervisors. Changes made through Chapter 142 of 2010 reflect the recommendations of the task force.

The evaluation process is designed to facilitate communication between employees and supervisors. The components of the appraisal process include an informal mid-year performance appraisal and an end-of-year performance appraisal with an overall performance rating. Previous requirements for a self appraisal by the employee were eliminated by Chapter 142. Employees are evaluated based on behavioral elements associated with their service category and on performance standards associated with their position. In the appraisal an employee may be rated as “outstanding,” “satisfactory,” or “unsatisfactory” (ratings were collapsed from five categories to three per Chapter 142). The final performance appraisal should include ways to enhance the employee’s performance, specific tasks to achieve during the next rating period, and recommendations for training or other methods to increase the employee’s skills.

In addition to the downward evaluation process, if a supervisor or manager is responsible for five or more employees, the supervisor’s or manager’s supervisor may require the completion of anonymous surveys by the supervisor’s employees. The survey results will be used in the evaluation of the supervisor. Supervisors are also required to attend training on how to effectively administer performance appraisals.

### **Performance-based Pay**

Personnel reform (Chapter 347) provided for the implementation of a pay-for-performance plan for skilled, professional, and management service employees. There was some interest in shifting away from the grade and step system toward a minimum/maximum salary system, which would provide more flexibility in determining individual salaries. However, the State continues to utilize a step and grade system for these groups of employees.

The Department of Budget and Management, within its current compensation structure, has developed three strategies to reward satisfactory service to the State, based on the results of employee performance appraisals. First, in order to advance from one step to the next within a grade, an employee must be rated as “meets standards” in the evaluation. Therefore, movement up a step is designed to reward satisfactory service.

Second, if an employee is rated as “needs improvement” or “unsatisfactory,” the employee is either given six months or three months, respectively, to improve. If there is not satisfactory improvement, the employee will be terminated.

The third method by which the State rewards performance is through bonuses. Although not available to all employees, retention and other bonus strategies are being employed in agencies for which maintenance of a full or at least adequate workforce has become an issue. For example, in fiscal 2007, employees holding Correctional Officer II, Sergeant, Lieutenant, Captain, and Major positions working in Public Safety and Correctional Services were eligible for a \$500 lump-sum bonus if they had fewer than five unscheduled absences over a 12-month period. In fiscal 2010 and 2011, due to the State's weak fiscal condition, language included in budget reconciliation and financing legislation prohibited the granting of bonuses to any State employee, except as necessary to retain faculty at certain higher education institutions or the performance bonus for the Chief Investment Officer of the State Retirement and Pension System. Bonuses are not considered regular compensation and will not be reflected in the base salary of the employee. These more targeted bonus programs replace a comprehensive program that was discontinued after fiscal 2002; in that program, if an employee was rated "outstanding" or "exceeds standards" the employee was given a bonus of \$1,000 or \$500, respectively. However, due to budget constraints and questions over the efficacy of these bonuses as incentives for high performance, the more comprehensive program was discontinued.

### **Transfer of Employees into State Service**

Subtitle 6 of Title 7 of the State Personnel and Pensions Article governs the transfer of employees into the State Personnel Management System when the State acquires a private institution or public entity. The statute requires that these employees must be employed in positions similar to the positions held at the time of acquisition and may retain their seniority. Within one year after the acquisition, the Department of Budget and Management must classify each position. Employees in these positions are required to serve a standard probation period. Once the employees are classified, they may continue to hold their positions without further examination and have all the rights associated with that class of positions.

### **Compensation of Employees**

Title 8 of the State Personnel and Pensions Article governs the compensation of State employees subject to the authority of the Secretary of Budget and Management. There are two basic pay plans for the State, the standard pay plan and the executive pay plan, both of which are administered by the Secretary. The Maryland Department of Transportation has its own pay plans that utilize the State Personnel Management System salary schedules. In addition to the regular pay provisions, which will be described in this section, certain State employees in the State Personnel and Management System are also entitled to "shift differential pay" and "hazardous duty pay."

## **Standard Pay Plan**

The standard pay plan does not apply to positions provided for by the State Constitution; positions based, by law, on judicial pay; or positions set by a unit with independent salary setting authority. In developing rates of pay, the Secretary must give consideration to prevailing rates of pay for comparable services in private and public employment, experience, living costs, other benefits received by employees, and the State's financial condition and policies. All pay plans are subject to the limitations of the State budget.

Generally, the standard pay plan for graded State employees is revised each year to reflect adjustments passed by the General Assembly and becomes effective July 1, although general salary increases may not become effective until a later date. In fiscal 2011, the salary schedule has 22 grades and 21 steps within each grade (base plus steps 1-20) and is the pay plan for the vast majority of employees. Chapter 216 of 2006 (the fiscal 2007 budget bill) eliminated grades 1 through 4 of the standard salary schedule in an effort to ensure that all full-time State employees earned at least \$20,000 per year. The salary schedule in effect beginning on July 1, 2010, is shown in Appendix 4.

Although the standard salary schedule covers most State employees, there are five additional schedules used by the State system, which are technically considered under the "standard" salary schedule moniker. These additional schedules cover park rangers (used for command and management positions), police officers, State and natural resources police, deputy fire marshals, and physicians.

## **Adjustments/Amendments to the Standard Pay Plan**

The most significant and costly element of pay plan adjustments is usually the general salary increase, which affects virtually all State employees. Only those employees whose pay rates are specifically set by statute or who are otherwise excluded from participation are not affected.

General salary increases have been provided by various methods. Appendix 5 is a history of State general salary increases for fiscal 2003 through 2011. Due to budgetary restraints, no general salary increases were granted in fiscal 2010 or 2011.

In addition to general pay increases, Section 8-105 of the State Personnel and Pensions Article provides for salary adjustment procedures through annual salary reviews. The Secretary of Budget and Management, with the approval of the Governor, may amend the pay plan to increase pay rates for specific classifications of positions in order to recruit or retain competent personnel or to ensure that pay rates adequately

compensate the skills, knowledge, effort, responsibility, and working conditions of employees in the class. An amendment may not take effect unless sufficient funds are available in the budget to cover the resulting pay rates. Amendments to the pay plan must be reported to the General Assembly by the fifteenth day of the next regular session, and the General Assembly may reject the amendments. If an amendment is rejected, the appropriate salary reduction becomes effective in the next fiscal year.

### **Special Pay Provisions**

Shift differential pay is provided to certain employees who work qualifying shifts. Qualifying shifts start at or after 2:00 p.m. and at or before 1:00 a.m. Employees eligible for shift differential pay include registered nurses at State institutions, sworn police officers, fire marshals, and firefighters at the Maryland Department of Transportation. In addition, registered nurses at State institutions may also be paid differentials for weekend shifts.

Employees of the State Fire Marshal's Office who are members of the bomb squad or work as an explosives technician are entitled to hazardous duty pay. Hazardous duty pay may not exceed \$150 per month.

### **Executive Pay Plan**

The executive pay plan was created in 1989 (Chapter 831) to provide a more rational framework for compensating management positions in State government. At that time, most managers received flat rate salaries that were adjusted on an individual basis from time to time. Before the 2000 session, the executive pay plan was structurally similar to the standard salary schedule. In order to compensate for what had become an inadequate standard pay plan, many managers who were not in the executive service were moved into the executive pay plan to provide for competitive compensation levels.

Significant changes in both the structure and coverage of the plan were made in 2000 when it was converted from an 11-grade, 7-step structure to an 8-grade structure with minimum and maximum rates. Further, two-thirds of the management service employees who had been in the plan were moved back to the standard salary schedule.

Before conversion to the new pay plan in fiscal 2001, approximately 573 positions were in the executive plan (including those working in the Maryland Department of Transportation); after the fiscal 2001 conversion, 192 remained. The plan now consists of executive service positions that function above the assistant secretary (or its equivalent) level. Management service employees were moved to the extended standard salary schedule, which was expanded four grades to accommodate them.



Chapter 335 of 2008 (the fiscal 2009 budget bill) created one additional salary range, for a total of nine salary ranges in the executive pay plan, as demonstrated in Exhibit 3.2. The executive pay plan is increased by the same percentage or dollar increase awarded to comparably paid positions on the standard salary schedule. As with the standard and other salary schedules, there are a number of executive service employees paid flat rate salaries. These employees are technically considered to be in the executive pay plan. Salaries for these employees are determined through the State budget. Increases for these and other executive pay plan positions are covered in Section 8-108 of the State Personnel and Pensions Article.

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**Exhibit 3.2**  
**Executive Pay Plan**  
**Fiscal 2011**  
**Effective July 1, 2010**

<u>Scale</u>	<u>Minimum</u>	<u>Midpoint</u>	<u>Maximum</u>
ES4	\$74,608	\$87,043	\$99,478
ES5	80,160	93,551	106,940
ES6	86,161	100,581	115,000
ES7	92,640	108,175	123,708
ES8	99,637	116,375	133,112
ES9	107,196	125,233	143,270
ES10	115,356	134,797	154,235
ES11	124,175	145,128	166,082
ES91	142,800	191,250	239,700

Source: Department of Legislative Services

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Administrative procedures pertaining to the executive pay plan include:

- Merit increases are limited by and awarded out of a merit pool. The pool does not increase or decrease if positions or employees are added to or removed from the executive pay plan during the fiscal year. Funds necessary to cover the merit increases come from existing agency funds.
- An agency head may award a merit increase to an employee in the plan at any time on or after July 1. It may be in the form of a one-time bonus or a salary increase. Base pay plus the merit increase may not exceed the maximum for the relevant grade.
- The total of all merit increases may not exceed the total of the pool within each agency. The cost of all increases is calculated on an annualized basis, regardless of the effective date of the increase for each employee.
- Employees coming into the plan during the fiscal year are eligible for a merit increase after six months of service during the fiscal year.
- Agencies placing new employees into a position in the plan are required to obtain approval from the Department of Budget and Management for the proposed initial pay rate if it is at midpoint or above.

### **Gubernatorial Compensation**

The Constitution of Maryland provides that every four years the Governor's Salary Commission must recommend salaries for the Governor and Lieutenant Governor that will apply to the next term of office. In January 2010, the commission recommended that the salaries of the Governor, Lieutenant Governor, and the salaries of constitutional officers which include the Comptroller, Treasurer, Attorney General, and Secretary of State remain the same for the first two years of the new term and then increase for each of the last two years of the term. The recommended increases for the Governor and Lieutenant Governor were proposed during the 2010 session as House Joint Resolution 3, which was amended by the General Assembly to reject the proposed increases. Legislation that would have increased the salaries of the constitutional officers was also rejected by the General Assembly during the 2010 session. As a result, salaries for calendar 2011 through 2014 will remain as follows:

Governor	\$150,000
Lieutenant Governor	\$125,000
Comptroller	\$125,000
Treasurer	\$125,000
Attorney General	\$125,000
Secretary of State	\$87,000

### **Overtime Compensation**

State employees who are not exempt from the federal Fair Labor Standards Act are eligible to receive cash payments or compensatory time for overtime work. Generally, overtime payments are calculated based on (1) straight time for time worked up to and including 40 hours per week; and (2) time and one-half the regular hourly rate for time worked in excess of 40 hours per week. Employees of a hospital or domiciliary care facility for the aged, ill, or disabled earn overtime compensation based on a two-week work period. Law enforcement and civilian employees of the Maryland State Police who participate in a modified workday program earn overtime compensation based on the work period that is in excess of the established workday.

State employees who are exempt from the federal Fair Labor Standards Act (*i.e.*, executive, administrative, and professional employees) are not eligible to receive cash overtime payments. However, most agencies allow exempt employees to accrue compensatory leave for working overtime. Compensatory leave policies vary widely among agencies in the Executive Branch in terms of how compensatory leave can be earned and used. In all cases, however, employees fall into one of three broad classifications: (1) employees not exempt from the federal Fair Labor Standards Act; (2) employees exempt from the Act, including employees in the executive pay plan in grades ES4 and ES5; and (3) employees in the executive pay plan in grades ES6 through ES91.

The Department of Budget and Management has adopted compensatory time regulations consistent with the federal Fair Labor Standards Act. The regulations provide that (1) an employee may elect to receive compensatory time rather than cash payments prior to the performance of work; (2) compensatory time must equal one hour for each hour of overtime work for which the employee otherwise would receive the employee's regular hourly rate of pay, and 1.5 hours for each hour of overtime work for which the employee would otherwise receive one and one-half times the employee's regular hourly rate of pay; (3) an employee may carry no more than 240 hours of compensatory time (480 hours for employees who work in a public safety activity, emergency response activity, or seasonal activity) and must use it within one year of when it is accrued; and

(4) monetary payments must be made for unused compensatory leave under certain circumstances.

Employees who are exempt from the federal Fair Labor Standards Acts guidelines, and, therefore, may not receive payment for overtime work, may be granted compensatory time. Concerning compensatory leave for executive positions, an employee who is included in the executive pay plan is not entitled to accrue any compensatory time other than for a legal State holiday on which the individual works at least five hours.

## **Employee Rights and Protections**

As discussed in Chapter 2 of this volume, the State personnel laws are based on merit system principles and are intended to treat State employees in a fair manner with respect to their employment. The purpose cited in statute for these protections is to maintain efficient and effective operations of State government.

### **Equal Opportunity Program**

State law prohibits discrimination and harassment in State employment with regard to age; ancestry; color; creed; marital status; mental or physical disability; national origin; race; religious affiliation, belief, or opinion; or sex. For members of the skilled, professional, and management services, and special appointment positions not designated as political appointments, personnel actions must also be made without regard for political affiliations, beliefs, or opinions. Title 5, Subtitle 2 of the Personnel and Pensions Article establishes the State's Equal Employment Opportunity Program, the purpose of which is to protect employees and applicants for State employment from illegal employment discrimination. The statute also provides a means for internal resolution of employment discrimination complaints. The Secretary of Budget and Management is responsible for development and implementation of the State's Equal Employment Opportunity Program in a manner consistent with applicable federal and State laws.

Maryland's Equal Employment Opportunity Program provides for the following:

- inclusion of all employees in the Executive Branch, including those in independent personnel systems, and applicants for the skilled service, the professional service, and the management service or applicants in comparable positions in independent personnel systems;

- reporting on the Equal Employment Opportunity Program to the Joint Committee on Fair Practices and State Personnel Oversight (formerly the Legislative Joint Committee on Fair Practices, changed in Chapter 690), which oversees the State's Equal Employment Opportunity practices;
- appointment of a statewide equal employment opportunity coordinator for the purpose of administering and enforcing the program, and investigating and resolving complaints stemming from violations of Subtitle 2;
- appointment of a fair practices officer and an appropriate number of equal employment opportunity officers at each executive agency whose duties include all aspects of implementing and administering the State's Equal Employment Opportunity Program;
- establishment of an Equal Employment Opportunity complaint procedure where the Secretary has the authority to take action upon a finding of discrimination;
- use of discipline, which may include dismissal, if a person violates anti-discrimination policies; and
- allowing State Personnel Management System employees in the skilled, professional, or management services the option of either pursuing an allegation of employment discrimination under (1) the statutory grievance procedures; or (2) filing a complaint with the statewide Equal Employment Opportunity coordinator. (These actions do not preclude an employee from filing a complaint to the Maryland Human Relations Commission, the federal Equal Opportunity Commission, or the courts.)

The statute sets up a "fast track" internal procedure for resolving Equal Employment Opportunity complaints. After an employee or applicant knows or should know of an alleged violation, the person has 30 days to file a complaint with the agency head. Within 30 days of the complaint being filed, the agency's equal employment opportunity officer then investigates, and the agency head must issue a written decision. If the complainant is not satisfied, the person has 10 days to appeal the decision to the Secretary of Budget and Management who refers the matter to the statewide Equal Employment Opportunity coordinator. The statewide coordinator has 30 days to review the complaint, conduct an investigation, and make a recommendation to the Secretary or a designee as to whether a violation occurred. The Secretary or designee must then make a decision and if a violation has occurred, the decision must also include

recommendations for appropriate remedial action. Regardless of the decision, the decision of the Secretary or designee is final.

## **Whistleblower Law**

As with the State Equal Employment Opportunity Program, the Maryland Whistleblower Law applies to all employees in the Executive Branch, including those in independent personnel systems. The law essentially prevents a supervisor, manager, or agency head from taking, or refusing to take, personnel actions as a reprisal against an employee who discloses information that the employee believes shows an abuse of authority, gross mismanagement, or a gross waste of money; poses a danger to the public health or safety; or constitutes a violation of law.

Employees seeking relief from a violation may file a complaint or pursue the statutory grievance procedure. After a possible violation, an employee has six months to file a complaint with the Secretary of Budget and Management, which must investigate the allegation and issue a written decision within the next 60 days on whether a violation has occurred. The decision is required to also include appropriate remedial action if a violation has occurred. Finally, if the employee is not satisfied with the department's decision, the employee has 10 days to appeal to the Office of Administrative Hearings for a final and binding decision.

## **State Substance Abuse Policy**

State law does not explicitly establish the State substance abuse policy; instead, it provides that the policy will be established by executive order. However, the law does provide that the consumption of alcohol in the workplace is a violation of the State substance abuse policy, and violators may be subject to disciplinary action. In addition, an agency may not consider probation before judgment for a substance abuse offense to be a conviction for purposes of the State substance abuse policy. However, appropriate disciplinary action may be imposed against an employee if the employee receives probation before judgment in a substance abuse offense and the appointing authority can demonstrate a relationship between that offense and the employee's job responsibilities.

In 1991, the Governor issued Executive Order 01.01.1999.16, "State of Maryland Substance Abuse Policy," which assured the State's compliance with the federal Drug-Free Workplace Act and established State policy on the issue of drugs and alcohol and the workplace. The Department of Budget and Management coordinates policies and practices regarding State employee drug use and testing. The State uses a two-tiered approach to drug and alcohol abuse, depending on whether or not the employee is in a "sensitive" classification.

A sensitive employee:

- convicted of any controlled dangerous substance offense will be terminated;
- who tests positive for a controlled dangerous substance as the result of a random drug test will be suspended for 15 work days and be required to successfully participate in a drug treatment program;
- who abuses a legally prescribed drug or an over-the-counter drug will, on the first offense, be suspended for five work days and be required to successfully participate in a drug treatment program;
- if convicted of an at-the-workplace alcohol driving offense or found under the influence of alcohol while at the workplace will be suspended for 15 days and be required to successfully participate in an alcohol treatment program; and
- if convicted of an off-the-workplace alcohol driving offense, will be referred to an employee assistance program for the first conviction and will be subject to any other appropriate disciplinary action; for the second conviction, will be suspended for at least five days and will be subject to first conviction actions; and for the third conviction, will be terminated.

Employees in positions not defined as sensitive are subject to disciplinary action if found working under the influence of alcohol, the inappropriate influence of prescription or over-the-counter drugs, or the influence of a controlled dangerous substance. Any employee charged with a drunk driving or a controlled substance offense is required to report a finding of guilty, acceptance of a plea bargain, or probation within five working days. In addition, the appointing authority will refer the use of a controlled dangerous substance or an alcohol offense at the workplace to the appropriate law enforcement agency.

The State uses a two-tiered approach to drug testing: (1) employees in sensitive classifications or sensitive positions are subject to random testing (as well as testing based on reasonable suspicion or an incident triggering factor); and (2) all other employees are subject to drug testing if the employer has “reasonable suspicion to believe that the employee has illegally used drugs.”<sup>1</sup>

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<sup>1</sup> In an opinion dated May 5, 1989, the Attorney General ruled that the former Department of Personnel had the authority to implement a drug testing program and could legally subject employees in sensitive classifications to random drug testing. However, the Attorney General also stated “... there is nothing in the Supreme Court’s decisions [*Skinner v. Railway Labor Executives’ Association, et al.* and *National Treasury Employees Union et al. v. von Raab*] to suggest that employees outside of these job categories [sensitive classifications] may be subject to drug testing without individualized suspicion....”

The Department of Budget and Management defines a “sensitive classification” as any classification in which one of the following conditions exist:

- an employee has a significant degree of responsibility for the safety of others, and there is a potential that impaired performance of the employee could result in death of or injury to the employee or others;
- an employee is required to carry a firearm;
- an employee is directly involved in efforts to interdict the flow of narcotics; or
- an employee is directly involved with narcotics law enforcement.

A “sensitive position” means a position not in a sensitive classification for which an appointing authority has determined that any one of the conditions listed above exist. The Department of Budget and Management conducts random, unannounced urine testing of employees in these positions. Agencies must inform applicants for sensitive classifications and positions that testing for illegal use of drugs is required.

### **Grievance Procedures in State Personnel Management System**

Title 12 of the State Personnel and Pensions Article sets forth the grievance procedures for all State Personnel Management System employees, unless otherwise specified, in the Executive Branch. A grievance is defined in statute as “a dispute between an employee and the employee’s employer about the interpretation of and application to the employee of (1) a personnel policy or regulation adopted by the secretary; or (2) any other policy or regulation over which management has control.” The statute also specifies that grievances do not include disputes about:

- a pay grade or range for a class;
- the amount or the effective date of a statewide pay increase;
- the establishment of a class;
- the assignment of a class to a service category;
- the establishment of classification standards;
- a mid-year performance appraisal; or
- an oral reprimand or counseling.



Employees not covered by Title 12 include gubernatorial appointees, executive service employees, temporary employees, attorneys in the Attorney General's Office and the Public Defender's Office, employees subject to collective bargaining agreements that contain other grievance procedures, student employees, Maryland State Police officers, inmates or patients employed by the State, employees and faculty members subject to a contract or regulation governing tenure, Baltimore City Community College employees, and administrative law judges in the Office of Administrative Hearings. These employees must have a separate but similar grievance procedure. Failure to appeal a decision to the next step in the process described in the subsequent section means that the employee accepts the decision.

### **Grievance Procedure**

#### *STEP 1 Initiation of Grievance Proceeding:*

- Before filing, the employee must talk to the employee's supervisor about the dispute. Grievances must be initiated by the employee, in writing, within 20 days of the alleged action (or employee's knowledge of alleged action) to the appointing authority.
- Within 10 days after receipt of a grievance, the appointing authority (or representative) must hold a conference with the employee (or representative) and render a written decision within 10 days after the conference.

#### *STEP 2 Appeal to the Administrative Head of Department or Unit:*

- If the employee is not satisfied with the decision, the employee must appeal within 10 days to the head of the employee's department or unit.
- Within 10 days of receipt of the written appeal, the department or unit head must hold a conference with the employee and render a decision within the next 10 days.

#### *STEP 3 Appeal to the Secretary of Budget and Management:*

- If the employee is not satisfied with the department or unit head's decision, the employee can submit the grievance within 10 days to the Secretary of Budget and Management.
- The Secretary has 30 days to try to mediate a resolution.

- If the Secretary cannot reach a resolution, the grievance is forwarded to the Office of Administrative Hearings, which, at the end of a hearing record, has 45 days to issue a final administrative decision.

If the employee is not satisfied with the decision rendered during STEP 3, the employee may appeal to the circuit court.

### **Peer Review and Other Appeal Procedures**

The statute allows agencies to establish peer review panels as an alternate grievance procedure for employees. These panels will review grievances according to established procedures, and the panel's decision will be the final administrative decision. Employees may also appeal performance evaluations of "satisfactory" or better only to the appointing authority, and if necessary, to the agency head. The decision of the agency head is final.

### **Remedies Available to Grievants**

Remedies available to grievants include restoring any rights, pay, status, or benefits that were lost because of the contested procedure and as applied by the appropriate decisionmaker in the grievance procedure. A decisionmaker may, if appropriate, order the appointing authority to grant back pay. If the grievance was over a reclassification, back pay may be awarded to the employee for a period up to one year prior to the initial filing of the grievance. Back pay orders are at the discretion of the Secretary and the Office of Administrative Hearings and must be carried out by the appointing authority.

### **Sovereign Immunity and Satisfaction of Awards**

Title 14 of the State Personnel and Pensions Article provides that the defense of sovereign immunity is not available to the State, unless otherwise specifically provided by the laws of Maryland, in any administrative, arbitration, or judicial proceeding involving an employee grievance or hearing that is held under (1) Division I of the article or regulation adopted under it; or (2) a personnel policy or regulation that governs classified employees of the University System of Maryland or Morgan State University. Furthermore, the Governor must provide in the annual State budget adequate funds for the satisfaction of any final monetary or benefit award judgment that has been rendered in favor of the person against the State in any administrative, arbitration, or judicial proceeding involving an employee grievance.

## **Disciplinary Actions, Layoffs, and Employment Terminations**

Title 11 of the State Personnel and Pensions Article sets forth the State's policy regarding disciplinary actions, layoffs, and employment terminations.

### **Disciplinary Actions**

Provisions relating to discipline apply to all State Personnel Management System employees and former employees, except temporary employees. In addition, the appointing authority has the burden of proof by a preponderance of the evidence in a disciplinary action, and the standard must be applied during appeals. Some of the allowed disciplinary actions are set forth below:

- a written reprimand;
- forfeiture of up to 15 work days of accrued annual leave;
- suspension without pay;
- denial of a pay increase;
- demotion; or
- termination with or without prejudice, with the approval of the agency head, depending on the severity of the offense.

Certain acts by an employee, such as intentionally injuring another person, theft of State property, and conviction of a felony, can result in automatic termination of employment. Otherwise there are two categories of discipline: conduct-related discipline and performance-related discipline. The former may result from employee misconduct stemming from either an action or inaction of the employee that violates a statute, regulation, policy, directive, or order. Examples of behavior resulting in conduct-related discipline include but are not limited to:

- being negligent in the performance of duties;
- engaging in intentional misconduct, without justification, that injures another person;
- stealing State property with a value under \$300; and

- using leave contrary to law or policy.

Performance-related discipline may result from inefficient or incompetent job performance or a lack of qualifications for the position.

Before taking a disciplinary action, the appointing authority has 30 days to investigate the alleged misconduct, meet with the employee, consider mitigating evidence, impose the discipline, and advise the employee of appeal rights. The appointing authority has only five days from the employee's last shift to complete this process if the employee is to be suspended without pay. An employee may appeal a disciplinary action. The following outlines the disciplinary appeals process:

- Employees in the skilled service and the professional service have 15 days to file an appeal to the head of the principal unit. If the employee is on initial probation, the employee bears the burden of proof on appeal and may only appeal on the grounds that the action was illegal or unconstitutional. The appeal should explain issues of fact and law that warrant rescinding the action. Upon receipt of the appeal, the agency has 15 days to address, point-by-point, the issues in the appeal.
- After receiving the decision of the agency head, the employee has 10 days to appeal to the Secretary of Budget and Management. If no settlement is reached after 30 days, the appeal is referred to the Office of Administrative Hearings.
- The Office of Administrative Hearings has 30 days to schedule a hearing and notify the parties of the hearing date, and must dispose of the appeal according to the provisions of the Administrative Procedure Act. At the close of the hearing, the office has 45 days to issue a decision. The decision of the office is the final administrative decision.

As mentioned earlier, terminating an employee in the skilled service or professional service requires the approval of the agency head. Terminated employees become "former employees," and with the exception of special appointment employees, may appeal the decision. At each stage in the appeals process, the decisionmaker can uphold the disciplinary action, or rescind or modify the action and restore lost time, compensation, status, or benefits. As with the grievance procedure, if the agency has a peer review panel, the employee may bypass the above process and file a disciplinary appeal with the peer review panel.

Employees in the management service, the executive service, or special appointments may appeal a disciplinary action to the agency head. Employees in these services have the burden of proof in an appeal and may only appeal on the grounds that

the action was illegal or unconstitutional. The decision of the agency head is the final administrative decision. Exhibit 3.3 lists the number of cases heard and decided by administrative law judges and the number of cases resolved within the Employer/Employee Relations Division of the Department of Budget and Management in fiscal 2008 and 2009. These actions include dismissals, suspensions, reprimands, and grievances.

Neither the Maryland Department of Transportation nor Morgan State University is covered under this process. Chapter 317 of 2005 altered the disciplinary process that the Maryland Department of Transportation must follow when an employee is accused of misconduct to make it much more similar to the process outlined above. Morgan State University utilizes a process where disciplinary action cases go to the Office of Administrative Hearings first and then go to the Department of Budget and Management on appeal for “exception hearings.”

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**Exhibit 3.3**  
**Disciplinary Actions and Grievances**  
**Fiscal 2008-2009**

	<b>Cases Forwarded to the Office of Administrative Hearings</b>		<b>Cases Resolved by the Employer/Employee Relations Division</b>	
	<b><u>2008</u></b>	<b><u>2009</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>
Reprimand	77	105	177	212
Disciplinary Loss of Leave	17	12	30	21
Disciplinary Suspension	50	47	53	56
Denial of Increment	2	0	2	0
Involuntary Demotion	4	8	4	4
Termination on Probation	13	11	14	19
Termination	67	58	38	35
Grievances	114	76	118	79
<b>Total</b>	<b>344</b>	<b>317</b>	<b>436</b>	<b>426</b>

Source: Department of Budget and Management

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## **Layoffs**

Only an employee in the skilled service or professional service who is not a special appointment can be “laid off” from the employee’s position if that position is abolished or discontinued because of lack of work or a change in the organization. Employees must be notified at least 60 days prior to the effective date of the layoff. Employees with the fewest seniority points in a class will be laid off first. Seniority points are accumulated based on the number of months the employee worked for the State, unit, and in the current job series. Chapter 696 of 2008 provides additional seniority points to eligible veterans, veterans with a disability, and former prisoners of war. An employee targeted for layoff may displace another employee with fewer seniority points in the same job series or classification held by the employee at any time during the three years preceding the layoff.

## **Separations**

All regular State Personnel Management System employees may be separated or terminated from State service. Separation occurs if the appropriation for the employee’s position in the State budget is omitted by the Governor, struck by the General Assembly, or reduced by the Governor through a submission to the Board of Public Works. Separations cannot be appealed, but the separated employee has the same reinstatement rights as a laid off employee.

## **Reinstatements**

Employees who are reinstated to State service will receive credit for the previous time employed to determine the employee’s rate of annual leave earnings and seniority rights. Reinstated employees are also entitled to unused accumulated sick leave. The reinstatement period for former nontemporary employees is three years. In addition, a State employee who transfers to a position in another unit of State government, regardless of the personnel system, transfers without loss of leave or credit earned for State employment. An employee who returns to State service in a position with an independent personnel system is entitled to the reinstatement rights of that system.

As mentioned above, laid off and separated employees have identical reinstatement rights. Reinstatements for these former employees are done through seniority point order. In other words, the former employee with the most seniority points will be the first employee reinstated to a class or job series from which the employee was laid off or separated, or to any lower classification in the same job series within the principal department or other independent unit from which the layoff or separation occurred.

## **Contractual Employment in State Government**

State policies concerning the hiring of contractual employees are in Title 13 of the State Personnel and Pensions Article and COMAR 17.04.03.13. The statute provides that no agency can execute or renew a contract for the employment of a contractual employee unless the Secretary of Budget and Management certifies that (1) the service cannot be rendered by assignment or hiring of a nontemporary employee; (2) the service is needed for a limited, infrequent, or unusual time, or needs to be established quickly; and (3) the rate of pay is equivalent to that of existing employees with similar duties. Certain contracts, however, are exempt from the certification process, such as contracts for college faculty; for student, inmate, and patient labor; for direct emergency services; or by independent agencies. The Secretary may not continue certification of contractual services if the services encompass a permanent function, have no specific expiration date, and are regularly performed on a basis that is at least equal to 50% of a full-time permanent employee.

Except for those contracts exempt from certification, the Department of Budget and Management reviews each contractual employment request. During this review process, the department informs the contracting agency if the work should be assigned to a budgeted position or if a regular position should be requested through the budget process. Hiring contractual employees allows agencies to save money since contractual employees do not receive benefits (paid leave, holiday pay, health benefits, or pension benefits) that regular employees receive. Appendix 6 shows the trends for State contractual employment from fiscal 2006 to 2010.

During the 1996 session, the General Assembly was concerned about whether long-term contractual employment was in the best interest of either the State or contractual employees. Therefore, the State Personnel Management System Reform Act of 1996 required the Department of Budget and Management to study the issue of long-term contractual employment. The department's study, completed in December 1997, presented recommendations for the cost neutral reduction in the number of long-term contractual employees.

The report suggested that cost neutral conversion of contractual positions could be accomplished with or without applying conversion ratios, and need not result in an expansion of the total workforce. The recommended policy and implementation framework allows for the appropriate utilization of budgeted positions for continuing functions, while providing flexibility at the agency level to define the extent of convertible positions as well as a workable timeframe for reducing long-term contractual employment levels.

The Department of Budget and Management implemented the majority of its recommendations through the budget process. Concerning the recommended statutory change, during the 1998 session the General Assembly passed legislation (Chapter 510 of 1998) authorizing the Department of Budget and Management to convert contractual employees to regular positions after six months of satisfactory job performance if (1) there is a continuing need for the function to be performed; (2) the agency can document a competitive hiring process; (3) the budgeted position was not available at the time the contractual employee was hired; and (4) the employee meets the minimum qualifications for the budgeted position. Exhibit 3.4 lists the number of contractual conversions from fiscal 2005 to 2009.

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**Exhibit 3.4**  
**Contractual Conversions in State Agencies**  
**Fiscal 2005-2009**

<u>Fiscal Year</u>	<u>Employees</u>
2005	658
2006	978
2007	605
2008	560
2009	596

Source: Department of Budget and Management

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The fiscal 2010 budget bill (Chapter 484 of 2009) provides for the creation of regular State positions if an equivalent 1.25 FTE contractual positions are abolished, with the approval of the Board of Public Works, as it has for a number of years.





## Chapter 4. Leave Policies and Benefits

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Regular State employees receive benefits in addition to monetary compensation. These benefits can be placed into three categories: leave, fringe benefits, and employee programs.

### Leave

Unless indicated otherwise, the leave policies and other benefits described in this chapter generally apply to employees in the State Personnel Management System. Most policies and benefits do not apply to temporary employees such as contractual or emergency employees. Units of the Executive Branch with independent personnel systems, and the Legislative and Judicial branches, generally have adopted similar policies and benefits. Leave includes paid leave (*e.g.*, annual or sick leave) and unpaid leave (*e.g.*, leave of absence). Family leave may fall within either; therefore, it is described under a separate heading.

### Paid Leave

Title 9 of the State Personnel and Pensions Article governs most leave policies, including the rate of leave accrual, circumstances under which leave can be taken, and the disposition of accrued but unused leave. The Secretary of Budget and Management is responsible for administering leave policies for State Personnel Management System employees.

### Holidays

Regular State Personnel Management System employees are entitled to paid time off for observance of the holidays listed in Exhibit 4.1 and or any other day the President or the Governor designates for the general cessation of business. Employees who work in agencies with 24 hours a day/seven days a week service may have their holidays rescheduled to accommodate the agencies' service needs. Also, a unit that is authorized to establish its own holiday schedule may allow different variations of holidays observed. For example, the Maryland Department of Transportation's personnel system has one less holiday (the American Indian Heritage Day) than the State Personnel Management System.

Employees who work on a holiday are entitled to compensatory time on at least an hour for hour basis but must use the compensatory time within one year after having

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**Exhibit 4.1**  
**Paid Holidays – State Personnel Management System Employees**

New Year's Day	January 1
Martin Luther King, Jr.'s Day	January 15 unless another day is designated by the U.S. Congress
Presidents' Day	3rd Monday in February
Memorial Day	May 30 unless another day is designated by the U.S. Congress
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	October 12 unless another day is designated by the U.S. Congress
Election Day	Days of general elections (not primary elections), normally the first Tuesday in November in even numbered years
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
American Indian Heritage Day	Fourth Friday in November
Christmas Day	December 25

Source: Department of Legislative Services

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accrued the time. Employees who are eligible for overtime, and who work on prescheduled holidays, are also paid for the holiday hours scheduled at the normal hourly rate plus time and one-half payment for any hours actually worked. In addition,

employees in the executive pay plan at ES 6 or higher must work at least five hours on a holiday to earn one day of compensatory time.

**Annual Leave**

State Personnel Management System employees are entitled to annual leave with pay for any purpose. The employee’s supervisor must approve such leave in advance. Employees may not use annual leave until six months of service are completed. Current law provides annual leave based upon an employee’s years of State service as shown in Exhibit 4.2.

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**Exhibit 4.2**  
**Annual Leave – State Personnel Management System Employees**

<u>Years of Service</u>	<u>Annual Leave</u>
Less than 5 years of service	10 workdays per year
5 to less than 10 years of service	15 workdays per year
10 to less than 20 years of service	20 workdays per year
20+ years of service	25 workdays per year

Source: Department of Legislative Services

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The law further provides that up to 75 days of unused annual leave may be carried over into any new calendar year. At the end of the year, any unused leave in excess of 75 days is forfeited, and, unless the employee objects, is placed into the State Employees Leave Bank. At any time an employee may donate annual leave to the leave bank or to another employee.

All employees except those covered under collective bargaining agreements and those whose State employment is terminated for a cause involving moral turpitude may elect to receive the compensation in lieu of unused annual leave upon termination from State service. The compensation is determined by calculating one-tenth of the employee’s current biweekly amount of compensation multiplied by the number of days of earned and unused annual leave accumulated at the end of the previous calendar year (maximum of 50 working days), plus the number of days of annual leave unused during the current calendar year.

In addition to the payment of annual leave upon termination, an appointing authority may request the agency head to compensate an employee for any unused annual leave – in excess of the maximum 50 days carryover – if the employee has been denied the opportunity to use such leave.

### **Personal Leave**

Six days of personal leave are credited to State employees at the beginning of each calendar year. Newly hired employees receive a prorated number of personal days depending on the employee's starting date. Personal leave can be used for any purpose after notice to the employee's immediate supervisor. A request to use personal leave to observe a religious holiday may not be denied unless the employee's unit provides a service continuously on a seven-day-a-week basis, there is a critical shortage of staff in the unit, and no reasonable accommodations to the employee's request can be made. Employees may not accumulate personal leave. Any unused personal leave at the end of the calendar year is forfeited, and, unless the employee objects, is placed into the State Employees Leave Bank. At any time an employee may donate personal leave to the leave bank or to another employee.

The number of personal days credited to employees in agencies in the Executive Branch with independent personnel systems and other branches of government may vary. For example, the Maryland Department of Transportation provides its employees with seven personal days.

### **Sick Leave**

State Personnel Management System regular employees are entitled to sick leave with pay. State employees earn sick leave at the rate of 15 days a year, prorated based on when the employee begins State service. Sick leave can be used for an illness, disability, or medical appointment of the employee; an illness, disability, death, or medical appointment in the employee's immediate family; or the birth or adoption of an employee's child. If an employee is absent five or more consecutive days due to personal illness or an illness in the immediate family, the employee must present an original certificate of illness or disability signed by one of several licensed or certified medical providers listed in statute.

As mentioned above, sick leave may be used during the period immediately following the birth of an employee's child or the placement of a child with an employee for adoption. With the approval of the head of the employee's principal department, an employee who is primarily responsible for the care and nurturing of the child may use, without certification of illness or disability, up to 30 days of accrued sick leave. With

approval, two employees who are responsible for the care and nurturing of the child may use, without certification of illness or disability, up to 40 days of accrued sick leave, not to exceed 30 days for one employee, to care for the child. The number of allowable sick days for these purposes varies for employees in Executive Branch agencies, agencies with independent personnel systems, and other branches of government. For example, the Maryland Department of Transportation's personnel system provides that 20 days of accrued sick leave may be used for adoption of a child or for care of an employee's newborn.

Employees are entitled to accumulate an unlimited number of unused sick leave days during their State service tenure and may carry all sick leave over into subsequent calendar years. Upon termination from State service for reasons other than retirement, an employee forfeits any accumulated sick leave. Forfeited sick leave, unless the employee objects, is placed into the leave bank. At any time an employee may donate sick leave to the leave bank or to another employee, provided that the employee's sick leave balance does not fall below 240 hours.

Employees who retire with a full or early service retirement may convert unused sick leave to creditable service when determining retirement benefits. For this purpose, 22 days of sick leave equals one month of creditable service.

### **State Employees' Leave Bank and Employee-to-employee Donations**

The leave bank is made up of forfeited or donated annual, personal, and sick leave. Employees are members of the leave bank if they donate or forfeit leave. An employee may be granted leave from the bank after exhausting all forms of leave because of a serious and prolonged medical condition, and providing a certificate of illness or disability. In addition, an employee may be granted leave from the bank to provide direct care to an immediate family member who has suffered a catastrophic illness or injury.

State employees may also donate annual, personal, and sick leave directly to another State employee who has exhausted all available leave because of a serious and prolonged medical condition. Leave may only be donated for a medical condition that exists at the time of the donation. The Secretary of Budget and Management administers the leave bank and leave donation program and determines an employee's eligibility to receive leave from these sources. State agencies with independent personnel systems and the Legislative and Judicial branches may also participate in these programs.

### **Work-related Accident Leave**

A regular employee is eligible for work-related accident leave with sick pay if the employee sustains an accidental personal injury in the actual performance of job duties that is compensable under the Maryland Workers' Compensation Law. Work-related accident leave is available from the first day of a physician-certified disability until the earlier of the day the employee is able to return to work, as certified by a physician, or six months from the day of the disability. An additional six months of leave may be granted for a certified continued disability by a physician selected or approved by the appointing authority if the Workers' Compensation Commission has not reached a decision on the claim.

Payment for work-related accident leave is based on two-thirds of an employee's regular pay and constitutes a separate benefit on account of accident disability. Employees continue seniority and leave accruals based on their regular pay and maintain all health care benefits; however, the employees may not receive temporary total disability benefits under the Maryland Workers' Compensation Act while receiving payments for this leave.

The allowance for work-related accident leave may vary for employees in agencies in the Executive Branch with independent personnel systems and other branches of government, but the policies are generally similar to the State Personnel Management System.

### **Compensatory Leave**

Compensatory leave is paid leave for time worked above the employee's normal work week or on holidays. Compensatory leave may be used for any purpose. Policies concerning how compensatory leave can be earned and used vary among executive agencies and branches of State government. Some employees have a choice between cash overtime payments and compensatory leave, while others are only eligible for compensatory leave. In most cases, compensatory leave is forfeited if it is not used within one year of the date on which it was earned. All employees except those covered under collective bargaining agreements are allowed to receive compensation for up to two days of unused compensatory leave earned during the calendar year in which the employee terminates State employment.

### **Military Administrative Leave**

State employees on active military duty on or after July 1, 2003, are eligible for military administrative leave. Employees electing this benefit are entitled to leave equal

to an amount sufficient to compensate them for the difference between the employees' active duty base salary paid by the federal government and the employees' State base salary.

### **Other Paid Leave**

Other types of leave may be authorized by statute, regulation, or the Governor, if the leave is consistent with statute. These types of leave are largely self-explanatory and include:

- Bereavement Leave
- Disaster Service Leave
- Organ Donation Leave
- Military Leave
- Jury Service Leave
- Legal Action Leave
- Disciplinary Action Leave
- Examinations/Interviews for State Positions
- Release Time for Union Activities
- Positive Tuberculin Skin Test
- Religious Observances

### **Unpaid Leave**

Several types of unpaid leave may be authorized for State employees, as described on the following page.



### **Leave of Absence**

The Secretary of Budget and Management may grant unpaid leaves of absences that do not exceed two years. A leave of absence without pay may be used by an employee who is a member of the armed forces and is called upon for active service, injured in the line of duty and has exhausted all paid leave, or temporarily incapacitated due to physical or mental illness. An employee is eligible, with approval from his or her appointing authority, for a leave of absence without pay for a period not to exceed 30 calendar days. For longer periods, a leave of absence request requires the additional approval of the Secretary.

If an employee returns to State service within two years, the employee is eligible for reinstatement. However, the leave period for entry into the armed services is the initial tour of duty. The employee may be restored to the employee's former position if a vacancy exists. If no vacancy exists, the employee's name will be placed on the reinstatement list for the employee's former classification.

### **Emergency Release Time**

Established under a 1981 executive order, emergency release time is unpaid leave granted to protect employees against unsafe conditions during emergency situations such as blizzards, hurricanes, civil disorders, physical plant hazards, fire, or war. The secretaries of the Department of General Services, the Department of Budget and Management, and the Maryland Department of Transportation, in consultation, may grant emergency leave to affected employees. An employee required to work during an emergency is credited with compensatory leave.

### **Family Leave**

In addition to the guaranteed use of sick leave after the birth of a child, the federal Family and Medical Leave Act of 1993 imposes benefit requirements on public agencies (state, local, and federal), local public and private education agencies, and businesses that employ 50 or more employees. The Act allows employees to take up to 12 weeks of unpaid or paid leave during any 12-month period for the birth, adoption, or foster-parent placement of a child; for a serious health condition of a child, spouse, or parent; or for an employee's own serious health condition. Employers are required to maintain the same health care coverage at the same rate as for employees on other types of leave. Upon return, employees are restored to their original or an equivalent position.

Certain public employees are not covered under the Act, including employees of the legislative body of a state or political subdivision who are not employed by the

legislative library; elected officials of a state or a political subdivision, their personal staffs, employees appointed by an elected official to a policymaking level, and employees appointed in an advisory capacity to an elected official; and employees employed for less than one year. The Act does not supersede any provision of any state or local law that provides greater leave rights.

## **Fringe Benefits**

Fringe benefits are direct employer subsidies on behalf of an employee. Traditional fringe benefits include contributions to an employee's health care or retirement plan. Together, fringe benefits and salary make up an employee's total compensation package. As an employer, the State provides five major benefits that involve a direct subsidy on behalf of employees: health insurance plans and other related benefits; Social Security; pension/retirement contributions; Workers' Compensation; and unemployment insurance. Generally, these fringe benefits represent approximately 35% of a regular employee's salary. Other less traditional benefits involving various levels of subsidy include a State match to the deferred compensation program, performance and retention bonuses, tuition waivers, and employee transit expenditures. These less-traditional fringe benefits generally represent approximately 1% of a regular employee's salary.

The administration of the Maryland State Employees Health Benefits Program has been moved from one agency to another over the years. In the mid-1960s, when the State first provided a subsidy for employees' health insurance, the program was administered by the Office of the State Treasurer. In the early 1970s, the responsibility was transferred to the former Department of Personnel. In October 1993, because of a significant increase in program costs and problems with program administration, this responsibility was transferred to the then Department of Budget and Fiscal Planning, now the Department of Budget and Management.

## **Health Insurance Plans and Other Related Benefits**

Title 2, Subtitle 5 of the State Personnel and Pensions Article authorizes the Secretary of Budget and Management to develop and administer a State Employee and Retiree Health and Welfare Benefits Program. All Executive, Judicial, and Legislative Branch agencies may participate in the program.

The benefits described below are available to regular full-time employees, part-time employees who work more than 50% of the workweek, and certain retirees who have qualified for retiree health care. In addition, health benefits and some other benefits

are available to contractual employees and part-time employees working less than 50% of the workweek, provided the employees pay all the costs of the plan.

### **Health Insurance Plans**

Starting in fiscal 2010, the State offered its employees the option of selecting a preferred provider organization, a point-of-service plan, or an exclusive provider organization. All employees are required to pay a portion of the premium or the self-funded cost to enroll in one of the offered health plans. Employees pay a percent of exclusive provider organization premiums, a percent of point-of-service costs, and a percent of preferred provider organization costs. Costs range from the lowest cost exclusive provider organization, to mid-range point-of-service plans, to the highest cost preferred provider organization plans.

The benefits offered are standardized within each type of program (preferred provider organization, point-of-service, and exclusive provider organization). Some of the benefits that all medical plans provide include:

- physician care;
- hospitalization;
- surgery;
- maternity benefits/newborn care;
- diagnostic lab and x-ray;
- acupuncture services for chronic pain management;
- routine vision exams;
- prescription eyeglasses and contacts;
- whole blood charges;
- durable medical supplies; and
- ambulance and emergency room service.

