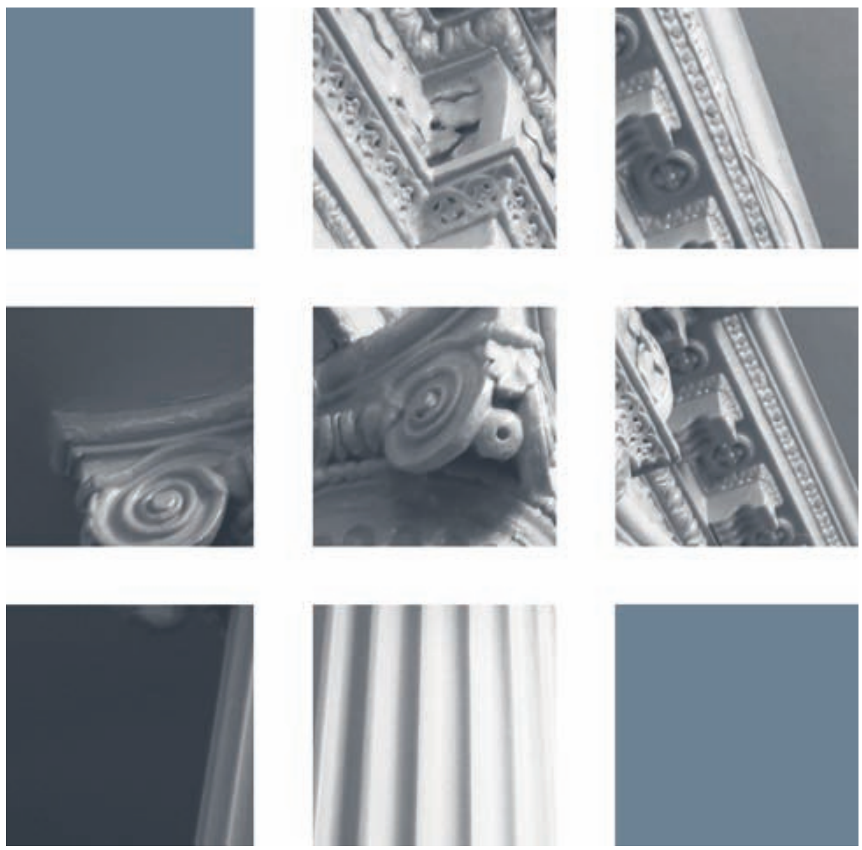
Issue Papers

2011 Legislative Session



Department of Legislative Services 2010

Issue Papers

2011 Legislative Session

Presentation to the

Maryland General Assembly

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

December 2010

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Baltimore Area: 410-946-5400 ● Washington Area: 301-970-5400
Other Areas: 1-800-492-7122, Extension 5400
TDD: 410-946-5401 ● 301-970-5401
Maryland Relay Service: 1-800-735-2258
E-mail: libr@mlis.state.md.us
Home Page: http://mlis.state.md.us

December 2010

Members of the General Assembly:

Prior to each session, staff of the Department of Legislative Services, Office of Policy Analysis, prepare an information report on issues. This document is a compilation of the issue papers arranged by major topic. The information reflects the status of the items as of December 1, 2010.

Following each paper is an identification of the staff who worked on a particular topic. If you should need additional information, please do not hesitate to contact the appropriate staff person.

We trust this information will be of assistance to members of the General Assembly.

Sincerely,

Karl S. Aro
Executive Director

Warren G. Deschenaux
Director

WGD/ncs

Contents

6. **Higher Education**

7. **Health and Health Insurance**

8. **Social Programs**

9. **Transportation**

10. **Business Regulation**

11. **Public Safety**

12. Criminal Law

13. Courts and Civil Proceedings

14. Environment and Natural Resources

15. State Government

16. Local Government

Operating Budget

Economic and Revenue Outlook

Although the recession is over, economic growth remains weak. Employment and income are expected to grow modestly over the next two years. Since the end of the legislative session, the general fund revenue estimate for fiscal 2011 has been revised upward by $89 million. After declining for two years, general fund revenues are projected to grow slightly in fiscal 2011 and more strongly in fiscal 2012.

Economic Outlook

The recession that began in December 2007 officially ended in June 2009. Lasting 18 months, the recession was the longest and deepest of the post World War II period. Inflation-adjusted gross domestic product fell, peak to trough, by 4.1%. Employment fell 6.1%, or 8.4 million jobs. The unemployment rate rose from 4.4% before the recession to 10.1%. Personal income fell 1.7% in 2009, the first annual decline in nominal income since 1949. In response, consumers cut back sharply and consumer spending, adjusted for inflation, fell in both 2008 and 2009. This was the first decline in consumer spending since 1980, and the first back-to-back declines in the entire series going back to the 1940s.

Although the recession is over, growth has been weak and tentative. The U.S. economy has added just over 600,000 jobs since December 2009. The unemployment rate has declined from 10.1% in October 2009 to 9.6% as of September 2010. Personal income has grown 2.4% in the first eight months of 2010. Most economists expect the U.S. economy to grow slowly through 2011 as consumers continue to deleverage and businesses remain cautious. Cutbacks by state and local governments will also be a drag on growth in the near term. Recovery in the labor market is expected to be particularly slow, with the economy not fully recouping the jobs lost during the recession until 2013, over five years after the recession began.

Maryland's employment peaked in February 2008 and bottomed out in February 2010 for a total peak to trough decline of 139,000 jobs, or 5.3%. Since February 2010 included two significant snowstorms, the drop in employment is probably somewhat overstated. The total decline as of January 2010 was 4.8%, or almost 127,000 jobs. By either measure, the decline in employment is on par with the experience in the early 1990s recession, which saw a total peak to trough decline of 5.0%. Since February, about 46,000 jobs have been added in Maryland. Personal income, which grew just 0.4% in 2009, is up 2.4% in the first six months of 2010.