The preferred provider organization plan allows an employee to choose any doctor for services. The State is self-insured for this plan by paying an administrative fee to the providers, and assuming the risk for all costs. If the doctor is part of the State's network of participating physicians, a copayment is required. If the doctor is outside of the network, the employee pays the entire fee and submits a claim for reimbursement, which is applied to a required deductible. After the deductible is exceeded, the plan then pays 80% of the cost.

The point-of-service plan is similar to an exclusive provider organization in that the employee's choice of providers is somewhat limited. However, employees are given the option of choosing out-of-network services without a referral but must then pay a deductible (not required with in-network services). The State pays fixed administrative fees and capitated payments and is self-insured for all other costs. When using services within the plan, a copayment is required. If the employee receives treatment out of the network, the employee pays the entire fee and submits a claim for reimbursement, which is applied to a required deductible. After the deductible is exceeded, the plan pays 80% of the cost.

For the exclusive provider organization plan, the State pays a fixed fee, and exclusive provider organizations assume the risk for all costs. Employees must choose a primary care physician, and all medical services are received from this provider or specialists within the network. When receiving a service, a copayment is required for primary and specialist care office visits.

### **Other Related Benefits**

***Dental Insurance Plans:*** The State offers dental insurance plans that are available to all employees who are eligible for health insurance benefits with the State. Two plans are available, a dental health maintenance organization and a dental preferred provider organization plan. The structure and funding of benefits is similar to health insurance exclusive provider organizations and point-of-service plans. Employees are required to pay 50% of the premium or the self-funded cost to enroll in one of the plans.

The available coverage from and requirements of the two types of plans vary. The dental health maintenance organization plan covers preventive and diagnostic dental care in full, while restorative and other major services are offered at a reduced cost. Orthodontic services are available for both adults and children. There are no deductibles and no annual maximum allowable amounts. Employees are required to select a primary dental office, which will arrange for all dental care. The preferred provider organization option does not require the selection of a primary dental office, and orthodontic services are available for children only. Dental care under this plan may be provided by a dentist

of the employees' choice; however, benefit coverage amounts are higher for in-network dentists.

***Mental Health/Substance Abuse Program:*** The State offers mental health/substance abuse coverage to State employees and their dependents who enroll in any kind of health coverage. For the preferred provider organization and point-of-service plans, the mental health benefit is administered by a separate provider, while exclusive provider organizations provide their own mental health services. For the preferred provider organization and point-of-service plans, the State is self-insured and pays an administrative fee. For exclusive provider organizations, the State pays a fixed fee, and the exclusive provider organizations assume the risks for all costs.

***Prescription Program:*** The State offers a self-funded prescription drug program to State employees and their dependents who enroll in any kind of health coverage. Similar to the State health plans, employees must pay a portion of the cost of receiving prescription drug coverage. A separate copayment is required for each individual prescription written for 1 to 45 days. Copayments vary depending on whether the prescription is a generic (\$5 copayment), preferred brand-name drug (\$15 copayment), or nonpreferred brand name drug (\$20 copayment). Drugs are determined to be "preferred" through an evaluation by the prescription drug benefit manager's panel of physicians and pharmacists. There is a mandatory generic requirement which means that if a generic drug is available and a brand name drug is chosen instead, the employee has to pay the difference between the cost of filling the generic and the brand name prescription.

***Flexible Spending Accounts:*** Employees have the option of establishing a Flexible Spending Account to set aside pre-tax dollars to pay for eligible health-related expenses that are not covered by existing State health plans or to pay for eligible dependent day care expenses. Employees are then "reimbursed" from these accounts for eligible expenses they incur during the year for which the account is established. Internal Revenue Service rules require that employees must continue to contribute a preselected amount to the health care or dependent care account throughout the year. Any money left over in the account at the end of the year is forfeited.

***Other Benefit Plans:*** While the State subsidizes the health care, prescription drug, and dental plans, it also offers other plans that it does not subsidize. An employee who elects to participate in one of these plans pays the full premium. Additional benefits offered by the State include term life insurance and a personal accidental death and dismemberment plan and long-term care coverage, which are offered to employees and their dependents who are eligible for health benefits.

**Enrollment and Funding**

Exhibit 4.3 provides fiscal year enrollment data for employee and retiree health insurance plans. The overall increase in enrollment can be attributed to the growth in the number of State positions. For active employees, there has been a small average annual increase in enrollment in the more popular preferred provider organization plans since fiscal 2007, while the average annual enrollment has decreased during the same time period in point-of-service and health maintenance organization/exclusive provider organization plans.

**Exhibit 4.3  
Employee Participation in Health and Life Insurance Plans  
Fiscal 2007-2010**

	<u>Actual 2007</u>	<u>Actual 2008</u>	<u>Actual 2009</u>	<u>Estimated 2010</u>	<u>Average Annual Change 2007-2010</u>
PPO	30,341	31,557	33,684	36,097	6.0%
POS	24,893	24,227	23,748	23,566	-1.8%
HMO/EPO	14,374	14,189	13,760	12,280	-5.1%
<b>Total Health Plan</b>	<b>69,608</b>	<b>69,973</b>	<b>71,192</b>	<b>71,943</b>	<b>1.1%</b>
Prescription	65,495	65,770	66,881	67,536	1.0%
Dental	61,361	62,607	64,941	64,975	1.9%
Term Life	43,495	44,338	46,575	46,724	2.4%
Accidental Death	36,701	37,340	39,137	39,084	2.1%

**Retiree Participation in Health and Life Insurance Plans**

	<u>Actual 2007</u>	<u>Actual 2008</u>	<u>Actual 2009</u>	<u>Estimated 2010</u>	<u>Average Annual Change 2007-2010</u>
PPO	23,471	24,119	24,960	25,689	3.1%
POS	8,496	8,591	8,726	8,700	0.8%
HMO/EPO	3,514	3,574	3,652	3,156	-3.5%
<b>Total Health Plan</b>	<b>35,481</b>	<b>36,284</b>	<b>37,338</b>	<b>37,545</b>	<b>1.9%</b>
Prescription	34,940	35,691	36,739	23,660	-12.2%
Dental	20,353	21,766	23,523	37,028	22.1%
Term Life	6,479	7,330	8,134	9,060	11.8%

EPO: exclusive provider organization  
HMO: Health Maintenance Organization

POS: point-of-service  
PPO: preferred provider organization

Source: Department of Budget and Management, Office of Personnel Services and Benefits Annual Reports

Exhibit 4.4 shows the health insurance account activity for fiscal 2007 through 2009. Receipts received from agencies, employees, retirees, and other sources (satellite participants in the health insurance program) have increased steadily, a result of both increased enrollment and health insurance cost inflation. From fiscal 2007 to 2009, total enrollment increased by 1.1%, yet total receipts decreased by 2.5%, and payments to providers and insurance companies increased by 8.9%. The net effect has been that the fund balance has decreased significantly over the three-year period.

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**Exhibit 4.4**  
**Summary of Health Insurance Reimbursable Fund**  
**Fiscal 2007-2009**  
**(\$ in Millions)**

	<u>Actual</u> <u>2007</u>	<u>Actual</u> <u>2008</u>	<u>Actual</u> <u>2009</u>	<u>Change</u> <u>2008-2009</u>	<u>Average</u> <u>Annual</u> <u>Change</u> <u>2007-2009</u>
<b>Balance, Beginning of Year</b>	<b>\$193.1</b>	<b>\$309.9</b>	<b>\$245.7</b>	<b>-20.7%</b>	<b>12.8%</b>
State Agency Receipts	787.4	657.0	745.2	13.4%	-2.7%
Employee Receipts	132.7	142.4	137.6	-3.4%	1.8%
Retiree Receipts	57.8	58.6	57.2	-2.4%	-0.5%
Other Receipts	66.1	67.3	51.5	-23.5%	-11.7%
<b>Total Receipts</b>	<b>\$1,044.0</b>	<b>\$925.3</b>	<b>\$991.5</b>	<b>7.2%</b>	<b>-2.5%</b>
<b>Subtotal Receipts and Balance</b>	<b>\$1,237.1</b>	<b>\$1,235.2</b>	<b>\$1,237.2</b>	<b>0.2%</b>	<b>0.0%</b>
Payments	\$927.2	\$989.5	\$1,099.3	11.1%	8.9%
<b>Ending Balance</b>	<b>\$309.9</b>	<b>\$245.7</b>	<b>\$137.9</b>	<b>-43.9%</b>	<b>-33.3%</b>
Change in Fund Balance	\$116.8	-\$64.2	-\$107.8		

Source: Department of Budget and Management

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Increases in prescription drug costs, however, have not been as dramatic in recent years. Exhibit 4.5 shows that while prescription payments have increased by 1.4% from fiscal 2005 to 2009, other payments have increased by 8.6%.

**Exhibit 4.5**  
**Payments for Prescription Coverage and Other Health Coverage**  
**Fiscal 2005-2009**  
**(\$ in Millions)**

	<u>Actual</u> <u>2005</u>	<u>Actual</u> <u>2009</u>	<u>Average Annual</u> <u>% Change</u> <u>2005-2009</u>
Prescription Payments	\$303.4	\$320.8	1.4%
Other Payments	567.6	789.6	8.6%
<b>Total Payments</b>	<b>\$871.1</b>	<b>\$1,110.4</b>	
% of Prescription Payments to Total	34.8%	28.9%	

Source: Department of Budget and Management

There have been a number of employee health and prescription insurance plan policy changes initiated by the Department of Budget and Management during the past several years. In January 2005, the Department of Budget and Management implemented a number of changes to the State employee health plans including:

- increasing primary doctor’s office visit copayments from \$5 to \$15 for point-of-service and health maintenance organization plans and increasing specialist doctor’s office visit copayments from \$10 or \$20 to \$25 for all types of plans;
- increasing emergency room hospital charge copayments from \$25 to \$50 if emergency criteria are not met and implementing physician’s charge copayments of \$50 per emergency room visit; and
- providing coverage for up to 50 rather than 100 visits per year of physical therapy.

Program restructuring implemented by the Department of Budget and Management and authorized by the General Assembly for fiscal 2006 (Chapter 444 of 2005) included:



- increasing the point-of-service health insurance co-premiums from 15 to 17% of the total cost;
- increasing prescription copayments to \$5 for generic drugs, \$15 for preferred brand name drugs, and \$25 for non-preferred brand name drugs from \$3, \$5, and \$10 for the three existing tiers;
- implementing a \$700 spending cap per family for prescriptions;
- requiring two copayments instead of one copayment for 90 days of medication;
- implementing a 30-day maximum for the first fill of a new drug;
- requiring prior authorization for certain medications; and
- implementing a number of other changes such as required step therapy, managed quantities of drugs, and voluntary mail order and specialty drug pharmacies.

Claims costs for fiscal 2008 compared to claims costs made for fiscal 2009 show that prescription cost increases are less than medical costs. As shown in Exhibit 4.6, the

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**Exhibit 4.6**  
**Total Claims for Health, Prescription, and Dental Benefit**  
**Fiscal 2008 and 2009**  
**(\$ in Millions)**

	<u>2008</u>	<u>2009</u>	<u>Change</u> <u>2008-2009</u>
Preferred Provider Organizations	\$213.7	\$264.9	24.0%
Point-of-service Plans	153.5	159.1	3.6%
Health Maintenance Organization Plans	100.7	102.2	1.5%
Mental Health/Substance Abuse Plans	9.5	10.4	9.5%
<b>Medical Subtotal</b>	<b>\$477.6</b>	<b>\$536.6</b>	<b>12.4%</b>
Prescription Plan	148.9	159.4	7.1%
Dental Plans	28.7	31.3	9.1%
<b>Total</b>	<b>\$655.2</b>	<b>\$727.3</b>	<b>10.4%</b>

Source: Department of Budget and Management

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costs, representing both the State's and the participants' share, increased at a rate of 12.4% for health coverage and 9.1% for dental coverage. Prescription claims costs increased by 7.1%. Overall, the insurance package costs 10.4% more in fiscal 2009 than it did in fiscal 2008. Nevertheless, as with the rest of the country, the numbers indicate that health care costs continue to rise.

### **Retiree Health Insurance**

In addition to the cost of employee health benefits, another issue of ongoing concern to the General Assembly is the cost of retiree health insurance. This issue includes both the increasing cost of retiree health benefits payments each year as well as new accounting rules that will require the State to address the liabilities for future retiree health care costs. When State-eligible employees retire, they may continue to receive State health insurance benefits. To be eligible, a retiree must have:

- ended State service with at least 10 years of creditable service and within 5 years of retirement age;
- ended State service with at least 16 years of service;
- ended State service on or before June 30, 1984;
- retired directly from the State with at least 5 years of service; or
- retired directly from State service with a disability.

If a retiree has less than 16 years of State service, the benefit is prorated. The State subsidy for health insurance is determined by the amount of creditable service the retired State employee earned. With five years of creditable service, a retired State employee is entitled to five-sixteenths of the State subsidy provided to active employees. For each additional year of creditable service, an additional one-sixteenth of the subsidy is earned until, with 16 years of creditable service, the retired State employee is entitled to full subsidy which is equal to the same State health insurance subsidy as provided to active employees. Chapter 11 of this handbook includes a detailed discussion of the issues relating to retiree health insurance.

### **Social Security**

Since 1956, State employees (with the exception of the Maryland State Police) have been participants in the Social Security system with the State paying the employer's

share of the cost. Social Security costs are determined by multiplying individual salaries up to the Social Security Wage Base by 6.2% for the employee and the employer. Both the State and the employees are also subject to a 1.45% Medicare cost, which is not subject to a wage base.

### **Pension/Retirement Contributions**

See Chapter 11 of this volume for an explanation of the pension and retirement benefits provided to State employees.

### **Workers' Compensation**

The purpose of the Workers' Compensation program is to assure that workers who sustain "accidental injuries out of and in the course of employment" are entitled to prompt payments for medical services and compensation without resorting to lawsuits. Questions of fault on the part of the employee or employer are excluded under the State Workers' Compensation Law.

Under the Workers' Compensation Law, an employee has the burden of proving that the injury was job-related and disabling. The injury is presumed not to be caused by the willful intention of the employee, and the burden to prove otherwise rests with the employer.

Compensation benefits are paid by six classifications of disability: (1) temporary total disability; (2) permanent total disability; (3) death; (4) serious disability; (5) permanent partial disability; and (6) temporary partial disability. The State's Workers' Compensation program is self-insured and administered through the Injured Workers' Insurance Fund.

### **Unemployment Insurance**

Title 8 of the Labor and Employment Article provides unemployment insurance coverage for employees in both the public and private sector. For fiscal 2010, State agencies were required to budget \$.10 for every \$100 of payroll for unemployment insurance costs. The amount increased to \$.28 for every \$100 for fiscal 2011, which is consistent with the higher assessments that all employers will be paying to insure the solvency of the Unemployment Insurance Trust Fund.

## **Employee Programs**

Employee programs are designed and often paid for by the State for the benefit of the employees. Examples include the Employee Assistance Program, the Employee Wellness Program, the Deferred Compensation Program, and the Employee Transit Benefit. These programs are voluntary and can benefit both the employer and employee by improving productivity and job satisfaction.

The Department of Budget and Management administers various other programs and miscellaneous benefits that are intended to assist employees for the mutual benefit of employer and employee.

### **Employee Assistance Program**

The Employee Assistance Program provides “confidential and professional assessment and referral services to State employees who are experiencing personal problems which may or may not be affecting their work performance.” Such problems may include substance abuse, emotional problems, stress, family/marital problems, and legal problems. Employees in nonsensitive positions who test positive for illegal drug use will be referred to the program as part of the State’s efforts to rehabilitate such employees.

### **Deferred Compensation Plan**

The State allows employees to participate in a deferred compensation plan whereby an employee can defer a portion of current income (along with the payment of taxes on that income) until a later date, normally when the employee is retired. (See Chapter 11 of this volume on the Maryland State Retirement and Pension System for more information.)

### **Employee Transit Benefit**

The Maryland Transit Administration provides free services for State employees. Beginning in fiscal 2003, free ridership has been available to all employees except those employees of the Legislative and Judicial branches, higher education agencies, and local election boards.

## **Employee Training and Awards Programs**

Title 10 of the State Personnel and Pensions Article established several programs to facilitate human resource management and development.

### **Employee Training Programs**

The Department of Budget and Management is responsible for managing and developing training programs for State Personnel Management System employees and coordinating in-service and out-service training programs for State agencies. The purpose of training is to develop the capabilities of State employees; train employees to efficiently perform their duties; attract qualified persons to State employment; and help managers and supervisors become knowledgeable and proficient in the application of laws, rules, and guidelines.

### **Incentive Awards Programs**

All principal units in the Executive Branch, including units with independent personnel systems, may participate in the Innovative Idea Program and the Incentive Performance Awards Program. Only executive service employees are not entitled to these awards.

***Innovative Idea Program:*** An employee, through an invention or innovative suggestion that increases revenues, saves money, improves service quality, or is of some other significant benefit, may receive a financial reward from the employee's agency. All ideas are subject to department review, and awards may range from \$300 to \$1,000. In addition to the departmental award, the employee's recognized innovative idea may receive an additional award – not to exceed \$20,000 or paid administrative leave not to exceed 20 workdays – from the Governor's awards panel.

***Incentive Performance Awards Program:*** This program grants an award for extraordinary performance in the public interest in connection with an employee's job performance. For extraordinary service, an employee may receive cash of not more than \$300, a gift of not more than \$300 in value, paid administrative leave of not more than three days, or any combination of cash, gift, and leave of not more than \$300 in value. An incentive performance award for outstanding service in connection with State employment over a sustained period or a special State project may be awarded for exceptional performance that exceeds the knowledge, skill, or ability required by the employee's position or exceptionally meritorious acts or services in the public interest. An award for outstanding service may not exceed \$3,000.

## **Teleworking Program**

The Department of Budget and Management maintains a telework policy that allows eligible employees to periodically work from home, a satellite office, or a telework center. Each Executive Branch agency must try to meet a goal of allowing at least 10% of eligible employees to telework.

## **Day Care Services**

The State operates three day care centers housed in three separate State agencies. The Maryland Department of the Environment's day care center in Baltimore City has a capacity of 70 children; the Department of Housing and Community Development's day care center in Crownsville has a capacity of 101 children; and the Department of Natural Resources' facility in Annapolis has a capacity of 103 children. All facilities are open to the children of State and non-state employees, although State employees are charged a lower rate. The facilities can accommodate infants, toddlers, and preschool children.

## **Miscellaneous Benefits**

In addition to the programs listed above, survivors of employees in the Executive Branch, including units with independent personnel systems, are entitled to death benefits when an employee is killed in the line of duty. Other miscellaneous benefits provided by State agencies include periodic and ongoing programs such as smoking cessation, stress management, and public employee recognition week.



## **Chapter 5. Collective Bargaining**

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### **History of Collective Bargaining in Maryland**

During the 1996 session, several bills were introduced that would have granted collective bargaining rights to State employees, including, for the first time, one from a Maryland Governor. Neither house of the General Assembly passed any of these bills that session. In May 1996, however, Governor Parris Glendening issued an executive order implementing collective bargaining for certain State employees.

In 1999, Governor Glendening's legislative package included comprehensive collective bargaining legislation. Chapter 298 of 1999 established statutory collective bargaining rights for employees in the principal departments of the Executive Branch and created an administrative process for collective bargaining. As introduced, the legislation would have gone beyond the procedures for collective bargaining established under the executive order by extending collective bargaining rights to nonfaculty employees of public institutions of higher education, creating procedures for resolving impasses, and requiring State employees to pay a fee to their unit's exclusive bargaining representative. As enacted, however, Chapter 298 simply codified much of the bargaining process set up by the Governor's executive order.

Two years later, in an effort again initiated by Governor Glendening, Chapter 341 of 2001 expanded collective bargaining for State employees to include certain employees of the University System of Maryland and its constituent institutions, Morgan State University, St. Mary's College, and Baltimore City Community College. Faculty, administrators, supervisors, managers, contractual and temporary personnel, and certain other employees were not granted collective bargaining rights.

From enactment in 1999 through 2005, there were no changes to the laws governing collective bargaining for most State employees. However, Chapter 62 of 2006 revised various sections of the collective bargaining law. The most significant changes included allowing the voluntary adjustment of disputes arising from the implementation of a collective bargaining agreement, making the State Labor Relations Board an independent unit of State government, codifying unfair labor practices, allowing exclusive bargaining representatives to access specific employee information, and allowing nonbinding fact-finding in the event of an impasse during collective bargaining negotiations. Chapter 634 of 2007 allowed the exclusive representatives of bargaining units of State higher education institutions to access certain employee information. In addition, it also provided that if an Executive Branch employee or higher education employee notifies the employer that the employee does not want his or her contact



information provided to the exclusive representative, the notification remains in effect until the employee indicates otherwise.

## **Collective Bargaining in State Government**

Approximately 31,400 State employees, excluding higher education employees, are covered by collective bargaining as of June 1, 2010. While most Executive Branch employees have collective bargaining rights, management service employees, special appointees, the Governor's personal staff, and elected officials do not. Generally, employees of all Executive Branch agencies, the Maryland State Department of Education, and the Maryland Transit Administration have collective bargaining rights (about 2,500 employees of the Maryland Transit Administration were already covered by collective bargaining prior to 1996). Except for higher education employees, who are discussed later in this chapter, covered employees are divided into nine bargaining units. The State Labor Relations Board conducts the elections in which employees choose their exclusive bargaining representative. Exhibit 5.1 contains a list of the bargaining units and their exclusive representatives.

The Maryland Transportation Authority Police Force, as part of a nonbudgeted agency, is not considered to be a unit of the Maryland Department of Transportation, and thus is not subject to the general State collective bargaining law. Chapter 704 of 2010 included in the general State collective bargaining law Maryland Transportation Authority police officers at the rank of first sergeant and below. In addition, the Act also required that the police officers have a separate bargaining unit. To date, elections for the exclusive representative of the police officers have not been held, thus they are not included in Exhibit 5.1.

State employees may be represented by other employee organizations for purposes other than collective bargaining. Examples of existing employee organizations that have not been designated exclusive bargaining representatives for nonhigher education Executive Branch bargaining units are the Maryland Classified Employees Association, the Maryland Troopers Association, and the Maryland Correctional Union.

**Exhibit 5.1**  
**Bargaining Units and Representatives**  
**As of June 1, 2010**

<u>Unit</u>	<u>Title</u>	<u>Exclusive Representative</u>	<u>Employees</u>
A	Labor and Trades	AFSCME (American Federation of State, County, and Municipal Employees)	1,709
B	Administrative, Technical, and Clerical	AFSCME	5,582
C	Regulatory, Inspection, and Licensure	AFSCME	508
D	Health and Human Service Nonprofessionals	AFSCME	1,862
E	Health Care Professionals	AFT – Healthcare Maryland	1,906
F	Social and Human Service Professionals	AFSCME	3,831
G	Engineering, Scientific and Administrative Professionals	Maryland Professional Employees Council	4,891
H	Public Safety and Security	AFSCME/Teamsters	9,447
I	Sworn Police Officers	State Law Enforcement Officers Labor Alliance	1,691
	<b>Total</b>		<b>31,421</b>

Source: Department of Budget and Management

The Department of Budget and Management represents the State in negotiations with each unit's bargaining representative. These negotiations may include any matters relating to wages, hours, and terms and conditions of employment. The Governor is not required to negotiate any matter that is inconsistent with State law; however, the Governor can negotiate items that require a statutory change or an appropriation as long as the parties understand that the item cannot become effective until the General Assembly takes action. The General Assembly, however, is not bound by the agreement. The collective bargaining statute does not provide for binding arbitration; instead, the State and bargaining representatives must meet and confer about negotiable terms. However, if no agreement is reached for the next fiscal year by October 25, a fact finder may be appointed.

After negotiations have concluded, a memorandum of understanding is prepared which delineates all agreements the bargaining parties have reached. Upon approval by the Governor and a majority of the employees in the bargaining unit, the terms of the memorandum are agreed. A memorandum of understanding may be effective for a period of one to three years.

The statute also prohibits certain activities. Employees may not strike nor may the State engage in a lockout. If a strike or a lockout occurs or appears imminent, the State or employee organization may petition the circuit court for relief.

Negotiations between the Governor and the bargaining units have resulted in a number of benefits for employees that required General Assembly approval. For example, the General Assembly passed legislation authorizing a sick leave incentive program, increasing death benefits for the survivors of employees killed in the line of duty, and requiring overtime payments to certain employees required to work on prescheduled holidays. All these changes were collectively bargained.

## **Service Fees**

While an exclusive representative bargains for all members of a particular bargaining unit, only a portion of these individuals pays union membership dues to the representing organization. A service fee is paid by an employee to his or her bargaining unit's exclusive representative to offset costs attributable to the collective bargaining process. Generally, this fee is less than the fee charged for union dues. Prior to 2009, the State's collective bargaining laws expressly prohibited negotiating for service fees, also known as agency shop fees and fair share fees. Chapter 187 of 2009, more commonly known as the "Fair Share Act," authorized the State to collectively bargain with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative. An employee who has religious objections to paying the service fee may instead pay an amount not to exceed the service fee to a charitable organization. The Act did not apply to the State's public four-year higher education institutions or Baltimore City Community College.

## **Collective Bargaining for Child Care Providers**

The child care subsidy program, administered by the Maryland State Department of Education, provides financial assistance with child care costs to eligible families through each local department of social services. In 2007, Governor Martin O'Malley signed an executive order authorizing collective bargaining for registration and registration-exempt family child care providers participating in the child care subsidy program. An October 15, 2009 memorandum of understanding between the Governor, the Maryland State Department of Education, and the Service Employees International Union recognized that organization as the exclusive collective bargaining representative for all registered and registration-exempt family child care providers participating in the child care subsidy program. The memorandum of understanding also specified that if legislation expanding the rights of providers to engage in collective bargaining is signed by the Governor, the exclusive representative may reopen negotiations related to these expanded rights.

Chapter 496 of 2010 codified collective bargaining rights for child care providers and authorized the negotiation and implementation of service fees. Under the Act, the State must conclude that a collective bargaining agreement as a whole will not adversely impact providers who are not members of the main employee organization before a service fee for nonmember providers can be authorized through an agreement reached by the State and the providers' exclusive collective bargaining representative. The Act also established a private fund to protect child care providers against extreme hardship or loss of livelihood resulting from late State payments. In addition, it required the Early Learning Programs Section of the Maryland State Department of Education to report to the Senate Finance and House Economic Matters committees each year through 2013 on the status of the Maryland Child Care Subsidy Program as it relates to family child care providers.

## **Collective Bargaining for Teachers**

State public school teachers have collective bargaining rights throughout the State; the State Board of Education, however, has served as the ultimate arbiter of all disputes between local boards of education and the local employee organizations representing school system personnel. Local employee organizations viewed this bargaining process as unfair. As a result, Chapters 324 and 325 of 2010 established a Public School Labor Relations Board to administer and enforce the labor relations laws for local boards of education and their employees. The law authorized the Public School Labor Relations Board to arbitrate impasses that cannot be resolved through mediation and makes any arbitration agreement reached binding on the parties. Under the Acts, the State Board of Education no longer has the power to decide public school labor relations disputes, and

the authority of the State Superintendent of Schools to declare labor impasses is repealed. The law also established a new mediation process for resolving disputes and a new process for the Public School Labor Relations Board to decide the negotiability of topics, and it repealed the authority of the local boards of education to make final determinations of matters that have been the subject of negotiation.

Prior decisions of the State Board of Education are not binding on the Public School Labor Relations Board but may be considered precedent. The Public School Labor Relations Board must report on the implementation of the Act by July 1, 2014, and the legislation terminates on June 30, 2015. For a more detailed discussion of collective bargaining for teachers, please see *Volume IX – Education*, of this Legislative Handbook Series.

### **Collective Bargaining in Higher Education**

Certain State higher education employees at 16 public higher education institutions have also been granted certain collective bargaining rights. Twelve of the institutions are required to create bargaining units for exempt employees, nonexempt employees, and sworn police officers; however, four institutions (University of Maryland, Baltimore; University of Maryland Center for Environmental Science; University of Maryland University College; and University System of Maryland Office) are only required to create bargaining units for exempt employees and nonexempt employees. The potential exists for the establishment of up to 44 bargaining units (12 institutions times three units each and 4 institutions times two units each), but institutions of the University System of Maryland are allowed to cooperate with each other for the purposes of collective bargaining. Similar to the system established for State employees, the affected higher education parties may bargain over wages, hours, and other terms and conditions of employment. The employer's representative and the employees' exclusive representative have the authority to "meet and confer" and execute a memorandum of understanding incorporating all matters of agreement reached. As with regular State employees, there is a provision for nonbinding fact-finding. To the extent that the matters of agreement require legislative approval, these matters must be recommended to the General Assembly, which is not bound by the agreement.

To oversee the process and resolve collective bargaining disputes, an independent Higher Education Labor Relations Board oversees collective bargaining for State institutions of higher education. Prior to the establishment of collective bargaining for State higher education employees, there was a statutory requirement that these employees receive the same compensation and benefits package as State employees. This requirement no longer exists and each group of State employees must negotiate their own compensation and benefits independently.

Since enactment in 2001, most of the bargaining units for State higher education employees have elected an exclusive representative. There are currently 33 bargaining units from 15 public higher education institutions certified as “eligible for exclusive representative election” by the board. Exhibit 5.2 contains a list of the institutions, bargaining units, and exclusive representatives. In order to be certified, an employee organization must submit a petition showing that at least 30% of the eligible employees in a bargaining unit wish to be represented by the petitioning organization. Other employee organizations may participate in the election if they prove that 10% of the eligible employees in the bargaining unit wish to be represented by them. Once the board certifies a petition, an election by secret ballot must be held within 90 days.

Negotiations between the system institution designees and exclusive bargaining representatives are ongoing, and, in at least one instance of collective bargaining, resulted in legislation that was introduced and passed by the General Assembly. Chapter 113 of 2005 moved all of Baltimore City Community College employees into the college’s independent personnel system. Prior to 2005, some Baltimore City Community College employees were in the college’s personnel system while others were State employees.

**Exhibit 5.2**  
**Unions Certified for Exclusive Representative Election by the**  
**State Higher Education Labor Relations Board and Number of Employees in**  
**Each Bargaining Unit**  
**Calendar 2010**

<u>Institution</u>	<u>Exempt Employees</u>	<u>No. of Employees</u>	<u>Nonexempt Employees</u>	<u>No. of Employees</u>	<u>Sworn Police Officers</u>	<u>No. of Employees</u>
Bowie State University	AFSCME	49	AFSCME	85	MCEA	11
Coppin State College	AFSCME	44	AFSCME	68	AFSCME	11
Frostburg State Univ.	AFSCME	96	AFSCME	229	MCEA	15
Salisbury University			MCEA	272	MCEA	13
University of Baltimore			AFSCME	139	AFSCME	8
UMCP	UPU/AFSCME	1,606	AFSCME	1,443	FOP	71
UMBC			AFSCME	353	FOP	19
UMUC			AFSCME	107		
UMCES			MCEA	58		
UMES	AFSCME	53	AFSCME	195	AFSCME	5
Morgan State University			AFSCME	188	MCEA	32
St. Mary's College	AFSCME	27	AFSCME	80	AFSCME	0
BCCC	AFSCME	84	AFSCME	89	AFSCME	7
UMB			AFSCME	841		
Towson					FOP	37

AFSCME: American Federation of State, County, and Municipal Employees

BCCC: Baltimore City Community College

FOP: Fraternal Order of Police

MCEA: Maryland Classified Employees Association, Inc.

UMB: University of Maryland, Baltimore

UMBC: University of Maryland Baltimore County

UMCES: University of Maryland Center for Environmental Science

UMCP: University of Maryland, College Park

UMES: University of Maryland Eastern Shore

UPU: University Professionals Union (AFSCME subset)

Source: State Higher Education Labor Relations Board

## **Chapter 6. Personnel Policies and Practices in the Legislative Branch**

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This chapter reviews the compensation and personnel policies of the Legislative Branch of State government. As a separate branch of State government, the legislature has the authority to establish its own personnel policies and procedures. It also has independent salary setting authority and control over the number of regular and contractual workers employed by the General Assembly and the Department of Legislative Services. All employees in the Legislative Branch are treated similarly to special appointments in the State Personnel Management System in that they do not have the civil service protections that cover most Executive Branch employees. Although the employees are not governed by the State Personnel Management System, many of the personnel policies adopted by the Legislative Branch are similar to those in the Executive Branch.

### **Compensation**

#### **Members of the General Assembly**

A constitutional amendment, approved by the voters in 1970, created the nine-member General Assembly Compensation Commission. The commission includes five persons appointed by the Governor, two appointed by the President of the Senate, and two appointed by the Speaker of the House of Delegates. Members of the General Assembly and State and local government officers and employees are not eligible for appointment to the commission.

The constitution requires that the commission submit salary, expense allowance, and pension recommendations to the General Assembly by formal resolution within 15 days after the beginning of the last session in a four-year term. Rates of compensation and pensions are to be uniform for all members of the legislature, except that the officers of the Senate and House of Delegates may receive higher compensation. Any item in the commission resolution may only be reduced or rejected by the General Assembly through a joint resolution. Unless modified by the General Assembly, commission recommendations become effective for the next four-year term.

In January 2010, the commission recommended that the salaries for the members of the General Assembly remain at the 2007 to 2010 levels for the first two years of the 2011 to 2014 term of office – \$43,500 for members and \$56,500 for the presiding officers. The commission also recommended that if the State’s annual unemployment rate is 5% or lower for calendar 2012, the salaries for members and the presiding officers



would increase by \$2,000 each. However, if the State unemployment rate for calendar 2012 is greater than 5%, but is 5% or lower for calendar 2013, then the salaries would increase by \$1,000 for members and \$2,000 for the presiding officers, for calendar 2014 only. The commission also recommended an increase in in-district travel allowances, modifications to the calculation of out-of-state travel expenses, and changes to the Legislative Pension Plan that would allow for a military service credit and optional forms of retirement.

In Joint Resolution 4 of 2010, the General Assembly rejected the recommendations of the commission regarding salary increases, in-district travel allowances, out-of-state travel reimbursements, and the Legislative Pension Plan. The compensation for the members and presiding officers of the General Assembly will remain at their current levels, as established by the January 2006 report by the commission. In addition, Joint Resolution 4 reaffirmed that membership in the Legislative Pension Plan is optional for each member during the 2011 to 2014 term of office and established provisions related to pension forfeiture under specified circumstances. For further information regarding the compensation for members of the General Assembly, see *Volume I – Maryland Legislator’s Handbook*.

## **Staff**

Regular full-time and part-time employees of the General Assembly and its staff agency, the Department of Legislative Services, are governed by a separate pay plan and are not subject to the pay plan governing Executive Branch employees. Their employment is at the will of their employer. Because the Legislative Branch has independent salary setting authority, the President of the Senate and Speaker of the House of Delegates must approve the job classifications and salary schedules of legislative staff. Employees in the Department of Legislative Services are in a classification plan that places employees in three career fields: skilled support, professional, and management personnel. Within each field are several position classifications that may contain more than one level (e.g., Policy Analyst I, Senior Analyst II). The Department of Legislative Services uses a pay-for-performance system with fairly broad pay scales in each level.

## **Personnel Policies and Procedures**

Legislative employees are not governed by the personnel procedures set forth in the State Personnel and Pensions Article, although the policies of the Legislative Branch are often equivalent. The General Assembly and the Department of Legislative Services have their own policies for recruiting, hiring, promoting, disciplining, laying off and terminating employees, and resolving employee grievances. Furthermore, the Legislative Branch has developed independent policies governing employee performance and conduct. The legislature has adopted policies on anti-harassment and substance abuse.

Leave policies and benefits are virtually identical for Legislative and Executive Branch employees. Legislative employees accrue annual and sick leave on the same basis as other State employees and are entitled to the same health and retirement benefits.

One area in which the two branches do differ is in the accrual of compensatory leave for Fair Labor Standards Act exempt employees. While most exempt employees in the Executive Branch earn compensatory leave on an hour-per-hour basis for any work beyond normal work hours, exempt employees in the Legislative Branch may only accrue compensatory leave for work performed on weekends and State holidays.



## **Chapter 7. Personnel Policies and Practices in the Judicial Branch**

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This chapter reviews the compensation and other personnel policies of the Judicial Branch of State government. Like the legislature, the Judiciary has the authority to develop and administer its own personnel policies and regulations. However, many of these policies are similar (if not identical) to those in the Executive Branch, especially with regard to leave and benefits.

### **Judicial Compensation**

The Judicial Compensation Commission, established in 1980, is required to review judicial salaries and pensions and make recommendations to the Governor and the General Assembly once every four years. The General Assembly may amend a joint resolution from the commission to decrease, but not increase, any of the commission's salary recommendations. The General Assembly may not reduce a judge's salary below its current level. Failure to adopt or amend the joint resolution within 50 calendar days of its introduction results in adoption of the salaries recommended by the commission. If the General Assembly rejects any or all of the commission's recommendations, the affected judges' salaries remain unchanged, unless modified by other provisions of law.

General State employee salary increases apply to judges only in years in which judges' salaries are not increased in accordance with a resolution from the commission's recommendations.

The following officials have salaries that are tied to judicial salaries:

- the State Prosecutor and the Public Defender – not less than that of a circuit court judge;
- members of the Workers' Compensation Commission – at least equal to a District Court judge, with the chair's salary being at least \$1,500 higher than the members' salaries; and
- State's Attorneys' of various counties – a percentage of a circuit or District Court judge's salary, as discussed in further detail under local expenditures.

In January 2009, the commission formulated salary increases for judges that equated to a \$39,858 raise for each judge, staggered over four years. The commission's

recommendations were introduced in both houses during the 2009 session (Senate Joint Resolution 4 and House Joint Resolution 2); however, no further action was taken on either bill. Instead, Chapter 2 of 2009, an emergency measure, established, for the 2009 session only, that the failure of the General Assembly to act on the joint resolution of the commission by the fiftieth day of session may not be deemed to have made effective the salary increases recommended in the resolution. In recognition of the failure to take salary action for the Judiciary, the time period for the commission's meeting schedule was altered to allow another meeting in fall 2009. This action aligned the schedule of the commission with the meeting schedules of the Governor's and General Assembly's compensation commissions. However, the commission did not hold a formal meeting in 2009. Instead, the members voted to resubmit the same salary recommendations that were submitted in the prior session.

During the 2010 session, the recommendations of the commission were introduced as Senate Joint Resolution 4 and House Joint Resolution 4. The General Assembly, however, amended those resolutions (which then became Joint Resolutions 2 and 3) to provide no salary adjustments for judges. In Chapter 484, the Budget Reconciliation and Financing Act of 2010, the General Assembly once again altered the commission's meeting schedule. Under the new schedule, the commission must meet on or after September 1, 2011, September 1, 2013, and every four years thereafter. Exhibit 7.1 shows the salaries of judges, as established by Joint Resolutions 2 and 3 of 2010.

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**Exhibit 7.1**  
**Judicial Salaries**  
**As established by Joint Resolutions 2 and 3 of 2010**

	<u>Salary</u>
<b>Court of Appeals</b>	
Chief Judge	\$181,352
Judge	\$162,352
<b>Court of Special Appeals</b>	
Chief Judge	\$152,552
Judge	\$149,552
<b>Circuit Court</b>	
Judge	\$140,352
<b>District Court</b>	
Chief Judge	\$149,552
Judge	\$127,252

Note: Chapter 484, the Budget Reconciliation and Financing Act of 2010, requires the Judicial Compensation Commission to meet and review the compensation for judges on or after September 1, 2011, September 1, 2013, and every four years thereafter. In each of those instances, the commission may recommend changes to the compensation of judges.

Source: Department of Legislative Services

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## **Additional Judges**

The Chief Judge is required to certify the need for new judges. The General Assembly then must pass legislation creating the new judgeships. The request for additional judges is based upon weighted caseload statistics. Use of the weighted methodology is intended to provide a more accurate assessment of the amount of judicial time required to process caseloads. The case weights represent the average bench and nonbench time required to reach a disposition in each case. Factors such as leave, the frequency of hearings and trials, and the amount of time Judicial Masters spend on certain cases are taken into consideration when determining case weights. Once the weights are calculated, the number of available judge minutes is divided by the case weight to determine the number of cases a single judge should reasonably be able to handle during the year, thus determining the workload standard. Actual filings are then applied to the standard to determine the need for judges. However, it should be noted that the weighted caseload statistics are only the starting point for the certification of a need for new judges. Other factors, such as available space in the courthouse, are also taken into consideration before the Chief Judge certifies the need.

Exhibits 7.2 and 7.3 show the number of judgeships in the District Courts and circuit courts, respectively, in fiscal 2011.

**Exhibit 7.2**  
**District Court Judgeships**  
**Fiscal 2011**

	<u><b>Judgeships</b></u>
<b>Chief Judge</b>	1
<b>District 1</b>	
Baltimore City	27
<b>District 2</b>	
Dorchester	1
Somerset	1
Wicomico	2
Worcester	2
<b>District 3</b>	
Caroline	1
Cecil	2
Kent	1
Queen Anne's	1
Talbot	1
<b>District 4</b>	
Calvert	2
Charles	2
St. Mary's	1
<b>District 5-10</b>	
Prince George's	15
Montgomery	11
Anne Arundel	9
Baltimore	13
Harford	4
Carroll	2
Howard	5
<b>District 11-12</b>	
Frederick	3
Washington	2
Allegany	2
Garrett	1
<b>State</b>	<b>112</b>

Source: Department of Legislative Services

**Exhibit 7.3  
Circuit Court Judgeships  
Fiscal 2011**

	<u><b>Judgeships</b></u>
<b>First Circuit</b>	
Dorchester	1
Somerset	1
Wicomico	3
Worcester	3
<b>Second Circuit</b>	
Caroline	1
Cecil	3
Kent	1
Queen Anne's	1
Talbot	1
<b>Third Circuit</b>	
Baltimore	18
Harford	5
<b>Fourth Circuit</b>	
Allegany	2
Garrett	1
Washington	5
<b>Fifth Circuit</b>	
Anne Arundel	12
Carroll	3
Howard	5
<b>Sixth Circuit</b>	
Frederick	4
Montgomery	22
<b>Seventh Circuit</b>	
Calvert	2
Charles	4
Prince George's	23
St. Mary's	3
<b>Eighth Circuit</b>	
Baltimore City	33
<b>State</b>	<b>157</b>

Source: Department of Legislative Services



## **Clerks of the Court**

There are 24 circuit court clerk offices in Maryland, each administered by a locally elected Clerk of the Circuit Court. Each clerk's office is responsible for managing court cases, recording land records, and issuing licenses as well as related financial and administrative functions. Clerks of the court are subject to and governed in accordance with the rules of the Court of Appeals. In addition, the appointment and removal of personnel in the clerks' offices are subject to rules adopted by the Court of Appeals. The Chief Judge has authority over compensation for positions in the clerks' offices (other than the elected clerk). The maximum salary of clerks of the court increased to \$98,500 annually pursuant to legislation passed in the 2005 session. The actual salary paid to an individual clerk, up to the maximum, is determined by the Board of Public Works.

## **District Court Employees**

Clerical, administrative, and constabular employees of the District Court were originally included in the State Personnel Management System because the Judiciary did not have a personnel system. When the Judiciary developed its own personnel system, these employees remained with the State system although they were subject to the Judiciary's hiring, termination, and grievance provisions. During the 1998 session, however, the General Assembly passed legislation that removed these employees from the State system and placed them fully under the Judicial Branch. In addition, the Secretary of Budget and Management no longer has salary setting authority over the District Court commissioners. District Court commissioners' salaries are now set by the Chief Judge of the Court of Appeals.

## **Personnel Policies and Procedures**

As noted above, the Judiciary is not governed by the State Personnel Management Systems' procedures; it has its own policies for recruitment, hiring, grievances, and terminations. In most cases where it has independent salary setting authority, it likewise has the power to establish job classifications and salary scales. Such action, of course, must receive budgetary approval by the General Assembly. Currently, judicial employees are entitled to the same or comparable leave provisions and health and retirement benefits as State employees in the Executive and Legislative branches.

## Chapter 8. Introduction to the State Retirement and Pension System

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The State Retirement and Pension System of Maryland provides retirement allowances and other benefits to State employees, teachers, police officers, judges, legislators, and employees of participating governmental units. As of June 30, 2009, the system had 199,705 active members, 116,007 retirees and beneficiaries, and 51,886 vested former members.

### Board of Trustees

The responsibility for the administration and operation of the system is vested in the 14-member Board of Trustees of the Maryland State Retirement and Pension Systems. Under current law, 3 of the 14 board members are *ex officio* members that include the State Comptroller, the State Treasurer, and the Secretary of Budget and Management. Six members are appointed by the Governor to four-year terms, including one representative of participating local governmental units and five representatives of the general public who must be private citizens knowledgeable in the administration and operation of pension systems. Lastly, the law requires that five trustees be elected by members and retirees of specific retirement systems as follows:

- one trustee elected by the active members of the Employees' Retirement System, the Employees' Pension System, the Correctional Officers' System, the Legislative Pension Plan, the Local Fire and Police System, and the Law Enforcement Officers' Pension Plan;
- one trustee elected by retired members of the Employees' Retirement System, the Employees' Pension System, the Correctional Officers' System, the Legislative Pension Plan, the Local Fire and Police System, and the Law Enforcement Officers' Pension Plan;
- one trustee elected by the active members of the Teachers' Retirement System and the Teachers' Pension System;
- one trustee elected by retired members of the Teachers' Retirement System and the Teachers' Pension System; and
- one trustee elected by both the active members and the retirees of the State Police Retirement System.

Prior to the start of fiscal 2008, the board had total and final responsibility for establishing and directing the system's investment program. However, legislation was enacted in 2007 that gave the chief investment officer for the State Retirement and Pension System the sole authority to hire and fire external managers to manage the system's assets, a responsibility that previously rested with the board. With the exception of this modification in responsibility, the board maintains all remaining administrative and fiduciary responsibility for the proper operation of the various plans and their subsystems. The board is responsible for seeing that the assets of the systems are held exclusively for the purpose of providing benefits for the participants in the systems. As fiduciaries, the members must exercise the care, skill, prudence, and diligence of a "prudent person" in seeing that the assets of the system are utilized in accordance with the law for the exclusive purpose of providing benefits for the participants.

The board is required to appoint an investment committee that must include three members of the public who have a background of experience in management and control of large investments. With the exception of the three public members, the members of the investment committee must be appointed from the board's own membership. As of June 30, 2006, there were 13 members of the investment committee, 10 of whom were board members. The statutory duty of the investment committee is to advise the board on (1) matters pertaining to the investment program; (2) compliance of investment programs with board policy; (3) preparation of an investments operation manual; and (4) bonding requirements of employees of the Maryland State Retirement Agency.

By law, the board of trustees must appoint one or more medical boards consisting of three members and not more than three alternates. There are currently two medical boards that meet on alternate weeks. The medical boards investigate the applications of members seeking disability retirement and submit written reports, with conclusions and recommendations, to the board of trustees.

In addition, the board appoints an actuary. Currently, actuarial services are provided by contract with Gabriel, Roeder, Smith and Company, a national actuarial firm. In July 2002, the board contracted with Ennis Knupp, an outside investment consultant, to assist the chief investment officer and the investment staff in developing reasonable asset allocation targets and investment category benchmarks. It was further anticipated that as the investment consultant, Ennis Knupp would assist the board in its search for outside investment managers.

Although not statutorily required, the board has established a seven-member administrative committee drawn entirely from its own membership. This committee reviews various issues that the full board deems to require detailed study and makes

recommendations to the full board. Similarly, the board has appointed its own membership to a six-member audit committee, and a six-member corporate governance committee to deal with complex audit and corporate governance issues.

## **Maryland State Retirement Agency**

The Maryland State Retirement Agency, which operates under the supervision of the board of trustees, is responsible for carrying out all administrative duties and business of the system. In fiscal 2010, the agency operated with a budget of \$29.9 million and 190 regular positions.

The agency is composed of the Executive Director's Office and five divisions: (1) Administrative Division; (2) Finance Division; (3) Investment Division; (4) Internal Audit Division; and (5) Information Services Division.

The Executive Director's Office is responsible for the administration and oversight of the system including administrative and investment policy, legislation and legal liaison, and financial affairs. The board of trustees appoints the executive director who serves at the pleasure of the board. The executive director is in charge of the agency and is responsible for compiling a comprehensive annual budget for submission to the board. In addition, the director has powers and duties as delegated by the board of trustees. By custom, the executive director also serves as secretary of the board of trustees.

The Administrative Division is responsible for the payment of benefits, administration of employee contributions, and individual and group membership counseling. The retirement administrator is responsible for the operations of the division.

The Finance Division is responsible for accounting and financial reporting, budget administration, and procurement. Under the leadership of the chief financial officer, the division prepares a Comprehensive Annual Financial Report of the Maryland State Retirement and Pension System and develops the annual budget for the retirement agency. The budget is submitted to the board of trustees, which in turn submits the budget to the Governor. After review through the executive budget process, the budget request is submitted to the General Assembly for review and appropriation. The agency's budget is funded with special funds from the investment earnings of the system's portfolio.

The Investment Division is responsible for the management, control, and investment of the system's Retirement Accumulation and Annuity Savings funds. The division maintains the equity and bond index funds, the self-liquidating bonds, and the reinvestment reserve. In addition, the division is responsible for the board's cash

management program, the tracking of all investments, and providing staff support to the investment committee. The board of trustees is responsible for appointing a chief investment officer who, in addition to having the sole responsibility to hire and fire external asset managers, is also charged with supervising and monitoring the external asset managers and making recommendations to the investment committee regarding investment policy and strategy.

In 2006, after the chief investment officer position had been vacant for over a year, despite the board of trustees conducting a search for a new chief investment officer, the board concluded that it could not find a qualified candidate at the compensation level it was offering. In addition, a compensation study commissioned by the board in 2006 concluded that the chief investment officer's salary was 13% below the median for comparable public pension plans, and total compensation was 18% below the median. As a result, legislation was enacted in 2007 that gave the board independent authority to determine the compensation, including performance bonuses, for the system's chief investment officer. These provisions were designed to bring the chief investment officer's compensation in line with that of comparable pension plans in an effort to attract top candidates to the chief investment officer position. Criteria for determining performance bonuses, if any, for the chief investment officer must be based on objective benchmarks of investment performance and criteria used by comparable public pension systems.

The Internal Audit Division ensures agency compliance with State laws, rules, and regulations, as well as ensuring employer compliance with agency reporting policies. The chief internal auditor is the director of the division.

The Information Services Division is responsible for the design and implementation of new automated management information systems and for enhancements to existing systems. The director of the division is the information systems officer.

Legal services for the system are provided by State Assistant Attorneys General assigned from the State Attorney General's Office.

## **Joint Committee on Pensions**

Since 1975, the General Assembly has exercised oversight of the State Retirement and Pension System through annual ad hoc interim joint committees. Joint Resolution 27 of 1975 established a Pension Study Commission composed of four senators, four delegates, four members of the Executive Branch, and three employee organization representatives. This commission reported its findings in 1978, and its recommended

legislation was enacted in 1979. Beginning in 1980, the President of the Senate and the Speaker of the House of Delegates each appoint members to an interim Joint Committee on Pensions. Traditionally, the members of the joint committee are members of the two standing committees that handle pension legislation during the legislative session.

Currently, these standing committees are the Senate Budget and Taxation Committee and the House Appropriations Committee. Within each standing committee there is a subcommittee on pensions and a subcommittee chair. The two subcommittee chairs are co-chairmen of the Joint Committee on Pensions. Most major pension legislation is introduced through this joint committee, including legislation requested by the State Retirement and Pension System's board of trustees.



## Chapter 9. Historical Background

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### Origin

The genesis of the State Retirement and Pension System is found in the Baltimore City Employees' Retirement System, which was established by the city in 1924. This pension system was based on concepts promulgated by Mr. George B. Buck of New York.

Mr. Buck's concepts were that people could receive an income in retirement if they contributed a portion of their earnings during their careers. This amount would be matched by the employer. Mr. Buck, trained in the life insurance actuarial discipline, had refined his concepts to the point whereby a contribution of 4 to 6% of pay by the employee would provide an annuity of 1/140 for each year of active service, and a similar contribution by the employer would provide a similar pension. Therefore, upon retirement, the employee would receive a retirement allowance of 1/70 (1/140 + 1/140) for each year of service. Thus, an employee who worked 35 years could retire at half pay (35/70), if interest earnings met assumptions.

In addition to city employees, the Baltimore City Employees' Retirement System included city public school teachers, probably due to its unique education department arrangement. In 1927, legislation was enacted (Chapter 344) establishing the Maryland State Teachers' Retirement System that expanded the same benefit to county school teachers throughout the State.

In 1941, the State Employees' Retirement System was established (Chapter 377), which mirrored, in most instances, the Teachers' Retirement System. At the time of establishment, it was exclusively for State employees. However, in 1945, "municipal corporations" (defined as a county, incorporated municipality, special taxing district, or other political subdivision) were allowed to participate in the system if they paid all their respective costs. Thus, local government employees also were allowed to be members of this system (Chapter 969).

In 1956, elections were held to determine if Maryland public employees wanted to participate in the federal Social Security program. The members of the employees' and teachers' systems elected to participate in Social Security, while the members of the State Police system did not. Thus, all regular State employees and all teachers in the State became members of the Social Security system with the State paying the employers' cost for both groups.



In 1966, legislation was enacted that provided for retirement allowances to be paid to legislators under certain conditions (Chapter 281). This Legislative Pension Plan was established as a subsystem within the Employees' Retirement System. In 1970, legislation was passed (Chapter 576) and ratified by the voters as a constitutional amendment establishing a General Assembly Compensation Commission. In 1971, this commission redesigned the Legislative Pension Plan. Since that time, the plan has been amended in various ways by the commission at its quadrennial meetings. The legislative plan continues to be administered as a subsystem of the Employees' Retirement System.

In 1971, legislation was enacted that established within the Employees' Retirement System special retirement benefits for former governors and their surviving spouses (Chapter 239).

In 1974, a hodgepodge of State and local retirement provisions for judges was replaced with the State Judicial Pension Plan (Chapter 483), and cellblock correctional officers were permitted to retire with a limited number of years of service (20 years). Legislation enacted in 1974 and 1982 created the Correctional Officers' Retirement System.

In 1975, the Optional Retirement Program for professional employees of public higher education institutions was established (Chapter 556). Whereas all the other State systems are defined benefit plans, this plan is a defined contribution plan. By arrangement with the State's higher education establishment, the original carrier of the plan was the Teachers Insurance Annuity Association and College Retirement Equities Fund. In 1993, authorization was provided for the addition of up to four more vendors for the Optional Retirement Program (Chapter 428). As of December 31, 2009, the Teachers Insurance Annuity Association and College Retirement Equities Fund and Fidelity are the current vendors to the Optional Retirement Plan.

In 1979, legislation was enacted that established the Employees' Pension System and the Teachers' Pension System (Chapters 23 and 24, respectively). All employees or teachers hired after January 1, 1980, were required to become members of these systems. Members of the older Employees' Retirement System and the Teachers' Retirement System have the option of transferring to these newer systems. In effect, the older retirement systems' membership was closed. Until 1998, members of these systems made contributions only on that portion of their salary above the Social Security Wage Base, and the benefits paid upon retirement were integrated with Social Security benefits.

In 1998, legislation was enacted that modified and increased the benefit formula for all active Employees' Pension System and Teachers' Pension System members except employees of participating local governments and members who transfer from the old

retirement systems after April 1, 1998 (Chapter 530). In addition to increasing the benefit formula, the 1998 legislation required member contributions of 2% of earnable compensation, eliminated the 5% contribution on compensation above the Social Security Wage Base, and established a defined contribution program for State members of the Employees' Pension System except members who transfer from the Employees' Retirement System to the Employees' Pension System after April 1, 1998. The defined contribution program is optional for all eligible employees and became effective July 1, 1999. Under the program, the State matches deferred compensation contributions up to a maximum of \$600 annually. This amount was reduced in fiscal 2003 through 2006, but was restored to \$600 per year in fiscal 2007 through 2009. However, no match was provided in fiscal 2010 and 2011.

Follow-up legislation was enacted in 1999 that provided local government units participating in the Maryland State Retirement and Pension System on July 1, 1999, with the opportunity to offer the 1998 pension enhancement to their members of the Employees' Pension System (Chapter 176). While this opportunity for the participating local governmental units to offer this enhancement to their employees was optional, once the election was made, it was irrevocable. Participating local governmental units that joined the Maryland State Retirement and Pension System after July 1, 1999, but before July 1, 2006, did so under the 1998 enhanced benefit structure.

In 2006, the General Assembly again enhanced pension benefits for all members of the Teachers' Pension System and the Employees' Pension System. Members of Selection C (the bifurcated option) of the now-closed Employees' Retirement System and Teachers' Retirement System also benefit from the enhanced benefits, although other Teachers' Retirement System and Employees' Retirement System members are not affected (Chapter 110). The legislation also allows the participating local governmental units that participate in Employees' Pension System the option of electing to participate in the enhanced benefits by June 30, 2007. Participating local governmental units who join the Maryland State Retirement and Pension System after July 1, 2006, do so under the 2006 enhanced benefit structure.

The 2006 pension enhancement increased the statutory benefit multiplier used to calculate a retiree's annual payment from 1.4 to 1.8% and applied the higher multiplier retroactively to service credit earned by current members of the Teachers' and Employees' Pension System since July 1, 1998. In addition, the enhancement increased member contributions from 2.0 to 5.0% of the member's annual compensation. However, this increase was phased in over a three-year period for all teachers, State employees, and employees of participating local governments that opted for the enhanced benefit (3.0% on July 1, 2006; 4.0% on July 1, 2007; and 5.0% on July 1, 2008 and thereafter).

The State Police Retirement System was established in 1949 (Chapter 349). At its inception, the system allowed retirement at an earlier age with less service than the Employees' Retirement System (25 years of service instead of 30 years), and provided a somewhat higher benefit level. In 1999, the years of service which a member of the State Police Retirement System must attain in order to be eligible for a normal service retirement allowance was reduced from 25 to 22 years (Chapters 122 and 123). Additionally, Chapters 122 and 123 increased the benefit formula for all active State Police Retirement System members, slightly increased employee contributions, and created a Deferred Retirement Option Program.

The Natural Resources Law Enforcement Officers' Pension Plan was created in 1989. Participation is mandatory for Natural Resources law enforcement officers hired after July 1, 1990, and optional for those officers hired prior to that date (Chapter 479). In 1996, this plan was renamed the Law Enforcement Officers' Pension System as other groups of law enforcement officers were authorized to become members. The plan has since been amended to include law enforcement officers from numerous groups throughout the State. As of June 30, 2009, membership in the Law Enforcement Officers' Pension System is composed of the:

- law enforcement officers of the Investigative Unit of the Comptroller's Office;
- Maryland Transportation Authority police (including the Maryland Port Administration police officers);
- Baltimore City sheriffs and deputy sheriffs;
- State Fire Marshal and deputy fire marshals;
- University System of Maryland police officers;
- Morgan State University police officers;
- Baltimore/Washington International Thurgood Marshall Airport Fire and Rescue Department personnel;
- Department of General Services, Department of Health and Mental Hygiene, Motor Vehicle Administration, and Department of Labor, Licensing, and Regulation police officers;
- firefighters for the Martin State Airport employed by the Military Department;

- police officers employed by the Division of Rehabilitation Services in the Department of Education who are certified in accordance with the Maryland Police and Correctional Training Commissions;
- firefighters or paramedics employed by the Salisbury Fire Department;
- aviators employed by the Department of State Police to operate an aircraft for the State Emergency Medical System;
- Maryland Transit Administration police;
- Baltimore City sheriffs who do not elect to join the Employees' Pension System;
- Department of Public Safety and Correctional Services Internal Investigative Unit police officers; and
- Baltimore City Community College police.

Additionally, enabling legislation was enacted in 1998 (Chapter 494) to permit a county or municipal corporation to participate in the Law Enforcement Officers' Pension System if the local law enforcement officers elect to participate and the county or municipal corporation elects to pay the costs of participation.

The Local Fire and Police Pension System was also created in 1989. This system permitted its members to retire with unreduced benefits after 25 years of service or at age 62. If a local government elected to participate, participation was mandatory for those municipal law enforcement officers hired after the election and optional for those hired prior to the election (Chapter 580). However, in 2004, Chapter 537 provided that the Local Fire and Police Pension System was closed to new membership. As of June 30, 2008, no participating employers remained in the Local Fire and Police Pension System. As an alternative, local firefighters may elect to participate in the Law Enforcement Officers' Pension System if the county or municipal corporation elects to pay the costs of participation.

In 1996, an early retirement incentive program was established for State employee members of the Employees' Retirement System and the Employees' Pension System (Chapter 353). As a result, 2,275 employees filed for early retirement, including 1,247 members of the Employees' Retirement System and 1,028 members of the Employees' Pension System.

## Administrative History

The Teachers' Retirement System was established in 1927 under an independent and autonomous five-member board of trustees. When the Employees' Retirement System was established in 1941, it too was set up under a five-member board of trustees which was expanded to seven members in 1947. In 1949, the State Police Retirement System was established under a five-member independent and autonomous board of trustees which was expanded to seven members in 1970.

When subsequent systems were established by law, they were placed under one of the three existing boards: (1) the Gubernatorial Plan; (2) the Legislative Pension Plan; and (3) the Correctional Officers' Retirement System. The Judges' Retirement System and the Employees' Pension System were placed under the Board of Trustees for the Employees' Retirement System; whereas the Teachers' Pension System was placed under the Board of Trustees for the Teachers' Retirement System.

Until 1974, each of the boards had its own staff handling all aspects of its own plan. However, all the boards shared an individual as their secretary, who also served as the staff director. In 1974, the three staffs were combined in a functional arrangement as one staff under the secretary, who was also an assistant secretary of personnel. This had come about by Chapter 98 of 1970, which created the Department of Personnel and placed the three boards of trustees under the Secretary of Personnel.

In 1982, legislation was enacted that substantially revised the organization of the boards of trustees (Chapter 506). It removed all the boards from the Department of Personnel and merged them into a single independent board. The previous 19 positions on the three boards held by 13 different persons were combined into one 13-member Board of Trustees of the Maryland State Retirement and Pension System. Pursuant to legislation approved in 1983, two private citizens, who may not be members or beneficiaries of the systems, were added to the board (Chapter 552). The abolishment of the Department of Personnel in 1996 (and the position of Secretary of Personnel) reduced the board to 14 members.

After a series of financial scandals and controversies plagued the board in 2001 and 2002, the General Assembly responded by restructuring the board in 2003 to include more members with investment expertise and to provide external investment advisors to the board (Chapter 403). Chapter 403 made several changes to the composition and governance of the board, including:

- removing the Secretary of State Police and the State Superintendent of Schools as *ex officio* members and one of the two State Police trustees and filling these

vacancies with three members of the public appointed by the Governor to serve as investment experts;

- requiring appointed or elected trustees to attend at least 80% of the board's monthly meetings or face removal from the board; and
- providing that the board is not responsible for considering benefit enhancements or reviewing the benefit structures for any of the several systems, except for the purpose of making technical corrections.

## **Financial and Actuarial History**

Prior to 1980, the State maintained four principal retirement plans: (1) the Employees' Retirement System; (2) the Teachers' Retirement System; (3) the State Police Retirement System; and (4) the Judicial Pension Plan. Only a portion of each of these systems was actuarially advance funded, except for the Judicial Pension Plan which was entirely financed on a pay-as-you-go basis. In response to concerns about the retirement systems' deteriorating financial status, the General Assembly established the Joint Committee on Pensions in 1975 to review and evaluate the financial and actuarial condition of the various plans. The committee's most significant finding was that unless major changes were made to the funding and benefit structures of the plans, the State would face a future of ever increasing pension costs both in terms of total dollars and as a percentage of payroll. The long range forecast indicated that under the system's then existing benefit structure and funding policy, the annual costs would be in excess of \$2.5 billion in the year 2026.

In 1979, after four years of work, legislation was enacted providing for full actuarial advance funding of the four existing retirement plans and for establishment of two new, fully funded plans – the Employees' Pension System and the Teachers' Pension System. The employees' and teachers' retirement systems, the two largest plans, were closed to new members as of January 1, 1980, and all employees and teachers hired on or after that date were required to join one of the new pension systems as a condition of employment.

However, despite the enactment of these major changes, a variety of factors led to the continued deterioration of the financial and actuarial condition of the systems in general, and the older retirement systems in particular. The State's contribution rate as a percentage of payroll steadily increased in the early 1980s, as did the percentage of the State's general fund budget that was appropriated for retirement purposes.

Consequently, in 1984, the General Assembly passed legislation (proposed by the Joint Committee on Pensions) that modified the benefit and contribution structure of the old employees' and teachers' retirement systems by providing that their members would receive benefits for service prior to July 1, 1984, calculated under the old systems, and benefits for service after that date under the new systems, unless members elected either (1) to receive benefits under the old systems but subject to a limitation of 5% (compounded) on the annual post retirement cost-of-living adjustment; or (2) to receive benefits under the old systems without limitation on the cost-of-living-adjustment, but with a 2% increase in their contribution (generally from 5 to 7% of salary).

At the same time, legislation was enacted that (1) changed the actuarial cost method for funding the systems; (2) combined the employees' retirement and pension systems only for purposes of establishing a single annual employer contribution rate for all State employees; (3) combined the teachers' retirement and pension systems only for purposes of establishing a single annual employer contribution rate for all teachers; and (4) made certain other changes relating to the technical methods and procedures used for determining the ongoing costs of the systems. These changes were effected to afford greater stability and predictability in the State's annual contribution rates to the various plans. In addition, the legislation codified the State practice of providing health insurance for retired State employees.

With the implementation of these changes, the financial and actuarial condition of this system steadily improved. The State's overall contribution rate for the system decreased from 17.6% of payroll in fiscal 1985 to 7.97% in fiscal 2005. The market value of the system's assets increased from \$2.3 billion in fiscal 1980 to over \$32.1 billion at the end of fiscal 2005. Moreover, for the first time in the history of the system, at the end of fiscal 2000 (approximately 20 years ahead of statutory schedule), the system was fully funded on an actuarial basis with an overall funding ratio of assets to liabilities of 101%.

However, since fiscal 2005 when the State's overall contribution rate for the system was 7.97%, the contribution rate has steadily increased. In fiscal 2009, it had risen to 11.14%. Additionally, the funding status for the system has also steadily decreased since its peak at the end of fiscal 2000. By the end of fiscal 2009, the funding status of the system had decreased by almost 36.0% from fiscal 2000. The most dramatic decrease was from the end of fiscal 2008 to the end of fiscal 2009, when the funding status decreased from 78.62 to 65.02%, a change of almost 14.0%. This decline is largely attributable to the effects of the turmoil in the financial markets that began in fall 2008 and carried through spring 2009. A more detailed discussion of the effects of the 2008 to 2009 financial crises on the State Retirement and Pension System is discussed in

Chapter 12, which covers the pensions plan's actuarial aspects and Chapter 13, which covers the system's investment performance.





## Chapter 10. System Membership

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Membership in the State Retirement and Pension System is required of all persons compensated by the State, all local employees of governmental units that participate in the employees' systems, and all local employees holding a position eligible to be in the teachers' systems. Only members of the General Assembly, officials in the Governor's Office, certain elected State officials, and higher education employees may choose not to participate in the State Retirement and Pension System.

The State Retirement and Pension System serves three classes of members. Active members are employees who are compensated for work being performed and for whom the State and governmental units are making contributions based on their earnings. Vested deferred members are former employees who have left the system with enough years of eligibility service to be vested and to whom the State or a governmental unit has an obligation to provide retirement benefits when the members reach the eligible retirement age. Finally, there are inactive status members. For reporting purposes, these members do not currently have enough eligibility service to be vested and are not on active payroll status. However, based on future service with a participating employer, the State or a governmental unit could be obligated to provide retirement benefits. In addition to active, vested, and inactive members, all the systems have beneficiaries. By law, beneficiaries are persons in receipt of a pension, an annuity, a retirement allowance, or other benefit. A beneficiary may be a retired member of one of the systems or a survivor of the retired member for whom a provision was made by the member.

Exhibit 10.1 details the membership of the State Retirement and Pension System as of June 30, 2009, including active and vested members and beneficiaries. Exhibit 10.2 provides a 10-year history of active membership, and Exhibit 10.3 provides a 10-year history of beneficiaries.

**Exhibit 10.1**  
**Membership as of June 30, 2009**

<u>System/ Sub-system</u>	<u>Active Members</u>	<u>Vested Former Members</u>	<u>Subtotal: Active and Former Vested Members</u>	<u>Beneficiaries</u>	<u>Total</u>
Employees' Retirement					
State – Regular	1540	*	*	**	
Correctional Officers	7915	*	*	**	
Legislators	178	*	*	253	
Governmental Units***	397	83	485	4,264	4,774
<b>Subtotal</b>	<b>10,030</b>	<b>1,065</b>	<b>11,095</b>	<b>23,778</b>	<b>34,873</b>
Employees' Pension					
State – Regular	54,223	21,132	75,355	24,280	99,635
Governmental Units	25,195	6,411	31,606	8,552	40,158
<b>Subtotal</b>	<b>79,418</b>	<b>27,543</b>	<b>106,961</b>	<b>32,832</b>	<b>139,793</b>
Teachers' Retirement	3,554	996	4,550	30,598	35,148
Teachers' Pension	102,553	21,999	124,552	25,158	149,710
State Police Retirement	1,408	68	1,476	2,226	3,702
Law Enforcement Officers' Pension	2,445	189	2,634	1,067	3,701
Judges' Retirement	297	6	303	348	651
<b>Total</b>	<b>199,705</b>	<b>51,866</b>	<b>251,571</b>	<b>116,007</b>	<b>367,578</b>

\*Individual data not available. However, as of June 30, 2009, 982 vested former members of the Employees' Retirement System were State employees, correctional officers, or legislators.

\*\*Individual data not available. However, as of June 30, 2009, 19,261 retirees of the Employees' Retirement System were State employees or correctional officers.

\*\*\*Includes members of both the Employees' Retirement System and the Correctional Officers' System employed by participating governmental units.

Source: Maryland State Retirement and Pension System

**Exhibit 10.2**  
**Active and Former**  
**Vested Membership Data by System**  
**Fiscal 2000-2009**

<b>June 30</b>	<b>Total All Systems</b>	<b>Teachers' Retirement</b>	<b>Teachers' Pension</b>	<b>Employees' Retirement*</b>	<b>Employees' Pension</b>	<b>Judges' Retirement</b>	<b>State Police Retirement</b>	<b>Law Enforcement Officers</b>
2009	251,571	4,550	124,552	11,275	106,961	365	1,414	2,634
2008	251,050	5,217	123,562	10,906	107,021	294	1,487	2,501
2007	248,289	5,963	120,333	11,240	106,566	310	1,470	2,344
2006	240,583	6,678	114,693	11,398	103,784	310	1,499	2,178
2005	235,714	7,606	110,327	11,160	102,845	297	1,486	1,930
2004	232,772	8,675	107,092	11,800	101,581	297	1,489	1,756
2003	235,594	9,776	106,383	12,696	103,151	300	1,583	1,543
2002	234,478	10,913	103,483	13,053	103,429	291	1,616	1,476
2001	227,799	12,126	98,508	13,312	100,420	294	1,602	1,367
2000	222,100	13,491	94,154	13,614	97,517	296	1,658	1,166

\*Includes members of the Maryland General Assembly and State and municipal correctional officers.

Source: *Comprehensive Annual Financial Report*, Maryland State Retirement and Pension System, June 30, 2009

**Exhibit 10.3**  
**Retiree and Beneficiary Data by System**  
**Fiscal 2000-2009**

<b><u>June 30</u></b>	<b><u>Total All Systems</u></b>	<b><u>Teachers' Retirement</u></b>	<b><u>Teachers' Pension</u></b>	<b><u>Employees' Retirement*</u></b>	<b><u>Employees' Pension</u></b>	<b><u>Judges' Retirement</u></b>	<b><u>State Police Retirement</u></b>	<b><u>Law Enforcement Officers</u></b>
2009	116,007	30,598	25,158	23,778	32,832	348	2,226	1,067
2008	112,422	30,955	23,030	24,197	30,723	342	2,149	958
2007	108,355	31,023	21,016	24,408	28,631	335	2,063	863
2006	103,831	31,138	19,144	24,271	26,216	330	1,937	782
2005	100,196	30,921	17,170	24,633	24,525	316	1,909	708
2004	94,880	30,598	15,093	24,559	21,913	309	1,790	581
2003	90,803	30,305	13,370	24,662	19,929	306	1,695	503
2002	87,367	29,989	11,931	24,904	18,205	311	1,598	403
2001	84,185	29,599	10,527	25,212	16,702	297	1,518	309
2000	80,773	29,061	9,084	25,489	15,241	285	1,388	206

\*Includes members of the Maryland General Assembly and correctional officers.

Source: *Comprehensive Annual Financial Report*, Maryland State Retirement and Pension System, June 30, 2009

## **Participating Governmental Units**

Governmental units were first allowed to participate in the State system in 1945. A governmental unit is defined as a county, an incorporated town or municipality, a special taxing district, or another political subdivision of the State. This definition includes public library associations, fire departments, any public board or commission created by the General Assembly, and certain other multiple jurisdictional bodies.

To be eligible to participate in the State employees' systems, the governmental unit's legislative or other policymaking body must approve the participation and at least 60% of its eligible employees must elect to participate. All eligible employees of that governmental unit must participate in the State employees' systems. The participating governmental unit is responsible for making all required plan contributions.

If a governmental unit withdraws from the State employees' systems, participating employees may elect to remain in the State system or transfer into a new system established by the governmental unit. Special funding and cost provisions are applied to governmental units that withdraw from the State's systems.

As of June 30, 2009, 121 units of local government participate in the State employees' systems as governmental units. A list of participating governmental units is set forth in Exhibit 10.4. In addition, 29 governmental units formerly participated in the State employees' systems. A list of withdrawn participating governmental units is shown in Exhibit 10.5.

Beginning July 1, 1989, governmental units were entitled to elect to participate in the Local Fire and Police System. If a governmental unit elected to participate, membership was mandatory for those law enforcement officers hired after such an election and optional for those officers hired prior to the election. However, in 2004, Chapter 534 provided that the Local Fire and Police Pension System was closed to new membership. As of June 30, 2008, no participating employers remained in the Local Fire and Police Pension System.

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**Exhibit 10.4**  
**Governmental Units Participating in the**  
**Employees' Retirement and Pension System**

Allegany Community College	Carroll Soil Conservation District	Federalsburg, Town of
Allegany County Board of Education	Catoctin & Fredrick Soil Conservation District	Frederick County Board of Education
Allegany County Commission	Cecil County Board of Education	Frostburg, Town of
Allegany County Housing Authority	Cecil County Commission	Fruitland, City of
Allegany County Library	Cecil County Library	Garrett County Board of Education
Allegany County Transit Authority	Charles County Community College	Garrett County Community Action Committee
Annapolis, City of	Chesapeake Bay Commission	Garrett County Office for Children, Youth, and Family
Anne Arundel County Board of Education	Chestertown, Town of	Greenbelt, City of
Anne Arundel County Community College	Cheverly, Town of	Greensboro, Town of
Anne Arundel County Economic Opportunity Commission	Cresaptown Civic Improvement Association	Hagerstown, City of
Berlin, Town of	Crisfield, City of	Hagerstown Junior College
Berwyn Heights, Town of	Crisfield Housing Authority	Hampstead, Town of
Bladensburg, Town of	Cumberland, City of	Hancock, Town of
Bowie, City of	Cumberland, City of – Police Department	Harford Community College
Brunswick, Town of	Denton, Town of	Harford County Board of Education
Calvert County Board of Education	District Heights, City of	Harford County Government
Cambridge, City of	Dorchester County Board of Education	Harford County Library
Caroline County Board of Education	Dorchester County Commission	Housing Authority of Cambridge
Carroll County Board of Education	Dorchester County Roads Board	Howard Community College
Carroll County Public Library	Eastern Shore Regional Library	Howard County Board of Education
	Emmitsburg, Town of	

**Exhibit 10.4 (cont.)**  
**Governmental Units Participating in the**  
**Employees' Retirement and Pension System**

Howard County Community Action Committee	Prince George's Community College	St. Mary's County Commission
Hurlock, Town of	Prince George's County Board of Education	St. Mary's County Metropolitan Commission
Hyattsville, City of	Prince George's County Crossing Guards	St. Michaels, Commissioners of
Kent County Board of Education	Prince George's County Government	Takoma Park, City of
Kent County Commissioners	Prince George's County Memorial Library	Talbot County Board of Education
Landover Hills, Town of	Princess Anne, Town of	Talbot County Council
LaPlata, Town of	Queen Anne's County Board of Education	Taneytown, Town of
Manchester, Town of	Queen Anne's County Commission	Thurmont, Town of
Maryland Health & Higher Education Facilities Authority	Ridgely, Town of	Tri-County Council of Western Maryland
Maryland Transit Administration	Rockhall, Town of	Tri-County for the Lower Eastern Shore
Middletown, Town of	Salisbury, City of	Upper Marlboro, Town of
Montgomery College	Shore up!	Walkersville, Town of
Mount Airy, Town of	Snow Hill, Town of	Washington County Board of Education
Mount Rainier, City of	Somerset County Board of Education	Washington County Board of License Commission
New Carrollton, City of	Somerset County Commission	Washington County Library
North Beach, Town of	Somerset County Sanitary District, Inc.	Westminister, City of
Northeast Maryland Waste Disposal Authority	Southern Maryland Tri-County Community Action Committee	Worcester County Board of Education
Oakland, Town of	St. Mary's County Board of Education	Worcester County Commission
Oxford, Town of		Wor-Wic Tech Community College
Pocomoke City		
Preston, Town of		

Source: Maryland State Retirement Agency

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**Exhibit 10.5**  
**Withdrawn Governmental Units**  
**as of June 30, 2009**

Anne Arundel County Government	Howard County Government	Washington County License Commissioners
Baltimore Metropolitan Council	Interstate Commission on the Potomac River Basin	Washington County Roads Board
Bethesda Fire Department	Lexington Market Authority	Washington County Sanitary District
Calvert County Government	Maryland Environmental Services	Washington Suburban Sanitary Commission
Caroline County Roads Board	Maryland National Capital Park and Planning Commission	Wicomico County Department of Recreation and Parks
Carroll County Government	Montgomery County Board of Education	Wicomico County Roads Board
Chevy Chase Fire Department	Montgomery County Government	
Elkton, Town of	Montgomery County Public Library	
Frederick County Government	Rockville, City of	
Garrett County Commission	St. Mary's Nursing Home	
Garrett County Roads Board	University of Maryland Medical System	
Harford County Liquor Board	Washington County Commission	
Health Systems Agency of Western Maryland		
Howard County Economic Development Authority		

Source: Maryland State Retirement Agency

Beginning October 1, 1998, governmental units representing law enforcement officers may also elect to enroll eligible employees in the Law Enforcement Officers' Pension System if at least 60% of the unit's officers choose to participate. In 2004, with the close of the Local Fire and Police Plan, the group of employees of governmental units eligible to participate in the Law Enforcement Officers' Pension System expanded to include local firefighters. If a governmental unit participates in the Law Enforcement

Officers' Pension System, membership is mandatory for those municipal law enforcement officers or firefighters hired after such an election and optional for those officers or firefighters hired prior to the election. To be eligible, officers or firefighters hired prior to the election must opt into the Law Enforcement Officers' Pension System within six months from the date the employer participates. As of July 1, 2009, 19 governmental units have chosen to participate in the Law Enforcement Officers' Pension System.

Beginning July 1, 2006, governmental units representing correctional officers may elect to enroll eligible employees in the Correctional Officers' Retirement System if at least 60% of the unit's officers choose to participate. If a governmental unit participates in the Correctional Officers' Retirement System, membership is mandatory for those municipal correctional officers hired after such an election and optional for those officers hired prior to the election. To be eligible, officers hired prior to the election must opt into the Correctional Officers' Retirement System within six months from the date the employer participates. As of July 1, 2009, one governmental unit has chosen to participate in the Correctional Officers' Retirement System.



## Chapter 11. Plan Summaries

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As of July 1, 2009, the State Retirement and Pension System of Maryland maintained nine principal retirement plans: (1) the Teachers' Retirement System; (2) the Teachers' Pension System; (3) the Employees' Retirement System; (4) the Employees' Pension System; (5) the State Police Retirement System; (6) the Correctional Officers' Retirement System; (7) the Law Enforcement Officers' Pension System; (8) the Judges' Retirement System; and (9) the Optional Retirement Program. In addition, the system administers a pension plan for Governors and other constitutional officers and a Legislative Pension Plan.

This chapter includes a discussion of each plan administered by the system including a summary of the following components:

- membership and composite information;
- member contributions;
- full service retirement eligibility and allowances;
- early retirement allowances;
- cost-of-living adjustments (COLA);
- death benefits;
- optional forms of payment;
- ordinary disability allowances;
- accidental disability allowances;
- post retirement health insurance; and
- vesting.

Appendix 7 provides a comparison of the major plan components.

## Teachers' Retirement System

The Teachers' Retirement System was established on August 1, 1927, to provide benefits for State and local teachers and certain employees of the boards of education, public libraries, and community colleges. Until January 1, 1980, membership in the system was a condition of employment for eligible employees. Effective January 1, 1980, the Teachers' Retirement System was closed to new membership when the State established the Teachers' Pension System. Prior to January 1, 2005, Teachers' Retirement System members were eligible to transfer to the Teachers' Pension System and receive a return of all accumulated contributions with interest. Those individuals who chose to transfer after April 1, 1998, are not eligible to receive the benefit enhancements to the Teachers' Pension System enacted in 1998 and 2006. Exhibit 11.1 summarizes membership in the Teachers' Retirement System, as of June 30, 2009.

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### Exhibit 11.1 Membership in the Teachers' Retirement System as of June 30, 2009

#### Membership:

Active Members	3,554
Deferred Vested Members	996
Retirees and Beneficiaries	30,598

#### Composite:

Average Age – Active Members	59.7 Years
Average Years of Service – Active Members	34.1 Years
Average Annual Salary – Active Members	\$86,127
Average Age – Retirees and Beneficiaries	73.8 Years
Average Annual Benefit – Retirees and Beneficiaries	\$31,200

Source: Maryland State Retirement Agency

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Due to a deterioration in the financial and actuarial condition of the system, legislation was enacted in 1984 to modify the benefit and contribution structure of the system. As a result of the 1984 legislation, Teachers' Retirement System members who wanted to remain in the system were required to make one of three choices: (1) Selection A – pay additional employee contributions for an unlimited COLA; (2) Selection B – receive a limited COLA; or (3) Selection C – receive a benefit based on a combined formula from both the Teachers' Retirement System and the new Teachers' Pension System. At retirement, a Selection C benefit is calculated as a Teachers'

Retirement System benefit for service credits accrued prior to the election of Selection C and as a Teachers' Pension System benefit for service credits accrued after the election.

### **Member Contributions**

Teachers' Retirement System members who elected Selection A contribute 7% of earnable compensation in return for unlimited annual COLAs after retirement. Selection B members contribute 5% of earnable compensation in return for COLAs which are limited to 5% annually after retirement.

Beginning July 1, 2006, member contributions for Selection C members increased from 2 to 5% of the member's annual earnable compensation, to be phased in over a three-year period (3% on July 1, 2006; 4% on July 1, 2007; and 5% on July 1, 2008, and thereafter). In return for this contribution, Selection C members receive a two-part COLA based on the amount of service credits accrued prior to the election of Selection C and the amount of service credits accrued after the election. For the service credits accrued prior to the member choosing Selection C, the COLA is unlimited unless the member chose Selection B prior to Selection C, in which case the COLA is limited to 5%. For service credits accrued after the member chose Selection C, the COLA is limited to 3%.

Teachers' Retirement System members who separate from service prior to accumulating five years of creditable service receive refunds of their accumulated contributions plus interest. Members with more than five years of creditable service are vested in the system and thus eligible to receive benefits upon reaching the normal retirement age.

### **Full Service Retirement Eligibility and Allowances**

Teachers' Retirement System members are eligible for a full service retirement allowance upon attaining age 60 or after 30 years of eligibility service regardless of age. The benefit formula for full service retirement for Selection A and B members is calculated as one fifty-fifth (1.8%) of the highest three years' average final salary multiplied by the number of years of accumulated creditable service.

$$1.8\% \times \text{Average Final Salary} \times \text{Years of Creditable Service}$$

Selection C members receive a retirement allowance that utilizes the benefit formulas from both the Teachers' Retirement System and the Teachers' Pension System. At retirement, this two-part benefit is calculated as a Teachers' Retirement System

benefit for service credits accrued prior to the election of Selection C and as a Teachers' Pension System benefit for service credits accrued after the election.

If all required contributions are not made, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

### **Early Retirement**

Teachers' Retirement System members are eligible for early retirement after accumulating at least 25 years of eligibility service prior to age 60. For Selection A and B members, the early retirement allowance is equal to the full service retirement allowance reduced by 0.5% for each month by which the member's retirement date precedes the normal retirement date. The maximum reduction for early retirement is 30.0%.

Selection C members receive an early retirement benefit that utilizes the early retirement benefit formulas from both the Teachers' Retirement System and Teachers' Pension System. At retirement, this two-part benefit is calculated as a Teachers' Retirement System early retirement benefit for service credits accrued prior to the election of Selection C and as a Teachers' Pension System early retirement benefit for service credits accrued after the election. However, the maximum reduction under the Teachers' Pension System part of the calculation is 42%.

### **Cost-of-living Adjustments**

Retirement allowances are adjusted each year based on the Consumer Price Index for all urban consumers (CPI-U) as published by the U.S. Bureau of Labor Statistics. COLAs are effective July 1 of each year and are applied to all allowances payable for the year. The amount of a beneficiary's COLA depends on the member's selection made on July 1, 1984. Selection A members receive an unlimited annual COLA based on the consumer price index. The COLA for Selection B members is limited to not more than 5% annually. The COLA for members who chose Selection C is computed in two parts. For the service credits accrued prior to the member choosing Selection C, the COLA is unlimited unless the member chose Selection B prior to Selection C, in which case the COLA is limited to 5%. For service credits accrued after the member chose Selection C, the COLA is limited to 3%.

Prior to calendar 2009, the CPI-U had not had a negative change since automatic COLAs were first instituted in the early 1970s. However, as of December 31, 2009, the CPI-U declined by 0.356% over the previous calendar year. Absent legislation, this

decline would have resulted in a negative adjustment for fiscal 2011 for retirees of the Teachers' Retirement System. As a result, legislation was enacted that requires that retirement allowances not be subject to COLAs in fiscal 2011 if the average change in the CPI-U from calendar 2008 to 2009 is negative. If COLAs are not applied in fiscal 2011, then fiscal 2012 retirement allowances must be reduced by the difference between fiscal 2010 allowances and the allowances that would have been paid in fiscal 2011 if COLAs had been applied.

### **Death Benefits**

An ordinary death benefit is paid if an active member dies after completing one year of eligibility service. The benefit provided upon death is a lump-sum payment equal to the member's annual earnable compensation at the time of death plus all accumulated contributions. A surviving spouse may elect to receive a 100% survivor annuity rather than a lump-sum payment if the spouse is the sole primary designated beneficiary and the member was eligible to retire or was at least 55 years of age with at least 15 years of eligibility service. A 100% survivor annuity means that upon the death of the member the entire monthly payment that the member would have been entitled to receive at the time of the member's death will be paid to the beneficiary for the remainder of the beneficiary's life.

If an active member dies while in the line of duty, a special death benefit equal to two-thirds of the member's final average compensation is paid as an annuity to the surviving spouse, plus a return of all accumulated member contributions. If the deceased member is not survived by a spouse, the member's children or dependent parents, if any, continue to receive the annuity until the youngest child reaches age 18 or for the life of each dependent parent.

### **Optional Forms of Payment**

A retirement reserve is established for each member who retires. This reserve is the amount needed, with interest, to pay for the member's normal retirement allowance. When an option is chosen, the retirement reserve does not change. However, the member's normal service retirement allowance is reduced by an actuarially determined factor to provide a potential death benefit for the member's designated beneficiary. There are six optional forms of payment:

- Option 1 provides a cash payout to the designated beneficiary or the retiree's estate in an amount equal to the excess of the present value of the retirement allowance at the date of retirement minus the total amount of payments (less COLAs) made to the date of death. The amount remaining in the retirement



reserve is paid to the designated beneficiary or estate as a one-time lump-sum payment.

- Option 2 provides a 100% joint and survivor annuity, which means that upon the death of the retiree the entire monthly payment continues to be paid to the beneficiary for the remainder of the beneficiary's life.
- Option 3 provides for a 50% joint and survivor annuity, which means that upon the death of the retiree half of the monthly benefit continues to be paid to the beneficiary for the remainder of the beneficiary's life.
- Option 4 guarantees a minimum return of the members' accumulated contributions by providing that if the retiree dies prior to receiving all employee contributions with interest, the balance will be paid in a lump-sum to the designated beneficiary.
- Option 5 provides a 100% survivor pop-up. Upon the death of the retiree, the designated beneficiary is paid the retiree's entire allowance for the remainder of the beneficiary's life. However, if the beneficiary predeceases the retiree, the retiree may designate a new beneficiary or else the retirement allowance will pop up to the retiree's maximum allowance, in which case all payments cease at the death of the retiree.
- Option 6 provides a 50% survivor pop-up. Upon the death of the retiree, the designated beneficiary is paid one-half of the retiree's allowance for the remainder of the beneficiary's life. However, if the designated beneficiary predeceases the retiree, the retiree may designate a new beneficiary or else the retirement allowance will pop up to the retiree's maximum allowance, in which case all payments cease at the death of the retiree.

### **Ordinary Disability Retirement Allowances**

A member is eligible for an ordinary disability retirement allowance after completing five years of eligibility service and after receiving certification from the medical board that the member is permanently incapable of performing the necessary functions of the job. The disability retirement allowance for Selection A and B members is equal to the greater of (1) a normal service retirement allowance (one fifty-fifth (1.8%) of the highest three years' average final salary); or (2) either 25.0% of the member's average final salary or, if the member is under the normal retirement age (60 years), 1.8% of the average final salary for each year of creditable service that the member would have received had the member continued to work until age 60, whichever is less. For

Selection C members, the disability retirement allowance is the greater of (1) an ordinary disability retirement allowance calculated using the Teachers' Retirement System formula given above; or (2) an ordinary disability retirement allowance calculated using the Teachers' Pension System formula.

### **Accidental Disability Retirement Allowances**

If during the course of job performance, a member becomes totally and permanently disabled as the direct result of an accidental injury, the member is eligible to receive an accidental disability retirement allowance. Prior to receiving this benefit, the medical board must certify that the member is, in fact, totally and permanently disabled. The accidental disability allowance is equal to the lesser of (1) the sum of an annuity determined as the actuarial value of the member's accumulated contributions and two thirds (66.7%) of the member's average final salary; or (2) the member's average final salary.

Disability retirement allowances for Teachers' Retirement System members who are State employees are generally reduced by workers' compensation benefits paid after retirement if, and to the extent that, such benefits are for the same injury and the same period of time for which the retirement benefits are paid. However, a workers' compensation benefit reduction cannot reduce any retirement allowance to less than the amount necessary to cover the retiree's monthly health insurance premiums. Disability retirement allowances for Teachers' Retirement System members who are employees of participating governmental units are not reduced by workers' compensation benefits. Instead, the offset is taken against any workers' compensation benefits payable for the same injury and the same period of time for which the retirement benefits are paid.

### **Post Retirement Health Insurance**

Members employed by the State may participate in the State Employee and Retiree Health and Welfare Benefits Program after retirement. Eligibility for post retirement health benefits is discussed in Chapter 4 of this handbook.

Members employed by a participating governmental unit are entitled to the post retirement health insurance provided by that particular employer.

### **Vesting**

Members are vested in the system after five years of service. They may begin to draw a deferred retirement allowance at age 60 if they leave State employment before retirement. However, members who withdraw their contributions after leaving service

are no longer entitled to a vested benefit. The vested benefit is equal to the normal retirement allowance computed on the basis of the member's accumulated creditable service and average final salary at the point of separation. If a vested member dies prior to age 60 and before withdrawing his or her accumulated contributions plus interest, the accumulated contributions with interest are paid to the designated beneficiary.

## **Teachers' Pension System**

The Teachers' Pension System was established on January 1, 1980, with participation a condition of employment for all State and local teachers and certain employees of the boards of education, public libraries, and community colleges hired after December 31, 1979 (unless those employees elected to participate in an optional retirement program). All Teachers' Pension System members, except for those who transfer from the Teachers' Retirement System after April 1, 1998, receive the enhanced benefits enacted in 1998 and 2006. Membership in the Teachers' Pension System is summarized in Exhibit 11.2.

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### **Exhibit 11.2 Membership in the Teachers' Pension System as of June 30, 2009**

#### **Membership:**

Active Members	102,553
Deferred Vested Members	21,999
Retirees and Beneficiaries	25,158

#### **Composite:**

Average Age – Active Members	44.3 Years
Average Years of Service – Active Members	11.2 Years
Average Annual Salary – Active Members	\$57,420
Average Age – Retirees and Beneficiaries	67.2 Years
Average Annual Benefit – Retirees and Beneficiaries	\$17,484

Source: Maryland State Retirement Agency

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## **Member Contributions**

The 2006 pension enhancement legislation provided for an increase in member contributions from 2 to 5% of the member's annual compensation to be phased in over a three-year period (3% on July 1, 2006; 4% on July 1, 2007; and 5% on

July 1, 2008, and thereafter). Teachers' Pension System members who transferred from the Teachers' Retirement System after April 1, 1998, are required to contribute 5% of earnable compensation in excess of the Social Security Wage Base.

Teachers' Pension System members who separate from service prior to accumulating five years of creditable service receive refunds of their accumulated contributions, if any, plus interest. Members with more than five years of creditable service are vested in the system, and they are eligible to receive benefits at some point in the future.

### **Full Service Retirement Eligibility and Allowances**

Members are eligible for a full service retirement allowance upon accumulating 30 years of eligible service, regardless of age. Absent 30 years of eligibility service, members must meet one of the following conditions to be eligible for full service retirement allowance:

- age 62 with five years of eligibility service;
- age 63 with four years of eligibility service;
- age 64 with three years of eligibility service; or
- age 65 or older and two years of eligibility service.

As a result of the enactment of Chapter 110 of 2006, the full service retirement allowance for Teachers' Pension System members is equal to 1.8% of average final salary earned after July 1, 1998, plus the greater of 1.2% of average final salary for each year of service earned prior to July 1, 1998. The average final salary is based on a member's highest three consecutive years of compensation.

(1.8% x Average Final Salary x Years of Creditable Service after July 1, 1998) + the greater of (1.2% x Average Final Salary x Years of Creditable Service prior to July 1, 1998 or the Teachers' Pension System Retirement Allowance for Creditable Service prior to July 1, 1998)

However, for members who transferred to the Teachers' Pension System from the Teachers' Retirement System after April 1, 1998, the full service retirement allowance is 0.8% of the highest three consecutive years' average final salary up to the Social Security Integration Level, plus 1.5% of average final salary in excess of the Social Security Integration Level, multiplied by the number of years of accumulated creditable service.

For the purpose of computing pension allowances, the Social Security Integration Level is the average of the Social Security Wage Base for the 35 years immediately prior to the year of retirement.

$$(0.8\% \times \text{Average Final Salary up to the Social Security Integration Level} + 1.5\% \times \text{Average Final Salary in excess of the Social Security Integration Level}) \times \text{Years of Creditable Service}$$

For all members of the Teachers' Pension System, if all required contributions are not made prior to retirement, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

### **Early Retirement**

Teachers' Pension System members are eligible for early retirement if they are at least 55 years of age with at least 15 years of eligibility service. The early retirement allowance is equal to the full service pension allowance reduced by 0.5% for each month by which the retirement date precedes the date on which the member reaches age 62. The maximum reduction for early retirement is 42.0%.