In September, the Board of Revenue Estimates (BRE) issued a revised economic forecast for Maryland, its first since March. The BRE's new forecast is not significantly different from the March forecast. Employment growth is expected to be slightly weaker, reflecting the current national forecasts for a slow labor market recovery. Personal income growth is expected to be slightly stronger than in the previous forecast, mostly due to the arrival of above average paying jobs from the federal Base Realignment and Closure process.

Exhibit 1 shows the forecasted year-over-year percent change for employment and personal income in Maryland through calendar 2013.

Exhibit 1
Maryland Economic Outlook
Forecasted Year-over-year Percent Change

	Employment		Personal Income	
Calendar Year	Dec. 2009	Sept. 2010	Dec. 2009	Sept. 2010
2007	0.7%	0.7%	4.6%	4.7%
2008	-0.4%	-0.3%	3.1%	3.6%
2009	-2.9%	-3.0%	0.7%	0.4%
2010E	-0.4%	-0.4%	2.0%	3.3%
2011E	1.6%	1.5%	3.7%	4.2%
2012E	2.3%	1.9%	4.5%	5.1%
2013E	2.4%	1.9%	5.3%	5.5%

Source: Board of Revenue Estimates

Revenue Outlook

Fiscal 2010 general fund revenues were above the estimate by $183.7 million. General fund revenues totaled $12.6 billion, a decline of 2.4% from fiscal 2009. Most of the overattainment was in the personal income tax, which exceeded the estimate by $109.5 million. Both withholding and final payments with returns exceeded the estimate by significant amounts. At the same time, refunds were a bit more than expected. The sales tax exceeded the estimate by $40.8 million, but fell 2.7% from fiscal 2009. After falling on a year-over-year basis for 19 straight months, sales tax revenues began to grow in April 2010 and have grown every month since. General fund lottery revenues were below the estimate by $15.1 million. Net lottery sales were up just 0.5%, the slowest growth since fiscal 1997.

Fiscal 2011 general fund revenues through September are up 5.0% from last year. Personal income tax revenues are up 6.0%, with quarterly estimated payments down 7.3% and withholding up 4.7%. General fund sales tax revenues are up 3.4% through September. Corporate income tax revenues are up strongly (22.5%) due to an 8.5% increase in gross receipts and a 19.0% decline in refunds. However, most corporate refunds are paid out in October and November, so current year-to-date performance may not be indicative of the whole year.

The revenue overattainment in fiscal 2010, combined with the slow economic recovery, results in an upward revision to fiscal 2011 revenues that is substantially smaller than the overattainment in fiscal 2010. In September, BRE raised their estimate for fiscal 2011 general fund revenues by $88.6 million, but also lowered the expected growth rate over fiscal 2010 from 2.7 to 1.8%. General fund revenues are projected to increase 3.6% in fiscal 2012 as economic growth accelerates in the later part of calendar 2011 and into 2012.

As shown in **Exhibit 2**, the largest revision was to the personal income tax which was increased by $68.0 million. This is considerably less than the $110.0 million overattainment in fiscal 2010 as revenues are expected to grow 2.9% over fiscal 2010 compared to the previous estimate of 3.7%. This reflects, in part, the expectation that capital gains income will be flat in tax year 2010 versus the previous estimate of 12.5% growth. Although the sales tax exceeded the estimate in fiscal 2010, the new forecast lowers the estimate for fiscal 2011 by $11.7 million. Growth over fiscal 2010 is now projected to be 3.8%, down from the previous estimate of 5.3%. A weaker near-term outlook for the housing market is partly to blame for the reduced expectations for sales tax revenues.

Exhibit 2

Maryland General Fund Revenue Forecast

($ in Millions)

	Fiscal 2011				Fiscal 2012	
	March 2010	**September 2010**	**$ Diff.**	**% Change 2011/2010**	**September 2010**	**% Change 2012/2011**
Personal Income Tax	$6,292	$6,360	$68	2.9%	$6,712	5.5%
Sales & Use Tax	3,667	3,656	-12	3.8%	3,778	3.4%
Corporate Income Tax	514	543	30	-21.2%	568	4.5%
Lottery	528	511	-17	4.1%	519	1.7%
Highway User Revenue	363	363	0	19.6%	338	-6.9%
Other	1,675	1,694	19	-0.7%	1,690	-0.2%
Total	**$13,039**	**$13,128**	**$89**	**1.8%**	**$13,607**	**3.6%**

Note: Figures may not sum to totals due to rounding.

Source: Board of Revenue Estimates. The estimate from March has been adjusted for actions taken at the 2010 legislative session.

For further information contact: Theresa M. Tuszynski Phone: (410) 946/(301) 946-5510

Operating Budget

Budget Outlook

From December 2007 to June 2009, the State was in a severe recession. Though the recession has ended, State revenues are still well below peak revenues. Fiscal 2010 ended with a general fund balance that was $191 million more than anticipated. In fiscal 2011, ongoing spending exceeds ongoing revenues by $1.9 billion. Much of the gap is closed by federal stimulus funds, fund swaps, and one-time transfers. Most of these one-time revenues are not expected to be available in fiscal 2012. Consequently, the Department of Legislative Services anticipates a $1.6 billion cash deficit in fiscal 2012. To balance the budget, the State will most likely be required to apply a combination of strategies, including spending reductions, transfer of special fund balances, and new revenues.

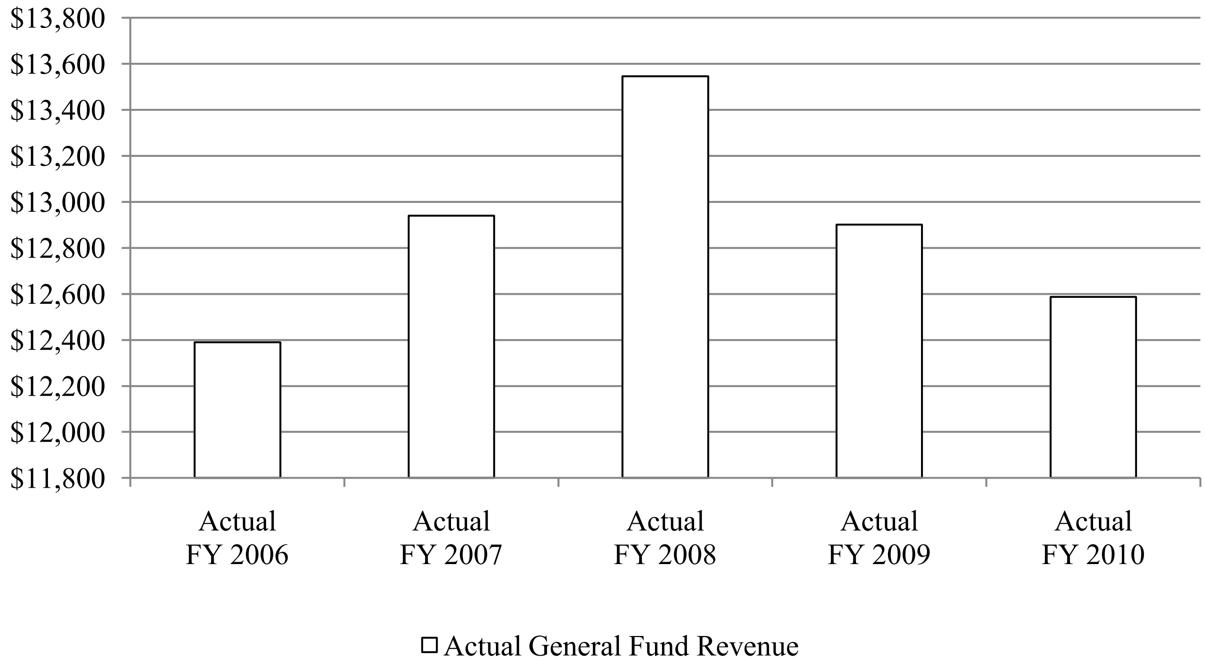
Background

Fiscal 2010 closed with a general fund balance of $344.0 million, which was $190.9 million higher than anticipated. Individual income tax revenue had higher attainment of $109.5 million (1.8%), followed by $40.8 million in greater revenue from the sales tax (1.2%) and $28.5 million from the corporate income tax (4.3%). After several years of continuously downward revisions, this represented a positive development, albeit at a nominal level. As **Exhibit 1** illustrates, however, fiscal 2010 actual revenue is below actual revenue received each year since fiscal 2006. Relative to the peak of $13.5 billion attained in fiscal 2008, fiscal 2010 is nearly $1.0 billion, or 7.0%, lower.

Fiscal 2011 Activity

Fiscal 2011 is projected to end with a general fund balance of $340 million, which is about $136 million greater than expected when the budget was enacted at the 2010 session. This higher balance is the result of a combination of higher revenues and transfers, offset by the need for deficiencies to address anticipated spending shortfalls. As noted, about $191 million came from the fiscal 2010 closeout. Added to that is approximately $89 million in revenue projected for fiscal 2011 by the Board of Revenue Estimates in September 2010. Finally, lower levels of Federal Medical Assistance Percentages (FMAP) were provided, based on federal legislation which was enacted in August 2010. A higher Medicaid FMAP match had been provided to states through the American Recovery and Reinvestment Act of 2009 (ARRA) but was set to expire at the end of calendar 2010. The Education Jobs and Medicaid Assistance Act extended the match until June 30, 2011, but at lower levels than those assumed when the State budget was enacted. As a result, the Comptroller is authorized to transfer $200 million from the Local Reserve Account to the general fund, per Sections 6 and 50 of Chapter 484 of 2010 (the Budget Reconciliation and Financing Act of 2010).

Exhibit 1
Actual General Fund Revenue Performance
Fiscal 2010 Improves but Still Lags Relative to Prior Years
($ in Millions)



Source: Department of Legislative Services

The Department of Legislative Services (DLS) estimates that $337 million in additional general fund spending is needed in fiscal 2011, largely to address shortfalls in Medicaid due to the lower FMAP match. The additional general fund spending is also due to Medicaid enrollment growth and provider rate increases and shortfalls in low-income energy assistance, mental hygiene community provider costs, overtime and per diem expenses in the Department of Juvenile Services, and a variety of miscellaneous expenses in other agencies.

Fiscal 2011-2016 Forecast

Exhibit 2 provides the Department of Legislative Services (DLS) general fund forecast through fiscal 2016. As shown, the State faces immediate challenges in producing a balanced fiscal 2012 spending plan. There is a projected cash shortfall of $1.6 billion; however, the difference between ongoing spending and revenues approximates $2.1 billion. The large shortfall is primarily due to the expiration of short-term revenue. This includes $1.2 billion in

Exhibit 2

General Fund Projections

Fiscal 2011-2016

($ in Millions)