### **Cost-of-living Adjustments**

Teachers' Pension System members receive a COLA based on the CPI-U as published by the U.S. Bureau of Labor Statistics. COLAs are effective July 1 of each year. The maximum COLA for Teachers' Pension System members is 3%, compounded annually.

Prior to calendar 2009, the CPI-U had not had a negative change since automatic COLAs were first instituted in the early 1970s. However, as of December 31, 2009, the CPI-U declined by 0.356% over the previous calendar year. Absent legislation, this decline would have resulted in a negative adjustment for fiscal 2011 for retirees of the Teachers' Pension System. As a result, legislation was enacted that requires that retirement allowances not be subject to COLAs in fiscal 2011 if the average change in the CPI-U from calendar 2008 to 2009 is negative. If COLAs are not applied in fiscal 2011, then fiscal 2012 retirement allowances must be reduced by the difference between fiscal 2010 allowances and the allowances that would have been paid in fiscal 2011 if COLAs had been applied.

## **Death Benefits**

An ordinary death benefit is paid if an active member dies after completing one year of eligibility service. The benefit provided upon death is a lump-sum payment equal to the member's annual earnable compensation at the time of death plus all accumulated contributions. A surviving spouse may elect to receive a 100% survivor annuity rather than a lump-sum payment if the spouse is the sole primary designated beneficiary and the member was eligible to retire, had at least 25 years of eligibility service, or was at least 55 years of age with at least 15 years of eligibility service. A 100% survivor annuity means that upon the death of the member the entire monthly payment that the member would have been entitled to receive at the time of the member's death will be paid to the beneficiary for the remainder of the beneficiary's life.

If an active member dies while in the line of duty, a special death benefit equal to two-thirds of the member's final average compensation is paid as an annuity to the surviving spouse, plus a return of all accumulated member contributions. If the deceased member is not survived by a spouse, the member's children or dependent parents, if any, continue to receive the annuity until the youngest child reaches age 18 or for the life of each dependent parent.

## **Optional Forms of Payment**

A retirement reserve is established for each member who retires. This reserve is the amount needed, with interest, to pay for the member's normal retirement allowance. When an option is chosen, the retirement reserve does not change. However, the member's normal service retirement allowance is reduced by an actuarially determined factor to provide a potential death benefit for the member's designated beneficiary. There are six optional forms of payment; these options are the same as those discussed under "Optional Forms of Payment" in the preceding discussion of the Teachers' Retirement System.

## **Ordinary Disability Retirement Allowances**

A member is eligible for an ordinary disability retirement allowance after completing five years of eligibility service and after receiving certification from the medical board that the member is permanently incapable of performing the necessary functions of the job. The disability retirement allowance is equal to the full service pension allowance if the member is at least 62 years of age on the date of retirement. Otherwise, the allowance equals the full service pension allowance computed as though the member had continued to accrue service credits until age 62 without any change in the rate of earnable compensation.

## **Accidental Disability Retirement Allowances**

If during the course of job performance, a member becomes totally and permanently disabled as the direct result of an accidental injury, the member is eligible to receive an accidental disability retirement allowance. Prior to receiving this benefit, the medical board must certify that the member is, in fact, totally and permanently disabled. The accidental disability allowance is equal to the lesser of (1) the sum of an annuity determined as the actuarial value of the member's accumulated contributions and two thirds (66.7%) of the member's average final salary; or (2) the member's average final salary.

Teachers' Pension System members who apply for disability retirement within two years of transfer from the Teachers' Retirement System receive disability benefits as provided under the Teachers Retirement System, reduced by the amount that the member received in refunded contributions.

Disability retirement allowances for Teachers' Pension System members who are State employees are generally reduced by workers' compensation benefits paid after retirement if, and to the extent that, such benefits are for the same injury and the same period of time for which the retirement benefits are paid. However, a workers' compensation benefit reduction cannot reduce any retirement allowance to less than the amount necessary to cover the retiree's monthly health insurance premiums. Disability retirement allowances for Teachers' Pension System members who are employees of participating governmental units are not reduced by workers' compensation benefits. Instead, the offset is taken against workers' compensation benefits for all employees of participating governmental units.

## **Post Retirement Health Insurance**

Members employed by the State may participate in the State Employee and Retiree Health and Welfare Benefits Program after retirement. The eligibility criteria for such benefits are discussed in Chapter 4 of this handbook.

Members employed by a participating governmental unit are entitled to the post retirement health insurance provided by that particular employer.

## **Vesting**

Members are vested in the system after five years of service. They may begin to draw a deferred retirement allowance at age 62 if they leave State service before retirement. The vested benefit is equal to the normal retirement allowance computed on

the basis of the member's accumulated creditable service and average final salary at the point of separation.

A Teachers' Pension System member may be eligible for a reduced deferred allowance upon attaining age 55 if the member has at least 15 years of eligibility service. If a vested member retires before age 62, the vested allowance is reduced by 0.5% for each month by which the member's retirement date precedes the date on which the member turns 62.

Teachers' Pension System members who elect to withdraw their accumulated contributions remain eligible to receive the employer-provided share of the vested benefit. If vested members do not withdraw their contributions and die before age 62, their accumulated contributions plus interest are paid to the designated beneficiaries.

## **Employees' Retirement System**

The Employees' Retirement System was established on October 1, 1941, and provides benefits for State employees, participating local employees, and certain elected and appointed officials. Until January 1, 1980, membership in the system was a condition of employment for eligible employees. Effective January 1, 1980, the Employees' Retirement System was closed to new membership when the State established the Employees' Pension System. Prior to January 1, 2005, Employees' Retirement System members were eligible to transfer to the Employees' Pension System and receive a return of all accumulated contributions with interest. Those individuals who chose to transfer after April 1, 1998, are not eligible to receive either the 1998 or 2006 enhanced Employees' Pension System benefit. Exhibit 11.3 illustrates membership in the Employees' Retirement System, as of June 30, 2009.

Due to a deterioration in the financial and actuarial condition of the system, legislation was enacted in 1984 to modify the benefit and contribution structure of the system. As a result of the 1984 legislation, Employees' Retirement System members who wanted to remain in the system were required to make one of three choices: (1) Selection A – pay additional employee contributions for an unlimited COLA; (2) Selection B – receive a limited COLA; or (3) Selection C – receive a benefit based on a combined formula from both the Employees' Retirement System and the new Employees' Pension System. At retirement, a Selection C benefit is calculated as an Employees' Retirement System benefit for service credits accrued prior to the election of Selection C and as an Employees Pensions System benefit for service credits accrued after the election.



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**Exhibit 11.3**  
**Membership in the Employees' Retirement System**  
**as of June 30, 2009\***

**Membership:**

Active Members	10,030
Deferred Vested Members	1,065
Retirees and Beneficiaries	23,778

**Composite:**

Average Age – Active Members	43.8 Years
Average Years of Service – Active Members	13.8 Years
Average Annual Salary – Active Members	\$48,572
Average Age – Retirees and Beneficiaries	72.6 Years
Average Annual Benefit – Retirees and Beneficiaries	\$18,360

\*Includes Members of the Maryland General Assembly and State and municipal correctional officers.

Source: Maryland State Retirement Agency

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## Member Contributions

Employees' Retirement System members who elected Selection A contribute 7% of earnable compensation in return for unlimited annual COLAs after retirement. Selection B members contribute 5% of earnable compensation in return for COLAs which are limited to 5% annually after retirement.

Beginning July 1, 2006, member contributions for Selection C members will be increased from 2 to 5% of the member's annual earnable compensation, to be phased in over a three-year period (3% on July 1, 2006; 4% on July 1, 2007; and 5% on July 1, 2008, and thereafter). In return for this contribution, Selection C members receive a two-part COLA based on the amount of service credits accrued prior to the election of Selection C and the amount of service credits accrued after the election. For the service credits accrued prior to the member choosing Selection C, the COLA is unlimited unless the member chose Selection B prior to Selection C, in which case the COLA is limited to 5%. For service credits accrued after the member chose Selection C, the COLA is limited to 3%.

Members who separate from service prior to accumulating five years of creditable service receive refunds of their accumulated contributions plus interest. Members with

more than five years of creditable service are vested in the system and thus eligible to receive retirement benefits upon reaching the normal retirement age.

### **Full Service Retirement Eligibility and Allowances**

Members are eligible for a full service retirement allowance upon attaining age 60 or after 30 years of eligibility service regardless of age. The benefit formula for full service retirement for Selection A and B members is calculated as one fifty-fifth (1.8%) of the highest three years' average final salary multiplied by the number of years of creditable service.

$1.8\% \times \text{Average Final Salary} \times \text{Years of Creditable Service.}$
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Selection C members receive a retirement allowance that utilizes the benefit formulas from both the Employees' Retirement System and the Employees' Pension System. At retirement, this two-part benefit is calculated as an Employees' Retirement System benefit for service credits accrued prior to the election of Selection C and as an Employees' Pension System benefit for service credits accrued after the election.

If all required contributions are not made, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

### **Early Retirement**

Employees' Retirement System members are eligible for early retirement after accumulating at least 25 years of eligibility service prior to age 60. For Selection A and B members, the early retirement allowance is equal to the full service retirement allowance reduced by 0.5% for each month by which the member's retirement date precedes the normal retirement date. The maximum reduction for early retirement is 30%.

Selection C members receive an early retirement benefit that utilizes the early retirement benefit formulas from both the Employees' Retirement System and the Employees' Pension System. At retirement, this two-part benefit is calculated as an Employees' Retirement System early retirement benefit for service credits accrued prior to the election of Selection C and as an Employees' Pension System early retirement benefit for service credits accrued after the election. However, the maximum reduction under the Employees' Pension System's part of the calculation is 42%.

## **Cost-of-living Adjustments**

Retirement allowances are adjusted each year based on the CPI-U as published by the U.S. Bureau of Labor Statistics. COLAs are effective July 1 of each year and are applied to all allowances payable for the year. The amount of a beneficiary's COLA depends on the member's selection made on July 1, 1984. Selection A members receive an unlimited annual COLA based on the consumer price index. The COLA for Selection B members is limited to not more than 5% annually. The COLA for members who chose Selection C is computed in two parts. For the service credits accrued prior to the member choosing Selection C, the COLA is unlimited unless the member chose Selection B prior to Selection C, in which case the COLA is limited to 5%. For service credits accrued after the member chose Selection C, the COLA is limited to 3%.

Prior to calendar 2009, the CPI-U had not had a negative change since automatic COLAs were first instituted in the early 1970s. However, as of December 31, 2009, the CPI-U declined by 0.356% over the previous calendar year. Absent legislation, this decline would have resulted in a negative adjustment for fiscal 2011 for retirees of the Employees' Retirement System. As a result, legislation was enacted that requires that retirement allowances not be subject to COLAs in fiscal 2011 if the average change in the CPI-U from calendar 2008 to 2009 is negative. If COLAs are not applied in fiscal 2011, then fiscal 2012 retirement allowances must be reduced by the difference between fiscal 2010 allowances and the allowances that would have been paid in fiscal 2011 if COLAs had been applied.

## **Death Benefits**

An ordinary death benefit is paid if an active member dies after completing one year of eligibility service. The benefit provided upon death is a lump-sum payment equal to the member's annual earnable compensation at the time of death plus all accumulated contributions. A surviving spouse may elect to receive a 100% survivor annuity rather than a lump-sum payment if the spouse is the sole primary designated beneficiary and the member was eligible to retire or was at least 55 years of age with at least 15 years of eligibility service. A 100% survivor annuity means that upon the death of the member the entire monthly payment that the member would have been entitled to receive at the time of the member's death will be paid to the beneficiary for the remainder of the beneficiary's life.

If an active member dies while in the line of duty, a special death benefit equal to two-thirds of the member's final average compensation is paid as an annuity to the surviving spouse, plus a return of all accumulated member contributions. If the deceased member is not survived by a spouse, the member's children or dependent parents, if any,

continue to receive the annuity until the youngest child reaches age 18 or for the life of each dependent parent.

### **Optional Forms of Payment**

A retirement reserve is established for each member who retires. This reserve is the amount needed, with interest, to pay for the member's normal retirement allowance. When an option is chosen, the retirement reserve does not change. However, the member's normal service retirement allowance is reduced by an actuarially determined factor to provide a potential death benefit for the member's designated beneficiary. There are six optional forms of payment; the details of these options are discussed under "Optional Forms of Payment" in the preceding discussion of the Teachers' Retirement System.

### **Ordinary Disability Retirement Allowances**

A member is eligible for an ordinary disability retirement allowance after completing five years of eligibility service and after receiving certification from the medical board that the member is permanently incapable of performing the necessary functions of the job. The disability retirement allowance is equal to the greater of (1) a normal service retirement allowance (one fifty-fifth (1.8%) of the highest three years' average final salary); or (2) either 25.0% of the member's average final salary or, if the member is under the normal retirement age (60 years), 1.8% of the average final salary for each year of creditable service that the member would have received had the member continued to work until age 60, whichever is less. For Selection C members, the disability retirement allowance is the greater of (1) an ordinary disability retirement allowance calculated using the Employees' Retirement System formula given above; or (2) an ordinary disability retirement allowance calculated using the Employees' Pension System formula.

### **Accidental Disability Retirement Allowances**

If during the course of job performance, a member becomes totally and permanently disabled as the direct result of an accidental injury, the member is eligible to receive an accidental disability retirement allowance. Prior to receiving this benefit, the medical board must certify that the member is, in fact, totally and permanently disabled. The accidental disability allowance is equal to the lesser of (1) the sum of an annuity determined as the actuarial value of the member's accumulated contributions and two thirds (66.7%) of the member's average final salary; or (2) the member's average final salary.

Disability retirement allowances for Employees' Retirement System members who are State employees are generally reduced by workers' compensation benefits paid after retirement if, and to the extent that, such benefits are for the same injury and the same period of time for which the retirement benefits are paid. However, a workers' compensation benefit reduction cannot reduce any retirement allowance to less than the amount necessary to cover the retiree's monthly health insurance premiums. Disability retirement allowances for Employees' Retirement System members who are employees of participating governmental units are not reduced by workers' compensation benefits. Instead, the offset is taken against any workers' compensation benefits payable for the same injury and the same period of time for which the retirement benefits are paid.

### **Post Retirement Health Insurance**

Members employed by the State may participate in the State Employee and Retiree Health and Welfare Benefits Program after retirement. The eligibility criteria for such benefits are discussed in Chapter 4 of this handbook.

Members employed by a participating governmental unit are entitled to the post retirement health insurance provided by that particular employer.

### **Vesting**

Members are vested in the system after five years. They may begin to draw a deferred retirement allowance at age 60 if they leave State service before retirement. However, members who withdraw their contributions after leaving service are no longer entitled to a vested benefit. The vested benefit is equal to the normal retirement allowance computed on the basis of the member's accumulated creditable service and average final salary at the point of separation. If a vested member dies prior to age 60 and before withdrawing his or her accumulated contributions plus interest, the accumulated contributions with interest are paid to the designated beneficiary.

### **Employees' Pension System**

The Employees' Pension System was established on January 1, 1980, with participation a condition of employment for all State employees (other than those eligible for participation in another system) hired after December 31, 1979. As of July 1, 1998, Employees' Pension System members who were State employees, except for those who transfer from the Employees' Retirement System after April 1, 1998, became eligible for the enhanced Employees' Pension System enacted in 1998. As of July 1, 1999, Employees' Pension System members who were employees of governmental units also received the enhanced Employees' Pension System benefit retroactive to July 1, 1998,

provided the participating governmental unit elected participation in the Employees' Pension System enhancement. State Employees' Pension System employees who transferred from Employees' Retirement System after April 1, 1998, and employees of participating governmental units that did not elect the enhancement receive the pre-1998 Employees' Pension System benefit formula.

As of July 1, 2006, Employees' Pension System members who were State employees, except for those who transfer from the Employees' Retirement System after April 1, 1998, were again eligible for an enhanced pension benefit. In addition, local governmental units who were participating in the Employees' Pension System on June 20, 2006, had the option of electing to participate in the enhanced benefits if such an election was made by June 30, 2007. Participating local governmental units who join the Maryland State Retirement and Pension System after July 1, 2006, do so under the 2006 enhanced benefit structure. Exhibit 11.4 summarizes membership in the Employees' Pension System, as of June 30, 2009.

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**Exhibit 11.4**  
**Membership in the Employees' Pension System**  
**as of June 30, 2009**

**Membership:**

Active Members	79,418
Deferred Vested Members	27,543
Beneficiaries	32,832

**Composite:**

Average Age – Active Members	47.8 Years
Average Years of Service – Active Members	12.5 Years
Average Annual Salary – Active Members	\$47,415
Average Age – Retirees and Beneficiaries	67.2 Years
Average Annual Benefit – Retirees and Beneficiaries	\$10,860

Source: Maryland State Retirement Agency

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**Member Contributions**

The 2006 pension enhancement legislation provided for an increase in member contributions from 2 to 5% of the member's annual compensation to be phased in over a three-year period (3% on July 1, 2006; 4% on July 1, 2007; and 5% on July 1, 2008, and thereafter). Employees' Pension System members who do not receive the enhanced

benefit are required to contribute 5% of earnable compensation in excess of the Social Security Wage Base.

Employees' Pension System members who separate from service prior to accumulating five years of creditable service receive refunds of their accumulated contributions, if any, plus interest. Members with more than five years of creditable service are vested in the system, and thus eligible to receive benefits at some point in the future.

### **Full Service Retirement Eligibility and Allowances**

Members are eligible for a full service retirement allowance upon accumulating 30 years of eligible service regardless of age. Absent 30 years of eligibility service, members must meet one of the following conditions to be eligible for a full service retirement allowance:

- age 62 with five years of eligibility service;
- age 63 with four years of eligibility service;
- age 64 with three years of eligibility service; or
- age 65 or older and two years of eligibility service.

As a result of the enactment of Chapter 110 of 2006, the full service retirement allowance for Employees' Pension System members is equal to 1.8% of average final salary earned after July 1, 1998, plus the greater of 1.2% of average final salary for each year of service earned prior to July 1, 1998, or the Employees' Pension System benefit described below for service earned prior to July 1, 1998. The average final salary is based on a member's highest three consecutive years of compensation.

(1.8% x Average Final Salary x Years of Creditable Service after July 1, 1998) + the greater of  
 (1.2% x Average Final Salary x Years of Creditable Service prior to July 1, 1998 or the  
 Employees' Pension System Retirement Allowance for Creditable Service prior to July 1, 1998)

The full service retirement allowance for Employees' Pension System members who do not receive the enhanced Employees' Pension System formula is 0.8% of the highest three consecutive years' average final salary up to the Social Security Integration Level, plus 1.5% of average final salary in excess of the Social Security Integration Level, multiplied by the number of years of accumulated creditable service. For the

purpose of computing pension allowances, the Social Security Integration Level is the average of the Social Security Wage Bases for the 35 years immediately prior to the year of retirement.

$(0.8\% \times \text{Average Final Salary up to the Social Security Integration Level} + 1.5\% \times \text{Average Final Salary in excess of the Social Security Integration Level}) \times \text{Years of Creditable Service}$

For all members of the Employees' Pension System, if all required contributions are not made prior to retirement, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

### **Early Retirement**

Employees' Pension System members are eligible for an early service retirement if they are at least 55 years of age with at least 15 years of eligibility service. The early service retirement allowance is equal to the full service pension allowance reduced by 0.5% for each month by which the retirement date precedes the date on which the member reaches age 62. The maximum reduction for early service is 42.0%.

### **Cost-of-living Adjustments**

Employees' Pension System members receive a COLA based on the CPI-U as published by the U.S. Bureau of Labor Statistics. COLAs are effective July 1 of each year. The maximum COLA for Employees' Pension System members is 3%, compounded annually. Employees' Pension System members who do not receive the enhanced Employees' Pension System formula receive a simple, rather than compounded, COLA limited to 3% per year.

Prior to calendar 2009, the CPI-U had not had a negative change since automatic COLAs were first instituted in the early 1970s. However, as of December 31, 2009, the CPI-U declined by 0.356% over the previous calendar year. Absent legislation, this decline would have resulted in a negative adjustment for fiscal 2011 for retirees of the Employees' Pension System. As a result, legislation was enacted that requires that retirement allowances not be subject to COLAs in fiscal 2011 if the average change in the CPI-U from calendar 2008 to 2009 is negative. If COLAs are not applied in fiscal 2011, then fiscal 2012 retirement allowances must be reduced by the difference between fiscal 2010 allowances and the allowances that would have been paid in fiscal 2011 if COLAs had been applied.



## **Death Benefits**

An ordinary death benefit is paid if an active member dies after completing one year of eligibility service. The benefit provided upon death is a lump-sum payment equal to the member's annual earnable compensation at the time of death plus all accumulated contributions. A surviving spouse may elect to receive a 100% survivor annuity rather than a lump-sum payment if the spouse is the sole primary designated beneficiary and the member was eligible to retire, had at least 25 years of eligibility service, or was at least 55 years of age with at least 15 years of eligibility service. A 100% survivor annuity means that upon the death of the member the entire monthly payment that the member would have been entitled to receive at the time of the member's death will be paid to the beneficiary for the remainder of the beneficiary's life.

If an active member dies while in the line of duty, a special death benefit equal to two-thirds of the member's final average compensation is paid as an annuity to the surviving spouse, plus a return of all accumulated member contributions. If the deceased member is not survived by a spouse, the member's children or dependent parents, if any, continue to receive the annuity until the youngest child reaches age 18 or for the life of each dependent parent.

## **Optional Forms of Payment**

A retirement reserve is established for each member who retires. This reserve is the amount needed, with interest, to pay for the member's normal retirement allowance. When an option is chosen, the retirement reserve does not change. However, the member's normal service retirement allowance is reduced by an actuarially determined factor to provide a potential death benefit for the member's designated beneficiary. There are six optional forms of payment; the details of these options are the same as those discussed under "Optional Forms of Payment" in the preceding discussion of the Teachers' Retirement System.

## **Ordinary Disability Retirement Allowances**

A member is eligible for an ordinary disability retirement allowance after completing five years of eligibility service and after receiving certification from the medical board that the member is permanently incapable of performing the necessary functions of the job. The disability retirement allowance is equal to the full service pension allowance if the member is at least 62 years of age on the date of retirement. Otherwise, the allowance equals the full service pension allowance computed as though the member had continued to accrue service credits until age 62 without any change in the rate of earnable compensation.

## **Accidental Disability Retirement Allowances**

If during the course of job performance, a member becomes totally and permanently disabled as the direct result of an accidental injury, the member is eligible to receive an accidental disability retirement allowance. Prior to receiving this benefit, the medical board must certify that the member is, in fact, totally and permanently disabled. The accidental disability allowance is equal to the lesser of (1) the sum of an annuity determined as the actuarial value of the member's accumulated contributions and two-thirds (66.7%) of the member's average final salary; or (2) the member's average final salary.

Employees' Pension System members who apply for disability retirement within two years of transfer from the Employees' Retirement System receive disability benefits as provided under the Employees' Retirement System, reduced by the amount that the member received in refunded contributions.

Disability retirement allowances for Employees' Pension System members who are State employees are generally reduced by workers' compensation benefits paid after retirement if, and to the extent that, such benefits are for the same injury and the same period of time for which the retirement benefits are paid. However, workers' compensation benefit reduction cannot reduce any retirement allowance to less than the amount necessary to cover the retiree's monthly health insurance premiums. Disability retirement allowances for Employees' Pension System members who are employees of participating governmental units are not reduced by workers' compensation benefits. Instead, the offset is taken against workers' compensation benefits for all employees of participating governmental units.

## **Post Retirement Health Insurance**

Members employed by the State may participate in the State Employee and Retiree Health and Welfare Benefits Program after retirement. This program and its eligibility requirements are discussed in Chapter 4 of this handbook.

Members employed by a participating governmental unit are entitled to the post retirement health insurance provided by that particular employer.

## **Vesting**

Members are vested in the system after five years of service. They begin to draw a deferred retirement allowance at age 62 if they leave State service prior to retirement. The vested benefit is equal to the normal retirement allowance computed on the basis of

the member's accumulated creditable service and average final salary at the point of separation.

An Employees' Pension System member may be eligible for a reduced deferred allowance upon attaining age 55 if the member has at least 15 years of eligibility service. If a vested member retires before age 62, the vested allowance is reduced by 0.5% for each month by which the member's retirement date precedes the date on which the member turns 62.

Employees' Pension System members who elect to withdraw their accumulated contributions remain eligible to receive the employer-provided share of the vested benefit. If vested members do not withdraw their contributions and die before age 62, their accumulated contributions plus interest are paid to the designated beneficiaries.

## **State Police Retirement System**

The State Police Retirement System was established on July 1, 1949, with participation a condition of employment for all uniformed officers of the Maryland State Police. The Superintendent of the Maryland State Police may elect membership in either the State Police Retirement System or the Employees' Pension System. Exhibit 11.5 illustrates membership in the State Police Retirement System, as of June 30, 2009.

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### **Exhibit 11.5 Membership in the State Police Retirement System as of June 30, 2009**

#### **Membership:**

Active Members	1,408
Deferred Vested Members	68
Retirees and Beneficiaries	2,226

#### **Composite:**

Average Age – Active Members	35.1 Years
Average Years of Service – Active Members	10.7 Years
Average Annual Salary – Active Members	\$60,785
Average Age – Retirees and Beneficiaries	59.4 Years
Average Annual Benefit – Retirees and Beneficiaries	\$42,288

Source: Maryland State Retirement Agency

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## Member Contributions

State Police Retirement System members are required to contribute 8% of annual earnable compensation during employment.

## Full Service Retirement Eligibility and Allowances

State Police Retirement System members are eligible for a full service retirement allowance at age 50 or after accumulating 22 years of eligibility service regardless of age. Except for the Superintendent, all members must retire by age 60. The benefit formula for full service retirement equals 2.55% of the member's highest three years' average final salary multiplied by the number of years of creditable service. However, the retirement allowance may not exceed 71.4% of the member's average final compensation.

$$(2.55\% \times \text{Average Final Salary}) \times \text{Years of Creditable Service}$$

If all required contributions are not made, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

## Early Retirement

State Police Retirement System members are not eligible for early retirement.

## Cost-of-living Adjustments

State Police Retirement System retirement allowances are adjusted each year based on the CPI-U as published by the U.S. Bureau of Labor Statistics. COLAs are effective July 1 of each year and are applied to all allowances payable for the year.

Prior to calendar 2009, the CPI-U had not had a negative change since automatic COLAs were first instituted in the early 1970s. However, as of December 31, 2009, the CPI-U declined by 0.356% over the previous calendar year. Absent legislation, this decline would have resulted in a negative adjustment for fiscal 2011 for retirees of the State Police Retirement System. As a result, legislation was enacted that requires that retirement allowances not be subject to COLAs in fiscal 2011 if the average change in the CPI-U from calendar 2008 to 2009 is negative. If COLAs are not applied in fiscal 2011, then fiscal 2012 retirement allowances must be reduced by the difference between fiscal 2010 allowances and the allowances that would have been paid in fiscal 2011 if COLAs had been applied.

## **Death Benefits**

An ordinary death benefit is paid if the member has accumulated at least one but less than two years of eligibility service prior to the date of death. The ordinary death benefit equals the member's annual earnable compensation at the time of death plus all accumulated member contributions.

A special death benefit is paid if an active member dies after completing at least two years of eligibility service prior to the date of death and does not die in the line of duty. This special death benefit equals 50% of the member's annual earnable compensation at the time of death, which is paid as an annuity to the surviving spouse, plus a return of all accumulated member contributions. If the deceased member is not survived by a spouse, the member's children or dependent parents, if any, continue to receive the annuity until the youngest child reaches age 18 or for the life of each dependent parent.

If an active member dies while in the line of duty, a special death benefit equal to two-thirds of the member's final average compensation is paid as an annuity to the surviving spouse, plus a return of all accumulated member contributions. If the deceased member is not survived by a spouse, the member's children or dependent parents, if any, continue to receive the annuity until the youngest child reaches age 18 or for the life of each dependent parent.

If a retired member dies, a special death benefit is paid if the retired member was receiving a service retirement allowance or a disability allowance. This special death benefit equals 80% of the member's retirement allowance and is paid as an annuity to the surviving spouse. If the member is not survived by a spouse, the member's children, if any, will receive the annuity until the youngest child reaches age 18.

## **Optional Forms of Payment**

Generally, State Police Retirement System retirement allowances are paid as a 50% joint and survivor annuity to the retiree's spouse, or if there is no spouse, to the retiree's children under the age of 18. If the retiree does not have a living spouse or an eligible child, the retiree may select any one of six payment options. These options are the same as the options discussed under "Optional Forms of Payment" in the preceding discussion of the Teachers' Retirement System.

## **Ordinary Disability Retirement Allowances**

A member of the State Police Retirement System is eligible for an ordinary disability retirement allowance after completing five years of eligibility service and after receiving certification from the medical board that the member is permanently incapable of performing the necessary functions of the job. The ordinary disability retirement allowance is equal to the greater of (1) a full service retirement allowance computed on the basis of the member's accumulated creditable service and average final salary; or (2) 35% of the member's average final salary.

## **Special Disability Retirement Allowances**

If a member of the State Police Retirement System becomes totally and permanently incapacitated for duty as a result of an injury arising out of or in the actual performance of the job, the member is eligible for a special disability retirement allowance. The special disability retirement allowance is equal to the lesser of (1) the member's average final salary; or (2) the sum of an annual annuity determined as the actuarial value of the member's accumulated contributions and two-thirds of the member's average final salary.

Disability retirement allowances are generally reduced by workers' compensation benefits paid after retirement if, and to the extent that, such benefits are for the same injury and the same period of time for which the retirement benefits are paid. A workers' compensation benefit reduction cannot reduce any retirement allowance to less than the amount necessary to cover the retiree's monthly health insurance premiums.

## **Post Retirement Health Insurance**

Members may participate in the State Employee and Retiree Health and Welfare Benefits Program after retirement. The eligibility criteria are discussed in Chapter 4 of this handbook.

## **Deferred Retirement Option Program**

State Police Retirement System members are eligible to participate in a Deferred Retirement Option Program. To participate, a member must have at least 22 years of creditable service, but less than 28 years, and be under the age of 60. The maximum period of participation is four years. During the Deferred Retirement Option Program period, a member is deemed retired and the retirement allowance is placed in an account earning 6% interest. At the end of the Deferred Retirement Option Program period, the

lump-sum held in the Deferred Retirement Option Program account is paid to the members who must then end employment and fully retire.

## **Vesting**

State Police Retirement System members are vested in the system after five years of service. They may begin to draw a deferred retirement allowance at age 50 if they leave State service before retirement. The vested benefit is equal to the normal retirement allowance computed on the basis of the member's accumulated creditable service and average final salary at the point of separation.

In lieu of receiving an accrued vested retirement allowance, State Police Retirement System members may withdraw their accumulated contributions within two years of separation. If a member dies prior to age 50 and before withdrawing his or her accumulated contributions, the accumulated contributions with interest are paid to the designated beneficiary.

If a State Police Retirement System member leaves State service prior to accumulating five years of creditable service, the member receives a refund of his or her accumulated contributions plus interest.

## **Correctional Officers' Retirement System**

Through legislation enacted in 1974 and 1982, the State established special benefits for Grade I – VI correctional officers who serve in the cellblocks at State penal institutions and for security attendants at the Clifton T. Perkins Hospital Center. Chapter 340 of 2006 made correctional dietary, supply, and maintenance officers eligible to receive these special benefits. Chapters 408 and 409 of 2008 included individuals serving as a Maryland Correctional Enterprises officer, officer trainee, plant supervisor, plant manager, or regional manager as members of the Correctional Officers' Retirement System.

For actuarial purposes, the Correctional Officers' Retirement System is a subsystem of the Employees' Retirement System. Membership in the subsystem is a condition of employment for eligible correctional officers and security attendants. As of June 30, 2009, there were 7,915 active members in the Correctional Officers' Retirement System. (Membership and composite information for the Employees' Retirement System includes Correctional Officers' Retirement System members.)

## **Member Contributions**

Members are required to contribute 5% of earnable compensation.

## **Full Service Retirement Eligibility and Allowances**

Correctional Officers' Retirement System members are eligible for a full service retirement allowance after 20 years of creditable service regardless of age. The last five years of service must be as an eligible correctional officer, security attendant, or a combination of these positions. The benefit formula for full service retirement is calculated as 1.8% of the highest three years' average final salary multiplied by the number of years of creditable service.

$1.8\% \times \text{Average Final Salary} \times \text{Years of Creditable Service}$
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## **Early Retirement**

Correctional Officers' Retirement System members are not eligible for early retirement.

## **Cost-of-living Adjustments**

Correctional Officers' Retirement System members are entitled to unlimited annual COLAs based on the CPI-U as published by the U.S. Bureau of Labor Statistics. COLAs are effective July 1 of each year and are applied to all allowances payable for the year.

Prior to calendar 2009, the CPI-U had not had a negative change since automatic COLAs were first instituted in the early 1970s. However, as of December 31, 2009, the CPI-U declined by 0.356% over the previous calendar year. Absent legislation, this decline would have resulted in a negative adjustment for fiscal 2011 for retirees of the Correctional Officers' Retirement System. As a result, legislation was enacted that requires that retirement allowances not be subject to COLAs in fiscal 2011 if the average change in the CPI-U from calendar 2008 to 2009 is negative. If COLAs are not applied in fiscal 2011, then fiscal 2012 retirement allowances must be reduced by the difference between fiscal 2010 allowances and the allowances that would have been paid in fiscal 2011 if COLAs had been applied.



## **Death Benefits**

An ordinary death benefit is paid if the member dies after completing one year of eligibility service. The benefit provided upon death is a lump-sum payment equal to the member's annual earnable compensation at the time of death plus all accumulated contributions. A surviving spouse may elect to receive a 100% survivor annuity rather than a lump-sum payment if the spouse is the sole primary designated beneficiary and the member was eligible to retire or was at least 55 years of age with at least 15 years of eligibility service. A 100% survivor annuity means that upon the death of the member, the entire monthly payment that the member would have been entitled to receive at the time of the member's death continues to be paid to the beneficiary for the remainder of the beneficiary's life.

If an active member dies while in the line of duty, a special death benefit equal to two-thirds of the member's final average compensation is paid as an annuity to the surviving spouse, plus a return of all accumulated member contributions. If the deceased member is not survived by a spouse, the member's children or dependent parents, if any, continue to receive the annuity until the youngest child reaches age 18 or for the life of each dependent parent.

## **Optional Forms of Payment**

A retirement reserve is established for each member who retires. This reserve is the amount needed, with interest, to pay for the member's normal retirement allowance. When an option is chosen, the retirement reserve does not change. However, the member's normal service retirement allowance is reduced by an actuarially determined factor to provide a potential death benefit for the member's designated beneficiary. There are six optional forms of payment; the details of these options are the same as those discussed under "Optional Forms of Payment" in the preceding discussion of the Teachers' Retirement System.

## **Ordinary Disability Retirement Allowances**

A member is eligible for an ordinary disability retirement allowance after completing five years of eligibility service and after receiving certification from the medical board that the member is permanently incapable of performing the necessary functions of the job. The disability retirement allowance is equal to the greater of (1) a normal service retirement allowance (one fifty-fifth (1.8%) of the highest three years' average final salary); or (2) either 25.0% of the member's average final salary or, if the member is under the normal retirement age (55 or 60 years), 1.8% of the average final

salary for each year of creditable service that the member would have received had the member continued to work until normal retirement age, whichever is less.

### **Accidental Disability Retirement Allowances**

If during the course of job performance, a Correctional Officers' Retirement System member becomes totally and permanently disabled as the direct result of an accidental injury, the member is eligible to receive an accidental disability retirement allowance. Prior to receiving this benefit, the medical board must certify that the member is, in fact, totally and permanently disabled. The accidental disability allowance is equal to the lesser of (1) the sum of an annuity determined as the actuarial value of the member's accumulated contributions and two-thirds (66.7%) of the member's average final salary or; (2) the member's average final salary.

Disability retirement allowances for Correctional Officers' Retirement System members are generally reduced by workers' compensation benefits paid after retirement if, and to the extent that, such benefits are for the same injury and the same period of time for which the retirement benefits are paid. However, a workers' compensation benefit reduction cannot reduce any retirement allowance to less than the amount necessary to cover the retiree's monthly health insurance premiums.

### **Post Retirement Health Insurance**

Correctional Officers' Retirement System members may participate in the State Employee and Retiree Health and Welfare Benefits Program after retirement. The criteria for participation in the retiree health program are discussed in Chapter 4 of this handbook.

### **Vesting**

Correctional Officers' Retirement System members who are correctional officers qualify for a vested benefit at age 55 with at least five years of creditable service. A security attendant at Clifton T. Perkins is eligible to collect a vested benefit at age 60 with at least five years of creditable service. However, members who withdraw their contributions after leaving service are no longer entitled to a vested benefit. The vested benefit is equal to the normal retirement allowance computed on the basis of the member's accumulated creditable service and average final salary at the point of separation. If a vested member dies prior to age 55 or 60 and before withdrawing his or her accumulated contributions plus interest, the accumulated contributions with interest are paid to the designated beneficiary.

**Law Enforcement Officers' Pension System**

The Law Enforcement Officers' Pension System was established on July 1, 1990, with participation a condition of employment for the following public safety employees:

- Department of Natural Resources police and rangers
- Maryland Investigative Services Unit officers (Comptroller's Office)
- Maryland Transportation Authority police officers
- Baltimore City sheriffs and deputy sheriffs
- University of Maryland police officers
- Morgan State University police officers
- State Fire Marshal and deputy State fire marshals
- Maryland Aviation Administration Fire Rescue Service officers
- Department of General Services police officers
- Department of Health and Mental Hygiene police officers
- Motor Vehicle Administration police officers
- Department of Labor, Licensing, and Regulation police officers
- Martin State Airport firefighters
- State Department of Education Division of Rehabilitation Services police officers
- Department of State Police aviators operating aircrafts for the State Emergency Medical System
- Maryland Transit Administration police

- Law enforcement officers and firefighters of an electing governmental unit (Participation is optional for law enforcement officers hired prior to their unit's participation date.)
- Baltimore City sheriffs who do not elect to join the Employees' Pension System
- Department of Public Safety and Correctional Services Internal Investigative Unit police officers
- Baltimore City Community College police

Exhibit 11.6 summarizes membership in the Law Enforcement Officers' Pension System, as of June 30, 2009.

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**Exhibit 11.6**  
**Membership in the Law Enforcement Officers' Pension System**  
**as of June 30, 2009**

**Membership:**

Active Members	2,445
Deferred Vested Members	189
Retirees and Beneficiaries	1,067

**Composite:**

Average Age – Active Members	40.2 Years
Average Years of Service – Active Members	10.8 Years
Average Annual Salary – Active Members	\$57,289
Average Age – Retirees and Beneficiaries	56.8 Years
Average Annual Benefit – Retirees and Beneficiaries	\$30,612

Source: Maryland State Retirement Agency

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The Law Enforcement Officers' Pension System consists of two components – a retirement plan (modeled after the Employees' Retirement System) and a pension plan (modeled after the Employees' Pension System). Retirement plan provisions are applicable to those officers who transferred into the Law Enforcement Officers' Pension System from the Employees' Retirement System. Pension plan provisions are applicable to all other Law Enforcement Officers' Pension System members.

## **Member Contributions**

Member contributions are based on a member's participation in either the pension plan or the retirement plan component. The retirement plan provisions apply to Law Enforcement Officers' Pension System members who transferred from the Employees' Retirement System and did not elect to participate in the pension plan by December 31, 2000. Members in the retirement plan were required to make one of two choices: (1) Selection A – pay additional employee contributions for an unlimited COLA; or (2) Selection B – receive a limited COLA.

Former Employees' Retirement System members who elected Selection A (unlimited COLAs) contribute 7% of earnable compensation if enrolled in the Employees' Retirement System on or after July 1, 1973. Those members enrolled in the Employees' Retirement System before July 1, 1973, contribute the lesser of (1) 7% of earnable compensation; or (2) 2% more than the rate of contribution in effect on the date of enrollment in the Employees' Retirement System.

Former Employees' Retirement System members who elected Selection B (COLAs limited to 5% annually after retirement) contribute 5% of earnable compensation if enrolled in the Employees' Retirement System on or after July 1, 1973. Those members enrolled in the Employees' Retirement System before July 1, 1973, contribute the lesser of (1) 5% in earnable compensation; or (2) the rate of contribution in effect on the date of enrollment in the Employees' Retirement System.

All other Law Enforcement Officers' Pension System members are subject to the pension plan provisions and contribute 4% of earnable compensation.

Law Enforcement Officers' Pension System members who separate from service prior to accumulating five years of creditable service receive refunds of their accumulated contributions, if any, plus interest. Members with more than five years of creditable service are vested in the system, and thus eligible to receive benefits upon reaching the normal retirement age.

## **Full Service Retirement Eligibility and Allowances**

Law Enforcement Officers' Pension System members are eligible for a full service retirement allowance upon reaching age 50 or after 25 years of eligibility service, regardless of age.

The full service retirement allowance for retirement plan participants is calculated as 2.3% of the highest three years' average final salary for the first 30 years of creditable service, plus one one-hundredth (1.0%) of average final salary for each additional year.

<p>Retirement Plan Participants:</p> $(2.3\% \times \text{Average Final Salary} \times \text{First 30 Years of Creditable Service}) + (1\% \times \text{Average Final Salary} \times \text{Each Additional Year After 30})$
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The full service retirement allowance for pension plan participants is calculated as 2% of average final salary up to a maximum benefit of 60% (30 years of creditable service).

<p>Pension Plan Participants:</p> $(2\% \times \text{Average Final Salary} \times \text{Years of Creditable Service (Up to 30 Maximum)})$
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If all required contributions are not made, the member's retirement allowance is reduced by the actuarial equivalent of the total unpaid contributions plus interest to the date of retirement.

### **Early Retirement**

Law Enforcement Officers' Pension System members are not eligible for early retirement.

### **Cost-of-living Adjustments**

Retirement allowances are adjusted each year based on the CPI-U as published by the U.S. Bureau of Labor Statistics. COLAs are effective July 1 of each year and are applied to all allowances payable for the year. The amount of a beneficiary's COLA depends on the member's status as a retirement plan participant or a pension plan participant.

The COLA for a retirement plan participant depends on the member's selection. Selection A members receive an unlimited annual COLA based on the consumer price index. The COLA for Selection B members is limited to no more than 5% annually.

The COLA for a pension plan participant is limited to 3% annually after retirement.

Prior to calendar 2009, the CPI-U had not had a negative change since automatic COLAs were first instituted in the early 1970s. However, as of December 31, 2009, the CPI-U declined by 0.356% over the previous calendar year. Absent legislation, this decline would have resulted in a negative adjustment for fiscal 2011 for retirees of the Law Enforcement Officers' Pension System. As a result, legislation was enacted that requires that retirement allowances not be subject to COLAs in fiscal 2011 if the average change in the CPI-U from calendar 2008 to 2009 is negative. If COLAs are not applied in fiscal 2011, then fiscal 2012 retirement allowances must be reduced by the difference between fiscal 2010 allowances and the allowances that would have been paid in fiscal 2011 if COLAs had been applied.

### **Death Benefits**

An ordinary death benefit is paid if the member has accumulated at least one but less than two years of eligibility service prior to the date of death. The ordinary death benefit equals the member's annual earnable compensation at the time of death plus all accumulated member contributions.

A special death benefit is paid if an active member has completed at least two years of eligibility service prior to the date of death and did not die in the line of duty. The special death benefit equals 50% of the applicable ordinary disability allowance, which is paid as an annuity to the surviving spouse. If the deceased member is not survived by a spouse, the member's children, if any, will continue to receive the annuity until the youngest child reaches age 18.

If an active member dies in the line of duty, the member receives a special death benefit equal to two-thirds of the member's average final compensation, which is paid as an annuity to the surviving spouse. If the deceased member is not survived by a spouse, the member's children, if any, will continue to receive the annuity until the youngest child reaches age 18.

If a retired member dies, a special death benefit is paid if the retired member was receiving a service retirement allowance or a disability allowance. This special death benefit equals 50% of the retirees' retirement allowance, and is paid as an annuity to the surviving spouse. If the member is not survived by a spouse, the member's children, if any, will receive the annuity until the youngest child reaches age 18.

## **Optional Forms of Payment**

Generally, a Law Enforcement Officers' Pension System retirement allowance is paid as a 50% joint and survivor annuity to the retiree's spouse, or if there is no spouse to the retiree's children under the age of 18. If the retiree does not have a living spouse or an eligible child, the retiree may select any one of six payment options; the details of these options are the same as those discussed under "Optional Forms of Payment" in the preceding discussion of the Teachers' Retirement System.

## **Ordinary Disability Retirement Allowances**

A member is eligible for an ordinary disability retirement allowance after completing five years of eligibility service and after receiving certification from the medical board that the member is permanently incapable of performing the necessary functions of the job. The amount of the disability allowance depends on the member's status as a retirement plan participant or a pension plan participant.

The ordinary disability allowance for a Law Enforcement Officers' Pension System member subject to the retirement plan provisions equals the greater of (1) the normal service retirement allowance; or (2) 25% of average final salary. For a pension plan participant, the ordinary disability allowance equals the full service pension allowance if the member is at least 50 years of age on the date of retirement. Otherwise, the allowance equals the full service pension allowance computed as though the member had continued to work until age 50 with no change in earnable compensation.

## **Accidental Disability Retirement Allowances**

If during the course of job performance, a Law Enforcement Officers' Pension System member becomes totally and permanently disabled as the direct result of an accidental injury, the member is eligible to receive an accidental disability retirement allowance. Prior to receiving this benefit, the medical board must certify that the member is, in fact, totally and permanently disabled. The accidental disability allowance is equal to the lesser of (1) the sum of an annuity determined as the actuarial value of the member's accumulated contributions and two-thirds (66.7%) of the member's average final salary; or (2) the member's average final salary.

Accidental disability retirement allowances for Law Enforcement Officers' Pension System members who are State employees are generally reduced by workers' compensation benefits paid after retirement if, and to the extent that, such benefits are for the same injury and the same period of time for which retirement benefits are paid. However, a workers' compensation benefit reduction cannot reduce any retirement



allowance to less than the amount necessary to cover the retiree's monthly health insurance premiums. Accidental disability retirement allowances for Law Enforcement Officers' Pension System members who are employees of participating governmental units are not reduced by workers' compensation benefits. Instead, the offset is taken against any workers' compensation benefits payable for the same injury and the same period of time for which the retirement benefits are paid.

### **Post Retirement Health Insurance**

Members employed by the State may participate in the State Employee and Retiree Health and Welfare Benefits Program after retirement. The criteria for participation in the retiree health insurance program are discussed in Chapter 4 of this handbook.

Members employed by a participating governmental unit are entitled to the post retirement health insurance provided by that particular employer.

### **Deferred Retirement Option Program**

Members are eligible to participate in a Deferred Retirement Option Program. To participate, a Law Enforcement Officers' Pension System member must have at least 25 years of creditable service, but less than 30 years. The maximum period of participation is 5 years. During the Deferred Retirement Option Program period, a member is deemed retired and the retirement allowance is placed in an account earning 6% interest. At the end of the Deferred Retirement Option Program period, the lump-sum held in the Deferred Retirement Option Program account is paid to the members who must end employment and fully retire.

### **Vesting**

Law Enforcement Officers' Pension System members are vested in the system after five years of service. They may begin to draw a deferred retirement allowance at age 50 if they leave State service before retirement. The vested benefit is equal to the normal retirement allowance computed on the basis of the member's accumulated creditable service and average final salary at the point of separation.

### **Judges' Retirement System**

The Judges' Retirement System was established on June 30, 1969, with membership a condition of employment for all judges of the District Court, the circuit courts, the Court of Appeals, and the Special Court of Appeals. Full-time masters in

chancery and masters in juvenile causes appointed prior to June 30, 1969, and Workers' Compensation Commission judges are also members of the system. Exhibit 11.7 summarizes membership in the Judges' Retirement System, as of June 30, 2009.

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**Exhibit 11.7**  
**Membership in the Judges' Retirement System**  
**as of June 30, 2009**

**Membership:**

Active Members	297
Deferred Vested Members	6
Retirees and Beneficiaries	348

**Composite:**

Average Age – Active Members	57.3 Years
Average Years of Service – Active Members	9.4 Years
Average Annual Salary – Active Members	\$135,577
Average Age – Retirees and Beneficiaries	76.1 Years
Average Annual Benefit – Retirees and Beneficiaries	\$67,668

Source: Maryland State Retirement Agency

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**Member Contributions**

Members contribute 6% of annual earnable compensation during their first 16 years of service. No contributions are required after 16 years of service.

Within six months after terminating service, but before receiving a retirement allowance, former members may elect to withdraw all accumulated member contributions. However, members who withdraw their contributions after leaving service are no longer entitled to a vested benefit.

**Full Service Retirement Eligibility and Allowances**

Members are eligible for full service retirement allowances at age 60, or upon retirement by order of the Court of Appeals, with at least 16 years of eligibility service. All members must retire by age 70. Except for masters in chancery or masters in juvenile causes, the full service retirement allowance equals two-thirds of the annual earnable compensation paid to an active judge holding a comparable position. The annual

retirement allowance is prorated for members retiring with less than 16 years of eligibility service.

66.7% of Annual Earnable Compensation Paid to an Active Judge
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### **Early Retirement**

Members are not eligible for early retirement.

### **Cost-of-living Adjustments**

Retirement allowances increase whenever there is a salary adjustment for sitting judges. This linking of post retirement adjustments to active salaries is regarded as an unlimited compound COLA.

### **Death Benefits**

A death benefit is paid if a member, former member, or retiree dies regardless of age or length of service. The death benefit equals 50% of the full service retirement allowance, which is paid as an annuity to the surviving spouse. If the deceased member is not survived by a spouse, the members' children, if any, continue to receive an annuity until the youngest child reaches age 18. In the event a deceased member, former member, or retiree is not survived by a spouse or a minor child, then all accumulated member contributions plus interest are refunded to the estate.

### **Optional Forms of Payment**

Generally, a Judges' Retirement System retirement allowance is paid as a 50% joint and survivor annuity to the retiree's spouse, or if there is no spouse, to the retiree's children under the age of 18. If the retiree does not have a living spouse or an eligible child, the retiree may select one of six payment options; the details of these options are discussed under "Optional Forms of Payment" in the preceding discussion of the Teachers' Retirement System.

### **Disability Retirement Allowances**

Judges' Retirement System members are eligible for a disability retirement allowance upon receiving certification from the medical board that the member is permanently incapable of performing the necessary job functions. The disability retirement allowance is equal to the full service retirement allowance based on the

member's actual length of service. However, if a member has at least three years of eligibility service, the disability benefit will be no less than one-third of the member's annual earnable compensation at the time of retirement.

### **Post Retirement Health Insurance**

Members of the Judges' Retirement System employed by the State may participate in the State Employee and Retiree Health and Welfare Benefits Program after retirement. The criteria for participation in retiree health insurance are discussed in Chapter 4 of this handbook.

### **Vesting**

Members are immediately vested in the system. Members leaving the bench before age 60 are eligible to receive their service retirement allowance upon attaining age 60. The vested allowance equals the normal service retirement allowance computed on the basis of the member's accumulated creditable service and the salary of active judges holding comparable positions. However, members who withdraw their contributions after leaving service are no longer entitled to a vested benefit.

### **The Optional Retirement Program**

In 1975, the State established the Optional Retirement Program, which is a defined contribution plan for professional employees of public higher education institutions. Professional staff must elect to participate in this optional program or one of the State's defined benefit systems. As of December 31, 2009, 35,364 professional employees are participating in the optional program.

The optional program is a contract between the participant and the selected vendor. There are currently two plan vendors: (1) TIAA/CREF and (2) Fidelity. By the terms of the plan, the State contributes a defined percentage of pay in the name of the participant to the vendor (currently 7.25% of salary). These contributions are held in an annuity fund until the participant retires, at which time they are paid out to the participant as a retirement allowance.

The two vendors may also offer supplemental retirement accounts, in accordance with § 401(a), § 403(b), or § 457 of the federal Internal Revenue Code, to Optional Retirement Program participants.

## **Legislative Pension Plan**

In 1966, legislation was enacted that provided for retirement allowances to be paid to legislators under certain conditions. This Legislative Pension Plan was established as a subsystem within the Employees' Retirement System. In 1970, a constitutional amendment was approved by the voters that created a nine-member General Assembly Compensation Commission and specified that the commission must submit salary, expense allowance, and pension recommendations to the legislature every four years. As a result of this constitutional amendment, the Legislative Pension Plan was redesigned but continues to be administered as a subsystem of the Employees' Retirement System.

The General Assembly Compensation Commission comprises five persons appointed by the Governor, two appointed by the President of the Senate, and two appointed by the Speaker of the House of Delegates. Appointees serve a four-year term. Members of the General Assembly and State and local government officers and employees are not eligible for appointment to the commission. The commission's recommendations must be submitted by means of a formal resolution to the General Assembly within 15 days after the beginning of the last regular legislative session in a four-year term of office. Through a joint resolution, the General Assembly may reduce or reject the recommendations included in the commission's resolution but may not increase those recommendations. Unless modified by the General Assembly, the commission's resolution has the force of law and takes effect at the beginning of the next General Assembly term. The most recent commission resolution was submitted in January 2010 for the 2011 to 2014 General Assembly term. The resolution included changes to the Legislative Pension Plan; however, Joint Resolution 4 of 2010 rejected those changes, and the provisions of the Legislative Pension Plan remain as described below. Membership and composite information for the Employees' Retirement System includes Legislative Pension Plan members.

### **Member Contributions**

Legislative Pension Plan members must contribute 5% of earnable compensation for the first 22 years and 3 months of service, after which there is no contribution requirement.

## Full Service Retirement Eligibility and Allowances

Members are eligible for a full service retirement allowance at age 60. The benefit formula for full service retirement is calculated as 3% of the salary of an active legislator in a similar position for each year of service. The maximum allowance is two-thirds of the current legislative salary payable to an active legislator.

$$\frac{3\% \times \text{the Salary Paid to an Active Legislator in a Similar Position} \times \text{Number of Years of Service}}{\text{Number of Years of Service}}$$

## Early Retirement

Members are eligible for early retirement at age 50. The early retirement allowance is equal to the full service retirement allowance reduced by 6% for each year by which the member's retirement date precedes the date on which the member reaches age 60. The maximum reduction for early retirement is 60%.

## Cost-of-living Adjustments

Retirement allowances increase whenever there is a salary adjustment for sitting legislators. This linking of post retirement adjustments to active salaries is regarded as an unlimited compound COLA.

## Death Benefits

Upon the death of an active legislator with less than eight years of service, the surviving spouse, or the designated beneficiary if there is no surviving spouse, receives a death benefit consisting of one year's salary plus a return of the member's accumulated contributions with interest. If there is no spouse and the member has designated multiple beneficiaries, then the beneficiaries share equally the lump-sum payment.

Upon the death of a member with at least eight years of service, the surviving spouse, or the designated beneficiary if there is no surviving spouse, has the option of receiving either the death benefit described above or a survivor's benefit that is equal to 50.0% of the retirement allowance accrued to the date of death. Payment to the surviving spouse begins at the member's death. Payment to the designated beneficiary begins when the beneficiary attains age 60. A designated beneficiary may receive an early benefit at age 50 subject to an actuarial reduction of 0.5% per month for each month that the allowance is received prior to age 60. If there is no spouse and the member has

designated multiple beneficiaries, then the beneficiaries share equally the lump-sum payment.

### **Optional Forms of Payment**

Rather than the full service retirement allowance and the 50% survivor allowance, members may elect one of the following optional retirement benefits:

- Option A provides a 100% joint and survivor annuity, which means that upon the death of the retiree the entire monthly payment continues to be paid to the surviving spouse or designated beneficiary for the remainder of the beneficiary's life.
- Option B provides a 10-year certain plan. When a member dies, the monthly allowance continues for the remainder of the 10-year period beginning on the date of the death or retirement of the member, whichever occurs first; and
- Option C permits an alternative monthly allowance to a surviving spouse or beneficiary that is actuarially equivalent to the retirement allowance and approved by the board of trustees.

### **Disability Retirement Allowances**

A member with at least eight years of creditable service is eligible for a disability retirement allowance if the medical board certifies that the legislator is mentally or physically incapacitated for further performance of legislative duty and such incapacity is likely to be permanent. The disability retirement allowance is equal to the full service retirement allowance.

### **Post Retirement Health Insurance**

Members of the Legislative Pension Plan may participate in the State Employee's Health Insurance Program after eight years of service, regardless of whether they retire directly from State service or terminate service prior to retirement.

The proportion of the State subsidy for health insurance to which a retired legislator may be entitled is determined by the amount of creditable service the retired legislator earned. For example, with nine years of creditable service, a retired member is entitled to nine-sixteenth of the State subsidy provided to active employees. For each additional year of creditable service, an additional one-sixteenth of the subsidy is earned

until, with 16 years of creditable service, the retired member is entitled to the same State health insurance subsidy as provided to active State employees.

## **Vesting**

Members of the Legislative Pension Plan are vested in the system after eight years of service and may begin to draw a full retirement allowance at age 60. Members with less than eight years of service credit may also become vested by paying the employer and employee contributions for the remaining amount of time they need to reach eight years. By doing so, a legislator is eligible for a retirement allowance equal to 24% of the current salary for an active legislator, payable at age 60 (or a reduced benefit upon attaining age 50).

A legislator with less than eight years of service who resigns to become a judge or an official included in the Judicial Pension Plan vests upon resignation. Legislators who withdraw their contributions after leaving service are no longer entitled to a vested benefit.

## **Forfeiture of Benefits**

In addition to rejecting the recommendations made by the General Assembly Compensation Commission for the 2011 to 2014 term, Joint Resolution 4 of 2010 also prohibits a retired member, or a member's beneficiary, from receiving a retirement allowance under the Legislative Pension Plan if the member is convicted of, or enters a plea of *nolo contendere* to any felony or to a misdemeanor related to the member's public duties and responsibilities that was committed during the member's term of office and that involves moral turpitude for which the penalty may be incarceration. Such members or retirees are subject to the forfeiture of benefits from the Legislative Pension Plan but remain entitled to receive a return of the member's or retiree's contributions with interest, less any benefits already paid prior to the forfeiture. If the member's conviction is later reversed or overturned, the member's benefits must be restored.

## **Retirement Provisions for Governors, Lieutenant Governors, and Constitutional Officers**

The Governor's Retirement Plan is a noncontributory plan that provides a pension benefit beginning at age 55. If a Governor serves one term, the pension plan benefit is equal to one-third of the annual salary received by the current Governor in office. If a Governor serves two terms, the benefit is equal to one-half of the annual salary received by the current Governor in office. The retirement allowance for members of the Governor's Retirement Plan increases whenever there is a salary adjustment for the



current Governor. This linking of post retirement adjustments to active salaries is regarded as an unlimited compound COLA.

If a Governor leaves office due to a disability, the retirement allowance begins immediately and continues through the period of disability. A surviving spouse receives 50% of the retirement benefit that the Governor received or would have received.

Lieutenant Governors and other constitutional officers participate in the Employees' Pension System unless the individual served the State prior to January 1, 1980, and elected to remain in the Employees' Retirement System. All provisions of the Employees' Pension System and the Employees' Retirement System apply to participating constitutional officers with two exceptions: (1) constitutional officers have immediate vesting rights; and (2) constitutional officers receive a minimum benefit equal to 10% of the salary received in the last term of service.

## Chapter 12. Actuarial Aspects

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The ultimate cost of any retirement system includes the benefits paid to participants and the expenses incurred for administration. These benefit costs can extend over several decades. For example, a retirement system's liabilities and obligations to a member can extend over the 30 years that the member works plus the 20 to 30 years that the member is retired. Therefore, a retirement system must have a long-term funding plan that provides for the system's ultimate cost.

### Funding Method

There are three basic methods by which retirement systems are funded. They are as follows:

***Pay-as-you-go Funding:*** The employer funds retirement benefits as they come due by using pension contributions from active employees to pay for benefits of current retirees, with the employer making up any shortfall. No provisions are made to fund retirement benefits when the liabilities are incurred (*i.e.*, during an employee's career), so there is no pension "trust fund" to administer. For example, Social Security is a pay-as-you-go system that uses proceeds from the Social Security payroll tax paid by current employees to pay benefits for current retirees. Although this method produces a low cash outlay in the system's early years before many employees transition to retirement, the liabilities continue to accumulate. As a result, the employer's cash outlay increases dramatically as the system matures and retirement benefits exceed contributions from current employees.

***Terminal Funding:*** At the time of retirement, the employer purchases an annuity to provide the retiree with an income during the remainder of the retiree's life. Again, this method produces a low cash outlay in the early years of a system. However, as the system matures, the employer's cash outlay increases and becomes volatile.

***Advance Funding:*** The employer funds retirement benefits as the liability is incurred by making periodic payments to a fund that is invested to provide future retirement benefits. While this method produces a higher cash outlay in the early years of a system than pay-as-you-go funding, its ultimate cost is less because the obligations and liabilities of the system are partially offset by investment income earned by the pension trust fund. The success of advance funding depends in large part on the accuracy of the actuarial assumptions that are used to project future

benefit obligations, and hence determine the current payments that are made toward those future obligations. If actual experience deviates from those assumptions, the contributions made in the present day may not be sufficient to pay for future benefits. With the enactment of the federal Employee Retirement Income Security Act in 1974, all private defined benefit plans must be advance funded. Public pension plans are exempt from the federal Employee Retirement Income Security Act, but the vast majority are advance funded.

When the General Assembly established the Teachers' Retirement System, the Employees' Retirement System, and the State Police Retirement System, it intended to advance fund all of these systems. However, in the years between 1962 and 1974, the State granted various benefit enhancements that were not advance funded. Consequently, in 1979, the General Assembly reiterated its intent to advance fund all retirement benefits through the enactment of Chapters 23 and 24. Since that time, all of the State's systems are funded utilizing an advance funding method.

### **Accrued Liabilities**

The system currently uses the entry age normal cost method to determine the actuarial accrued liability on which future employer contribution rates will be based. Under this funding method, the total contribution rate consists of two elements, the normal cost rate and the unfunded actuarial liability rate. The normal cost represents the value of retirement benefits earned by employees in the current year, assuming all assumptions are precisely accurate, there are no changes in the plan over the lifetime of the employee, and all of the employee's service is accrued after the establishment of the plan. The accrued liability represents the value of retirement benefits earned in prior years, and includes:

- the liability for benefits earned by employees under pre-existing pension plans before the establishment of the current plan;
- the total liability associated with any retroactive benefit enhancement; and
- the net effect of any previous actuarial gains and losses resulting from deviations from assumptions, or changes in assumptions.

### **Actuarial Assumptions**

As indicated above, advance funding is dependent on the accuracy of actuarial determinations based on a variety of demographic and economic assumptions. As the calculation of accrued liabilities includes a projection of future liabilities for every

current member of the system, it relies heavily on assumptions about their future behavior, including:

- ***Mortality*** – the number of deaths at various ages that are expected to occur annually;
- ***Disability*** – the number of employees who will retire on some type of disability allowance rather than on a normal service allowance;
- ***Turnover*** – the number of employees who leave service prior to retirement, either before eligibility for deferred benefits, or after eligibility;
- ***Retirement Rates*** – the percentage of members who choose to retire when they are first eligible and at subsequent intervals;
- ***Future Salary Increases*** – an estimate of future salaries for plan participants;
- ***Cost-of-living Increases*** – an assumption concerning retirees’ post retirement cost-of-living increases; and
- ***Investment Return*** – the rate of return on the system’s investment portfolio.

The assumptions used for the actuarial valuation of the State’s system are recommended by the State’s actuary and adopted by the board of trustees based upon periodic analysis of the system’s experience. Differences between assumed and actual experience (actuarial gains and losses) affect the system’s unfunded actuarial liabilities. Therefore, these actuarial assumptions are subjected to a periodic “experience investigation,” which is a comparison of actual experience with the actuarial assumptions used. The variation of an assumption from actual experience can lead to a gain or loss that must be amortized over time. However, gains and losses often offset each other and thus do not drastically affect annual costs in the aggregate. Maryland law requires an experience investigation at least once in each five-year period. The last experience study was based on actuarial results from the four years through June 30, 2006. The next scheduled experience study will reflect results from the five years through June 30, 2011. Any changes to actuarial assumptions will be reflected in the fiscal 2014 contribution rates.

Following the 2007 actuarial experience study, the State Retirement and Pension Systems’ board of trustees adjusted several of the system’s economic and actuarial assumptions. As of June 30, 2010, the following significant assumptions are in place:

- a rate of return on investments of 7.75% compounded annually (adopted in calendar 2003);
- projected salary increases of 3.5% compounded annually, attributable to inflation (adopted in calendar 2007);
- post retirement cost-of-living increases of 2.75% per year for members subject to a 3.0% cap on cost-of-living increases and 3.0% for most other members (adopted in calendar 2009); and
- rates of mortality, termination of service disablement, and retirement based on actual experience during the period from 1981 through 2006 (adjusted in calendar 2007).

## **Asset Valuation**

The equation to calculate the pension system's unfunded liabilities has two components: the calculation of total liabilities, discussed in the previous section, and the calculation of the assets available to pay those liabilities, which is the focus of this section. Most public pension plans take advantage of their long-range horizons to adjust the market value of their assets using asset smoothing strategies. Asset smoothing is a mechanism that spreads out, or smoothes, annual investment returns over a designated period of time in order to minimize volatility. The State Retirement and Pension System employs a five-year rolling average to calculate its actuarial value of assets. In this way, only one-fifth of a given annual gain or loss is recognized during the year in which it occurs. In fiscal 2009, the system experienced a shortfall of \$10.2 billion in projected investment income. However, only one-fifth of that amount (\$2.0 billion) was initially recognized during the June 30, 2009 valuation. In addition, \$389.4 million in gains from previous years was recognized, as well as \$1.0 billion in losses from fiscal 2008. Thus, asset smoothing protects the system from experiencing wild annual fluctuations in the value of its assets based on the performance of financial markets.

Asset smoothing is often limited by a final adjustment to keep the actuarial value of assets from being too far from the market value of assets. For the State Retirement and Pension System, the actuarial value is not allowed to be lower than 80.0% of market value or higher than 120.0%. Prior to calendar 2009, this "collar" had never been invoked. However, due to the precipitous drop in the market value of assets due to the financial crisis of calendar 2008 through June 2009, the system ended fiscal 2009 with its actuarial value of assets representing 136.0% of its market value of assets. This required a one-time reduction to the actuarial value of assets of more than \$4.7 billion to bring it under the 120.0% ceiling. As a result, instead of having \$8.1 billion in investment losses

from fiscal 2009 left to recognize over the remaining four years, the system has only \$3.5 billion in losses from fiscal 2009 to “smooth” over the next four years.

## **Unfunded Liabilities and Contribution Rates**

The difference between the actuarial accrued liabilities and the actuarial value of assets calculated in a given year represents the system’s total unfunded liabilities. The actuary amortizes the total unfunded liabilities over a specified period of no more than 40 years and adds that to the normal cost calculation for that year. The sum of the normal cost and the annual amortization payment represents the system’s total cost for that year. Based on system membership and payroll, the actuary then determines the annual contribution that, if all assumptions hold, is sufficient to pay the entire normal cost and the annual amortization payment for the accrued liability.

The State Retirement and Pension System’s unfunded actuarial accrued liability is amortized, as a level percentage of payroll, in two distinct pieces. The unfunded actuarial accrued liability that existed as of the June 30, 2000 actuarial valuation is being amortized over a total of 20 years to June 30, 2020. The new layer of unfunded actuarial accrued liability that arises each year is amortized over a 25-year period from the date it is incurred. For instance, the unfunded liability generated by the retroactive pension enhancement in Chapter 110 of 2006 is being amortized over 25 years beginning July 1, 2006.

## **Public vs. Private Pension Plans**

Under the provisions of the federal Employee Retirement Income Security Act, as amended by the federal Pension Protection Act of 2006, private plans are subject to very strict rules about how they calculate their liabilities and assets. The federal Employee Retirement Income Security Act plans must amortize their unfunded accrued liability as annual level dollar amounts over a period of 7 years, substantially less than the typical 20 to 30 years used by public plans. Their investment return assumptions are based on corporate bond yields, which typically are in the 4.5 to 6.5% range. Again, this is significantly lower than the 7.5 to 8.5% investment return assumptions used by most public plans. Private plans are allowed to smooth their assets over no more than 24 months, whereas public plans typically smooth their assets over 5 to 10 years. Last, private plans are subject to a “collar” that restricts the actuarial value of assets to between 90 and 110% of the market value of assets. By contrast, Maryland’s “collar” is 80 to 120%, which provides more flexibility in calculating the actuarial value of assets.

The rationale for exempting public pension plans from the federal Employee Retirement Income Security Act’s requirements is that sponsors of public plans, unlike

private companies, are not expected to go out of business. Under the federal Employee Retirement Income Security Act, if a private plan sponsor goes bankrupt or otherwise cannot honor its pension obligation, the Pension Benefit Guaranty Corporation assumes the sponsor's pension liabilities and assets. The federal Employee Retirement Income Security Act requirements are designed to ensure that private plans are well funded so that the Pension Benefit Guaranty Corporation's finances are not overwhelmed by the assumption of exorbitant unfunded liabilities. However, public plan sponsors typically do not go out of business and always have the option of raising additional revenue to honor their pension obligations. Therefore, they are exempt from the federal Employee Retirement Income Security Act requirements and do not have the option of relying on the Pension Benefit Guaranty Corporation to assume control of their plans.

### **Actuarial Funding and the “Corridor” Funding Method**

Advance funded systems like the State Retirement and Pension System seek to achieve full actuarial status, or 100% funded status, whereby the system's actuarial value of assets equals or exceeds its actuarial liabilities (current and future retiree benefits). As shown in Exhibit 12.1, the State Retirement and Pension System achieved full actuarial funding status in fiscal 2000 following nearly a decade of better-than-expected investment returns. However, negative investment returns in fiscal 2001 and 2002 resulted in a dramatic increase in the system's unfunded liabilities, which put upward pressure on State contribution rates. This prompted the State to revise its approach to move the system back toward full actuarial funding.

Exhibit 12.1 depicts the steady growth in the State's total actuarial liabilities, which spiked after the calendar 2006 benefit enhancement, and the volatility in the actuarial value of the assets and the unfunded actuarial liabilities from fiscal 1995 through 2009. Appendix 8 illustrates the impact of that volatility on the employer contribution rate of each pension subsystem. Contribution rates declined significantly as the system's funding level improved throughout the late 1990s but began increasing as the system's funding status deteriorated in fiscal 2001.

Faced with the prospect of dramatic increases in State contribution rates in fiscal 2002 due to investment losses, the State adopted a proposal to reduce the volatility of its contribution rates while still maintaining advance funding of its pension liabilities. Under the new approach, which was incorporated into the Budget Reconciliation and Financing Act of 2002 (Chapter 440), the rates for the largest systems – the employees' and teachers' systems – remained fixed at the fiscal 2002 certified rate as long as their funding levels remained in a “corridor” of actuarial funding from 90 to 110%.

**Exhibit 12.1**  
**State Retirement and Pension System of Maryland**  
**Actuarial Funding Status**  
**Fiscal 1995-2009**  
**(\$ in Billions)**

<b>Fiscal Year</b>	<b>Total Actuarial Liabilities</b>	<b>Percent Change</b>	<b>Actuarial Value of Assets</b>	<b>Percent Change</b>	<b>Unfunded Actuarial Liabilities</b>	<b>Unfunded Liabilities as a % of Total Liabilities</b>
1995	\$23.09	5.5%	\$17.67	8.6%	\$5.43	23.6%
1996	24.24	5.0%	19.46	10.1%	4.79	19.8%
1997	25.38	4.7%	21.92	12.6%	3.46	13.6%
1998	27.42	8.0%	24.85	13.4%	2.57	9.4%
1999	28.48	3.8%	27.65	11.3%	0.83	2.9%
2000	30.28	6.3%	30.65	10.9%	-0.37	-1.2%
2001	32.47	7.2%	31.91	4.1%	0.56	1.7%
2002	34.13	5.1%	32.32	1.3%	1.80	5.3%
2003	34.97	2.5%	32.63	1.0%	2.34	6.7%
2004	36.33	3.9%	33.48	2.6%	2.84	7.8%
2005	39.13	7.7%	34.52	3.1%	4.61	11.8%
2006	43.24	10.5%	35.80	3.7%	7.45	17.2%
2007	47.14	9.0%	37.89	5.8%	9.26	19.6%
2008	50.24	6.6%	39.50	4.3%	10.74	21.4%
2009	52.73	4.9%	34.28	-13.2	18.44	35.0%

Source: State Retirement and Pension System Comprehensive Annual Financial Reports and actuarial valuations

Under the corridor funding method, contribution rates for plans that fall out of their corridors, increase by an amount equal to one-fifth of the difference between the prior year's rate and the "true" actuarial rate necessary to fully fund the systems. This has the effect of stretching out any increase in State contribution rates over five years. Any benefit enhancements or other changes to either plan would require adjustments to the fixed rate. At the time the corridor method was implemented, the employees' systems were 102.2% funded, and the teachers' systems were 93.5% funded. The employees' systems fell out of their corridor in fiscal 2005, followed by the teachers' systems in fiscal 2006.



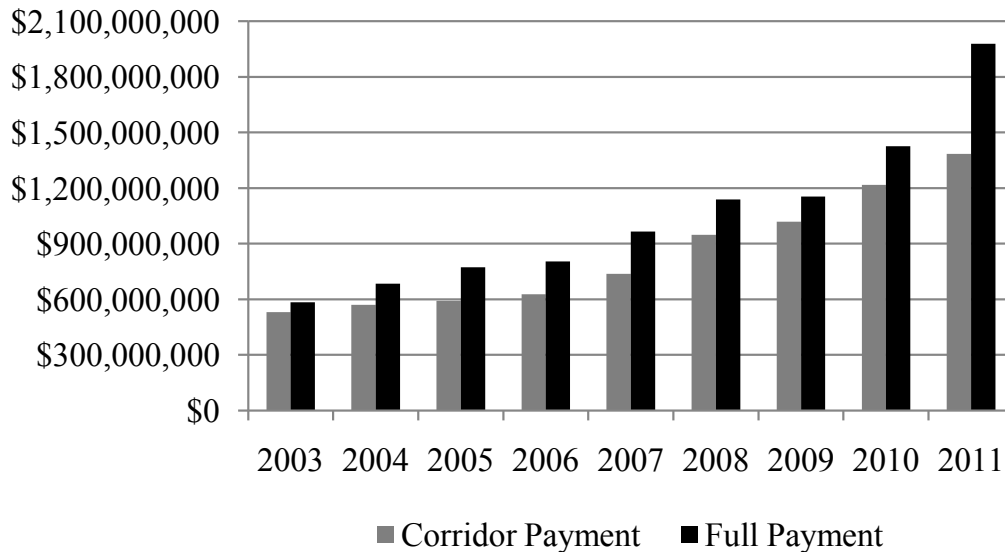
The three smaller plans, the State Police Retirement System, the Judges' Retirement System, and the Law Enforcement Officers' Pension System, and the municipal pool of participating local units, have remained under the prior methodology, whereby the contribution rate is reset by the board of trustees and the actuary each year. The decision to exclude the smaller systems reflected concerns by the actuary and the board of trustees about the relative funding levels of these systems (the State Police Retirement System was 131% funded, while the Law Enforcement Officers' Pension System was 57% funded). These smaller systems are more volatile and would be harder to keep within corridors.

In the long-term, the corridor approach creates greater stability and predictability in budgeting but carries potential risks as well. As long as the employees' and teachers' systems stayed within their corridors, pension contributions increased only as a factor of payroll growth. Under the prior methodology, two consecutive years of poor investment performance would have caused the contribution rate to spike up at the same time that the State was experiencing declining tax revenues. The corridor method insulated the State from having to dramatically increase its pension contribution when it could least afford to do so.

With both the employees' and the teachers' systems having fallen out of their respective corridors, attention has shifted from the corridor method's short-term benefits with regard to the State budget to its potential long-term fiscal effects. As Exhibit 12.2 shows, the corridor method achieved its fundamental purpose by restricting the growth in State contributions under the teachers' and employees' retirement and pension plans. For the first eight fiscal years since the enactment of the corridor method, it saved the State between \$53.1 million and \$228.4 million in annual pension contributions when compared with what the State would have to pay under full actuarial funding. However, the exhibit shows that the gap between full funding and corridor funding spiked in fiscal 2011, reaching \$594.0 million. The State's fiscal 2011 contribution under the corridor method is just 70% of the full actuarial cost of the retirement and pension plans for teachers and regular State employees. Over the nine years since the enactment of the corridor method, the cumulative underfunding of the State Retirement and Pension System has reached \$1.9 billion, raising concerns about its long-term fiscal implications and the viability of the corridor method.

The systematic underfunding of the State's pension obligations attributed to the corridor method have contributed to the steady increase in its unfunded liabilities and the corresponding decline in its funded status. Although anemic investment returns over the past decade are the single largest factor contributing to the increase in unfunded liabilities, the growing disparity between the actuarial contribution required to fully fund

**Exhibit 12.2**  
**Annual State Pension Contributions**  
**Corridor vs. Full Actuarial Funding**  
**Fiscal 2003-2011**



Source: Gabriel, Roeder, Smith

State pension costs and the actual contribution based on the corridor calculation has become a significant factor. Each year, the difference between the amount that the State should be contributing under full funding and the amount it contributes under the corridor method is added to the system’s unfunded liabilities. As explained earlier, unfunded liabilities are amortized over 25 years, and the annual amortization payment is one of the two pieces of the State contribution to the pension system. Therefore, any factor that adds to the system’s unfunded liabilities, like the corridor method, puts direct upward pressure on the State contribution. Thus, the short-term budgetary savings attributed to the corridor method may be generating a long-term cost that the pension system, and the State, cannot sustain.



## **Chapter 13. Investment Overview**

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The Board of Trustees of the State Retirement and Pension System is responsible for the system's investment portfolio that, as of May 31, 2010, had a market value of \$32.4 billion. The portfolio is Maryland's largest public pool of capital. The State Retirement Agency's investment division is responsible for the day-to-day management of the portfolio in accordance with the policies and objectives established by the board. The chief investment officer, in consultation with the board's outside investment consultant, is responsible for the selection, supervision, and termination of external asset managers. All investment funds are managed by external fund managers under the supervision of the chief investment officer and the investment division.

The portfolio began in 1927 with the establishment of the Teachers' Retirement System. Its investments were essentially limited to bonds and real estate until 1965, when the General Assembly authorized investments of up to 25% of the system's assets in equities. In 1980, legislation was enacted (Chapter 290) that changed the investment standards from those used by domestic life insurance companies (bonds and real estate) to the "prudent person" standard. As a result, the board of trustees is charged with the responsibility of managing the assets of the system solely in the interests of participants and with the care, skill, and diligence that a prudent person would exercise in the conduct of similar affairs. This standard encourages the diversification of investments among various asset classes to avoid adverse experience, maximize returns, and provide financial stability. The board is required to adopt an investment operations manual setting forth the goals and objectives of the investment program and defining the policies that govern the selection and retention of investments.

### **Investment Advisors**

Beginning in 2002, the board retained the services of external investment consultants to help it navigate a market environment that has grown increasingly complex, challenging, and competitive. In June 2002, the board selected Ennis Knupp & Associates to act as its general investment consultant. Ennis Knupp provides a broad array of investment consulting services to the board and staff, including asset liability studies, asset allocation advice, and periodic performance review of the system's outside investment managers. Ennis Knupp also provides general information regarding investment trends and developments.

In the past 10 years, the system also hired specialty consultants in the areas of private equity and real estate. In 2004, the board selected Altius Associates to act as the system's private equity consultant. In 2005, it contracted with PCA Real Estate

Advisors, Inc. to serve as its real estate consultant. In addition to providing advisory, reporting, and analytical services, these two specialty consultants help the system identify and conduct comprehensive due diligence on prospective investments. In May 2010, the board rebid both specialty consultant contracts: Altius was rehired as the private equity consultant under a five-year contract, and Pension Consulting Alliance, Inc. was awarded a five-year contract for real estate consulting.

## **External Manager Oversight**

With all system assets managed by external managers according to rules established in statute and by the board, oversight of those managers is a key function of the board and investment division staff. Through its manager compliance program, the board seeks to minimize loss due to failings in the external managers' business processes, information systems, or internal controls. Through annual planning processes, the board determines resource needs on an ongoing basis while tracking progress and ensuring that each manager is meeting the system's objectives and expectations.

A central tool in the agency's oversight of external managers is the external manager Watch List maintained by investment division staff. The Watch List provides the investment committee and the board with additional information about managers that are not meeting agency expectations. Managers may be added to the Watch List for any of the following reasons:

- organizational issues (change in ownership, team composition, or business organization);
- performance issues (one-, three-, and five-year performance below benchmarks, below peers, or inconsistent with manager's style and risk control); and
- other matters (in general, failure to comply with terms of the contract or to provide adequate client service).

Managers may remain on the Watch List indefinitely and may be terminated at any time, whether or not they have been placed on the Watch List.

## **Asset Allocation**

Before fiscal 1987, the board's investment strategy for the allocation of system assets called for a 60% investment in equities and a 40% investment in fixed income securities. However, this asset allocation shifted dramatically in fall 1987 when the board of trustees used \$2.3 billion from the sale of equities and \$1.8 billion from the sale

of fixed income securities to acquire nearly \$4.0 billion in additional fixed income securities. These bonds were then “dedicated” to paying the benefits of retirees who were retired as of June 30, 1987. The State’s actuary had projected the cash flow required to pay the benefits of these retirees out to the year 2062. By establishing the Dedicated Bond Fund, the system matched the schedule of interest earnings and bond maturity dates to the schedule of these projected benefits. As a result, the system’s unfunded liability decreased by approximately \$1.4 billion in fiscal 1990, which was largely responsible for the 1.4% decrease in the State’s overall contribution rate to the systems (from 15.6% in fiscal 1989 to 14.2% in fiscal 1990). At the end of fiscal 1990, the board added approximately \$800 million in additional bonds to the fund, which was dedicated to paying the benefits of retirees who had retired as of June 30, 1989. As part of a restructuring of the system’s fixed income program in the first quarter of 2003, the Dedicated Bond Fund was closed and its fixed income securities were transferred to an indexed bond portfolio.

During the late 1990s, when equities were realizing dramatic gains, the board shifted substantial funds from fixed income securities to equities to address what it perceived to be an “under-weighting” of equities in the system’s portfolio. It also, for the first time, branched out into alternative asset classes, establishing a 2.0% target in 1999 for investments in private equity partnerships. As a result, equity investments totaled 69.2% of the system’s assets on June 30, 2002, while fixed income investments totaled just 22.1%. Following the precipitous decline in the equity markets in 2001 and 2002, the board reversed course, adopting a new asset allocation policy in calendar 2002 that established asset allocation targets based on three competing liability oriented objectives as follows:

- achieving and maintaining a fully funded pension plan;
- minimizing contribution volatility year to year; and
- achieving surplus assets.

The board initially established an equity allocation target of 60.0%, resulting in a gradual diminution in the system’s reliance on equity investments, though they still represented a substantial majority of system assets. The equity allocation target was subsequently raised to 65.0%, with sub-asset targets for domestic, global, international, and private equity. The global equity sub-asset target (10.0%) did not take effect until fiscal 2006, resulting in a reduction of the domestic equity target from 48.0 to 40.0%. As of June 30, 2005, equity totaled 65.3% of the system’s assets.

In calendar 2008, the board once again revisited its asset allocation, making two substantial adjustments, first in January and again in September. The fundamental purpose of these two adjustments was to diversify the fund's investments by expanding its holdings in alternative asset classes and diminishing its holdings in both public equities and fixed income. The changes are summarized in Exhibit 13.1, with the January changes reflected in the June 2008 targets, and the September changes reflected in the June 2009 targets. It bears noting, however, that the asset allocation changes represent long-term goals. Due to market conditions and the nature of private equity investing, the fund has not yet achieved most of the new targets established in calendar 2008 and may not fully reach them until at least fiscal 2014.

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**Exhibit 13.1**  
**Asset Allocation Targets**  
**State Retirement and Pension System of Maryland**  
**Fiscal 2007-2009**

	<b><u>6/30/2009</u></b> <b><u>Strategic</u></b> <b><u>Targets</u></b>	<b><u>6/30/2008</u></b> <b><u>Strategic</u></b> <b><u>Targets</u></b>	<b><u>6/30/2007</u></b> <b><u>Strategic</u></b> <b><u>Targets</u></b>
<b>Public Equity</b>			
Domestic Stocks	13.0%	27%	40.0%
International Stocks	13.0%	16%	13.0%
Global Equity	13.0%	14%	10.0%
<b>Total Public Equity</b>	<b>36.0%</b>	<b>57.0%</b>	<b>63.0%</b>
Private Equity	15.0%	5.0%	2.0%
Real Estate	10.0%	10.0%	5.0%
Fixed Income	15.0%	17.0%	28.0%
Real Return Strategies	10.0%	5.0%	2.0%
Absolute Return	10.0%	5.0%	n/a
Credit Opportunity	1.0%	n/a	n/a
Cash and Other	3.0%	1.0%	n/a
<b>Total Assets</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: State Retirement Agency

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## **Terra Maria Program**

In September 2008, the system's new Emerging Manager program underwent a significant expansion, restructuring, and name change. First, the program's name was changed to the Terra Maria program. While the original program's target had been raised from 1 to 2% of the portfolio, funding for the Terra Maria program was earmarked at approximately 5%. Each investment manager will be assigned to the appropriate asset or sub-asset class, depending on their respective holdings. Finally, the system hired six new program managers in addition to Northern Trust, the original program manager.

Instead of selecting participating managers and their allocations, each program manager is responsible for recommending investment managers to the chief investment officer that are consistent with the program's focus. The new program guidelines do not place a ceiling on the size of the firms in the program so that the program will not be forced to "graduate" investment managers who successfully grow their portfolios beyond the ceiling. Although the program managers are responsible for performing due diligence on all firms they recommend to the chief investment officer, all hiring, benchmark selection, and rebalancing decisions are left solely to the chief investment officer. Each investment manager in the Terra Maria program will be a part of the State Retirement and Pension System portfolio and evaluated against its benchmark. Participating investment managers may be selected in any of four asset classes: domestic equity, global equity, international equity, and fixed income (including real return).

## **Public Equities**

Exhibit 13.2 outlines the performance of the system's public equity portfolio for fiscal 2010 and provides 3-, 5-, and 10-year time weighted total returns. The system held \$16.3 billion in public equity investments as of June 30, 2010. As the exhibit shows, the public equity portfolio is roughly divided between domestic and international funds (20.0 and 21.8%, respectively), with global equity accounting for almost 10.0% of total assets. Passively managed assets are invested in funds that track broad market indices such as the Standard & Poors 500 or the Russell 3000. Actively managed assets are invested by managers who seek to beat broad market indices by accepting greater investment risks.

One-year rates of return for passively managed U.S. equities (15.0 %) exceeded those of actively managed U.S. equities (14.6%), but the reverse is true for international equities (9.2% for passive funds compared with 13.2% for active funds). All equity sectors achieved positive one-year rates of return, but long-term returns reflect market stress during the financial crisis of fall/winter 2008-09, which resulted in negative three-year returns for all equity sub-classes.



**Exhibit 13.2**  
**Equity Performance Comparisons**  
**as of June 30, 2010**

	June 30, 2010		Time Weighted Total Returns to June 30, 2010					Benchmark Since Inception
	Millions	% Total	1 Year	3 Years	5 Years	10 Years	Inception	
<b>U.S. EQUITY</b>								
Passively Managed Funds	\$2,856.9	9.0%	15.0%	-	-	-	14.1%	14.3%
Actively Managed Funds <sup>1</sup>	\$1,876.6	5.9%	14.6%	-12.9%	-3.4%	-	-	-
Terra Maria	\$1,620.7	5.1%	20.8%	-5.0%	-	-	-2.7%	-5.8%
<b>U.S. Equity Subtotal</b>	<b>\$6,354.2</b>	<b>20.0%</b>	<b>15.9%</b>	<b>-9.8%</b>	<b>-0.8%</b>	<b>-1.1%</b>	<b>-</b>	<b>-</b>
<hr/>								
Russell 3000			15.7%	-9.5%	-0.5%	-0.9%	-	-
S&P 500			14.4%	-9.8%	-0.8%	-1.6%	-	-
<hr/>								
<b>INTERNATIONAL EQUITY</b>								
Passively Managed Funds	\$3,311.4	10.4%	9.2%	-10.8%	3.3%	-	9.8%	9.2%
Actively Managed Funds <sup>1</sup>	\$2,983.3	9.4%	13.2%	-11.2%	3.3%	-	-	-
Terra Maria	\$480.7	1.5%	13.34%	-	-	-	-9.7%	-12.7%
Currency Management	162.7	0.5%						
<b>International Equity Subtotal</b>	<b>\$6,938.1</b>	<b>21.8%</b>	<b>15.2%</b>	<b>-9.6%</b>	<b>4.2%</b>	<b>1.6%</b>	<b>-</b>	<b>-</b>
<hr/>								
MSCI AC WORLD, ex US Net			10.4%	-10.7%	3.4%	-	-	-
<hr/>								
<b>GLOBAL EQUITY</b>								
Actively Managed Funds <sup>1</sup>	\$2,888.7	9.1%	12.8%	-10.7%	-	-	-0.1%	-0.3%
Terra Maria	\$59.7	0.2%	10.7%	-	-	-	14.2%	12.9%
Currency Management	\$49.3	0.2%	-	-	-	-	-	-
<b>Global Equity Subtotal</b>	<b>\$2,997.7</b>	<b>9.4%</b>	<b>15.4%</b>	<b>-10.1%</b>			<b>0.3%</b>	<b>-0.1%</b>
<hr/>								
MSCI AC World Net			11.8%	-10.5%				
<hr/>								
<b>Total Public Equity</b>	<b>\$16,290.0</b>	<b>51.2%</b>	<b>15.6%</b>	<b>-9.8%</b>	<b>0.6%</b>	<b>-0.4%</b>		

<sup>1</sup>Does not include Terra Maria.

Source: Maryland State Retirement Agency

## Fixed Income Securities

Exhibit 13.3 sets forth the system's fixed income performance for fiscal 2010 and provides 3-, 5-, and 10-year time weighted total returns and the time weighted return for each major sub-class. The system held \$6.1 billion in fixed income investments as of June 30, 2010.

**Exhibit 13.3**  
**Fixed Income Performance Comparisons**  
**as of June 30, 2010**

	June 30, 2010		Time Weighted Total Returns to June 30, 2010					Benchmark Since Inception
	Millions	% Total	1 Year	3 Years	5 Years	10 Years	Inception	
<b>Fixed Income</b>								
Passively Managed Funds	\$1,110.3	3.5%	9.6%	7.6%	5.6%	-	5.1%	5.1%
Actively Managed Funds <sup>1</sup>	\$4,743.9	14.9%	15.5%	7.0%	5.4%	-	-	-
Terra Maria	\$198.1	0.6%	14.7%	-	-	-	16.3%	24.2%
Custom Fixed Income								
Benchmark			9.5%	6.9%	5.4%	-	-	-
<b>Total Fixed Income</b>	<b>\$6,052.3</b>	<b>19.0%</b>	<b>14.3%</b>	<b>8.1%</b>	<b>6.0%</b>	<b>6.7%</b>	<b>-</b>	<b>-</b>

<sup>1</sup>Does not include Terra Maria.

Source: Maryland State Retirement Agency

As of June 30, 2010, actively managed fixed income assets represented 14.9 % of the system's portfolio, while passively managed fixed income assets represented 3.5 % of the portfolio. Based on one-year returns, active fixed income managers outperformed the passively managed fixed income assets (15.5% vs. 9.6%). Overall, during fiscal 2010, the system's fixed income securities returned 14.3 %.

## Real Estate Holdings

Exhibit 13.4 sets forth the performance of the system's real estate holdings for fiscal 2010 and provides 3-, 5-, and 10-year time weighted total returns to June 30, 2010. The system held \$2.0 billion in real estate investments as of June 30, 2010. Over the prior two years, the system altered the focus of its real estate program from direct investments in neighborhood/community shopping centers and suburban office buildings (most of which were located in Maryland) in favor of investing in private market real estate partnerships. The board of trustees has authorized the divestment of all direct real estate holdings but is waiting for the real estate market to recover before selling its holdings.

**Exhibit 13.4**  
**Real Estate Funds and Direct Estate**  
**as of June 30, 2010**

	June 30, 2010		Time Weighted Total Returns to June 30, 2010					Benchmark Since Inception	
	Millions	% Total	1 Year	3 Years	5 Years	10 Years	Inception	Inception	
<b>Real Estate</b>									
Private Market Investments <sup>1</sup>	\$1,169.8	3.7%	-9.9%	-10.3%	1.2%	6.3%	-	-	
Real Estate Investment Trusts (REITS)	\$846.9	2.7%	25.0%	-12.8%	-0.2%	9.5%	-	-	
NCREIF Property Index			-9.6%	-4.3%	4.2%	7.1%			
LaSalle REIT Benchmark			56.1%	-10.5%	-0.5%	9.5%			
<b>Total Real Estate</b>	<b>\$2,016.6</b>	<b>6.3%</b>	<b>3.6%</b>	<b>-11.7%</b>	<b>0.5%</b>	<b>7.8%</b>	<b>-</b>	<b>-</b>	

<sup>1</sup>Includes direct investments.

Source: Maryland State Retirement Agency

Of the three major asset classes in the system's portfolio (public equity, fixed income, and real estate), real estate investments were by far the weakest performing asset class in fiscal 2010, reflecting the dramatic downturn in the commercial real estate market that began in calendar 2008. The system's real estate investments returned 3.6% for the fiscal year.

## Private Equity

Beginning in fiscal 2000, the system embarked on a program to commit \$250 million in private equity investments, which include venture capital. As noted in Exhibit 13.1, the system's private equity program has been expanded dramatically. As of June 30, 2009, the target allocation had increased from 2.0% of total assets to 15.0% (it was subsequently lowered to 12.0% as part of a restructuring of the portfolio in May 2010). Even when financial markets are strong, building a private equity portfolio can take many years. The system's efforts were further interrupted by the financial crisis of fall/winter 2008-09, when many limited partnerships stopped raising funds and the system placed a priority on holding cash to ensure it could meet all of its obligations at a time when many assets were not trading. As a result, private equity composed 3.2% of total assets on June 30, 2010.

For fiscal 2010, private equity returned 14.2%, with average annual returns of 0.1% over 3 years, 9.1% over 5 years, and 3.5% over 10 years. The number of private equity managers has grown at a rapid pace, from just a handful in fiscal 2006 to more than 75 in fiscal 2010.

## **Alternative Asset Classes**

Over the past four years, the State Retirement and Pension System has added three new asset classes to its investment portfolio. As noted earlier, the system, under the leadership of its new chief investment officer, has sought to diversify away from public equities and fixed income. Toward that end, it added allocations to real return securities, absolute return investments, and credit/debt strategies. Real return strategies are investments that hedge against inflation and include Treasury Inflation-Protected Securities, commodities, and infrastructure. Absolute return investments consist of multi-strategy hedge funds. Credit/debt strategies include distressed debt, mezzanine debt, and public-private partnerships, including the federal Public-Private Investment Partnership created by the federal stimulus legislation.