	Actual 2010	Working 2011	Baseline 2012	Estimate 2013	Estimate 2014	Estimate 2015	Estimate 2016	Avg. Annual Change 2012-2016
Revenues								
Opening Fund Balance	$87	$344	$340	$0	$0	$0	$0	
Transfers	243	348	19	61	63	58	63	
One-time Revenues/Legislation	593	5	0	0	0	0	0	
Subtotal One-time Revenue	***$922***	***$697***	***$359***	***$61***	***$63***	***$58***	***$63***	***-35.2%***
Ongoing Revenues	$12,864	$13,122	$13,607	$14,316	$14,983	$15,722	$16,433	
Subtotal Ongoing Revenue	***$12,864***	***$13,122***	***$13,607***	***$13,316***	***$14,983***	***$15,722***	***$16,433***	***4.8%***
Total Revenues and Fund Balance	**$13,786**	**$13,819**	**$13,966**	**$14,377**	**$15,046**	**$15,780**	**$16,497**	**4.3%**
Ongoing Spending								
Operating Spending	$14,478	$15,124*	$15,735	$16,458	$17,226	$17,975	$18,737	
Video Lottery Terminals Spending Supporting Education	-11	-114	-105	-228	-448	-491	-530	
Multi-year Commitments	5	25	80	30	80	65	50	
Subtotal Ongoing Spending	***$14,472***	***$15,034***	***$15,710***	***$16,260***	***$16,859***	***$17,549***	***$18,257***	***3.8%***
One-time Spending								
Pay-as-you-go Capital	$0	$1	$1	$1	$1	$1	$1	
One-time Fund Swaps	0	-350	0	0	0	0	0	
Federal Stimulus Funds	-1,144	-1,206	-143	0	0	0	0	
Appropriation to Reserve Fund	115	0	30	50	50	50	50	
Subtotal One-time Spending	***-$1,029***	***-$1,556***	***-$112***	***$51***	***$51***	***$51***	***$51***	***n/a***
Total Spending	**$13,442**	**$13,479**	**$15,598**	**$16,311**	**$16,910**	**$17,600**	**$18,308**	**4.1%**
Ending Balance	**$344**	**$340**	**-$1,633**	**-$1,934**	**-$1,864**	**-$1,819**	**-$1,811**	
Rainy Day Fund Balance		$630	$681	$716	$749	$786	$822	
Balance Over 5% of General Fund (GF) Revenues		-26	0	0	0	0	0	
As % of GF Revenues		4.8%	5.0%	5.0%	5.0%	5.0%	5.0%	
Structural Balance**	**-$1,608**	**-$1,913**	**-$2,103**	**-$1,944**	**-$1,875**	**-$1,826**	**-$1,824**	

*Includes $337 million in projected fiscal 2011 deficiency appropriations and $1,206 million in American Recovery and Reinvestment Act of 2009 spending supplanting general funds.

**Represents the difference between ongoing revenue and ongoing spending.

Source: Department of Legislative Services

federal stimulus funding received from the ARRA as well as the additional Medicaid match provided through the end of fiscal 2011. Moreover, the State is expected to have transferred a total of $550 million in one-time balances from the Local Reserve Account, as well as nearly $112 million from pay-as-you-go capital programs (nearly all of which was replaced with general obligation bond funding). Much of the ARRA monies were dedicated to mandated education aid or Medicaid spending.

In the out-years of the forecast, a rough level of equilibrium has been established. Revenues are projected to grow on average by 4.8% per year, while ongoing spending (exclusive of the mitigating effects of video lottery terminal offsets to education spending) grows 4.5% per year. Beyond 2012, once video lottery terminal revenue to the Education Trust Fund matures at roughly $500 million per year, the projected structural deficit stabilizes at about $1.8 billion annually.

Solving the Structural Deficit

In the short-term, strategies to balance the budget will most likely require a combination of new revenues, transfers from special fund balances, and budget cuts. Even on a cash basis, a shortfall of $1.6 billion is too large to be addressed purely through one type of action. On the revenue side, options could include increasing the income tax, instituting combined reporting, expanding the sales tax to services, increasing the gas tax and reclaiming the portion of the sales tax dedicated to the Transportation Trust Fund, or adopting other tax or fee increases. It is unlikely to assume that additional federal stimulus funds or a continuation of the enhanced FMAP match will continue in the future. Many special funds have been largely tapped, but there are several opportunities to use one-time balances to assist with next year's spending plan. The largest is the $630 million projected closing balance in the Rainy Day Fund as of June 30, 2011. Special fund revenues for Program Open Space and Bay Restoration were diverted to the general fund in fiscal 2011 and replaced with bond funding and could also be utilized in fiscal 2012.

In looking at expenditures, much of the growth in future years is for Medicaid, employee retirement and health, and selected mandated programs such as for community colleges. Many of the local education aid programs have been modified in recent years to limit growth. In the 2010 session, a Public Employees' and Retirees' Benefit Sustainability Commission was created, per Chapter 484 of 2010, to examine personnel funding. A preliminary report is required by December 15, 2010, and a final report by June 30, 2011. The legislature also considered, but rejected, sharing teacher retirement costs with local jurisdictions at the 2010 session. Given the large growth in this area, cost sharing proposals may again be considered. Other statutory spending mandates and increases will also need to be re-examined.

Conclusion

Although the most recent recession ended in June 2009, the State continues to face a significant shortfall in the general fund budget. This is mostly due to the expiration of short-term federal stimulus revenues, which supplanted $1.2 billion in the fiscal 2011 budget, as well as the use of other one-time revenue sources. Revenue attainment in fiscal 2010 was slightly higher than projected but continues to lag the amount received since fiscal 2006. Developing a balanced budget for fiscal 2012 is the first major challenge for the incumbent Governor. Addressing a projected $1.6 billion shortfall will require a mix of new revenues, transfers, and spending reductions. Long-term structural balance will require lasting revenue and spending actions. The upcoming preliminary report from the Public Employees' and Retirees' Benefit Sustainability Commission could begin to set the stage for spending reform. Further examination of revenue options, State/local fiscal relationships, spending mandates, and agency operations will be needed.

For further information contact: David B. Juppe Phone: (410) 946/(301) 970-5530

Operating Budget

Transportation Trust Fund Overview

While the Transportation Trust Fund's ending cash balance for fiscal 2010 exceeded estimates, future growth in transportation revenues is relatively modest. The Department of Legislative Services estimates that this expected modest revenue growth will create constraints on debt issuances and a reduced transportation capital program through fiscal 2016.

Fiscal 2010 Closeout

The Transportation Trust Fund (TTF) ended fiscal 2010 with a fund balance of $252 million, higher than the $100 million projected; however, $18 million is needed to make a fiscal 2010 Highway User Revenue (HUR) payment. Total gross revenues were $37 million higher than estimated, with titling tax revenues $29 million higher than expected due to the Cash for Clunkers program and strong sales in the second half of the fiscal year. The corporate income tax was $18 million higher than estimated, while the motor fuel tax was $19 million less than estimated. In general, revenues exceeded estimates due to the stabilization of the economy; however, the decline in motor fuel tax revenue highlights ongoing economic concerns.

Capital expenditures decreased by $140 million compared to the January 2010 estimate due to funding being transferred to support winter maintenance expenditures, a wet spring season, and cash flow changes. Operating budget expenditures increased by $25 million to cover winter maintenance expenditures. The local share of HUR was $23 million higher than estimated in January 2010 due to higher revenues and the statutory change in the HUR formula that allows local jurisdictions to retain fiscal 2010 funding already received. The required general fund revenue transfer was $17 million less than estimated due to the changes in the HUR formula.

Fiscal 2011 – 2016 Transportation Trust Fund Forecast

Exhibit 1 shows the fiscal 2011-2016 TTF forecast by the Department of Legislative Services (DLS). The forecast details the expected trends in revenue attainment, debt issuance, and capital expenditures. Compared to the Maryland Department of Transportation's (MDOT) forecast, DLS assumes an economic recovery, but less robust growth in revenues, higher operating budget spending for transit and winter maintenance expenditures, and reduced bond sales due to the constraints of debt coverage ratios. Because of less revenue, higher spending, and less debt, DLS projects a capital program that is approximately $2.1 billion less over the six years as compared to MDOT's forecast.

Exhibit 1
Department of Legislative Services
Transportation Trust Fund Forecast
Fiscal 2011-2016
($ in Millions)

	Actual 2010	Estimate 2011	Estimate 2012	Estimate 2013	Estimate 2014	Estimate 2015	Estimate 2016
Opening Fund Balance	**$245**	**$252**	**$100**	**$100**	**$100**	**$100**	**$100**
Closing Fund Balance	**$252**	**$100**	**$100**	**$100**	**$100**	**$100**	**$100**
Net Revenues							
Taxes and Fees	$1,665	$1,682	$1,798	$1,896	$2,025	$2,082	$2,129
Operating & Misc.	531	492	473	474	478	483	488
Transfers btw. TTF and GF	0	0	0	0	0	0	0
MDTA Transfer	-30	0	0	0	0	0	0
Net Revenues Subtotal	2,166	2,175	2,270	2,371	2,503	2,565	2,617
Bonds Sold	140	130	30	0	0	0	0
Bond Premiums	6	0	0	0	0	0	0
Total Revenues	**$2,312**	**$2,305**	**$2,300**	**$2,371**	**$2,503**	**$2,566**	**$2,617**
Expenditures							
Debt Service	$151	$158	$179	$184	$202	$212	$217
Operating Budget	1,582	1,575	1,624	1,718	1,819	1,927	2,040
State Capital	575	724	497	470	482	427	360
Total Expenditures	**$2,308**	**$2,457**	**$2,300**	**$2,371**	**$2,503**	**$2,566**	**$2,617**
Debt							
Debt Outstanding	$1,645	$1,692	$1,619	$1,510	$1,377	$1,226	$1,064
Debt Coverage – Net Income	2.9	2.5	2.6	2.8	2.8	3.0	2.8
Local Highway User Revenues	**$163**	**$134**	**$133**	**$158**	**$162**	**$166**	**$169**
HUR Transfer to GF	**$304**	**$364**	**$333**	**$330**	**$341**	**$348**	**$354**
Capital Summary							
State Capital	$575	$724	$497	$470	$482	$427	$360
Net Federal Capital (Cash Flow)	656	789	625	631	568	392	388
Subtotal Capital Expenditures	**$1,231**	**$1,513**	**$1,122**	**$1,101**	**$1,050**	**$819**	**$748**
GARVEE Debt Service	87	87	87	87	87	87	87

GARVEE: Grant Anticipation Revenue Vehicle
GF: general fund
HUR: highway user revenue
MDTA: Maryland Transportation Authority
TTF: Transportation Trust Fund

Revenues

Over the six-year period, DLS estimates that net tax and fee revenue will total approximately $11.6 billion, with an average annual growth rate of 4.8%. Total titling tax revenue is expected to grow modestly in fiscal 2011 and 2012, as unemployment rates remain high, and then grow 12.1% in fiscal 2013 as the economy recovers. Revenue growth is expected to return to more historical average growth rates beginning in fiscal 2014. In total, the DLS forecast for titling tax revenues over the six-year period is $405 million less than the MDOT September 2010 estimate due to less robust growth in fiscal 2011 and 2012. DLS also estimates that motor fuel tax revenues will be $60 million less than the MDOT estimate due to lower estimates of growth. The main difference between the DLS and MDOT revenue forecasts is that DLS estimates less robust short-term economic growth.