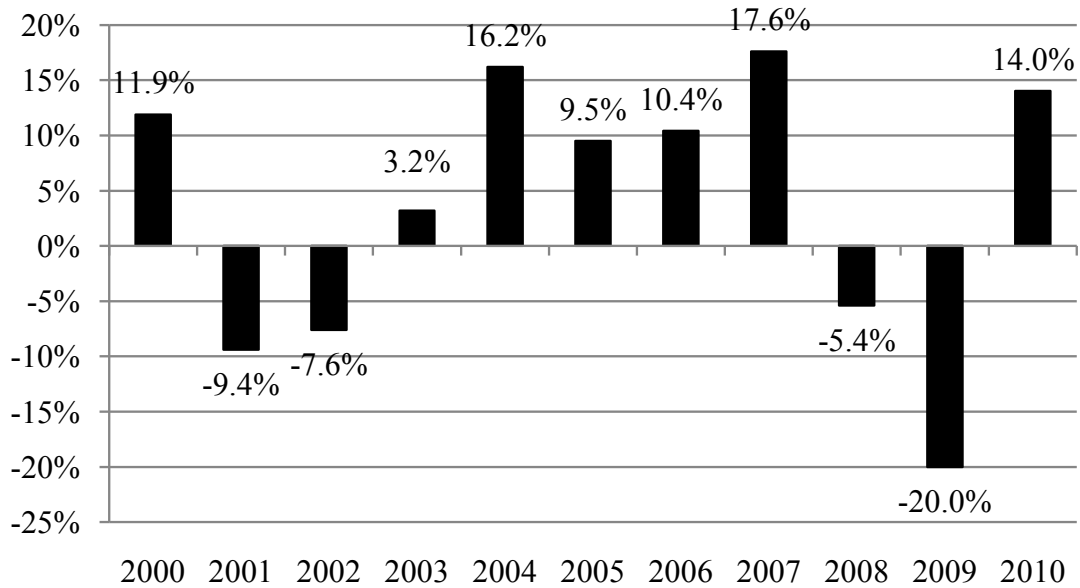
As of June 30, 2010, real return holdings accounted for 10.5% of assets, absolute return accounted for 4.4%, and credit/debt strategies were 3.4%. As most of these asset classes are new, long-term results are not generally available. However, one-year returns as of June 30, 2010, were 12.1% for real return, 7.5% for absolute return, and 19.2% for credit/debt strategies.

## **Investment Performance Overall**

Exhibits 13.5 and 13.6 illustrate the systems' 10-year history of total annualized returns and the 10-year growth of the investment portfolio, respectively, from fiscal 2000 through 2010. As indicated in Exhibits 13.5 and 13.6, the system experienced its first negative return in 10 years at the close of fiscal 2001 with a reported loss of 9.4%, and the first decrease in market value of its assets since 1996, sustaining a loss of \$3.6 billion. These losses continued through fiscal 2002, when the system again reported a loss of 7.6% and a further decrease in market value of its assets of \$3 billion. The 7.6% loss experienced by the system was 15.6 percentage points below the system's actuarial target of 8.0%.

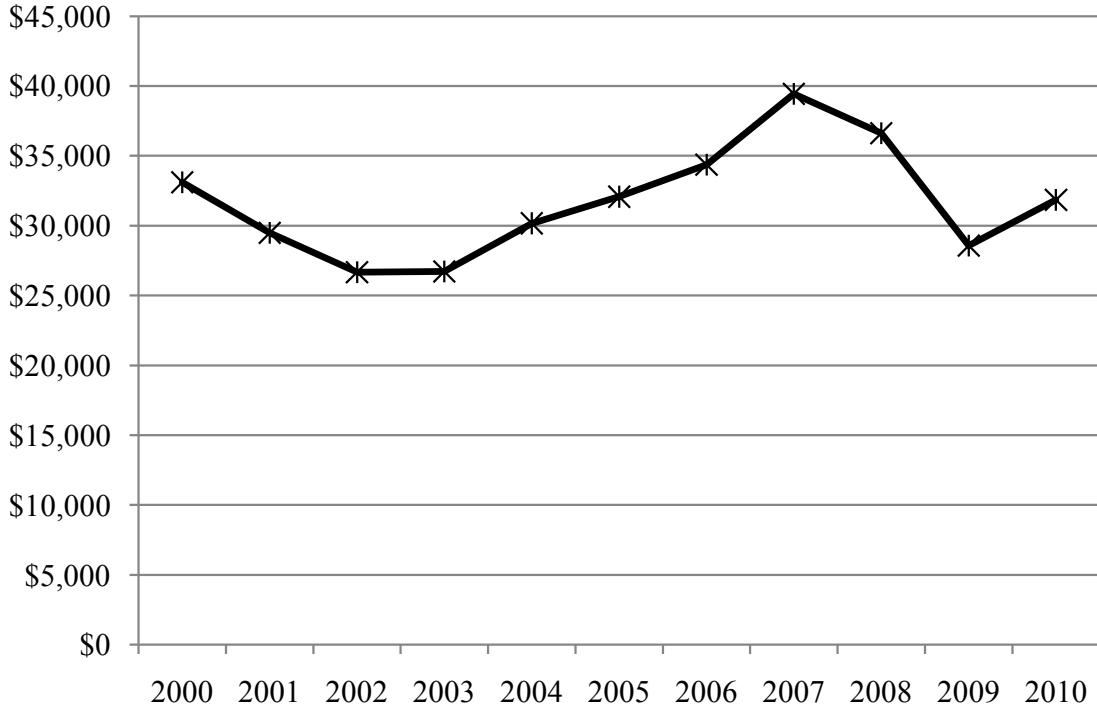
It was not until fiscal 2004 when the system's annual investment returns exceed the new actuarial target of 7.75%, which was revised downward from 8.0% after the three years of poor performance. Exhibit 13.7 details the management and performance of the portfolio by asset class for fiscal 2005, including the 3-, 5-, 7-, and 10-year

**Exhibit 13.5**  
**State Retirement and Pension System**  
**Annual Investment Returns**  
**Fiscal 2000-2010**



Source: State Retirement and Pension System of Maryland

**Exhibit 13.6**  
**State Retirement and Pension System**  
**Market Value of Assets**  
**Fiscal 2000-2010**  
**(\$ in Millions)**



Source: State Retirement and Pension System of Maryland

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**Exhibit 13.7**  
**Annualized Rates of Return by Asset Class**  
**as of June 30, 2010**

	<u><b>1 Year</b></u>	<u><b>3 Years</b></u>	<u><b>5 Years</b></u>	<u><b>10 Years</b></u>
Public Equity	15.6%	-9.8%	0.6%	-0.4%
Fixed Income	14.3%	8.1%	6.0%	6.7%
Real Estate	3.6%	-11.7%	0.5%	7.8%
Private Equity	14.2%	0.1%	9.1%	3.5%
Real Return	12.1%	7.6%	-	-
Absolute Return	7.5%	-	-	-
Credit/Debt	19.2%	-	-	-
<b>Total Fund</b>	<b>14.0%</b>	<b>-4.8%</b>	<b>2.3%</b>	<b>2.1%</b>

Source: Maryland State Retirement Agency

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time weighted total returns. Despite strong portfolio performance from fiscal 2004 through 2007, and again in fiscal 2010, the losses at the beginning and end of the 10-year period bring the portfolio's 10-year average returns to just 2.1%, well below the 7.75 % actuarial target.

## **Chapter 14. Maryland Teachers' and State Employees' Supplemental Retirement Plans**

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The State of Maryland has authorized four different deferred compensation programs for its employees in accordance with federal income tax laws and regulations. While these programs are not part of the State Retirement and Pension System, they provide an increasingly important supplemental benefit for employees who elect to participate. As of July 1, 2009, the deferred compensation programs authorized by the State were the:

- Deferred Compensation Program operated pursuant to Internal Revenue Code Section 457;
- Tax-Deferred Annuity Program for Educational Employees under Internal Revenue Code Section 403(b);
- Savings and Investment Program under Internal Revenue Code Section 401(k); and
- Employer Matching Plan operated under Internal Revenue Code Section 401(a).

The federal rules regarding each of these plans are listed in Appendix 9.

### **Administration**

Prior to 1985, responsibility for the administration of the various programs was scattered among several State agencies. The 457 program was the responsibility of a seven-member Board of Trustees of the State Employees Deferred Compensation Plan. The 403(b) program was the responsibility of the Board of Trustees of the Maryland State Retirement and Pension System, and the 401(k) program was the responsibility of the Department of Personnel.

Since enactment of Chapter 741 of 1985, responsibility for the administration of the 457, 403(b), and 401(k) plans has been vested in a single nine-member Board of Trustees of the Maryland Teachers' and State Employees' Supplemental Retirement Plans. In 1998, Chapter 530 allocated the additional responsibility of administering the 401(a) plan to the board. The board members are appointed by the Governor to staggered four-year terms. Three members must be appointed from the following State departments and offices:



- Department of Budget and Management
- Department of Education
- Office of the Comptroller
- Office of the Treasurer
- State Retirement Agency
- Maryland Higher Education Commission

In addition, three members must be appointed from those eligible to participate in the programs, and three must be members of the public who are not eligible to participate, including one who has experience with deferred compensation and salary reduction plans.

The board's operating budget for fiscal 2009 was \$1,437,000, which was financed by a 0.05% fee on the assets of the participants in all of the programs. In addition to a 14-member staff, the board contracts for outside investment advisory services. As of August 1, 2010, investment advisory services are provided by Mercer Investment Consulting. The actual hands-on administration, including participation and investment carrier coordination, is performed by Nationwide Retirement Solutions, Inc.

### **457 Program – Deferred Compensation**

The 457 program has the largest amount of assets of the three deferred compensation programs at this time. Participation is open to (1) officers and employees of the State; (2) members of the General Assembly; (3) judges, clerks, and employees of the various courts; (4) registers and other employees of the Office of the Register of Wills; and (5) part-time and contractual State employees. Beginning January 1, 2009, participants may defer up to 100% of adjusted gross salary annually, not to exceed \$16,500, which is accomplished through pre-tax payroll deductions. Participants over the age of 50 may contribute an additional \$5,500 in "catch-up" contributions. In fiscal 2009, the average asset value per account was \$33,307.

**403(b) Program – Tax Sheltered Annuities**

Participation in the 403(b) program is limited to employees of the State, local governments, or local boards of education who perform services in or for educational entities. Beginning January 1, 2009, the maximum deferral is the lesser of \$16,500 annually, or 100% of annual adjusted gross salary; as with the 457 plan, participants over the age of 50 may defer an additional \$5,500 in catch-up contributions. The board assumed administrative control over this program from the State Retirement and Pension System in October 1986, at which time there were 41 participants with \$559,000 in deferrals. As of June 30, 2009, the plan had grown to 997 participants and \$3.2 million in deferrals. In fiscal 2009, the average asset value per account was \$53,312.

**401(k) Program – Savings and Investment**

Participation in the 401(k) program, which became operational on January 1, 1990, is open to all State officers and employees. Similar to the 457 and 403(b) plans, the maximum annual deferral is 100% of adjusted gross salary annually and limits participants' deferrals to \$16,500, beginning January 1, 2009, except for those over the age of 50, who can contribute an additional \$5,500 annually. In fiscal 2009, the average asset value per account in the 401(k) plan was \$22,286.

**401(a) Program – Employer Matching Plan**

Participation in this plan, which became operational on July 1, 1999, is open to all State employee members of the Employees' Pension System and certain members of the Employees' Retirement System. Chapter 530 of 1998 provides that the State is required to contribute a dollar-for-dollar amount not to exceed \$600 for each participant who actively defers to one of the three plans described above. For fiscal 2003, the match was reduced to \$500 due to fiscal constraints. The match was subsequently eliminated entirely for fiscal 2004 and 2005 due to the continuing fiscal challenges facing the State. The match was restored to a \$400 amount in fiscal 2006 and the full statutory amount of \$600 in fiscal 2007. The full statutory amount remained in place through fiscal 2009. However, once again due to the fiscal challenges facing the State, the match was eliminated entirely for fiscal 2010 and 2011.

As the match grew from fiscal 2005 to 2008, so did the total membership levels in the State's supplemental plans. Plan membership steadily increased from a low of 55,877 members in fiscal 2005 to an all time high in fiscal 2008. As of June 30, 2008, 61,362 of 84,058 eligible State employees, or 73%, were members of one or more

supplemental retirement plans. However, the extreme decline in the financial market may have altered this relationship. As the economic downturn worsened in fiscal 2009, even with the State providing a \$600 match, participation growth became nearly stagnant. By the end of fiscal 2009, participant totals increased from fiscal 2008 by only .33% or 204 members.

## **Investment Options**

Participants in the 457, 401(k), and 401(a) program have the option of investing in fixed-rate investment contracts. The fixed-rate investment contracts are bid quarterly and have a blended interest rate that is established each quarter. These are contracts with insurance or investment management companies whereby the companies promise a fixed interest rate for a specified term. In addition, participants in the 403(b) program, who are excluded from the fixed-rate contract pool, may invest in a money market fund, the Vanguard Prime Money Market Fund.

Participants in all four payroll deferral plans may take advantage of various mutual fund options. There has been considerable change in the available options: 22 of the 31 funds currently available to participants are new since 2005. Moreover, in fiscal 2006, “life cycle funds” were offered to participants. Life cycle funds are mutual funds that feature an asset mix that adjusts over time as the individual investor ages. With life cycle funds, asset allocation is handled by the fund managers, so members in essence receive investment management services for the same fees they currently pay to individual mutual fund managers.

As of June 30, 2010, the following mutual funds were available to participants in all four payroll deferral plans:

- Short-term Investments
  - Vanguard Prime Money Market Fund
  - Investment Contract Pool
- Bonds
  - PIMCO Total Return Fund
- Balanced
  - Fidelity Puritan Fund
- Large-cap Stocks
  - Vanguard Institutional Index Fund

Growth Fund of America  
Neuberger Berman Partners Fund  
Goldman Sachs Large Cap Value Fund  
Vanguard Value Index Fund – Inst'l Shares  
Vanguard Value Index Fund – Inv Shares

- Mid-cap Stocks
  - Dreyfus Mid Cap Index Fund
  - Vanguard Mid Cap Index Fund
  - INVESCO Van Kampen Mid Cap Growth Fund
  - T. Rowe Price Mid Cap Value Fund
  
- Small-cap Stocks
  - T. Rowe Price Small Cap Stock Fund
  - Vanguard Small Cap Growth Index Fund
  - Vanguard Small Cap Growth Index Fund – Inv Shares
  - Vanguard Small Cap Growth Index Fund – Inst'l Shares
  
- International Stocks
  - Vanguard Total International Stock Index Fund
  - American Funds Euro Pacific Growth Fund
  
- Retirement Funds (“Life Cycle Funds”)
  - T. Rowe Price Retirement Fund
  - T. Rowe Price Retirement 2005 Fund
  - T. Rowe Price Retirement 2010 Fund
  - T. Rowe Price Retirement 2015 Fund
  - T. Rowe Price Retirement 2020 Fund
  - T. Rowe Price Retirement 2025 Fund
  - T. Rowe Price Retirement 2030 Fund
  - T. Rowe Price Retirement 2035 Fund
  - T. Rowe Price Retirement 2040 Fund
  - T. Rowe Price Retirement 2045 Fund
  - T. Rowe Price Retirement 2050 Fund
  - T. Rowe Price Retirement 2055 Fund

## **Program Administration and Fees**

Since January 1, 2003, Nationwide Retirement Solutions, Inc. has served as the plan administrator for all of the supplemental plans. Prior to that time, the plan

administrator was PEBSCO. Nationwide is under contract to administer the supplemental plans through calendar 2012. Each participant in a plan is assessed an annual asset fee of 0.19% (0.14% to Nationwide, which was reduced from 0.23% in 2008 and .05% to the board), not to exceed \$2,000.

For fiscal 2009, the board approved an additional one-time \$3 charge on each supplemental account in May 2009 in response to depleted reserves necessary to cover the board's operating expenses. This was not the first time that the board's fee structure has resulted in a series of charges to fees. In fiscal 2002 and 2003, in response to overall poor market returns, the board imposed a flat per account fee of \$8 and \$6, respectively, to meet revenue short falls. In an attempt to avoid these types of ad hoc supplemental account charges, beginning in May 2010, a \$0.50 cent per month, per account, charge is assessed on all 457, 401(k), and 403(b) plan accounts. Exhibit 14.1 provides a summary of Nationwide and board fees as a percentage of total assets for the supplemental plans for fiscal 2005 through 2009 and the board's operating expenses and reserves for the same period of time.

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**Exhibit 14.1**  
**Assets and Participants' Fees and Agency Operating Budgets**  
**Fiscal 2005-2009**  
**(\$ in Billions)**

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Invested Assets	\$1.97	\$2.15	\$2.50	\$2.33	\$2.02
Nationwide Fees	\$4,135,755	\$4,505,329	\$5,125,018	\$4,649,862	\$3,014,920
<i>as Percent of Assets</i>	0.23%	0.23%	0.23%	0.23/0.14% <sup>3</sup>	0.14%
Board Fees, Interest, Adjustments	\$1,719,944	\$1,301,598	\$1,158,166	\$1,253,098	\$1,153,949
Fiscal 2009 \$3 Charge	n/a	n/a	n/a	n/a	\$204,006
<i>as Percent of Assets</i>	0.11/0.07% <sup>1</sup>	0.07/0.05% <sup>2</sup>	0.05%	0.05%	0.05%
Operating Expenses	\$1,338,905	\$1,303,763	\$1,311,258	\$1,383,759	\$1,436,942
Carryover Balance	\$826,029	\$823,864	\$670,772	\$546,152	\$467,165
<i>Carryover Balance as Percent of Operating Expenses</i>	61.69%	63.19%	51.15%	39.47%	32.5%

<sup>1</sup>Board fee reduced January 1, 2005.

<sup>2</sup>Board fee reduced January 1, 2006.

<sup>3</sup>New administrator's contract ratified January 30, 2008, reduced Nationwide fee to 0.14%.

Source: Maryland Supplemental Retirement Plan; Department of Legislative Services

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**All Plans – Assets, Deferrals, Participants, and Average Accounts**

Exhibit 14.2 provides a summary of the plans' assets, deferrals, participants, and average account values for fiscal 2005 through 2009.

**Exhibit 14.2**  
**All Plans – Assets, Deferrals, Participants, and Average Account Values**  
**Fiscal 2005-2009**

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>% Change</u> <u>2008-2009</u>	<u>% Change</u> <u>2005-2009</u>
<b>Plan Assets</b>	<b>(\$ in Millions)</b>						
457	\$1,126.6	\$1,181.0	\$1,312.2	\$1,208.8	\$1,047.0	-13.4%	-7.1%
403(b)	67.2	70.6	77.6	66.9	53.2	-20.6%	-21.0%
401(k)	733.6	834.9	1,009.5	958.1	825.7	-13.8%	12.6%
401(a)	80.3	97.3	131.5	132.0	121.1	-8.3%	50.7%
<b>Total</b>	<b>\$2,007.8</b>	<b>\$2,183.8</b>	<b>\$2,530.4</b>	<b>\$2,365.8</b>	<b>\$2,046.9</b>	<b>-13.5%</b>	<b>2.0%</b>
<b>Deferrals</b>	<b>(\$ in Millions)</b>						
457	\$54.9	\$59.9	\$68.4	\$66.4	\$68.5	3.1%	24.7%
403(b)	2.7	2.9	2.7	2.9	3.2	9.6%	19.0%
401(k)	84.4	87.7	91.6	96.5	94.9	-1.7%	12.5%
401(a)	0.0	13.5	20.2	20.5	20.2	-1.1%	n/a
<b>Total</b>	<b>\$142.0</b>	<b>\$164.0</b>	<b>\$182.9</b>	<b>\$186.3</b>	<b>\$186.8</b>	<b>0.3%</b>	<b>31.6%</b>
<b>Participant Accounts</b>	<b>(\$ in Millions)</b>						
457	\$28,032	\$29,147	\$30,024	\$30,549	\$30,544	0.0%	9.0%
403(b)	1,009	962	918	958	997	4.1%	-1.2%
401(k)	35,363	36,370	37,036	37,450	37,052	-1.1%	4.8%
<b>Total</b>	<b>\$64,404</b>	<b>\$66,479</b>	<b>\$67,978</b>	<b>\$68,957</b>	<b>\$68,957</b>	<b>-0.5%</b>	<b>6.5%</b>
401(a)	\$36,748	\$41,814	\$43,486	\$44,426	\$44,572	0.3%	21.3%
<i>Multi-accounts</i>	8,527	7,457	7,501	7,595	7,391		
<b>Average Account Values</b>	<b>(in Actual \$)</b>						
457	\$38,817	\$39,292	\$42,557	\$38,536	\$33,307	-13.6%	-14.2%
403(b)	66,647	73,387	84,538	69,835	53,312	-23.7%	-20.0%
401(k)	20,746	22,956	27,256	25,584	22,286	-12.9%	7.4%
401(a)	2,186	2,327	3,016	2,970	2,716	-8.6%	24.2%

Source: Maryland Supplemental Retirement Plans



## Chapter 15. Retiree Health Insurance

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Upon their retirement, and provided they receive a retirement allowance from the State Retirement and Pension System, retired State employees are entitled to enroll and participate in any of the health insurance options provided by the State Employee and Retiree Health and Welfare Benefits Program. In effect, this entitles retired State employees to retain the same health coverage they had as active employees. In addition, active State employees accrue eligibility for a partial State subsidy of the cost of health insurance coverage under the program. To be eligible to enroll and participate in the group coverage, a retiree must have:

- retired directly from the State with at least 5 years of service;
- retired directly from State service with a disability;
- ended State service with at least 16 years of service;
- ended State service with at least 10 years of creditable service and within 5 years of retirement age; or
- ended State service on or before June 30, 1984.

For eligible retirees with at least 16 years of service, the State provides the same subsidy of health insurance premiums that is provided to active employees (80% of preferred provider organization premiums, 83% of point of service premiums, and 85% of health maintenance organization premiums). If a retiree has less than 16 years of State service, the benefit is prorated. The State subsidy for health insurance is determined by the amount of creditable service the retired State employee earned. With five years of creditable service (the minimum required to participate in the State's program), a retired State employee is entitled to five sixteenths of the State subsidy provided to active employees. For each additional year of creditable service up to 16 years, an additional one sixteenth of the subsidy is earned.

Health insurance for retirees is one of the fastest growing areas in the State budget due to aging populations, longer life spans, and increasing health care costs. As illustrated in Exhibit 15.1, retiree enrollment in the State health plan is growing faster than active employee enrollment. Retiree enrollment in the State health plan as a percentage of total health plan enrollment increased from 32.3% in 2005 to 34.0% in 2009. Over the same time period, retiree enrollment in the prescription plan increased



from 33.2% of total enrollment to 35.1%. This trend is expected to continue as the population continues to age and the size of the State workforce remains fairly stable.

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**Exhibit 15.1**  
**Retiree Health Plan Enrollment**  
**as a Percentage of Total Plan Enrollment**  
**Fiscal 2005-2009**

<u>Plan Type</u>	<u>FY</u> <u>2005</u>	<u>FY</u> <u>2006</u>	<u>FY</u> <u>2007</u>	<u>FY</u> <u>2008</u>	<u>FY</u> <u>2009</u>
Health	32.3%	32.9%	32.7%	33.6%	34.0%
Prescription	33.2%	34.0%	33.6%	34.7%	35.1%
Dental	22.4%	23.6%	23.5%	25.2%	26.1%

Source: Department of Budget and Management

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While the number of retired enrollees is increasing faster than the number of active employee enrollees, retiree claims costs are roughly equivalent to employee costs on a per-enrollee basis. Exhibit 15.2 shows that medical costs on a per-enrollee basis are actually lower for retirees than for active employees, with retirees averaging \$5,577 in claims costs and active employees averaging \$7,471, a difference of \$1,894. However, retirees average \$4,369 in prescription drug costs, compared with \$2,364 for active employees, a difference of \$2,005. Dental costs for retirees on a per-enrollee basis are slightly lower than per-enrollee costs for active employees.

**Exhibit 15.2**  
**Health, Prescription, Mental Health, and Dental Claims**  
**Costs on a Per Enrollee Basis**  
**Fiscal 2009**

	<b>Active Employees</b>		
	<u>Claims</u>	<u>Enrollment</u>	<u>Per Enrollee</u>
PPO	\$264,874,989	33,899	\$7,814
POS	159,108,334	24,000	6,630
HMO	102,215,605	13,924	7,341
<b>Subtotal Health Plan</b>	<b>\$536,574,342</b>	<b>71,823</b>	<b>\$7,471</b>
Prescription	\$159,356,665	67,414	\$2,364
Dental	31,333,955	65,421	479
	<b>Retirees</b>		
	<u>Claims</u>	<u>Enrollment</u>	<u>Per Enrollee</u>
PPO	\$135,081,751	24,806	\$5,446
POS	49,425,040	8,607	5,742
HMO	18,494,416	3,606	\$5,128
<b>Subtotal Health Plan</b>	<b>\$206,439,367</b>	<b>37,019</b>	<b>\$5,577</b>
Prescription	\$161,444,021	36,950	4,369
Dental	8,794,067	23,560	373

HMO: health maintenance organization

POS: point of service

PPO: preferred provider organization

Source: Department of Budget and Management

## **Governmental Accounting Standards Board Issues New Accounting Standards**

In 2004, the Governmental Accounting Standards Board released new standards that require the State to apply an accounting methodology similar to the one used for pension liabilities to account for retiree health benefits. The Governmental Accounting Standards Board is an independent, nonprofit foundation that establishes accounting

standards for local and state governments. The new standards affect governmental accounting of other post employment benefits, which are defined as post employment benefits other than pensions. Under the new standards, incorporated into the Governmental Accounting Standards Board's Statements 43 and 45, the State must account for the cost of other post employment benefits as they accrue to employees based on their employment with the State rather than on a pay-as-you-go basis. Prior to the release of Statements 43 and 45, almost all states, including Maryland, had accounted for other post employment benefits on a pay-as-you-go basis.

The new standards require the State to conduct an actuarial valuation of its other post employment benefit liability at least every two years; since 2006, the State has conducted annual valuations. The valuations must determine the State's accrued other post employment benefits liabilities, defined as the value of the retiree health benefits promised to current and retired employees based on their actual and projected employment with the State. Each valuation credits the State with the value of any assets (including pay-as-you-go expenditures) deposited in an irrevocable other post employment benefit trust for the purpose of funding its other post employment benefits liabilities. The difference between the State's other post employment benefit liabilities and its trust fund assets represents the unfunded actuarial accrued liability.

The Governmental Accounting Standards Board allows governments to amortize the unfunded actuarial accrued liability over a period not exceeding 30 years. The annual amortization payment resulting from that calculation is then added to the normal cost, which is the value of the Other Post Employment Benefits accrued by active employees during the current year. The sum of the unfunded actuarial accrued liability amortization payment and the normal cost is the annual required contribution that is necessary to pay down the total Other Post Employment Benefits liability over the amortization period (typically 30 years).

The Governmental Accounting Standards Board does not require governments to reflect their full Other Post Employment Benefits liability on their balance sheets. Instead, governments must reflect their net Other Post Employment Benefits obligation on their balance sheets. The net Other Post Employment Benefits obligation is defined as the cumulative total of unpaid annual required contribution, plus interest. In the first year that a government implements the new Other Post Employment Benefits standards, the net Other Post Employment Benefits obligation represents the annual required contribution minus any payment made to the Other Post Employment Benefits trust. If the government pays the full annual required contribution to the trust, the government has no net obligation, and, therefore, shows no Other Post Employment Benefits liability on its financial statement. In succeeding years, the sum of any unpaid annual required contributions plus accrued annual interest represents the net Other Post Employment

Benefits obligation, which is reflected as a long-term liability on public financial statements. Exhibit 15.3 shows the calculation of Maryland's net Other Post Employment Benefits obligation over the last three years (since Statements 43 and 45 took effect).

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**Exhibit 15.3**  
**Calculation of Maryland's Net OPEB Obligation**  
**Fiscal 2008-2010**  
**(\$ in Thousands)**

	<u><b>FY 2008</b></u>	<u><b>FY 2009</b></u>	<u><b>FY 2010</b></u>
Beginning NOO	n/a	\$695,921	\$1,478,130
Adjusted ARC	\$1,086,240	1,118,672	1,127,220
Interest on NOO	0	29,925	63,560
<b>Annual OPEB Cost</b>	<b>1,086,240</b>	<b>1,148,597</b>	<b>1,190,780</b>
PAYGO costs	271,435	315,257	360,308
Pre-funding	118,884	51,131	0
<b>Annual Contributions</b>	<b>390,319</b>	<b>366,388</b>	<b>360,308</b>
<b>End of Year NOO</b>	<b>\$695,921</b>	<b>\$1,478,130</b>	<b>\$2,308,602</b>

ARC: annual required contribution

NOO: net Other Post Employment Benefits obligation

OPEB: Other Post Employment Benefits

PAYGO: pay-as-you-go

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The exhibit illustrates several key points about the effects of the new Governmental Accounting Standards Boards standards. First, it demonstrates that the annual required contribution calculated under the new standards is three to four times larger than the State's pay-as-you-go costs for retiree health care. This is typical for most governments that have been accounting for Other Post Employment Benefits on a pay-as-you-go basis. Second, it shows that for two years (fiscal 2008 and 2009), the State made modest contributions above its pay-as-you-go costs toward pre-funding its Other Post Employment Benefits liability. However, beginning in fiscal 2010, the State has made no pre-funding contributions toward its Other Post Employment Benefits liabilities. Although the annual required contribution has remained fairly stable over this three-year period, the exhibit also illustrates that failure to contribute the full annual

required contribution to the irrevocable trust causes the net Other Post Employment Benefits obligation to grow rapidly. As it is the net Other Post Employment Benefits obligation that is included as a long-term liability on State financial statements, failure to fully fund the annual required contribution may have long-term consequences for the State's finances and credit worthiness.

### **The Advantages of Pre-funding**

As accounting standards, Statements 43 and 45 require only that governments calculate their Other Post Employment Benefits liabilities and reflect their net Other Post Employment Benefits obligations on their annual financial statements; they do not require governments to pre-fund their Other Post Employment Benefits liabilities. Indeed, the Governmental Accounting Standards Board has no mechanism of its own to enforce governmental adherence to their standards. However, adherence to the Governmental Accounting Standards Board standards, and maintaining affordable levels of short- and long-term debt, are both important factors considered by credit rating agencies. For many years, Maryland has been one of only a handful of states that has maintained a AAA bond rating from all three agencies. Failure to address its growing Other Post Employment Benefits liabilities by fully funding its annual required contribution may ultimately put those AAA ratings in jeopardy.

The Governmental Accounting Standards Board also added an incentive to encourage governments to prefund at least a portion of their annual required contributions. In calculating the present value of future Other Post Employment Benefits promised to current employees and retirees, actuaries must discount the value of those future benefits to today's dollars. A government that does not prefund any portion of its annual required contribution must use a conservative discount rate based on the expected return on Treasury securities and other high-grade bonds. However, a government that fully funds its annual required contribution can use a higher discount rate associated with investments in more diversified vehicles, including equities and real estate. In Maryland's case, the unfunded rate is 4.25%, but the fully funded rate is 7.75%, the same investment expectation used by the State Retirement and Pension System. The spread between the two rates results in dramatically different calculations of the State's Other Post Employment Benefits liabilities, as shown in Exhibit 15.4. Governments that prefund a portion of their annual required contribution may use a blended discount rate that is weighted based on the proportion of the annual required contribution that is prefunded. As Maryland has prefunded only a tiny fraction of its liability, the actuary uses a blended discount rate of 4.3%.

**Exhibit 15.4**  
**Maryland's OPEB Liabilities and ARC**  
**(\$ in Millions)**

	<b>July 1, 2006</b>		<b>July 1, 2009</b>	
	No Pre-funding ( <u>4.25%</u> )	Full Pre-funding ( <u>7.75%</u> )	Minimal Pre-funding ( <u>4.30%</u> )	Full Pre-funding ( <u>7.75%</u> )
Liabilities	\$14,543	\$9,002	\$15,279	\$9,323
ARC	\$1,114	\$772	\$1,185	\$806

ARC: annual required contribution  
OPEB: Other Post Employment Benefits

**Effort to Prefund Other Post Employment Benefits Liability Interrupted by Budget Crisis**

Chapter 466 of 2004 established the Post-Retirement Health Benefits Trust Fund to assist the State in financing the retiree health insurance subsidy paid by the State. The fund is a tax-exempt trust in accordance with § 115 of the Internal Revenue Code. Beginning in fiscal 2006, any subsidy received by the State that is provided to employers as a result of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 or other similar federal subsidy was to be deposited into the fund. However, Chapter 444 of 2005 (the Budget Reconciliation and Financing Act) diverted the Medicare Part D subsidy from the fund to pay for employee and retiree health premiums in fiscal 2006 and 2007. Chapter 355 of 2007 authorized the transfer of funds from the trust fund to the Department of Budget and Management to assist in defraying the current costs of retiree health care costs beginning in fiscal 2009. Proceeds from the Medicare Part D federal subsidy were restored to the Post-Retirement Health Benefits Trust Fund beginning in fiscal 2008. However, Chapter 487 of 2009 redirected the federal Medicare Part D employer subsidy from the Post-Retirement Health Benefits Trust Fund to the State Employee Health and Welfare Benefits Fund, a special fund from which State employee and retiree health insurance costs are paid, for three years beginning in fiscal 2010.

## Commissions Established to Address Other Post Employment Benefits Liability

### Blue Ribbon Commission

In response to a recommendation by a previous task force, Chapter 433 of 2006 established the Blue Ribbon Commission to Study Retiree Health Care Funding Options and authorized it to commission annual valuations of the State's Other Post Employment Benefits liabilities. Based on modifications to its membership made by Chapter 355 of 2007, the commission has 18 members, including 5 Senators, 5 Delegates, 5 *ex officio* members from State government agencies, and 3 public members (1 public member position is currently vacant).

Chapter 433 sets forth six principles to guide the commission's work, most notably that it must find an alternative to pay-as-you-go funding for retiree health care and that it should treat employees, retirees, and taxpaying citizens fairly. It also required the commission to:

- review the State's legal obligation to provide retiree health benefits;
- study the factors contributing to the rising cost of retiree health benefits;
- review current benefit levels for State employees and retirees;
- review the eligibility requirements for retiree health benefits;
- review alternatives for providing health benefits to State retirees; and
- recommend a multiyear plan to fully fund State obligations for retiree health benefits.

Chapters 228 and 229 of 2008 extended the termination date for the commission by one year, to June 30, 2010; the deadline for the final report was also extended by one year, to December 31, 2009. Chapters 560 and 561 of 2010 further extended the commission's termination date by two years, until June 30, 2012. They also extended the deadline for submission of a final report from December 31, 2009, to December 31, 2011, and required the commission to submit an interim report by December 31, 2010.

## **Benefit Sustainability Commission**

Prompted in part by the Blue Ribbon Commission's delays in completing its work and by new concerns about the growing liability associated with the State Retirement and Pension System, the Budget Reconciliation and Financing Act of 2010 (Chapter 484) established a Public Employees' and Retirees' Benefit Sustainability Commission. The new commission is charged with studying and making recommendations with respect to all aspects of State funded benefits and pensions provided to State employees and public education employees.

Chapter 484 specifies that membership of the new commission cannot include any State employee, member of the Board of Trustees of the State Retirement and Pension System, or representative of any organization that represents State employees or local governments. The one exception is the State Treasurer, who is an *ex officio* member of the commission. The commission is expected to study and make recommendations with respect to the State's Other Post Employment Benefits liability.





## Chapter 16. Overview of Procurement

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### Introduction to the Procurement Process

The procurement process is the State's system for acquiring supplies, services, or leases for real or personal property. The procurement process may include some or all of the following: identifying a need, specifying the requirements to fulfill the need, identifying potential vendors, soliciting bids and proposals, evaluating bids and proposals, awarding contracts, tracking progress and ensuring compliance, taking delivery, inspecting and inventorying deliveries, and paying the vendor. The procurement process is designed to (1) ensure that State contract awards are based on technical merit and price after effective competition between vendors; and (2) immunize the system from improper influence.

The State's contracting and procurement process results in a significant amount of dollars being awarded to the private sector for goods and services each year. As of April 2010, the Governor's Office of Minority Affairs reported the total dollar value of contracts awarded by the major State agencies between fiscal 2007 and April 2010 was over \$23 billion. The contract dollars awarded by agency are shown in Appendix 10, and the total contract dollars awarded in fiscal 2007 through April 2010 are shown below in Exhibit 16.1.

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**Exhibit 16.1**  
**Total State Contract Dollars Awarded by Fiscal Year**  
**(Fiscal 2007-April 2010)**

<u>Fiscal Year of Contract Award</u>	<u>Contract Dollars Awarded</u>
2007	\$ 5,671,222,391
2008	6,426,096,394
2009	7,449,820,454
2010 (through April)	4,178,476,713
<b>Total</b>	<b>\$ 23,725,615,952</b>

Source: Department of Legislative Services based on information from: *Minority Business Enterprise Participation by Cabinet Agencies, Fiscal Years 2007, 2008, 2009, and 2010 (through April)* and *Minority Business Enterprise Participation by Non-Cabinet Agencies, Fiscal Years 2007, 2008, 2009, and 2010 (through April)*, Governor's Office of Minority Affairs (June 2010)

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## **Origins of the Current Maryland Procurement Law**

As a result of an intensive procurement study conducted by the State from 1977 through 1980, the procurement law was enacted in 1980, effective July 1981. The initial incarnation of the Maryland procurement law generally was patterned after the Model Procurement Code developed by the American Bar Association. Currently, Maryland's procurement law is found in Division II, Titles 11 through 19 of the State Finance and Procurement Article.

## **Purposes of the Procurement Law**

The procurement law was enacted to ensure that State contracts are immune from inappropriate influences and are awarded on the basis of technical merit and price after effective competition between vendors. Specifically, the purposes and policies of the procurement law include:

- providing for increased confidence in State procurement;
- ensuring fair and equitable treatment of all persons who deal with the State procurement system;
- providing safeguards for maintaining a State procurement system of quality and integrity;
- fostering effective broad-based competition in the State through support of the free enterprise system;
- promoting increased long-term economic efficiency and responsibility in the State by encouraging the use of recycled materials;
- providing increased economy in the State procurement system;
- getting the maximum benefit from the purchasing power of the State;
- simplifying, clarifying, and modernizing State procurement law;
- allowing the continued development of procurement regulations, policies, and practices in the State; and

- promoting development of uniform State procurement procedures to the extent possible.

Generally, the procurement law applies to the Executive Branch agencies of Maryland government for (1) expenditures under procurement contracts; (2) procurements on behalf of other governmental agencies or other entities; and (3) procurements for services to benefit specific categories of individuals, even if the procurement contract does not involve a State expenditure and does produce State revenue. The procurement law does not apply to the Legislative or Judicial branches, multistate or multicounty government agencies, or other political subdivisions in the State.

## **Exemptions from the Procurement Law**

Although the procurement law applies broadly to numerous agencies in the Executive Branch, for various policy reasons certain types of procurement and certain agencies are exempt from its provisions. Examples of types of procurement that are exempt include:

- transactions in which an agency procures from another State agency, a political subdivision of the State or one of its agencies, a government (including the government of another state, the United States, or another country) or one of its agencies or political subdivisions, or a multistate or multicounty governmental agency;
- procurements in support of enterprise activities for the purpose of direct resale, or remanufacture and subsequent resale; and
- grants awarded by the State to the Chesapeake Bay Trust for the restoration or protection of the Chesapeake Bay or other aquatic and land resources.

When the procurement law became effective in 1981, few agencies were exempt; however, the number has substantially increased over time. In 1986, after an intensive review that spanned several years, the General Assembly identified a total of 14 agencies that, at least in part, were determined to be inappropriate for inclusion in the general procurement process because the agencies performed specialized functions. Accordingly, legislation was enacted to provide limited or full exemptions for each of these agencies, but required most of the agencies' procurement processes to comply with the underlying purposes of the procurement law. As of fiscal 2011, the number of exemptions for specific agencies has increased to 30.

Exhibit 15.2 identifies the 30 agencies now exempt from the Maryland procurement law, cites the current statutory provision that describes the exemption, and references the original enactment that established the exemption. For a full understanding of the nature of the exemption, however, Exhibit 15.2 should be read in conjunction with the statutory provision granting the exemption because many of the agencies are exempt only in certain situations. For example, the Maryland State Arts Council is exempt only when the procurement is for the support of the arts.

Although the entities identified in Exhibit 16.2 are generally exempt from the procurement law, many are still required to comply with provisions of law that address:

- fraud in procurement (State Finance and Procurement Article, § 11-205);
- Board of Public Works approval for designated contracts (State Finance and Procurement Article, § 12-204);
- supervision of capital expenditures and real property leases (State Finance and Procurement Article, Title 12, Subtitle 2);
- required clauses regarding nondiscrimination (State Finance and Procurement Article, § 13-219);
- disclosures to the Secretary of State (State Finance and Procurement Article, § 13-221);
- policies and procedures for exempt agencies (State Finance and Procurement Article, Title 12, Subtitle 4);
- debarment of contractors (State Finance and Procurement Article, Title 16); and
- special provisions regarding State and local subdivisions (State Finance and Procurement Article, Title 17).

Furthermore, minority business participation requirements apply to most exempt entities.

## Exhibit 16.2

### Agencies Exempt from the Maryland Procurement Law

<u>Agency</u>	<u>Statutory Exemption</u>	<u>Enabling Legislation</u>
Blind Industries and Services of Maryland	SFP, § 11-203(a)(1)(i)	Chapter 608 of 1982
Canal Place Authority	FI, § 13-1027(2)	Chapter 544 of 1993
College Savings Plan of Maryland	SFP, § 11-203(f)	Chapter 208 of 2004
Department of Business and Economic Development	SFP, § 11-203(a)(1)(xii)	Chapter 555 of 1993
Department of General Services	SFP, § 11-203(a)(1)(xviii)	Chapter 198 of 2009
Department of Natural Resources	SFP, § 11-203(a)(1)(xix)	Chapter 428 of 2010
Enterprise Fund	EC, § 5-602(e)	Chapter 305 of 2000
Maryland Automobile Insurance Fund	SFP, § 11-203(a)(1)(ix)	Chapter 840 of 1986
Maryland Developmental Disabilities Administration of the Department of Health and Mental Hygiene	SFP, § 11-203(a)(1)(xvii)	Chapter 471 of 2003
Maryland Economic Development Corporation	EC, § 10-111(a)(1)(ii)	Chapter 498 of 1984
Maryland Energy Administration	SFP, § 11-203(a)(1)(xvi)	Chapter 412 of 2003
Maryland Environmental Service	NR, § 3-103(g)(2)	Chapter 196 of 1993 (replacement) [Chapter 840 of 1986 (repealed)]
Maryland Food Center Authority	SFP, § 11-203(a)(1)(v)	Chapters 650 and 675 of 1983
Maryland Health and Higher Educational Facilities Authority	SFP, § 11-203(a)(1)(iii)	Chapter 840 of 1986
Maryland Health Insurance Plan (within the Maryland Insurance Administration)	SFP, § 11-203(a)(1)(xv)	Chapter 153 of 2002
Maryland Historical Trust	SFP, § 11-203(a)(1)(x)	Chapter 840 of 1986
Maryland Industrial Training Program or the Partnership for Workforce Quality Program in the Department of Business and Economic Development	SFP, § 11-203(a)(1)(iv)	Chapter 840 of 1986
Maryland Public Broadcasting Commission	SFP, § 11-203(a)(1)(vi)	Chapter 840 of 1986
Maryland Stadium Authority	SFP, § 11-203(c)	Chapter 123 of 1987
Maryland State Arts Council	SFP, § 11-203(a)(1)(ii)	Chapter 292 of 1984
Maryland State Lottery Agency	SFP, § 11-203(a)(1)(xiv)	Chapter 548 of 1997
Maryland State Planning Council on Developmental Disabilities	SFP, § 11-203(a)(1)(viii)	Chapter 292 of 1984
Maryland Technology Development Corporation	EC, § 10-407(a)(1)	Chapter 661 of 1998
Maryland Venture Capital Trust	EC, § 10-706(a)	Chapter 222 of 1990
Morgan State University	ED, § 14-109(b)	Chapter 485 of 2004
	SFP, § 11-203(e)(2)	Chapter 273 of 2004
Rural Maryland Council (Forum for Rural Maryland)	SFP, § 11-203(a)(1)(xiii)	Chapter 119 of 1995
St. Mary's College of Maryland	SFP, § 11-203(e)(2)	Chapter 255 of 2006
State Retirement and Pension System	SFP, § 11-203(d)	Chapter 840 of 1986 Chapter 544 of 1994 Chapter 520 of 1999
University of Maryland (University College)	SFP, § 11-203(a)(1)(xi)	Chapter 555 of 1983
University System of Maryland	SFP, § 11-203(e)(2)	Chapter 515 of 1999
Public Institutions of Higher Education (for cultural, entertainment, and intercollegiate athletic procurement contracts)	SFP, § 11-203(a)(1)(vii)	Chapter 840 of 1986

EC: Economic Development Article    FI: Financial Institutions Article  
ED: Education Article                    NR: Natural Resources Article

SFP: State Finance and Procurement Article

Source: Department of Legislative Services



## Chapter 17. Organization of State Procurement

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### Board of Public Works

The Board of Public Works was established by the Maryland Constitution of 1864 and consists of the Governor, the Comptroller, and the Treasurer. It derives its ultimate authority from the Maryland Constitution and is responsible for the expenditure of all capital appropriations and the superintendence of nearly all State public works projects. Each year it deals with hundreds of millions of dollars. The board is constitutionally required to meet four times each year and is authorized to meet more often when necessary. In practice, the board usually meets once every two weeks.

The 1981 revision of the procurement law centralized full authority over all State procurement in the Board of Public Works. The board was given “power and authority over the procurement, management, and control of all supplies, services, construction, and other items procured by the State.” At the same time, however, the General Assembly authorized the board to delegate any of its procurement authority that it determines to be appropriate for delegation and required board approval for specified procurement actions. The board implements the procurement law by setting policy, adopting regulations, and establishing internal procedures. The board, however, does not have authority over capital expenditures by the Maryland Department of Transportation or the Maryland Transportation Authority in connection with State roads, bridges, or highways.

### Primary Procurement Units

State law establishes 10 primary procurement units with exclusive jurisdiction over specified procurements, subject to the authority of the board. The 10 primary procurement units are:

- State Treasurer
- Department of Budget and Management
- Department of General Services
- Department of Information Technology
- Maryland Department of Transportation and the Maryland Transportation Authority



- University System of Maryland
- Maryland Port Commission
- Department of Public Safety and Correctional Services
- Morgan State University
- St. Mary's College of Maryland

In addition, 7 of the 10 agencies are authorized to control and supervise the procurement of specified goods or services for other agencies. These agencies are referred to as control authorities. Four of the control authorities actively oversee the procurement of other agencies: the State Treasurer (for banking and financial services, insurance, and insurance services), the Department of Budget and Management (for services and motor vehicle leases), the Department of General Services (for real property, other supplies, construction, and construction related services), and the Department of Information Technology (for information processing and telecommunication equipment and services). The Maryland Department of Transportation, the Maryland Port Commission, and the Department of Public Safety and Correctional Services are also recognized as control authorities but do not have active oversight of other agencies. Exhibit 17.1 illustrates the type of procurement authority granted to agencies.

In general, the board authorizes primary procurement agencies to enter into procurement contracts not exceeding \$200,000 without board approval. Any procurement contract over this amount must be submitted to the board for approval. Agencies also may modify specified contracts without board approval but must report contract modifications that exceed \$50,000.