Operating and Debt Service Expenditures

Operating and debt service expenditures are the first draw on TTF revenues. Over the six-year period, operating and debt service expenditures are estimated by DLS to total $11.9 billion. Compared to MDOT's forecast, the DLS forecast assumes that total operating budget expenditures will be $395 million more due to higher transit and winter maintenance expenditures. Operating budget expenditures are estimated by DLS to grow 5.3%, compared to tax and fee growth of 4.8%, meaning that as expenditure growth outpaces revenue growth, less cash is available for the capital program and the department's bonding capacity over the six years is diminished.

Debt Financing

Debt issuances by the department for the capital budget are limited by a total debt outstanding cap of $2.6 billion and two bondholder coverage tests that require the prior year's pledged taxes and net income to be two times greater than the maximum debt service in a given fiscal year. Due to DLS estimates of lower revenue and higher operating budget spending, the level of net income is reduced and debt issuances for the capital budget are constrained. DLS assumes the administrative 2.5 coverage ratio through fiscal 2020, which further constrains debt issuances. As a result, DLS estimates total debt issuances of $160 million, $1.4 billion less than MDOT's forecast.

Capital Expenditures

DLS estimates that special and federal fund capital budget expenditures will total $6.4 billion over the six-year period, approximately $2.1 billion less than MDOT's estimate in the draft *Consolidated Transportation Program*. As indicated earlier, the decline in the capital program is attributable to downward revenue revisions and higher estimates for operating expenses, which in turn constrain future debt issuances. The department does have mechanisms available to offset the decline in the capital budget, such as moving below the 2.5 coverage ratio, which could add approximately $600 million to the capital program over the six years.

In fiscal 2011, the capital program is largely maintained with a $130 million bond sale and will total $1.5 billion. After fiscal 2011, the capital program declines to just over $1.1 billion and continues to steadily decline to $748 million in fiscal 2016.

Operating Budget

Federal Funds Overview

In fiscal 2011, federal funds total $9.3 billion. Of this total, $1.5 billion was authorized in the American Recovery and Reinvestment Act of 2009 (ARRA). $1.2 billion of ARRA funds supplanted general funds in fiscal 2011. These funds are scheduled to end in fiscal 2011, requiring the State to either reduce expenditures or replace these funds with other revenues. With respect to the federal budget, there is considerable uncertainty. To date, the U.S. Congress has not enacted the federal fiscal 2011 budget. There are also large federal programs, such as child nutrition and surface transportation, that expire at the end of 2010 and need to be reauthorized.

The fiscal 2011 federal fund legislative appropriation totals $9.3 billion. Of that amount, $1.5 billion (16.2%) was authorized by the federal government through the American Recovery and Reinvestment Act of 2009 (ARRA). **Exhibit 1** shows the distribution of the federal funds by department/service area.

Exhibit 1
Federal Funds in Fiscal 2011 Legislative Appropriation
($ in Millions)

Department/Service Area	Fiscal 2011 Legislative Appropriation
Judicial and Legal Review	$6.5
Executive and Administrative Control	158.4
General Services	1.0
Transportation	916.2
Department of Natural Resources	48.9
Agriculture	6.4
Health and Mental Hygiene	4,793.5
Human Resources	1,443.7
Labor, Licensing, and Regulation	146.4
Public Safety and Correctional Services	73.6
Public Education	1,392.5
Housing and Community Development	247.3
Business and Economic Development	1.9
Environment	55.0

Department/Service Area	Fiscal 2011 Legislative Appropriation
Juvenile Services	15.9
State Police	23.0
Public Debt	7.6
Total Federal Funds	**$9,337.8**

Source: *Fiscal Digest of the State of Maryland for the Fiscal Year 2011*

The American Recovery and Reinvestment Act

The ARRA was designed to slow the declining economy, to assist in the recovery from one of the nation's deepest recessions, to save and create jobs, and to help states close their budget shortfalls to avoid even greater spending cuts and tax increases than they were already enacting to balance budgets. As shown in **Exhibit 2**, the State received nearly $4.3 billion in ARRA funding from fiscal 2009 through 2011.

Exhibit 2
American Recovery and Reinvestment Act Funding
Fiscal 2009-2011
($ in Millions)

Program	2009 Approp.	2010 Approp.	2011 Approp.	Total ARRA Funding*
Supporting State General Fund Commitments				
Fiscal Stabilization – Education	$0.0	$297.3	$422.3	$719.7
Fiscal Stabilization – Discretionary	1.5	79.6	79.0	160.1
Medicaid	443.5	785.8	705.0	1,934.3
Subtotal	***$445.0***	***$1,162.7***	***$1,206.4***	***$2,814.1***
Education Grants Appropriated in the State Budget				
Special Education	$0.4	$210.9	$0.0	$211.3
Title I	0.0	156.8	0.0	156.8
Education Technology	0.0	8.5	4.3	12.8
Subtotal	***$0.4***	***$376.2***	***$4.3***	***$380.9***