Exhibit 17.2 lists the areas of procurement authority for each agency and the amount of funds that can be spent before obtaining board approval. The exhibit also shows if a control authority sub-delegated its authority to another agency.

**Exhibit 17.1**  
**Procurement Authority Delegated to Agencies**

<u>Agency</u>	<u>Type of Delegation</u>
State Treasurer	Primary Procurement Unit and Control Authority
Department of Budget and Management	Primary Procurement Unit and Control Authority
Department of General Services	Primary Procurement Unit and Control Authority
Department of Information Technology	Primary Procurement Unit and Control Authority
Maryland Department of Transportation and Maryland Transportation Authority	Primary Procurement Unit and Control Authority
University System of Maryland	Primary Procurement Unit
Maryland Port Commission	Primary Procurement Unit and Control Authority
Department of Public Safety and Correctional Services	Primary Procurement Unit and Control Authority
Morgan State University	Primary Procurement Unit
St. Mary's College of Maryland	Primary Procurement Unit

Source: Department of Legislative Services

**Exhibit 17.2**  
**Areas of Procurement Authority**

**State Treasurer Delegation – COMAR 21.02.01.04E**

<b><u>May Engage in or Control Procurement of:</u></b>	<b><u>Delegation Level</u></b>
Banking, investment, and other financial services contracts	Unlimited
Contracts for insurance and insurance-related services	Unlimited

**Department of Budget and Management Delegation – COMAR 21.02.01.04A**

<b><u>May Engage in or Control Procurement of:</u></b>	<b><u>Delegation Level</u></b>
Service contracts (except architectural/engineering services)	\$200,000 or less
Contract modifications	In limited circumstances, subject to specified restrictions
Sole source contracts	\$100,000 or less
Contracts in which only one bid or offer received	\$50,000 or less
Purchase of motor vehicles as commodities	Develop standards for purchase to be approved by the board
Lease of motor vehicles	\$10,000 and six months or less

**Department of Budget and Management – Sub-delegation**

The Department of Budget and Management has sub-delegated its authority to approve contracts for services (except for vehicle leases over which the department retains approval authority) as follows:

<u>Agency</u>	<u>Delegation Level</u>
All agencies	\$25,000
All agencies	\$200,000 – awards to preferred providers
<ul style="list-style-type: none"> <li>• Department of Natural Resources</li> <li>• Division of Vocational Rehabilitation (Maryland State Department of Education) for conversion of vehicles and dwellings to accommodate disabled individuals for employment readiness</li> </ul>	\$50,000
<ul style="list-style-type: none"> <li>• Department of Information Technology</li> <li>• Department of General Services</li> <li>• Maryland Department of Transportation</li> <li>• Department of Human Resources</li> <li>• Department of Health and Mental Hygiene</li> <li>• Department of State Police for helicopter maintenance</li> </ul>	\$100,000

Note: For additional details see “DBM PAAR Guidelines” and “Attachment A: Examples” on the Department of Budget and Management Procurement web page.

**Department of Information Technology – COMAR 21.02.01.04J**

<u>May Engage in or Control Procurement of:</u>	<u>Delegation Level</u>
Information technology contracts	\$200,000 or less
Contract modifications	In limited circumstances, subject to specified restrictions
Sole source contracts	\$100,000 or less
Contracts in which only one bid or offer is received	\$50,000 or less

**Department of General Services Delegation – COMAR 21.02.01.04B**

<b><u>May Engage in or Control Procurement of:</u></b>	<b><u>Delegation Level</u></b>
Commodities and supplies	Unlimited
Capital construction	\$200,000 or less
Capital construction-related service	\$200,000 or less
Architectural/engineering	\$200,000 or less
Maintenance	\$200,000 or less
Capital equipment	\$50,000 or less
Contract modifications	In limited circumstances, subject to specified restrictions
Invoices necessary to administer capital improvement contracts	Unlimited
Sole source contracts	\$50,000 or less
Contracts in which only one bid or offer received	\$50,000 or less

**Department of General Services – Sub-delegation**

The Department of General Services has sub-delegated its authority to approve contracts as follows:

<b><u>Agency</u></b>	<b><u>Delegation Level</u></b>
All agencies	\$25,000 for commodities
All agencies	\$50,000 for maintenance

**Maryland Department of Transportation/Maryland Transportation  
Authority Delegation – COMAR 21.02.01.04C**

<b><u>May Engage in Procurement of:</u></b>	<b><u>Delegation Level</u></b>
Transportation-related construction	\$200,000 or less
Capital expenditures contracts in connection with State roads, bridges, and highways	Unlimited
Capital construction-related service	\$200,000 or less
Architectural and engineering	\$200,000 or less
Maintenance	\$200,000 or less
Capital equipment	\$50,000 or less
Contract modifications	In limited circumstances, subject to specified restrictions
Sole source contracts	\$50,000 or less
Contracts in which only one bid or offer received	\$50,000 or less
Supplies and services for aeronautics-related activities	Unlimited

**Maryland Port Commission Delegation – COMAR 21.02.01.04F**

<b><u>May Engage in Procurement of:</u></b>	<b><u>Delegation Level</u></b>
Construction contracts for port facilities	\$200,000 or less
Construction-related service contracts for port facilities	\$200,000 or less
Port-related architectural/engineering services	\$200,000 or less
Capital equipment	\$50,000 or less
Services including information technology services but excluding banking, insurance, and financial services	\$200,000 or less
Contract modifications	In limited circumstances, subject to specified restrictions
Port-related maintenance	\$200,000 or less
Commodities and supplies	
<ul style="list-style-type: none"> <li>• Including motor vehicles and information technology supplies</li> <li>• Excluding supplies funded by the proceeds of State general obligation funds, insurance, and insurance-related services</li> </ul>	Unlimited
Sole source contracts	\$50,000 or less
Contracts in which only one bid or offer received	\$50,000 or less
Leases of real property for port-related activities if lease payments are not made from the general fund	\$50,000 or less per year

**Department of Public Safety and Correctional Services Delegation –  
COMAR 21.02.01.04H**

<u>May Engage in Procurement of:</u>	<u>Delegation Level</u>
Capital construction contracts	\$200,000 or less
Capital construction-related services contracts	\$200,000 or less
Architectural/engineering contracts based on Department of General Services selections	\$200,000 or less
Capital equipment contracts in support of construction and construction-related services	\$50,000 or less
Commodities and supplies in support of construction and construction-related services	Unlimited
Modifications to the above contracts	In limited circumstances, subject to specified restrictions
Invoices necessary to administer capital improvement contracts	Unlimited
Sole source contracts in support of construction and construction related services	\$50,000 or less
Contracts in support of construction and construction-related services in which only one bid or offer received	\$50,000 or less

Source: Department of Legislative Services (based on information provided by the designated agencies)

## **Components of the State Procurement Process**

### **Procurement Advisory Council**

The Procurement Advisory Council was created to provide oversight of the State procurement process. The council is composed of 10 members representing various State departments, a representative of local government with expertise in State procurement matters, and 2 members of the general public, at least 1 of whom has expertise in State procurement matters. The Secretary of the Board of Public Works is the chair of the council.

The council is required to meet at least quarterly and has several important functions, including:

- ensuring that the State's procurement system uses the most advanced procurement methods and management techniques;
- effecting and enhancing communication among State agencies on procurement matters;
- providing a forum for the discussion of specific procurement issues and problems that arise;
- advising the Board of Public Works on problems in the procurement process and making recommendations for improvement of the process; and
- reviewing existing procurement regulations.

### **Procurement Advisor**

The procurement advisor is appointed by the Board of Public Works and serves at the pleasure of the board. The procurement advisor is the principal staff to the Procurement Advisory Council and has numerous duties, including:

- examining all procurements that are subject to review by the board and making recommendations to the board as to the appropriateness and legality of each procurement;
- preventing, detecting, and investigating allegations of fraud, waste, and abuse, and fostering competition in the expenditure of State funds in the procurement of supplies, services, or construction;
- conducting investigations into procurement policies, practices, and procedures;
- assisting agencies and the public with questions regarding procurement policy; and
- establishing policies for effective training of State procurement officials.

### **General Counsel to the Procurement Advisory Council**

The general counsel to the Procurement Advisory Council is appointed by the Board of Public Works and serves at the pleasure of the board. The general counsel provides independent legal advice to the board and makes recommendations to the board



as to the legal sufficiency of the procurements that are subject to review by the board. The general counsel has numerous other duties that include assisting the procurement advisor in investigations and responding to complaints concerning abuse or alleged violations of the procurement law and regulations, and reviewing regulations proposed by the board for legality.

### **Maryland Green Purchasing Committee**

The Maryland Green Purchasing Committee consists of representatives of the Department of General Services, the Department of Budget and Management, the Department of Natural Resources, the Maryland Department of the Environment, the Department of Health and Mental Hygiene, the Department of Business and Economic Development, the Maryland Department of Transportation, the Department of Public Safety and Correctional Services, and the University System of Maryland. The committee was established by legislation enacted in 2010 and is required to promote, develop, and implement a strategy to increase, and coordinate with other relevant entities concerning environmentally preferable purchasing.

To help achieve these goals, the committee is required to develop an environmentally preferable purchasing best practices manual. In developing the manual, the committee is required to consider the use of more efficient electric measuring meters, the more efficient use of heating, ventilation, and air conditioning systems in State buildings, increasing the energy efficiency of computer servers and data storage systems, and the use of biodegradable or recycled food and beverage containers and utensils. Each State agency is required to revise its procurement specifications annually in accordance with the manual.

The committee also is required to establish a single point of contact for State agencies and other interested parties regarding issues related to environmentally preferable purchasing.

## Chapter 18. Source Selection

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### Methods

Maryland uses numerous methods for awarding procurement contracts. The General Assembly has established the general public policy that competitive sealed bidding is the preferred method. A competitive sealed proposal, however, is the preferred method for awarding a contract for human, social, cultural, or educational services, or for the lease of real property. Noncompetitive negotiation, sole source procurement, emergency or expedited procurement, small procurement, intergovernmental cooperative purchasing agreement, auction bids, and unsolicited proposals are other procurement methods.

### Competitive Sealed Bidding

Competitive sealed bidding is a process under which a State agency solicits sealed bids to complete a project from vendors and awards the contract to the most responsible bidder. In competitive sealed bidding, a procurement officer issues an invitation for bids, which generally includes the contract specifications and whether it will be awarded based on the lowest bid price, the lowest evaluated bid price, or, for certain contracts, the bid most favorable to the State. If the contract is based on the lowest evaluated bid price, the invitation for bids must include the objective measurable criteria for determining the lowest bid price. The invitation for bids should also include any designated small business preference.

If the preparation of specifications is impractical, the invitation for bids may include a request for unpriced technical offers or samples. The invitation for bids may direct bidders to submit price bids with the technical offer or sample or after the agency evaluates the offer or sample. An agency may not open price bids until after evaluating the offer or sample. An agency also may only consider price bids from bidders that submit acceptable offers or samples. This method is called multistep sealed bidding.

In general, agencies are required to give reasonable public notice of an invitation for bids at least 10 days before bid opening. If the amount of the bid is expected to exceed \$25,000 and at least part of the procurement contract will be performed in Maryland or Washington, DC, the public notice must be published at least 20 days before bid opening. Notice of invitation for bids must be published on eMaryland Marketplace.

A procurement officer must award the contract to the bidder who submits a responsive bid either at the lowest bid price or, if the invitation for bids so provides, to

the lowest evaluated bid price. If, after competitive sealed bids have been opened, a procurement officer determines that only one responsible bidder has submitted a responsive bid, the agency may negotiate the contract with that bidder under the procedure for sole source procurements. Further, a procurement officer may award a contract based on revised bids if, after competitive sealed bids have been opened (1) all bids are rejected; (2) all bid prices exceed the funds available; or (3) the procurement officer, with approval from the agency head, determines that all bids are unreasonable and the delay from issuing a new invitation for bids would be fiscally disadvantageous or otherwise not in the best interest of the State. An agency must publish notice of an award within 30 days after the execution and approval of a contract in excess of \$25,000. Notice of award must be published on eMaryland Marketplace.

### **Competitive Sealed Proposals**

Procurement by competitive sealed proposal is a process under which a State agency solicits sealed proposals to complete a project from vendors and awards the contract to the most responsible offeror. An agency may use competitive sealed proposals if (1) the procurement is for human, social, cultural, or educational services; (2) the agency determines that specifications cannot be prepared that would allow an award based on the lowest bid price, the lowest evaluated bid price, or, for certain contracts, the bid most favorable to the State; or (3) the agency determines that the use of this method is sufficiently compelling to override the general public policy favoring competitive sealed bidding and competitive sealed bidding is not practical or advantageous to the State.

A procurement officer using competitive sealed proposals must begin by issuing a request for proposals. A request for proposals must include a statement of the scope of the contract (including the expected minority business enterprise participation), factors to be used in evaluating proposals (including price), and the relative importance of each factor. Any restrictions on revocability must be specified in the request for proposals. The public notice requirements for this procurement method and awards under this method are the same as for an invitation for bids.

After receipt of proposals, but before contract award, an agency may discuss the proposal with an offeror to obtain the best price for the State or to ensure full understanding of the proposal or request for proposal. If discussions occur, the agency must allow each responsible offeror that it considers to be a possible awardee the opportunity to participate. The agency must treat these responsible offerors fairly and equally and may allow an offeror to revise the proposal by submitting a best and final offer. An agency may conduct more than one series of discussions and requests for best and final offers. A procurement officer must award the contract to the responsible offeror

that submits the proposal or best and final offer determined to be the most advantageous to the State, considering the evaluation factors in the request for proposals.

### **Noncompetitive Negotiation**

Noncompetitive negotiation is the process by which an agency may award a procurement contract for specified human, social, or educational services if the agency head determines, on the basis of continuing discussion or past experience, that an award under this process will serve the best interests of the State. Under this process, an agency may conduct discussions with any responsible service provider that has submitted an expression of interest. Specifically, a procurement officer may use this method only if (1) the procurement is for human, social, or educational services to be provided directly to individuals with disabilities, or who are aged, indigent, disadvantaged, unemployed, mentally or physically ill, handicapped, displaced, or minors; (2) the procurement is one of a class for which the Department of Budget and Management has approved this method; and (3) the agency determines that at least two sources are available, but the absence of effective competition makes it unreasonable to expect bids or proposals from the available sources.

If procurement is based on noncompetitive negotiation, an agency must publish a request for general expressions of interest. The request should state the general requirement for services, request interested service providers to respond in writing, and be published in the same manner as an invitation for bids or request for proposals. Notice of an award must be published on eMaryland Marketplace.

### **Sole Source Procurement**

Procurement by the sole source method is a process under which an agency awards a contract to a vendor without competition. An agency may use the sole source method if the agency determines that there is only one available responsible source. An agency also may use this method with the prior written approval of the Attorney General to obtain services that require confidentiality in connection with threatened or pending litigation, appraisal of real property for State acquisition, or collective bargaining. An agency may not use this method under the latter circumstances if the agency reasonably anticipates a continuing need for the services. Notice of an award must be published on eMaryland Marketplace.

### **Unsolicited Proposals**

Unsolicited proposals can offer State agencies access to unique and innovative ideas developed outside of the State or local government. A procurement officer may

enter into a procurement contract based on an unsolicited proposal if the unsolicited proposal (1) is for the delivery of educational services, health or social services, business and economic development services, or lottery services; (2) is in writing; (3) shows a novel or innovative concept application, approach, or method or novel capability of the offeror; (4) has not been previously submitted by another person; and (5) meets a need or is otherwise advantageous to the agency. The procurement officer must determine within 30 days whether an unsolicited proposal is legally sufficient.

The term of a contract awarded for an unsolicited proposal may not exceed three years, and State expenditures may not exceed \$2,000,000 annually and \$4,000,000 for the total contract. A contracting agency must publish a notice of the intent to award the contract at least 30 days before execution and award in an appropriate local newspaper and on eMaryland Marketplace. Additionally, a contracting agency must publish notice of the award on eMaryland Marketplace within 30 days after contract execution and approval.

This procurement method terminates on September 30, 2013, unless otherwise extended by law.

### **Emergency Procurement**

An emergency procurement is a procurement that an agency may make by any method considered most appropriate to mitigate or avoid serious damage to public health, safety, or welfare. The agency must obtain as much competition as possible and limit, both in type and quantity, the items procured to those necessary for the mitigation or avoidance. After awarding the contract, the procurement officer must submit written justification to the Board of Public Works for the use of the emergency procurement procedure.

With the approval of the board, the Maryland Port Commission or the Maryland Aviation Administration may make an expedited procurement if the agency and the board find that (1) urgent circumstances require prompt action; (2) an expedited procurement best serves the public interest; and (3) the need for the expedited procurement outweighs the benefits of using competitive sealed bids or competitive sealed proposals. The agency must obtain as much competition as reasonably possible.

Notice of an award for these procurements must be published on eMaryland Marketplace within 30 days after the execution and approval of the award. Real property leased under these procurement processes must be leased for the minimum practicable period of time.

## **Small Procurement**

A small procurement is one in which (1) an agency spends \$25,000 or less; (2) in certain circumstances, a vendor receives annual revenues of \$25,000 or less; or (3) the Department of General Services spends \$50,000 or less for construction. An agency may make small procurements in accordance with regulations adopted by primary procurement agencies. A procurement may not be artificially divided into a small procurement. In all small procurements, competition should be sought to the extent practical.

## **Auction Bids**

A procurement made by auction bid is a process under which an agency may accept multiple price bids from the same vendor until the time when, or event on which, bidding ends. A primary procurement agency may use auction bids to procure supplies within an estimated contract value of \$1,000,000 or more if the agency determines that auction bids are in the State's best interest. An invitation for auction bids must include contract specifications, whether the contract will be awarded based on lowest bid price or lowest evaluated bid price (including any objective measurable criteria), any small business preference, and the dates and times when bidding will begin and end. An invitation for auction bids may include a request for technical offers or samples before submission of price bids.

A bidder may submit multiple price bids in response to an invitation for auction bids. If a person submits multiple bids, an agency must judge each bid independently. The amount of any price bid, but not the identity of the bidder, is available for public inspection from the time the bid is received.

An agency must give public notice of an invitation for auction bids in the same manner as required for an invitation for bids. The procurement officer must award the contract to the responsive bidder who submits the lowest bid price, or if applicable, the lowest evaluated bid price.

Notice of a procurement contract awarded on an auction bid basis must be published on eMaryland Marketplace within 30 days after the execution and approval of the contract.

## **Procedures**

### **Administrative**

State law establishes procedures that apply to all types of source selection. A procurement officer must maintain a file on each procurement that includes a substantive record of all inquiries, all written solicitations by an agency, all offers received, all internal and external correspondence, written documentation from the procurement officer describing efforts to confirm the information in the affidavits submitted by the successful bidder or offeror, and the final contract. An agency must draft specifications to encourage maximum practicable competition and may not draft specifications to favor a single prospective bidder or offeror. Further, prospective bidders or offerors of supplies or construction must state whether the procurement will include recycled materials, including the types, amounts, and applications of these materials.

### **Prequalification**

Each of the primary procurement units may provide for the prequalification of persons as prospective responsible bidders or offerors. However, an agency may award a procurement contract to a person who is not prequalified and the agency may determine that a prequalified person is not a responsible bidder or offeror.

### **Rejection and Cancellation of Bids**

A procurement officer must reject a bid or proposal if the procurement officer determines that the bid is nonresponsive or the proposal is unacceptable, or that the bidder or offeror is not responsible. In addition, if, with Board of Public Works approval, an agency determines that it is fiscally advantageous or otherwise in the best interests of the State, the agency may cancel a solicitation, or reject all bids or proposals.

### **Bid Security**

Bid security submitted with a bid helps ensure that, on contract award, the bidder will execute the contract at the bid price. Bid security includes surety bonds, cash, or other forms of security that are authorized by State or federal regulation or deemed satisfactory by the unit awarding the contract. If a successful bidder does not enter into a contract, the bid security will be forfeited. An agency may not require bid security for a procurement expected to be for \$100,000 or less. An agency, however, must require a bidder or offeror to provide bid security on a procurement contract for construction if the price is expected to exceed \$100,000 or, for smaller contracts, if federal law requires.

The amount of bid security required for a procurement contract for construction is at least 5% of the bid or price proposal or, if the price is unknown, an amount determined by the agency. An agency may require a bidder or offeror to provide bid security set by the agency on a procurement contract for services, supplies, or construction-related services if the price of the procurement contract is expected to exceed \$50,000 or if federal law requires. If a bidder or offeror withdraws a bid or proposal, action may be taken against the bid security unless there is a mistake in the bid or proposal, and the agency allows the bidder or offeror to withdraw before the contract is awarded.

### **Security**

Generally, a procurement officer may not require a contractor to provide a performance bond, payment bond, or other security on a procurement contract for construction, construction-related services, services, or supplies if the price of the procurement contract is for \$100,000 or less. However, a procurement officer must require a contractor to provide a performance bond, payment bond, or other security if federal law or a condition of federal assistance requires the security. If the price of a procurement contract for construction exceeds \$100,000, a procurement officer must require a contractor to provide security as required under Title 17 of the State Finance and Procurement Article (the “Maryland Little Miller Act”). A procurement officer may also require a contractor to provide a performance bond or other security on a procurement contract for supplies, services, or construction-related services where circumstances warrant security and the price of the procurement contract exceeds \$100,000.

### **Unlawful Conduct and Conflict of Interest**

During the procurement process, a bidder or offeror may not knowingly offer or promise future employment, a business opportunity, or money or other gifts, to an agency procurement official. Further, a bidder or offeror may not solicit from an agency employee any proprietary or source selection information regarding the procurement. In addition, for invitations for bids or requests for proposals that involve the selection of a consultant, the bidder or offeror must provide to the agency an affidavit that discloses any actual or potential conflict of interest of which the bidder or offeror knows, or can reasonably be expected to know.





## Chapter 19. Contract Formation

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### Contract Method and Preference

An agency may enter into a procurement contract based on any method of pricing that will promote the best interests of the State. However, if practicable, an agency must give preference to a fixed-price form of procurement contract. An agency may not enter into a cost-plus-a-percentage-of-cost procurement contract, and a contractor who is subject to a cost-reimbursement contract may not enter into a cost-plus-a-percentage-of-cost subcontract.

An agency may not enter into a cost-reimbursement contract unless the procurement officer determines that a cost-reimbursement contract is likely to be less costly to the State than any other type of contract, or, except for leases of real property, the kind or quality of procurement that the agency requires cannot be obtained practicably under any other type of contract. If an agency enters into a contract that is wholly or partly a cost-reimbursement contract, the procurement officer must first determine that the contractor's accounting system is adequate for the timely development of all necessary cost data and to allocate costs in accordance with generally accepted accounting principles. Furthermore, a cost-reimbursement contract must provide that costs, including costs for subcontractors, will be reimbursed only if the costs are allowable and allocable under the contract or by regulation.

A contractor under a cost-reimbursement contract shall give notice to and obtain approval from the agency before the contractor enters into a cost-reimbursement subcontract, or any subcontract involving more than \$25,000 or 5% of the estimated cost of the procurement contract.

### Contract Provisions

State law requires each procurement contract to include a number of specific contract provisions. After the parties enter into a contract, they may include additional clauses in the contract. Each procurement contract shall include clauses covering the following:

- termination for default;
- termination wholly or partly by the State for its convenience if the agency head of the primary procurement unit determines that termination is appropriate;

- variations that occur between estimated and actual quantities of work in a contract;
- liquidated damages, as appropriate;
- specified excuses for nonperformance;
- except for real property leases, the unilateral right of the State to order in writing changes in the work, if the changes are within the scope of the contract, or a temporary stop or delay in performance;
- the obligation of the contractor to comply with political contribution reporting requirements;
- nonvisual access for information technology;
- notice to parties of preexisting regulations;
- for construction contracts, provisions related to modifications and contract claims;
- for a multi-year contract, including a lease of real property, an automatic termination clause that discharges both parties to the contract from future performance of that contract, but not from existing obligations (the Board of Public Works, on the recommendation of the Secretary of General Services, may waive this required clause for a contract to acquire renewable energy); and
- nondiscrimination requirements.

## **Preferences**

### **In General**

State law requires that a State or State-aided entity buy supplies and services, if available, from Maryland Correctional Enterprises, Blind Industries and Services of Maryland, a community service provider under the Employment Works Program, or a business owned by an individual with a disability, in that order of priority. Maryland also has preferences for small, minority-owned, veteran-owned, and disabled veteran-owned businesses. In addition, several miscellaneous purchasing preferences exist, including a reciprocal preference for resident bidders competing with bidders from outside the State. Other procurement preferences include those for products made from recycled paper and

other recycled material, low noise supplies, coal operated heating systems, mercury free products, and locally grown foods.

## **Small- and Veteran-owned Business Programs**

### **Preference Programs**

The Small Business Preference Program applies to the procurement of supplies, general services, and construction-related services by the Department of General Services, the Maryland Department of Transportation, the University System of Maryland, Morgan State University, and, with respect to the construction of correctional facilities, the Department of Public Safety and Correctional Services. Under the program a small business may receive a baseline maximum 5% price preference and an additional 3% for a disabled veteran-owned small business or 2% for a veteran-owned small business. These preferences allow a small business to be awarded a contract even if the small business submits a responsive price bid that exceeds the lowest responsive bid by the applicable percentage. To qualify as a small business, a firm must (1) be independently owned and operated; (2) not be a subsidiary of another firm; (3) not be dominant in its field of operation; and (4) not exceed employment and gross sales figures specific to wholesalers, retailers, manufacturers, or to the service or construction industries. Specified lead agencies, with the help of the Department of Business and Economic Development, are required to compile and maintain a comprehensive bidder's list of small businesses and to adopt other procedures, including procedures related to outreach, to facilitate the involvement of small businesses in the public procurement process.

In addition, the Small Business Reserve Program requires designated units of State government to structure their procurement procedures so that, subject to limited exceptions, at least 10% of the total dollar value of goods and services it procures are from small businesses. The Small Business Reserve Program terminates on September 30, 2016, unless otherwise extended by law.

### **Reserve Programs**

Each designated agency is required to structure its procurement procedures so that at least 10% of the agency's total dollar value for procurement of goods, supplies, services, maintenance, construction, construction-related services, and architectural and engineering services is expended directly to small businesses at the prime contract level. The Department of General Services compiles and maintains a comprehensive bidder's list of qualified small businesses.

Beginning July 1, 2012, an agency is required to structure its procurement procedures so that at least 0.5% of the total dollar value of its procurement contracts is awarded to veteran-owned small businesses.

### **Minority Business Enterprise Program**

In the late 1970s, the General Assembly concluded that underutilization of minority businesses in State contracting was primarily due to past and present discrimination. More recent studies also have found that marketplace discrimination continues to make it more difficult for minority business enterprises to compete for business from the State and from vendors who do business with the State. These studies show that prime contractors will use minority business enterprises on public-sector projects with minority business enterprise requirements but will seldom use these businesses on projects without these requirements.

To address these issues, the General Assembly established the Minority Business Enterprise Program, which set goals for agencies to try to achieve greater participation in government contracting by minority business enterprises. The ultimate goal of the program is to develop qualified minority businesses that will be able to do business without the need of the program. In accordance with a U.S. Supreme Court decision, the program is evaluated every five years to determine whether evidence of continuing discrimination exists and supports the reauthorization of the program.

A Minority Business Enterprise is defined as a legal entity, except a joint venture, that is organized to engage in commercial transactions and is at least 51% owned, controlled, and managed by socially and economically disadvantaged individuals, as determined by the certifying agency. The law provides that a rebuttable presumption exists that “socially and economically disadvantaged individuals” includes African Americans, Native Americans, Asians, Hispanics, women, and physically or mentally disabled individuals. An individual with a net worth exceeding approximately \$1,500,000, adjusted annually for inflation but not including specific interests in minority businesses, primary residences, or qualified retirement plans, may not be found to be economically disadvantaged.

Under this program, each agency must structure construction contract and general procurement contract procedures to try to achieve the following results:

- a minimum of 7% of the agency’s total dollar value of procurement contracts is to be made directly or indirectly from certified Minority Business Enterprises classified by the certification agency as African American-owned businesses;

- a minimum of 10% of the agency's total dollar value of procurement contracts is to be made directly or indirectly from certified Minority Business Enterprises classified by the certification agency as women-owned businesses; and
- an overall minimum of 25% of the agency's total dollar value of procurement contracts is to be made directly or indirectly from all certified Minority Business Enterprises.

A bidder or offeror may obtain a waiver of Minority Business Enterprise contract goals if:

- the bidder or offeror can show that it was unable to obtain certified Minority Business Enterprise subcontract participation or participation at a reasonable price or in the appropriate classifications; and
- the agency head determines that a waiver serves the public interest.

An agency head may also waive the Minority Business Enterprise requirements for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate the use of those procedures.

The Board of Public Works has designated by regulation the Maryland Department of Transportation to certify, recertify, and decertify minority business enterprises. That agency must publish and maintain a central directory of minority business enterprises that are certified or have been decertified for specific purposes. A State agency may not allow a person to participate in procurement as a certified Minority Business Enterprise unless the Maryland Department of Transportation has appropriately certified the person. The board is also required to adopt regulations promoting and facilitating the certification of minority business enterprises that have received certification from the federal Small Business Administration or a county that uses a certification process that is substantially similar to the State process.

Within 90 days after each fiscal year, each agency is required to submit a report to the Governor's Office of Minority Affairs, the Maryland Department of Transportation in its role as the certification agency, and the General Assembly. The report must include for the previous fiscal year:

- the total number and value of procurement contracts awarded to minority business enterprises, catalogued by category of minority business enterprise and by the award of prime contracts and subcontracts;

- the percentage of the total number and value of contracts awarded to minority business enterprises, catalogued by category of minority business enterprise;
- the total number and the names of certified minority business enterprise contractors that participated as prime contractors or subcontractors on agency contracts;
- all contracts awarded for each participating minority business enterprise, including a description of the contracts; and
- any other information required by the Governor's Office of Minority Affairs and the Maryland Department of Transportation, as approved by the Board of Public Works.

The Governor's Office of Minority Affairs is required to submit a summary report of this information to the board and the General Assembly by the end of each calendar year.

The Governor's Office of Minority Affairs also implements numerous outreach activities to support the Minority Business Enterprise Program. The office has established many partnerships with State and local governments, private business entities, and business development organizations to support the program. To enhance the development of minority business enterprises, the office also holds outreach forums and seminars to publicize government contracting opportunities and to educate minority business enterprises on the State's certification and procurement processes.

## **Miscellaneous Purchasing Preferences**

### **Resident Bidders**

When an agency uses competitive sealed bidding or competitive sealed proposals to award a procurement contract, the agency may give a preference to a resident bidder or offeror who submits the lowest responsive bid if (1) the resident bidder or offeror is a responsible bidder or offeror; (2) a responsible bidder or offeror whose principal office or operation is in another state submits the lowest responsive bid; (3) the state in which the nonresident bidder or offeror's principal office is located or in which the nonresident bidder or offeror has its principal operation gives a preference to its residents; and (4) the preference does not conflict with a federal law or grant affecting the procurement contract. A preference may include a percentage preference or an employee residency requirement. The preference given must be identical to the out-of-state preference.

### **Paper Procurement by the Department of General Services**

To the extent practicable, the Secretary of General Services must buy or approve for purchase only supplies that are produced from recycled paper. Of the total volume of paper that General Services buys, at least 90% must be recycled paper.

### **Low Noise Supplies**

To the extent practicable, each State agency must buy or lease for use by the State government the quietest available supplies, which include supplies that are certified as low-noise-emission products under the federal Noise Control Act of 1972.

### **Coal in Heating Systems**

The design of a heating system in a building or facility constructed after July 1, 1986, may not preclude the use of Maryland coal if the State provides at least 50% of the money used for construction of the building or facility and if a determination is made that coal products will be used to fuel the heating system. This preference does not apply to a building or facility for which (1) the Maryland Department of the Environment determines that the use of coal products would violate State law; or (2) the Department of General Services or another appropriate agency determines that the use of coal products would not be cost effective.

### **Biodiesel Fuel for State Vehicle Fleet**

Half of all diesel-powered vehicles in the State fleet and State-owned heavy equipment must use a fuel blend that consists of 5% biodiesel. This requirement also applies to specified State-owned heating equipment, subject to the availability of the biodiesel.

### **Recycled Products**

A price preference, not to exceed 5%, exists for the purchase of products made from recycled materials. The Department of General Services, in consultation with other State agencies and interested parties, must establish a list of acceptable products that contain recycled materials. The list must be published for use by State agencies at least twice each year.



**Mercury Free Products**

All State agencies must give a price preference not exceeding 5% to products and equipment that are mercury free or contain the least amount of mercury necessary to meet product or equipment performance standards. An agency also may limit a procurement to mercury free products.

**Maryland Food Growers**

Maryland food growers or distributors of Maryland grown food may receive a 5% price preference if the bid meets all other requirements specified by the procurement.

**Steel**

State agencies must require a contractor or subcontractor to use or supply only American steel products in the performance of a contract for:

- constructing or maintaining a public work; or
- buying or manufacturing machinery or equipment that is composed of at least 10,000 pounds of steel and is to be installed at a public work site.

An agency, however, does not have to use American steel products if:

- the price of American steel products is not reasonable;
- American steel products are not produced in sufficient quantity to meet the requirements of the contract; or
- the purchase of American steel products would not be consistent with the public interest.

**Compost**

State and local agencies that maintain public lands must give preference to the use of compost in any land maintenance activity paid for with public funds. The intent of this requirement is to foster the composting of landscaping waste from State land and to increase the percentage of landscaped area fertilized by compost.

## **Chapter 20. Dispute Resolution**

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### **In General**

The dispute resolution process begins when an aggrieved party submits a bid protest or contract claim to a procurement officer, who must review the protest or claim and any other appropriate information, and may conduct discussions or negotiations with interested parties. The procurement officer may negotiate a settlement, or grant or deny whole or partial relief. The procurement officer's decision is then reviewed by the unit and agency head, who may approve, disapprove, modify, or remand the decision. If the protester or claimant is not satisfied by the agency's final decision, the protester or claimant may appeal to the Maryland State Board of Contract Appeals. If either of the parties is not satisfied by the board's decision, the party may appeal to the appropriate court. This chapter discusses this process.

### **Complaints**

#### **Types of Complaints**

Two types of complaints arise under the procurement process. A protest arises out of the formation of a contract and includes disputes related to the qualifications of bidders or offerors or contract award. The protest procedures described here do not apply to (1) the procurement of architectural or engineering services; (2) except as authorized by the Board of Public Works, an act or omission by an agency under the Veteran-owned Small Business Enterprise Participation Program (reserve program); or (3) an unintentional failure to use eMaryland Marketplace when required for publication of a procurement or award. A contract claim arises out of the contract itself and includes disputes related to performance, breach, modification, or termination of the contract. Different procedures apply to the resolution of protests and contract claims.

#### **Protest**

The protest process begins when a prospective or actual bidder or offeror submits a protest to the procurement officer against the award or the proposed award of a contract. A protest must be filed within seven days after the basis for the protest is known or should have been known, with two exceptions. First, if a protest is based on an invitation for bids and the basis for the protest is apparent before the initial bid opening or closing, the protest shall be filed before the initial bid opening or closing, respectively. Second, if a protest is based on competitive sealed proposals and the basis for the protest

did not exist in the initial request for proposals, the protest may not be filed later than the next closing date for receipt of proposals following the alleged impropriety.

## **Contract Complaint**

### **Complaint by Contractor**

Contract claims begin with two steps. First, the claimant must submit a notice of a contract claim to the procurement officer within 30 days after the basis for the claim is known or should have been known. Second, unless provided an extension by the procurement officer or final payment has been made on the contract, a contractor must file the claim within 90 days of filing notice of a construction contract claim and 30 days of filing notice of a contract nonconstruction claim. A claim must be in writing and include:

- an explanation of the claim and pertinent contract provisions;
- the amount of the claim;
- the facts on which the contract claim is based;
- all relevant data and correspondence that may substantiate the contract claim; and
- a certified statement that the claim is made in good faith.

### **Complaint by Agency**

Chapter 373 of 2004 authorized State agencies to assert contract claims against contractors, provided for review of State claims, and specified that State agencies may appeal the final decision to the Maryland State Board of Contract Appeals. In effect, the enactment overturned the Maryland Court of Appeals' decision in *University of Maryland v. MFE International/NFP Architects, Inc.* 345 MD. 86, 691 A.2d 676 (1997) that held that the State had no statutory authority to file a contract claim that could be appealed to the Board of Contract Appeals. The Act specified that a claim by an agency must be in writing and include:

- the basis for the contract claim;
- to the extent known, the amount, or the performance or other action, requested by the agency in the contract claim; and

- the date by which the contractor is required to provide a written response to the contract claim.

## **Procurement Officer's Duties**

A procurement officer's duties in the decisionmaking process for procurement disputes depend on the type of complaint filed.

### **Protests**

#### **General Procedures**

When a procurement officer receives a protest, the procurement officer:

- must review the substance of the protest;
- may request additional information;
- may conduct discussions or negotiations; and
- unless clearly inappropriate, may seek the advice of the Office of the Attorney General.

#### **Requests for Additional Information**

If a procurement officer requests additional information from a party, the party has five days after notification of the request to produce the requested information unless the officer specifies another time. Failure to produce the requested information in a timely manner may result in the procurement officer's resolution of the protest without consideration of the requested information.

#### **Discussions or Negotiations**

A procurement officer may conduct discussions or negotiations with the interested parties and resolve a protest by agreement with any one or more of the interested parties. The agreement must be in writing and is subject to the approval of the reviewing authority and the Office of the Attorney General.

**Recommended Decisions**

If discussions and negotiations do not lead to an agreement, the procurement officer must wholly or partly grant or deny the protest and the relief sought. The procurement officer must write the decision as expeditiously as possible and must include in the decision:

- a description of the controversy;
- a statement of the decision and any supporting material; and
- if the protest is denied, a paragraph stating that the decision is the final action of the agency but that the decision may be appealed to the Maryland State Board of Contract Appeals.

**Contract Claims****General Procedures**

After a procurement officer receives a contract claim, the procurement officer:

- must investigate and review the facts pertinent to the claim;
- may request additional information or substantiation through appropriate procedure;
- may conduct discussions or negotiations; and
- unless clearly inappropriate, may seek the advice of the Office of the Attorney General.

**Requests for Additional Information**

Unlike for protests, there is not a specific time limit for submitting additionally requested information.

**Discussions or Negotiations**

A procurement officer may conduct discussions or negotiations with the interested parties and settle a claim by agreement. Like a protest agreement, a contract claim

settlement must be in writing and is subject to the approval of the reviewing authority and the Office of the Attorney General. Unlike a protest agreement, however, a contract claim settlement must include a release and be supported by a written statement that the agreement is in the best interest of the State.

### **Recommended Decisions**

If a settlement is not reached, the procurement officer must wholly or partly grant or deny the claim. The procurement officer must include in the decision:

- a description of the claim;
- a reference to pertinent contract provisions;
- a statement of factual agreements and disagreements;
- a statement of the proposed decision and supporting rationale; and
- a paragraph stating that the decision is the final action of the agency but that the decision may be appealed to the Maryland State Board of Contract Appeals.

## **Duties of the Reviewing Authority**

### **Protest and Contract Complaints**

Before the procurement officer's decision on a protest or contract claim is finalized, it must be approved by the reviewing authority. The reviewing authority is the head of the procurement officer's unit and the head of the agency of which the officer's unit is a part. The reviewing authority may approve, modify, or disapprove the procurement officer's decision. If the reviewing authority disapproves the decision, it may remand it to the procurement officer, but if the reviewing authority approves or modifies the decision, it becomes the final agency action. On receipt of the final agency action, an aggrieved party may appeal to the board. A party to a protest has 10 days to file an appeal, while a party to a contract claim has 30 days to file a notice to appeal.

### **Construction Contract Complaints**

In addition to the duties the reviewing authority has for protests and contract claims, the reviewing authority must comply with specific notification requirements for

construction contract claims. The reviewing authority must mail or deliver written notification of its final decision to a contractor within:

- 90 days after a procurement officer receives a claim in an amount for which the board's accelerated procedure may be used;
- 180 days after the procurement officer receives a claim in an amount for which the board's accelerated procedure may not be used; or
- a longer period that the contractor agrees to in writing.

Failure to make a final decision within these time limits may be considered a decision to deny the claim which may be appealed to the board.

If the final decision grants the claim in part and denies the claim in part, the procurement agency must pay the amount granted. However, payment is not an admission of liability, and if a subsequent determination modifies the reviewing authority's final decision, the agency may recover the amount paid.

## **Maryland State Board of Contract Appeals**

### **In General**

The Maryland State Board of Contract Appeals is an independent agency in the Executive Branch that consists of three full-time members qualified to serve in a quasi-judicial capacity and possessing a thorough knowledge of procurement practices and processes. The chairman and other members are appointed by the Governor with the advice and consent of the Senate.

The board adjudicates protest and contract disputes between State agencies and contractors or vendors doing business with the State. Matters involved in protest disputes include the preparation and interpretation of bid specifications, qualification and selection of bidders, the bidding process, and other concerns relating to the formation of a procurement contract. Issues in contract disputes include the quality of performance, compliance with contract provisions, compensation, claims and change orders, and termination. The board may subpoena witnesses and documents and may compel the testimony of witnesses. Board decisions are subject to judicial review, and any aggrieved party, including a State agency, may appeal a final decision. The board does not have jurisdiction over (1) protests relating to architectural and engineering services, an unintentional failure to use eMaryland Marketplace when required for publication of a

procurement or an award, or, except as authorized by the Board of Public Works, an act or omission by an agency under the Veteran-owned Small Business Enterprise Participation Program (reserve program); or (2) contract claims relating to a lease of real property.

## **Appeals**

The board must give priority to an appeal of a final agency decision on a bid protest. Also with respect to an appeal of a bid protest, discovery is limited to document production absent extraordinary circumstances. The board must decide an appeal of a bid protest expeditiously.

The board must make a decision regarding an appeal on a contract claim within 180 days after the day on which all briefs were filed or, if later, the day on which the record was closed. An appellant may elect to use a “small claims” (expedited) appeal for a dispute of \$10,000 or less or an “accelerated” appeal for a dispute of \$50,000 or less. Appeal procedures are streamlined under these processes, and decisions must be rendered within 120 or 180 days, respectively, of the appellant’s election to use these processes.





## Chapter 21. Penalties for Noncompliance

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### In General

Noncompliance with the State procurement law may result in a contract being found void or voidable, the suspension or debarment of a party to a procurement contract, or a criminal penalty.

### Void Contracts

A contract is considered void if it violates the State procurement law. A void contract cannot be enforced. When a contract is found to be void, the contractor must be awarded compensation for actual expenses reasonably incurred under the contract and a reasonable profit if the contractor:

- acted in good faith;
- did not directly contribute to the violation; and
- had no knowledge of the violation before the contract was awarded.

### Voidable Contracts

Even though a contract violates the State procurement law, the contract may be enforceable. The Board of Public Works may determine that a contract is voidable, rather than void, if the board determines that:

- all parties acted in good faith;
- enforcement of the procurement contract would not undermine the purposes of the State procurement law; and
- the violation was insignificant or otherwise did not prevent substantial compliance with the State procurement law.

The State agency that entered into the contract must make the affirmative decision to ratify a voidable contract. The agency must determine that the contract is in the best interests of the State before ratifying it. If the agency does not ratify the contract, it may void the contract subject to above-noted payment of expenses and profit.

## **Debarment**

A debarred contractor may not be considered for the award of, be awarded, or perform, directly or indirectly, a contract with the State during the time of debarment. A contractor may be debarred for numerous reasons including:

- conviction for a variety of specified offenses;
- an admission in writing or under oath of an act that constitutes grounds for conviction of certain offenses;
- being a successor, assignee, subsidiary, or affiliate of a debarred person;
- operating in a manner designed to evade or defeat the purpose of the State procurement law;
- debarment on the federal level;
- previous failure to perform procurement contracts;
- being found in a final determination to have discriminated against other entities on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, disability, or any otherwise unlawful form of discrimination;
- conviction for specified offenses under the Minority Business Enterprise Program; or
- any cause the Board of Public Works determines to be so serious as to affect the integrity of the procurement process.

A debarment may occur when the Attorney General initiates a proceeding against a contractor with the Board of Public Works. The board is required to notify a person of the proceedings and that the person is entitled to a hearing before the board if requested within 30 days of receiving the notice. If a person does not make a request within the 30 days, the person waives the right to a hearing and is automatically debarred. A person who is convicted of certain crimes related to bribery is debarred by operation of law.

The Board of Public Works decides whether to debar a contractor by determining if the debarment would serve the integrity of the contracting process and the best interests of the State. In making this determination the board considers:

- the nature and seriousness of the act;
- the time the act occurred;
- to what extent the person cooperated with the authorities and the conditions under which the person cooperated; and
- the conduct of the person after the act occurred.

The board is required to provide notice of its determination to the person in question.

The board may debar a business if the board previously debars an officer, director, controlling shareholder, or partner of the business, or an employee involved in the procurement process. The business is debarred as long as the debarred person remains with the business in any of the listed capacities or until the debarment is terminated.

The board may place a person or business on suspension while the debarment proceeding is pending. Suspension means that a person may not be considered for the award of, be awarded, or perform, directly or indirectly, a contract with the State.

A suspension or debarment terminates automatically if the underlying conviction is reversed or voided. The board also may grant a petition for removal of the debarment after specified time periods have elapsed.

## **Criminal Penalties**

### **Collusion**

Collusion occurs when a person acts with another person to defraud the State in connection with the procurement process. A person who acts in collusion is liable for damages equal to three times the value of the loss to the State created by the collusion.

**Falsification, Concealment, or Suppression of Material Facts**

In connection with a procurement contract, a person may not willfully falsify, conceal, or suppress a material fact or make false statements of material fact. Additionally, a person may not aid or conspire with an individual in falsifying or concealing a material fact. A person who violates this provision is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years, or both.

## **Chapter 22. Miscellaneous Requirements**

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Certain types of procurement have special requirements. This chapter describes some of these procurements.

### **Energy Performance Contracts**

The State procurement law requires special oversight for energy performance contracts. Before an agency may issue a request for proposals for an energy contract, the agency is required to consult with the Maryland Energy Administration, which is charged with reviewing the request to ensure that it meets the State energy standards, preserves the State's flexibility to investigate and use economically justifiable new technologies, and is in conformance with the agency's energy conservation plan. In addition, before an agency approves a contract, the Board of Public Works is required to review the contract to ensure that the projected annual energy savings will exceed the projected annual payments to the contractor and that the proposed energy technology is appropriate for the time period provided in the contract.

### **Architectural and Engineering Services**

#### **In General**

The procurement of architectural and engineering services is overseen by the General Professional Services Selection Board in the Department of General Services and the Transportation Professional Services Selection Board in the Maryland Department of Transportation. Both selection boards are required to ensure that recommendations to the Board of Public Works for architectural and engineering procurements costing more than \$200,000 are made on a competitive basis and include an evaluation of the technical proposals and qualifications of at least two firms. Each board has separate regulations and procedures.

#### **General Professional Services Selection Board**

The General Professional Services Selection Board (General Selection Board) awards procurements for architectural and engineering services over \$200,000 based on an initial technical ranking and a subsequent negotiation for compensation. State agencies, with the exception of transportation units, intending to procure architectural and engineering services that cannot be provided in-house are required to submit a request to procure those services to the General Selection Board. A comprehensive description of

the nature and scope of the services to be procured and how further information may be obtained must be published by the General Selection Board. The technical proposals submitted and the qualifications of contractors are then evaluated and the proposals are ranked. The General Selection Board begins negotiations with the most qualified contractor to enter a contract with fair, competitive, and reasonable compensation. If they cannot come to an agreement, the board must end negotiations with the most qualified contractor and begin negotiations with the next highest ranked contractor.

### **Transportation Professional Services Selection Board**

Architectural and engineering procurements for transportation agencies are awarded by the Transportation Professional Services Selection Board (Transportation Selection Board) based on a multi-tier ranking process. A transportation agency that intends to procure architectural and engineering services that cannot be provided in-house is required to submit a request to procure those services to the Secretary of Transportation. The Secretary must consider whether the project can be performed by in-house resources. If not, the Secretary must certify this fact to the Transportation Selection Board.

The Transportation Selection Board must publish a solicitation of interest generally describing the services to be procured and how further information may be obtained. The transportation agency then evaluates and ranks the respondents to the solicitation, and establishes a reduced candidate list of two or more candidates. The agency then sends a request for technical proposals to the contractors on the reduced candidate list. The agency reviews, evaluates, and ranks the proposals for submission to the agency head. After receiving concurrence from the agency head, the agency begins negotiations with the most qualified contractor to enter a contract with fair, competitive, and reasonable compensation. If the agency and the contractor cannot come to an agreement, the agency must end negotiations with the most qualified contractor and begin negotiations with the next highest ranked contractor. Once the agency comes to an agreement with a contractor, it must submit the agreement and accompanying documentation to the Transportation Selection Board. The Transportation Selection Board must review the agreement, documentation, and selection process and then approve, postpone for cause, or reject the contract award.

**Appendix 1**  
**Summary of Personnel Data by Major Areas of Government**  
**Regular Full-time Equivalent Positions**  
**Fiscal 2006-2010 Working Appropriations**  
**(\$ in Millions)**

<u>Department/Service Area</u>	<u>2006 Actual</u>	<u>2007 Actual</u>	<u>2008 Actual</u>	<u>2009 Actual</u>	<u>2010 Working Appropriation</u>
Legislative Branch	\$744	\$747	\$747	\$747	\$747
Judicial Branch	3,291	3,397	3,498	3,569	3,581
<i>Executive Branch</i>					
Legal	1,563	1,584	1,582	1,571	1,504
Executive and Administrative Control	1,650	1,666	1,661	1,661	1,633
Financial and Revenue Administration	2,028	2,026	2,025	1,990	1,991
Budget and Management	431	442	435	447	450
Retirement	186	201	203	204	204
General Services	643	636	638	611	593
Transportation	9,012	9,021	8,994	9,135	9,012
Natural Resources	1,367	1,369	1,344	1,359	1,287
Agriculture	428	436	437	427	406
Health and Mental Hygiene	7,631	7,692	7,494	7,237	6,584
Human Resources	7,005	7,021	6,961	6,851	6,742
Labor, Licensing, and Regulation	1,460	1,475	1,493	1,484	1,680
Public Safety and Correctional Services	11,279	11,503	11,642	11,627	11,308
Maryland State Department of Education and Other Education	2,140	2,185	2,181	2,138	1,961
Housing and Community Development	318	316	311	311	311
Business and Economic Development	292	292	276	259	238
Environment	949	951	957	979	970
Juvenile Services	2,081	2,080	2,222	2,272	2,254
Police and Fire Marshal	2,464	2,472	2,458	2,441	2,416
<b><i>Executive Branch Subtotal</i></b>	<b><i>\$52,924</i></b>	<b><i>\$53,364</i></b>	<b><i>\$53,311</i></b>	<b><i>\$53,001</i></b>	<b><i>\$51,543</i></b>
Higher Education	21,714	22,794	23,613	23,768	23,864
<b>Total</b>	<b>\$78,673</b>	<b>\$80,302</b>	<b>\$81,169</b>	<b>\$81,085</b>	<b>\$79,735</b>

Source: Department of Budget and Management; Department of Legislative Services





**Appendix 2**  
**Salary Setting Authorities and Personnel Systems**  
**Independent of the State Personnel Management System**

<u>Department/Agency</u>	<u>Authority</u>	<u>Groups Covered</u>
<b>Independent Salary Setting Authority</b>		
Assessments and Taxation	Tax Property Article § 2-104	Persons transferred from jurisdictions in 1974-1976, retain the right to remain in local pay and classification systems for present job and for any job to which promoted at any time in the future
Department of Budget and Management	Education Article § 6-302	Teachers employed in Department of Juvenile Justice facilities, hospitals, prisons, and certain vocational rehabilitation programs
Department of Business and Economic Development	Article 83A § 2-102	Assistants, professional consultants, and employees of the Secretary's office
Employment Services and Unemployment Insurance	Labor and Employment Article § 8-305	All employees
Health Care Commission	Health-General Article §§ 19-106 and 19-107	Executive director
Health Services Cost Review Commission	Health-General Article §§ 19-206	Executive director, deputy director, principle section chiefs
Maryland Automobile Insurance Fund	Insurance Article § 20-204	Executive director, technical, and professional positions
Maryland Energy Administration	State Government Article § 9-2002	All employees
Maryland Public Broadcasting	Education Article § 24-204	All employees except support and custodial staff
Maryland Insurance Administration	Insurance Article § 2-105	Professional, management, and technical employees

<u>Department/Agency</u>	<u>Authority</u>	<u>Groups Covered</u>
Water Quality Finance Administration	Environment Article § 9-1604	Employ consultants, accountants, attorneys, financial experts, and other personnel and agents as may be necessary in its judgment, and fix their compensation
<b>Independent Personnel Systems</b>		
African American Museum	State Government Article § 9-2604	All employees
Office of People's Counsel	Public Utilities Companies Article § 2-203	Deputy people's counsel, certain attorneys, and positions unique to the People's Counsel
Public Service Commission	Public Utilities Companies Article § 2-108	Executive director and positions unique to the Public Service Commission
State Board of Physician Quality Assurance	Health Occupations Article § 14-204	All employees hired after September 1, 1992
State Racing Commission	Business Regulation Article § 11-206	Stewards and harness judges
Department of Legislative Services	State Government Article § 2-1205	All employees
Judiciary	Declaration of Rights Article 8; Maryland Constitution Article IV	All employees, except judges
Historic St. Mary's City Commission	Education Article § 24-510	All employees
University System of Maryland	Education Article §§ 12-110 and 12-111	All employees, including former board of trustees institutions
Morgan State University	Education Article § 14-104	Professional positions, including faculty
St. Mary's College	Education Article § 14-408	All positions
Baltimore City Community College	Education Article § 16-510	All employees
Transportation	Transportation Article § 2-103.4	All employees
Maryland Aviation Administration	Transportation Article § 5-201.1	Management personnel (up to 12)

<u>Department/Agency</u>	<u>Authority</u>	<u>Groups Covered</u>
<b>Independent Personnel Systems</b>		
Maryland Port Administration	Transportation Article § 6-204	Management personnel (up to 12) for private operating companies
Injured Workers' Insurance Fund	Labor & Employment Article § 10-113	All professional and technical; all others hired after July 1, 1990
Maryland Environmental Service	Natural Resources Article §§ 3-103.1 and 3-103.2	All employees
Maryland Food Center Authority	Article 41 § 13-105	All employees
Maryland Stadium Authority	Financial Institutions Article § 13-708	All employees
Maryland Veterans' Home Commission	State Government Article § 9-927	All employees of the home
Police & Correctional Training Commissions	Correctional Services Article § 8-206	Personnel performing administrative and training management functions
State Soil Conservation Committee	Agriculture Article § 8-203	All employees of the committee except certain clerical employees

Source: Department of Budget and Management



## **Appendix 3**

### **Creation and Abolition of State Positions through the Budget**

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#### **I. Position Request**

- A. The requesting agency normally initiates requests for a position authorization, to be funded through:
  - 1. Regular Budget – may be anticipated in the agency’s budget request or incorporated into the agency’s budget as part of a program enhancement or new initiative.
  - 2. Supplementary or deficiency budget as an addition to the regular budget.
  - 3. Board of Public Works – if it is within the legislatively prescribed position limit, created with non-State funds, or created through a contractual conversion, the Board of Public Works can approve the creation of positions.
  
- B. The requesting agency needs justification for additional positions. Each requested position is described in terms of:
  - 1. workload;
  - 2. organizational implications;
  - 3. whether it is a statutorily created position;
  - 4. funding; and
  - 5. related costs.

#### **II. Position Approval**

- A. New position requests are reviewed by the budget analyst for the requesting agency for inclusion in the budget or on the Board of Public Works agenda.
  - 1. Legislative and judicial requests are reviewed for consistency with the Legislative Branch request format, but not for approval/disapproval.
  - 2. Position actions with the nonbudgeted independent agencies, including the Maryland Automobile Insurance Fund, the Food Market Authority, and the Maryland Transportation Authority, are not reviewed by the Department of Budget and Management, but must be consistent with statute.

3. Executive Branch requests for positions are subjected to a full review of the requesting agency's need justification and related position matters including whether:
  - a. the workload can be quantified;
  - b. the quantity and types of positions are appropriate for the workload to be performed;
  - c. existing staff can absorb the proposed workload;
  - d. there are excessive vacancies in the program or unit, which may be filled before new positions are created;
  - e. the workload is continuing or can be resolved with the use of temporary positions; and
  - f. the requested position/positions conform to statute, budget bill language, and the *Joint Chairmen's Report*.

B. Department of Budget and Management Processing of Position Actions

1. The Department of Budget and Management, for new positions that have been approved in the budget, assigns each a position identification number as an inventory control.
2. Position creations not specified in the annual budget are subject to the Board of Public Works approval, after which they are assigned a position identification number by the Department of Budget and Management.

III. Position Maintenance

- A. The Department of Budget and Management, Office of Personnel Services and Benefits determines the appropriate job title and pay level for each new position based on each position's assigned duties and responsibilities, consulting with departmental personnel where necessary for clarification. The position identification number is entered into the office's data files along with the approved job title and corresponding pay range, creating a position which then may be filled by an employee. The requesting agency is then notified.
  1. The office, subject to approval of the Secretary of Budget and Management, must establish classifications for all positions in the State Personnel Management System.
  2. Changes in the duties, if material, may result in an agency requesting a position be abolished and a new position be created. The Office of Budget Analysis, also part of the Department of Budget and Management, controls the need and funding aspects of reorganized positions, while the

assignment to a classification is handled within the department's Office of Personnel Services and Benefits.

However, unless the change involves a large number of employees, agencies are given the discretion to abolish and create positions on their own as the result of changes in duties.

3. The office audits a random sample of positions under its jurisdiction to determine whether the positions are correctly classified and correctly compensated.

B. Position Transfer and Casual Abolition

1. The Office of Budget Analysis affects position transfers based on requests from the State agencies. The Department of Budget and Management reviews requests for the transfer of position identification numbers to reflect interagency organizational change. Funds for any transferred position identification numbers remain with the originating agency.
2. Position abolitions are made from time to time outside of the annual budget:
  - a. to reflect law changes;
  - b. as a result of special or federal fund lapses;
  - c. from contractual replacement of State employees;
  - d. because of reorganization; and
  - e. because of financial difficulties faced by the State.

Source: Department of Legislative Services; Department of Budget and Management





**Appendix 4**  
**State of Maryland Salary Schedule**  
**Fiscal 2011**  
**Annual Rates Effective July 1, 2010**

GRADE	BASE	STEP	STEP	STEP	STEP	STEP	STEP	STEP	STEP	MID POINT	STEP	STEP	STEP	STEP	STEP	STEP	THIRD QUARTILE	STEP	STEP	STEP	STEP	STEP	STEP
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20		
5	\$21,188	\$21,908	\$22,657	\$23,436	\$24,246	\$25,088	\$25,926	\$26,792	\$27,629	\$28,893	\$27,367	\$27,851	\$28,343	\$28,847	\$29,360	\$29,883	\$30,416	\$30,961	\$31,514	\$32,079	\$32,655		
6	\$22,448	\$23,219	\$24,018	\$24,853	\$25,718	\$26,619	\$27,089	\$27,966	\$28,055	\$28,551	\$29,059	\$29,577	\$30,105	\$30,642	\$31,191	\$31,752	\$32,323	\$32,906	\$33,497	\$34,101	\$34,716		
7	\$23,796	\$24,621	\$25,478	\$26,370	\$27,298	\$28,263	\$28,762	\$29,274	\$29,796	\$30,328	\$30,872	\$31,426	\$31,989	\$32,564	\$33,154	\$33,752	\$34,363	\$34,988	\$35,622	\$36,270	\$36,928		
8	\$25,239	\$26,122	\$27,038	\$27,992	\$28,984	\$30,016	\$30,552	\$31,099	\$31,656	\$32,226	\$32,807	\$33,400	\$34,004	\$34,619	\$35,249	\$35,890	\$36,544	\$37,212	\$37,890	\$38,582	\$39,287		
9	\$26,783	\$27,726	\$28,707	\$29,728	\$30,790	\$31,895	\$32,468	\$33,054	\$33,650	\$34,260	\$34,881	\$35,516	\$36,162	\$36,820	\$37,495	\$38,180	\$38,879	\$39,593	\$40,320	\$41,062	\$41,816		
10	\$28,434	\$29,444	\$30,494	\$31,587	\$32,723	\$33,903	\$34,518	\$35,144	\$35,783	\$36,436	\$37,101	\$37,779	\$38,471	\$39,177	\$39,895	\$40,630	\$41,378	\$42,141	\$42,919	\$43,713	\$44,520		
11	\$30,200	\$31,282	\$32,405	\$33,574	\$34,788	\$36,052	\$36,710	\$37,381	\$38,065	\$38,763	\$39,473	\$40,200	\$40,939	\$41,694	\$42,464	\$43,251	\$44,052	\$44,871	\$45,705	\$46,554	\$47,420		
12	\$32,091	\$33,247	\$34,450	\$35,700	\$37,002	\$38,354	\$39,056	\$39,773	\$40,506	\$41,250	\$42,013	\$42,789	\$43,581	\$44,389	\$45,213	\$46,055	\$46,911	\$47,785	\$48,684	\$49,620	\$50,563		
13	\$34,113	\$35,351	\$36,639	\$37,977	\$39,365	\$40,814	\$41,567	\$42,333	\$43,118	\$43,917	\$44,731	\$45,560	\$46,408	\$47,272	\$48,162	\$49,080	\$50,015	\$50,968	\$51,941	\$52,933	\$53,944		
14	\$36,280	\$37,603	\$38,981	\$40,411	\$41,899	\$43,448	\$44,254	\$45,074	\$45,914	\$46,769	\$47,639	\$48,543	\$49,468	\$50,414	\$51,375	\$52,356	\$53,359	\$54,380	\$55,422	\$56,484	\$57,567		
15	\$38,594	\$40,013	\$41,485	\$43,016	\$44,610	\$46,268	\$47,129	\$48,012	\$48,928	\$49,859	\$50,811	\$51,781	\$52,770	\$53,780	\$54,809	\$55,859	\$56,930	\$58,022	\$59,135	\$60,270	\$61,427		
16	\$41,074	\$42,590	\$44,168	\$45,806	\$47,511	\$49,313	\$50,255	\$51,214	\$52,192	\$53,189	\$54,207	\$55,245	\$56,306	\$57,386	\$58,487	\$59,609	\$60,757	\$61,927	\$63,117	\$64,331	\$65,568		
17	\$43,725	\$45,347	\$47,033	\$48,807	\$50,668	\$52,605	\$53,610	\$54,635	\$55,682	\$56,750	\$57,840	\$58,949	\$60,083	\$61,239	\$62,417	\$63,618	\$64,847	\$66,096	\$67,373	\$68,674	\$69,999		
18	\$46,563	\$48,309	\$50,151	\$52,065	\$54,056	\$56,126	\$57,203	\$58,299	\$59,421	\$60,563	\$61,729	\$62,917	\$64,129	\$65,366	\$66,627	\$67,912	\$69,224	\$70,562	\$71,926	\$73,316	\$74,725		
19	\$49,638	\$51,532	\$53,501	\$55,548	\$57,677	\$59,894	\$61,044	\$62,220	\$63,420	\$64,642	\$65,887	\$67,160	\$68,457	\$69,780	\$71,129	\$72,505	\$73,910	\$75,320	\$76,750	\$78,208	\$79,693		
20	\$52,950	\$54,977	\$57,083	\$59,276	\$61,554	\$63,924	\$65,157	\$66,414	\$67,697	\$69,003	\$70,339	\$71,699	\$73,087	\$74,499	\$75,914	\$77,359	\$78,832	\$80,333	\$81,864	\$83,425	\$85,017		
21	\$56,496	\$58,664	\$60,921	\$63,264	\$65,702	\$68,238	\$69,557	\$70,903	\$72,276	\$73,674	\$75,085	\$76,513	\$77,968	\$79,453	\$80,969	\$82,514	\$84,089	\$85,697	\$87,334	\$89,004	\$90,706		
22	\$60,290	\$62,609	\$65,021	\$67,532	\$70,141	\$72,855	\$74,265	\$75,677	\$77,116	\$78,584	\$80,081	\$81,609	\$83,165	\$84,756	\$86,377	\$88,030	\$89,717	\$91,438	\$93,194	\$94,983	\$96,808		
23	\$64,349	\$66,832	\$69,414	\$72,098	\$74,879	\$77,726	\$79,205	\$80,714	\$82,254	\$83,824	\$85,428	\$87,062	\$88,728	\$90,431	\$92,164	\$93,932	\$95,738	\$97,578	\$99,457	\$101,373	\$103,328		
24	\$68,692	\$71,349	\$74,112	\$76,931	\$79,859	\$82,905	\$84,489	\$86,107	\$87,753	\$89,434	\$91,148	\$92,896	\$94,681	\$96,501	\$98,356	\$100,249	\$102,180	\$104,151	\$106,159	\$108,208	\$110,297		
25	\$73,341	\$76,146	\$79,043	\$82,055	\$85,190	\$88,450	\$90,143	\$91,874	\$93,636	\$95,434	\$97,268	\$99,139	\$101,048	\$102,996	\$104,981	\$107,006	\$109,071	\$111,178	\$113,327	\$115,518	\$117,751		
26	\$78,233	\$81,216	\$84,314	\$87,540	\$90,895	\$94,381	\$96,194	\$98,043	\$99,930	\$101,855	\$103,817	\$105,819	\$107,861	\$109,946	\$112,070	\$114,235	\$116,449	\$118,704	\$121,005	\$123,351	\$125,743		

257

Source: Department of Budget and Management

Note: Salary levels do not reflect fiscal 2011 temporary salary reduction.



**Appendix 5**  
**General Salary Increases, Increments, and Other Compensation**  
**Fiscal 2003-2011**

<b>Fiscal Year</b>	<b>General Salary Increase</b>	<b>Increments</b>	<b>Police, Natural Resources Police, and Park Ranger Salary Increases</b>	<b>Maximum Deferred Compensation Match by State</b>	<b>Pay-for-performance Bonuses</b>	<b>Annual Salary Review Reclassifications</b>	<b>Other</b>
2003	None	None		\$500	None	None	
2004	None	None		None	None	None	
2005	7/1/2004 \$752	On time		None	None	Yes <sup>1</sup>	
2006	7/1/2005 1.5%	On time		\$400	None	Yes <sup>2</sup>	
2007	7/1/2006 \$900, \$1,400, or 2% <sup>3</sup>	On time	2% extra, 9% extra for State police (primarily DGS and DHMH officers)	\$600	None	Yes <sup>4</sup>	2 steps on standard salary schedule; 1 step on the physicians salary schedule
2008	7/1/2007 2.0%	On time		\$600	None	None	
2009	7/1/2008 2.0%	On time		\$600	None	Yes <sup>5</sup>	2-5 day furlough enacted <sup>6</sup>
2010	7/1/2009 None	None		\$0	None	None	3-10 day furlough enacted <sup>7</sup>
2011	7/1/2010 None	None		\$0	None	None	3-10 day furlough enacted <sup>8</sup>

DGS: Department of General Services;

DHMH: Department of Health and Mental Hygiene

<sup>1</sup>The following classifications are provided upgrades: public defenders, social services attorneys, assistant general counsels (human relations), assistant State prosecutors, direct service workers in the Department of Juvenile Services, property assessors, lab scientists, administrative law judges, and banking financial examiners.

<sup>2</sup>The fiscal 2006 annual salary review provides a one-grade salary adjustment for the Deputy State Fire Marshal classification series.

<sup>3</sup>Fiscal 2007 general salary increases are \$900 for employees making less than \$45,000 at the end of fiscal 2006, \$1,400 for employees making \$70,000 or more, and 2% for those remaining.

<sup>4</sup>The fiscal 2007 annual salary review provides reclassifications and other enhancements for correctional officers and correctional support personnel, registered nurses, licensed practical nurses, direct care assistants, forensic scientists, institutional educators, administrative law judges, and teachers aides.

<sup>5</sup>The fiscal 2009 annual salary review provides reclassifications and other enhancements for scientists, investigators, engineers, public defender intake specialist, veteran service, cemetery workers, call center specialists, complex tax auditor, tax consultant, retirement benefits counselor, medical care specialist, dental workers, financial regulation, deputy fire marshal, lead aviation maintenance technician, police communications operators, and civilian helicopter pilots worth \$5.9 million.

<sup>6</sup>State employee salaries were reduced through furlough in fiscal 2009 by Executive Order 01.01.2008.20 in December 2008. The salaries for employees earning \$40,000 were reduced by the value of 2 days' salary; those earning between \$40,000 and \$59,999 were reduced by the value of 4 days' salary; and those earning \$60,000 or above were reduced by 5 days' salary. Public safety and positions required to maintain 24/7 facilities were exempted from the action. The result was an average salary reduction of approximately 1.5%.

<sup>7</sup>State employee salaries were reduced through furloughs and temporary salary reductions in fiscal 2010 by Executive Order 01.01.2009.11 in August 2009. All employees are subject to a temporary salary reduction of five salary days, while non-24/7 employees with salaries between \$40,000 and \$49,999 are furloughed for an additional three days, those between \$50,000 and \$99,999 for extra four days; and those earning over \$100,000 are furloughed for additional five days. The result was an average salary reduction of approximately 2.6%

<sup>8</sup>State employee salaries were reduced through furloughs and salary reductions in fiscal 2011 by Executive Order 01.01.2010.11 in May 2010. The structure mirrors the fiscal 2010 program.

Source: Department of Legislative Services; Department of Budget and Management

**Appendix 6**  
**Contractual Full-time Equivalent Positions**  
**Fiscal 2006 Actuals to 2010 Working Appropriation**  
**Fiscal 2006-2010**  
**(\$ in Millions)**

<u>Department/Service Area</u>	<u>FY 2006</u> <u>Actual</u>	<u>FY 2007</u> <u>Actual</u>	<u>FY 2008</u> <u>Actual</u>	<u>FY 2009</u> <u>Actual</u>	<u>FY 2010</u> <u>Work.</u> <u>Approp.</u>
<b>Health and Human Services</b>					
Health and Mental Hygiene	\$461.5	\$457.8	\$400.8	\$542.5	\$352.3
Human Resources	70.5	136.1	78.0	78.1	73.9
Juvenile Services	177.5	144.2	157.3	121.4	126.4
<b>Subtotal</b>	<b>\$709.5</b>	<b>\$738.1</b>	<b>\$636.1</b>	<b>\$742.0</b>	<b>\$552.6</b>
<b>Public Safety</b>					
Public Safety and Correctional Services	\$265.7	\$411.5	\$264.6	\$284.1	\$380.3
Police and Fire Marshal	34.5	49.0	33.6	33.3	32.4
<b>Subtotal</b>	<b>\$300.2</b>	<b>\$460.4</b>	<b>\$298.2</b>	<b>\$317.3</b>	<b>\$412.6</b>
<b>Transportation</b>	<b>\$140.5</b>	<b>\$175.9</b>	<b>\$146.7</b>	<b>\$124.8</b>	<b>\$163.9</b>
<b>Other Executive</b>					
Legal (Excluding Judiciary)	\$95.1	\$114.5	\$85.8	\$50.9	\$58.7
Executive and Administrative Control	195.7	168.5	187.4	196.4	158.6
Financial and Revenue Administration	39.4	39.1	39.7	39.7	40.7
Budget and Management	16.5	16.0	23.6	21.1	20.3
Retirement	19.7	29.0	5.2	11.4	15.0
General Services	21.0	28.4	15.8	14.9	27.3
Natural Resources	345.7	373.8	463.8	400.7	389.7
Agriculture	35.5	42.3	51.5	49.1	49.9
Labor, Licensing, and Regulation	201.7	191.3	140.0	144.4	191.0
MSDE and Other Education	248.0	224.8	223.4	223.3	208.2
Housing and Community Development	53.5	39.5	21.2	30.0	63.0
Business and Economic Development	35.0	33.1	32.7	28.1	17.9
Environment	26.0	37.5	20.4	21.2	44.5
<b>Subtotal</b>	<b>\$1,332.6</b>	<b>\$1,337.6</b>	<b>\$1,310.3</b>	<b>\$1,231.1</b>	<b>\$1,284.6</b>
<b>Executive Branch Subtotal</b>	<b>\$2,482.9</b>	<b>\$2,712.1</b>	<b>\$2,391.3</b>	<b>\$2,415.2</b>	<b>\$2,413.7</b>
<b>Higher Education</b>	<b>\$5,784.0</b>	<b>\$5,929.1</b>	<b>\$6,147.3</b>	<b>\$6,285.4</b>	<b>\$6,276.7</b>
<b>Judiciary</b>	<b>371.0</b>	<b>370.5</b>	<b>376.5</b>	<b>373.5</b>	<b>384.0</b>
<b>Grand Total</b>	<b>\$8,637.8</b>	<b>\$9,011.7</b>	<b>\$8,915.1</b>	<b>\$9,074.0</b>	<b>\$9,074.4</b>

MSDE: Maryland State Department of Education



## Appendix 7 Comparison of Maryland State Retirement Plans

	<b>Employees and Teachers<sup>1</sup></b>	<b>State Police</b>	<b>Correctional Officers' System</b>	<b>Law Enforcement Officers' System</b>	<b>Judges</b>	<b>General Assembly</b>	<b>Governor</b>
<b>Participation</b>	Condition of employment	Condition of employment	Condition of employment	Condition of employment	Condition of employment	Optional	Automatic
<b>Vesting</b>	5 years of service	5 years of service	5 years of service	5 years of service	Immediate	8 years of service	one full term
<b>Employee Contribution</b>	2% of salary	8% of salary	5% of salary	4% of salary	6% of salary (for 16 years)	5% of salary (for 22 years, 3 months)	none
<b>Service Retirement Conditions</b>	Age 62 or 30 years (Age 55 with 15 years reduced benefit)	Age 50 or 22 years of service	20 years service, with at least the last 5 years as correctional officer	Age 50 or 25 years of service	Age 60	Age 60 (Age 50 with 8 years reduced benefit)	Age 55
<b>Allowance</b>	1.8% of salary for years service after 7/1/98; plus 1.2% of salary for years service prior to 7/1/98	2.55% per year of service	1.8% per year of service	2.0% per year if subject to the LEOP's modified pension benefit; otherwise 2.3% for first 30 years and 1.0% for each year thereafter	2/3 of active judge salary at 16 years	3% of current legislative salary per year of service	1/3 of current gubernatorial salary for one term; or 1/2 of annual salary for 2 terms
<b>Post Retirement Adjustments</b>	Limited to 3% annual COLA	Unlimited annual COLA	Unlimited annual COLA	Limited to 3% annual COLA	Based on salary of active judges	Based on salary of active legislators	Based on salary of active governor



<b>Employees and Teachers<sup>1</sup></b>	<b>State Police</b>	<b>Correctional Officers' System</b>	<b>Law Enforcement Officers' System</b>	<b>Judges</b>	<b>General Assembly</b>	<b>Governor</b>
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**Ordinary Disability Retirement**

<b>Conditions</b>	Incapacitated for duty after 5 years eligibility service	Incapacitated for duty after 5 years eligibility service	Incapacitated for duty after 5 years eligibility service	Incapacitated for duty after 5 years eligibility service	Incapacitated for duty	Incapacitated for duty after 8 years of creditable service	Not applicable
<b>Allowance</b>	Service retirement projected to age 62	Service retirement with minimum of 35% of salary	Service retirement with minimum of 25% of salary	Service retirement projected to age 50	Service retirement with minimum of 33.3% of salary	Service retirement based on total years of creditable service	Not applicable

**Accidental Disability Retirement**

<b>Conditions</b>	Permanently and totally disabled by accident in the performance of duty	Permanently and totally disabled by accident in the performance of duty	Permanently and totally disabled by accident in the performance of duty	Permanently and totally disabled by accident in the performance of duty	Not applicable	Not applicable	Not applicable
<b>Allowance</b>	2/3 of salary plus annuity based on member contributions	2/3 of salary plus annuity based on member contributions	2/3 of salary plus annuity based on member contributions	2/3 of salary plus annuity based on member contributions	Not applicable	Not applicable	Not applicable

COLA: cost-of-living-adjustment

LEOPS: Law Enforcement Officers' Pension System

<sup>1</sup>Table reflects the provisions of the Employees' Pension System and Teachers' Pension System. The Employees' Retirement System and Teachers' Retirement System, which were closed to new members in 1980, have different plan provisions that are discussed in Chapter 11.

Note: Table reflects abbreviated discussion of plan provisions; see Chapter 11 for fuller discussion of plan provisions.

**Appendix 8**  
**State and Participating Municipal Corporations – Contribution Rates by System**  
**Fiscal 2002-2011**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Teachers' Combined	9.4%	9.4%*	9.4%*	9.4%*	9.4%*	9.7%*	11.6%	11.7%	13.2%	14.3%
Employees' Combined	4.7%	4.7%*	4.7%*	4.7%*	5.8%*	6.8%	8.9%	8.7%	9.9%	11.7%
State Police	5.8%	5.8%	7.6%	0%	8.2%	13.8%	15.4%	21.2%	30.8%	57.0%
Judges	42.7%	43.9%	43.7%	36.7%	41.1%	42.4%	44.1%	43.6%	48.9%	59.1%
Law Enforcement Officers'	32.4%	36.1%	35.1%	37.7%	38.5%	40.6%	41.7%	36.6%	38.6%	47.7%
<b>Total State Systems</b>	<b>8.0%</b>	<b>8.0%</b>	<b>8.1%</b>	<b>8.0%</b>	<b>8.5%</b>	<b>9.2%</b>	<b>11.1%</b>	<b>11.1%</b>	<b>12.6%</b>	<b>14.3%</b>
Municipal Retirement	6.8%	7.0%	7.6%	9.9%	9.8%	10.7%	10.3%	8.9%	9.05%	12.3%
Municipal Pension	1.8%**	2.0%**	2.6%**	4.9%**	4.8%**	5.7%**	5.3%**	3.9%**	4.05%**	7.3%**

\*This rate remained fixed as long as the funding for the teachers' and employees' systems remained within a "corridor" of actuarial funding from 90 to 110%. In 2006, the funding level for the employees' system was out of its corridor, so employer contribution rates increased. In 2007, the funding level for the teachers' system was out of its corridor, so employer contribution rates increased.

\*\*An additional contribution of 2.42% is charged to all participating municipal corporations that have chosen to offer the 1998 contributory benefit enhancement to their Employees' Pension System members. Participating municipal corporations that also opted for the Alternate Contributory Pension Selection enacted in Chapter 110 of 2006 pay an additional contribution of 1.1%.

Source: *Comprehensive Annual Financial Report*, Maryland State Retirement Agency, June 30, 2010.



**Appendix 9**  
**Comparison of Plan Provisions of**  
**457, 401(k), and 403(b) Payroll Deferral Plans**

	<b><u>457 Deferred Compensation Plan</u></b>	<b><u>401 (k) Savings and Investment Plan*</u></b>	<b><u>403(b) Tax Deferred Annuity Plan</u></b>
<b>Eligibility</b>	All State employees.	All State employees.	State employees whose work assignments are within State educational institutions.
<b>Pre-tax payroll deductions</b>	Yes (but not for FICA).	Yes (but not for FICA).	Yes (but not for FICA).
<b>Minimum contribution</b>	\$5 per bi-weekly pay.	\$5 per bi-weekly pay.	\$5 per bi-weekly pay.
<b>Maximum contribution</b>	Up to 100% of compensation, or \$16,500.	Up to 100% of compensation, or \$16,500.	Up to 100% of compensation, or \$16,500.
<b>Maximum contribution if participating in more than one plan</b>	Up to \$33,000 if a member is participating in the 457 and the 401(k) or 403(b) plan.	Up to \$33,000 if a member is participating in the 401(k) and the 457 or 403(b) plan.	Up to \$33,000 if a member is participating in the 403(b) and the 401(k) or 457 plan.
<b>Eligibility to participate in the 401(a) matching program</b>	Yes, provided the participant is a member of the Employees' Alternate Contributory Pension Selection Plan.	Yes, provided the participant is a member of the Employees' Alternate Contributory Pension Selection Plan.	Yes, provided the participant is a member of the Employees' Alternate Contributory Pension Selection Plan.
<b>"Catch-up" provisions</b>	Yes, within limits.	Yes, within limits.	Yes, within limits.
<b>Fees</b>	Currently, 0.19% of the member's account value per year (not to exceed \$2,000/year) and \$0.50/month per account.	Currently, 0.19% of the member's account value per year (not to exceed \$2,000/year) and \$0.50/month per account.	Currently, 0.19% of the member's account value per year (not to exceed \$2,000/year) and \$0.50/month per account.
<b>Current investment categories</b>	Investment Contract Pool and mutual funds.	Investment Contract Pool and mutual funds.	Mutual funds.

	<b><u>457 Deferred Compensation Plan</u></b>	<b><u>401 (k) Savings and Investment Plan*</u></b>	<b><u>403(b) Tax Deferred Annuity Plan</u></b>
<b>Rollover options</b>	1. From a 457, 401(k), 403(b) or traditional IRA into the member's supplemental retirement account; and 2. To a 457, 401(k), 403(b) or traditional IRA, upon leaving State service.	1. From a 457, 401(k), 403(b) or traditional IRA into the member's supplemental retirement account; and 2. To a 457, 401(k), 403(b) or traditional IRA, upon leaving State service.	1. From a 457, 401(k), 403(b) or traditional IRA into the member's supplemental retirement account; and 2. To a 457, 401(k), 403(b) or traditional IRA, either upon leaving State service or reaching age 59 ½ while member remains in State service.
<b>Withdrawal while employed</b>	Age 70 1/2 or older, or qualify for a hardship withdrawal.	Age 59 1/2 or older, or qualify for a hardship withdrawal.	Age 59 1/2 or older, or qualify for a hardship withdrawal.
<b>Penalty for early withdrawals</b>	None.	1. None, if the member leaves State employment at age 55 or older, or begins withdrawals at age 59 1/2; and 2. Prior to age 55, a 10% federal income tax withholding on most distributions.	1. None, if the member leaves State employment at age 55 or older, or begins withdrawals at age 59 1/2; and 2. Prior to age 55, a 10% federal income tax withholding on most distributions.
<b>Loans</b>	Member may borrow up to 50% of the member's account, not to exceed \$50,000. Must be repaid within 5 years.	Member may borrow up to 50% of the member's account, not to exceed \$50,000. Must be repaid within 5 years.	Member may borrow up to 50% of the member's account, not to exceed \$50,000. Must be repaid within 5 years.
<b>Hardship distributions</b>	For unforeseeable emergencies causing financial hardships. No IRS penalty for hardship distributions.	For severe emergencies causing financial hardships. A 10% IRS penalty may apply for certain hardship distributions.	For severe emergencies causing financial hardships. A 10% IRS penalty may apply for certain hardship distributions.

FICA: Federal Insurance Contributions Act

IRA: Individual Retirement Account

IRS: Internal Revenue Service

Source: Maryland Teachers' and Employees' Supplemental Plans

**Appendix 10**  
**State Contract Dollars Awarded by Agency**  
**Fiscal 2007 though April 2010**

<u>Agency</u>	<u>Total Procurement Dollars</u>	
Aging	\$9,143,373	
Agriculture	\$20,837,037	
Archives	\$10,539,960	
Assessments & Taxation	\$5,924,878	
Attorney General's Office	\$2,072,846	
Automobile Insurance Fund	\$2,358,794	
Baltimore City Community College	\$35,994,841	
Board of Public Works	\$177,354	
Bowie State University	\$75,985,619	
Budget & Management	\$631,136,657	
Business & Economic Development	\$49,436,244	
Canal Place Preservation	\$319,376	(Does not include fiscal 2009 and 2010)
Comptroller	\$128,627,657	
Coppin State University	\$38,250,878	
Education	\$313,825,669	
Elections	\$52,981,884	
Environment	\$35,901,744	
Environmental Service	\$283,281,045	
Executive Department (Excludes Dept. of Disabilities)	\$58,091,633	
Food Center Authority	\$2,956,814	(Does not include fiscal 2008)
Frostburg State University	\$53,855,532	
General Services	\$1,177,403,316	
Health & Mental Hygiene	\$3,021,578,762	
Higher Education Commission	\$6,760,849	
Housing & Community Development	\$32,955,630	
Human Relations Commission	\$312,902	
Human Resources	\$1,011,530,331	
Information Technology (Established in 2008)	\$58,405,844	
Insurance Administration	\$8,919,201	
Juvenile Services	\$390,477,497	
Labor, Licensing & Regulation	\$59,563,403	
Lottery	\$146,805,223	
Military	\$20,961,181	
Morgan State University	\$125,590,313	
Natural Resources	\$57,743,861	
People's Counsel	\$1,534,032	
Planning	\$4,680,992	
Police	\$61,601,249	
Prosecutor's Office	\$79,798	
Public Defender's Office	\$12,632,731	
Public Safety & Corrections	\$880,364,180	
Public School Construction	\$2,713,908,312	
Public Service Commission	\$4,891,010	(Does not include fiscal 2007 and 2008)

<u>Agency</u>	<u>Total Procurement Dollars</u>	
Public Television	\$32,465,366	
Retirement	\$14,656,444	
Salisbury University	\$55,971,301	
School for the Deaf	\$7,581,697	
Stadium Authority	\$208,558,856	
St. Mary's College	\$70,221,317	(Does not include fiscal 2007)
Subsequent Injury Fund	\$142,856	(Does not include fiscal 2007 or 2008)
Tax Court	\$32,722	(Does not include fiscal 2007 or 2009)
Towson University	\$190,849,341	
Transportation – Aviation	\$559,080,868	
Transportation – Motor Vehicle	\$229,273,300	
Transportation – Office of the Secretary	\$126,410,218	
Transportation – Port	\$343,526,799	
Transportation – State Highway	\$4,245,564,515	
Transportation – Transit	\$2,027,220,208	(Includes \$506 million for federal operating agreement for rail lines in fiscal 2009)
Transportation – Transportation Authority	\$1,229,883,510	
Treasurer's Office	\$4,455,865	
University of Baltimore	\$53,654,699	
University of Maryland, Baltimore	\$967,370,934	
University of Maryland, Baltimore County	\$157,286,531	
University of Maryland, College Park	\$1,355,986,184	
Univeristy of Maryland, Eastern Shore	\$51,538,701	
University of Maryland, University College	\$117,533,727	
Veteran's Affairs	\$63,528,687	
Workers Compensation	\$2,420,854	
<b>TOTAL</b>	<b>\$23,725,615,952</b>	

Source: Department of Legislative Services with numbers from: *Minority Business Enterprise Participation by Cabinet Agencies, Fiscal Years 2007, 2008, 2009, and 2010(through April)* and *Minority Business Enterprise Participation by Non-Cabinet Agencies, Fiscal Years 2007, 2008, 2009, and 2010 (through April)*, Governor's Office of Minority Affairs (June 2010)

# Index

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## A

Accidental Disability Allowances .....	115
Actuarial Assumptions .....	161-164
Actuary .....	90, 162-163, 172
Advance Funding (for Pensions) .....	101, 161-163, 167
Annual Leave .....	42, 51-52
Architectural and Engineering Services .....	245-246
Asset Allocation .....	90, 172-174
Auction Bids .....	221
Average Salary .....	5

## B

Bargaining Units .....	4, 72-74
Beneficiaries .....	89, 105-106, 116, 122, 127-128, 133, 138, 147, 153
Bereavement Leave .....	55
Bid Security (for Contracts) .....	222-223
Board of Contract Appeals .....	238-239
Board of Public Works .....	204, 207, 214-215

## C

Civil Service .....	7-9, 11, 79
Civil Service Reform Act .....	7-8
Criminal Penalties (in Procurement) .....	243
Collective Bargaining .....	4, 13, 37, 47, 50, 71-74, 207
Compensatory Leave .....	34-35, 54, 56
Competitive Sealed Bidding (Procurement Method) .....	217-218
Competitive Sealed Proposals (Procurement Method) .....	218-219
Contract Complaints .....	233-238
Contract Dollars Awarded .....	201
Contract Formation .....	225
Contract Provisions .....	225-226
Contractual Employee .....	11, 15, 46-47, 57-58
Contractual Employment .....	1, 46
Correctional Officers' Retirement System .....	96, 100, 113, 115, 142-145
Credits for Candidates .....	25-26



**D**

Day Care .....	69, 75
Death Benefits .....	69, 115, 119, 125, 130, 136, 140, 144, 150, 154, 157
Debarment .....	204, 242-243
Dental Plan .....	59, 64
Department of Transportation Personnel System.....	19, 29
Disciplinary Actions .....	42-44
Disciplinary Action Leave.....	55
Disaster Service Leave .....	55
Dispute Resolution (in Procurement Contracts).....	233

**E**

Emergency Employee.....	15, 49
Emergency Procurement.....	220
Emergency Release Time .....	56
Employee Assistance Program .....	19, 38, 67
Employee Performance Appraisals .....	27-28
Employee-to-employee Donations .....	53
Employee Training Programs.....	68
Employee Transit Benefit.....	67
Employee Wellness Program .....	67
Employees' Pension System.....	95-99, 115, 132-138, 185
Employee Retirement Income Security Act.....	165-166
Employees' Retirement System .....	95-99, 115, 127-132, 185
Energy Performance Contracts.....	245
Equal Employment Opportunity Program.....	35-37
Examination Candidates .....	25-26
Exclusive Bargaining Representative.....	71-74
Exclusive Provider Organization Plan.....	58, 59, 61
Executive Pay Plan .....	31-33, 51
Executive Service .....	4, 13, 15, 16, 21-23, 31, 43, 68
Exemptions from the Procurement Law .....	203-205
Experience Investigation .....	163

**F**

401(a) Program – Employer Match Plan.....	183, 185-186
401(k) Program – Tax Sheltered Annuities.....	183, 185, 186
403(b) Program – Tax Sheltered Annuities.....	183, 185, 186
457 Program – Deferred Compensation .....	183, 184, 186

Fair Share Act ..... 74  
Family Leave ..... 12, 56-57  
Federal Fair Labor Standards Act ..... 34  
Fiduciaries ..... 90  
Flexible Spending Accounts ..... 60  
Fringe Benefits ..... 49, 57  
Full-time Equivalent Positions ..... 1-2

**G**

General Assembly Compensation Commission ..... 79, 96, 156  
General Professional Services Selection Board ..... 245-246  
Goodnow Commission ..... 10  
Governor’s Retirement Plan ..... 159-160  
Governor’s Salary Commission ..... 33  
Green Purchasing Committee ..... 216  
Grievance Procedures ..... 11, 39-41

**H**

Higher Education Labor Relations Board ..... 76-78  
Holidays ..... 49-51, 74, 81

**I**

Independent Salary Setting Authorities ..... 18-19, 29  
Innovative Idea Program ..... 68  
Incentive Performance Awards Program ..... 68  
Investment Committee (State Retirement and Pension System Board) ..... 90-91  
Investment Consultant (State Retirement and Pension System Board) ..... 90, 163

**J**

Joint Committee on Pensions ..... 92-93, 101  
Judges’ Retirement System ..... 100, 115, 152-155  
Judicial Compensation Commission ..... 83  
Jury Service Leave ..... 55

**L**

Law Enforcement Officers' Pension System .....	98, 99, 106, 115, 146-152
Layoffs .....	45
Leave of Absence .....	49, 56
Legal Action Leave .....	55
Legislative Pension Plan.....	96, 100, 106, 156-159

**M**

Management Service .....	4, 13, 15, 20-21, 27-28, 36
Mental Health/Substance Abuse Program.....	60
Military Leave .....	54, 55
Minority Business Enterprise Program .....	228-230
Miscellaneous Purchasing Preferences (in Procurement) .....	230-232
Morgan State University.....	41, 71, 76, 98, 146, 205, 208, 227

**N**

Noncompetitive Negotiation (Procurement Method).....	219
--	-----

**O**

Office of Administrative Hearings .....	37, 40-44
Office of Personnel and Employee Benefits .....	13
Optional Retirement Program.....	96, 115, 155
Ordinary Disability Allowances .....	115
Organ Donation Leave.....	55
Other Post Employment Benefits .....	194-199
Overtime Compensation .....	34-35

**P**

Paid Leave .....	49-52
Pay-as-you-go Funding.....	161
Performance Based Pay .....	28
Pendleton Act .....	7, 9
Personal Leave.....	52
Point-of-service Plan .....	58, 59, 61
Positive Tuberculin Skin Test .....	55
Preferences (in Procurement) .....	226-232
Preferred Provider Organization.....	58, 59, 61

Prescription Program ..... 60

Primary Procurement Units ..... 207-208

Probation ..... 27

Procurement Advisor ..... 215

Procurement Advisory Council ..... 214-216

Procurement Authority (Delegation Level) ..... 209-214

Procurement Law (Process, Origins, and Purpose) ..... 201-203

Procurement Officer ..... 235-237

Procurement Procedures ..... 222-223

Professional Service ..... 4, 15-16

Protest(s) (in Procurement) ..... 233-238

Public School Labor Relations Board ..... 75-76

**R**

Recruitment ..... 23-24

Reinstatements ..... 45

Religious Observance ..... 55

Release Time for Union Activities ..... 55

Retiree Health Insurance ..... 65, 191-199

Reserve Programs (in Procurement) ..... 227-228

Reviewing Authority for Contract Complaints (in Procurement) ..... 237-238

**S**

Salary Increase ..... 28-29, 83, 162-163

Selection (for Candidates) ..... 25-26

Separations ..... 13, 45

Sick Leave ..... 12, 17, 45, 49, 52-53, 74, 81

Skilled Service ..... 4, 16, 20-21, 25, 35, 43, 45

Small Procurement ..... 221

Small- and Veteran-owned Business Preference Programs ..... 227-228

Social Security ..... 8, 65-66, 95, 161

Sole Source Procurement ..... 219

Special Appointments ..... 16, 20-21, 43, 79

St. Mary’s College ..... 19, 71, 78, 205, 208

Standard Pay Plan ..... 30

State Workforce ..... 1, 4

State Employees Leave Bank ..... 53

State Labor Relations Board ..... 71-72

State Personnel Management System.....	1, 11-13, 21-22, 39-41
State Personnel Management System Reform Act of 1996 .....	13, 46
State Police Retirement System.....	89, 98-101, 115, 138-142
Substance Abuse.....	16, 37-39, 60, 64, 67, 80

**T**

Teachers' Pension System.....	89, 95-97, 122-126
Teachers' Retirement System.....	89, 95-97, 116-121
Teleworking.....	69
Temporary Employee .....	16, 21, 40, 45-47
Terminal Funding .....	161
Terminations .....	12, 42, 88
Transfer of Employees into State Service .....	29
Transportation Professional Services Selection Board .....	246

**U**

Unemployment Insurance.....	18, 54, 66
Unfunded Actuarial Liabilities .....	162-165
University System of Maryland Personnel System .....	19
Unpaid Leave.....	55-56
Unsolicited Proposals Procurement Method .....	219-220

**V**

Vesting.....	107, 121-122, 126-127, 132, 137-138, 142, 145, 152, 155, 159
Vision (Health Insurance Benefits) .....	58
Void or Voidable Contracts (in Procurement).....	241

**W**

Whistleblower Law.....	37
Work-Related Accident Leave .....	54
Workers' Compensation.....	54, 66, 121, 126, 131-132, 137, 141, 145, 151-152, 153