Program	2009 Approp.	2010 Approp.	2011 Approp.	Total ARRA Funding*
Infrastructure Appropriated in the State Budget				
Highways	$15.0	$221.8	$144.4	$381.2
Transit Capital	0.0	66.5	66.7	133.2
HOME Investment Partnerships Program	0.0	31.7	0.0	31.7
Leaking Underground Storage Tanks	0.0	3.7	1.6	5.3
Clean Water	0.0	97.0	0.7	97.6
Drinking Water	0.0	27.0	0.1	27.1
Subtotal	***$15.0***	***$447.7***	***$213.4***	***$676.1***
Other Grants Appropriated in the State Budget				
State Energy Programs	$0.0	$44.8	$23.9	$68.7
Weatherization	6.5	52.6	2.7	61.8
Community Services Block Grant	0.0	13.7	0.0	13.7
Homelessness Prevention – State	0.0	5.7	0.1	5.8
Community Development Block Grant – State	0.0	0.0	0.0	0.0
Foster Care	7.2	11.5	0.0	18.7
Child Support Enforcement	14.1	8.5	8.3	30.9
Food Assistance – Individuals	32.0	45.0	21.7	98.7
Food Assistance – Other	1.4	2.1	0.0	3.5
Temporary Assistance for Needy Families	16.1	22.2	18.1	56.3
Independent Living, Homeless Education and Work Study	0.0	1.5	0.4	2.0
Child Care Development Block Grant	4.4	19.6	2.0	26.0
Vocational Rehabilitation	0.7	5.9	2.7	9.3
Unemployment Insurance/Workforce Investment/Dislocated Workers	1.8	35.2	0.0	37.1
Preventive Health Block Grant/Immunization	0.0	0.0	2.8	2.8
AmeriCorps State Program	0.0	1.0	0.0	1.0
Arts Funding	0.3	0.0	0.0	0.3
Byrne Grants/Public Safety Grants	0.1	15.0	11.9	27.0
Subtotal	***$84.7***	***$284.5***	***$94.6***	***$463.7***
Total State Grants	**$545.1**	**$2,271.1**	**$1,518.7**	**$4,334.9**

*Does not include competitive grant awards.

Source: Maryland State Budget; Department of Legislative Services

The ARRA provisions require quarterly reporting of spending, although reporting on spending for grants that go directly to individuals (Medicaid, Foster Care, Food Stamps, etc.) is not required. As shown in **Exhibit 3**, as of June 30, 2010, $801 million, or nearly 54%, of the ARRA funds budgeted in fiscal 2009 and 2010 had been spent.

Exhibit 3
American Recovery and Reinvestment Act Spending
Fiscal 2009-2010
($ in Millions)

Program	Total Approp. FY 2009-10*	Expended as of 6/30/2010
Supporting State General Fund Commitments		
Fiscal Stabilization – Education	$297.3	$251.1
Fiscal Stabilization – Discretionary	81.1	81.1
Subtotal	***$378.4***	***$332.1***
Education Grants Appropriated in the State Budget		
Special Education	$211.3	$68.8
Title I	156.8	49.4
Education Technology	8.5	0.0
Subtotal	***$376.6***	***$118.2***
Infrastructure Appropriated in the State Budget		
Highways	$236.8	$167.0
Transit Capital	66.5	40.0
HOME Investment Partnerships Program	31.7	11.2
Leaking Underground Storage Tanks	3.7	0.8
Clean Water	97.0	19.1
Drinking Water	27.0	4.8
Subtotal	***$462.7***	***$242.8***
Other Grants Appropriated in the State Budget		
State Energy Programs	$44.8	$6.2
Weatherization	59.1	11.8
Community Services Block Grant	13.7	10.2
Homelessness Prevention – State	5.7	1.5
Community Development Block Grant – State	0.0	0.2
Child Support Enforcement	22.6	23.4
Food Assistance – Other	3.5	1.7
Independent Living, Homeless Education and Work Study	1.6	0.7
Child Care Development Block Grant	24.0	21.5
Vocational Rehabilitation	6.6	4.6
Unemployment Insurance/Workforce Investment/Dislocated Workers	37.1	16.1
Preventive Health Block Grant/Immunization	0.0	0.5
AmeriCorps State Program	1.0	0.7

Program	Total Approp. FY 2009-10*	Expended as of 6/30/2010
Arts Funding	0.3	0.3
Byrne Grants/Public Safety Grants	15.1	8.5
Subtotal	***$235.2***	***$108.0***
Total State Grants	**$1,452.9**	**$801.1**

*Does not include competitive grant awards.

Source: Maryland State Budget; Governor's StateStat Office; Department of Legislative Services

The ARRA Cliff

Much of the ARRA funding received by Maryland supports spending that would have otherwise been funded with general funds. In fiscal 2011, $1.2 billion of the total $1.5 billion ARRA funding falls into this category. When these funds are no longer available, the State will need to replace the funds or reduce funding. The fiscal 2012 baseline budget and general fund forecast reflect this.

Federal Budget and Reauthorizations Stalled

Congressional Action on Federal Fiscal 2011 Budget

Congress failed to enact any of the 12 appropriations bills to fund the federal government before the October 1, 2010 start of federal fiscal 2011. It passed, and the President signed, a continuing resolution bill to fund most programs at the fiscal 2010 levels until December 3, 2010. Congress is scheduled to return on November 15, 2010, for a lame duck session.

Before recessing, the House had passed only two of the appropriations bills. The Senate had not passed any of the bills, although nine of them had passed at the committee level.

Federal Programs Needing Reauthorization

Three major federal programs – surface transportation, child nutrition, and Temporary Assistance for Needy Families – all expire by the end of calendar 2010. Maryland's fiscal 2011 budget includes over $1.7 billion from these programs. It is likely that extensions to the current authorizations for these programs will pass before legislation reauthorizing the programs is considered.

For further information contact: Steven C. McCulloch Phone: (410) 946/(301) 970-5530

Capital Budget

Debt Affordability

The Capital Debt Affordability Committee recommended a general obligation bond debt limit totaling $925 million for fiscal 2012. This represents a $215 million decrease from the $1.14 billion limit recommended for fiscal 2011. The reduction was necessary to keep debt service payments below 8% of revenues. The Treasurer's Office estimates that tax-supported debt service will be $1.3 billion in fiscal 2012. Total State debt outstanding is projected to be $10.8 billion at the end of fiscal 2012.

Capital Debt Affordability Process

State law requires the Capital Debt Affordability Committee (CDAC) to review the size and condition of all tax-supported debt to ensure that the State's tax-supported debt burden remains affordable. The committee is composed of the Treasurer, the Comptroller, the Secretaries of the Maryland Department of Transportation and the Department of Budget and Management, and a public member. Chapter 445 of 2005 added, as nonvoting members, the chairs of the Capital Budget Subcommittees for the Senate Budget and Taxation Committee and the House Appropriations Committee.

Tax-supported debt consists of general obligation (GO) debt, transportation debt, Grant Anticipation Revenue Vehicles (GARVEEs), bay restoration bonds, capital leases, Stadium Authority debt, and bond or revenue anticipation notes. The committee makes annual, nonbinding recommendations to the Governor and the General Assembly on the appropriate level of new GO and academic revenue debt for each fiscal year. The committee does not make individual recommendations on the levels of capital leases, transportation debt, bay restoration bonds, or Stadium Authority debt but does incorporate the anticipated levels of these types of debt in its analysis of total debt affordability.

Affordability Criteria and Ratios

CDAC began evaluating State debt in 1979. In consultation with rating agencies, investment bankers, and its financial advisor, CDAC has adopted policies to limit State debt outstanding to 4.0% of personal income and State debt service to 8.0% of State revenues. The committee's analysis of debt affordability for fiscal 2011 through 2020 indicates that debt outstanding peaks in fiscal 2013 at 3.5% of personal income and debt service peaks in fiscal 2017 at 7.92%, as indicated in **Exhibit 1**.

Exhibit 1
Affordability Ratios
Fiscal 2010-2015

Fiscal Year	Projected Debt Outstanding As a Percent of Personal Income	Projected Debt Service As a Percent of Revenues
2011	3.40%	6.87%
2012	3.48%	7.18%
2013	3.50%	7.24%
2014	3.43%	7.52%
2015	3.33%	7.64%
2016	3.22%	7.89%
2017	3.12%	7.92%
2018	3.03%	7.84%
2019	2.94%	7.56%
2020	2.87%	7.29%

Source: *Report of the Capital Debt Affordability Committee on Recommended Debt Authorizations*, September 2010

New Debt Authorizations

The committee has recommended $925 million in new GO debt authorization for fiscal 2012, which is $215 million less than was authorized in fiscal 2011. The fiscal 2011 authorization included a one-time $150 million increase, which is removed in fiscal 2012. To keep debt service below 8% of revenues, CDAC reduced GO bond authorizations an additional $65 million. Based on the current level of authorizations, the committee estimates that total GO debt will be just over $7.4 billion at the end of fiscal 2012. GO bond debt service payments are projected to total $887 million.

The University System of Maryland (USM), Morgan State University, and St. Mary's College of Maryland have the authority to issue debt for academic facilities, as well as auxiliary facilities. Proceeds from academic debt issues are used for facilities that have an education-related function, such as classrooms. Debt service for these bonds is paid with tuition and fee revenues. For fiscal 2012, CDAC recommends $27 million for academic facilities on USM campuses.

Transportation bonds are limited obligation instruments, the proceeds of which fund highway and other transportation-related projects. Debt service on these bonds is funded from motor vehicle fuel taxes, titling and registration fees, a portion of the corporate income tax, and other Maryland Department of Transportation revenues. The gross outstanding aggregate principal amount of Consolidated Transportation Bonds is limited by statute to $2.6 billion. CDAC projects that total outstanding transportation debt is projected to reach $1.9 billion in fiscal 2012. Transportation bond debt service is projected to be $190 million in fiscal 2012. The department also issued GARVEE bonds in fiscal 2008 and 2009. Chapters 471 and 472 of 2005 limit the total amount of GARVEEs that may be issued at $750 million. The State pledges anticipated federal revenues to support the GARVEEs debt service, and statute specifies that the bonds are considered tax-supported debt. GARVEE debt outstanding is projected to be $539 million at the end of fiscal 2012. GARVEE debt service costs are estimated to be $87 million.

The Bay Restoration Fund was created by Chapter 428 of 2004 to provide grants for enhanced nutrient removal pollution reduction upgrades at the State's major wastewater treatment plants. The fund has several revenue sources and expends funds for both operating and capital program purposes. In fiscal 2008, the first $50 million in bay bonds was issued. The Maryland Department of the Environment indicates that the estimated issuance stream is $180 million, $205 million, and $95 million in fiscal 2012 through 2014, respectively. The department estimates that $219 million in bonds will be outstanding at the end of fiscal 2012. Debt service costs are projected to be $5 million in fiscal 2012.

Capital leases for real property and equipment are secured by the assets leased and are paid with appropriations made to the agencies using the leased items. Debt outstanding for leases is expected to be $484 million at the end of fiscal 2012. Capital lease payments are estimated to be $59 million in fiscal 2012.

Finally, Stadium Authority debt is also limited obligation debt and represents bonds sold for the construction of the Camden Yards baseball and football stadiums, the Baltimore and Ocean City convention centers, the Hippodrome Theater, and the Montgomery County Conference Center. The facilities' debt service is supported by lottery revenues and other general fund sources. Stadium Authority debt outstanding is expected to be $214 million at the end of fiscal 2012. Debt service payments are projected to be $34 million in fiscal 2012.

Capital Budget

Capital Budget Outlook

Balancing the State's capital infrastructure funding needs amidst the pressures created by declining State revenues, limited general obligation (GO) bond capacity, and use of the limited GO bond capacity to resolve operating budget pressures compounds the already difficult task of allocating scarce resources.

The State is faced with the task of programming funding for its capital infrastructure needs amidst a fiscal climate marked by limited general obligation (GO) bond capacity within debt affordability limits and pressure to shift bondable operating expenditures to the capital budget. These factors compound an already difficult task of prioritizing agency capital requests which annually far exceed Capital Debt Affordability Committee (CDAC) recommended GO bond limits.

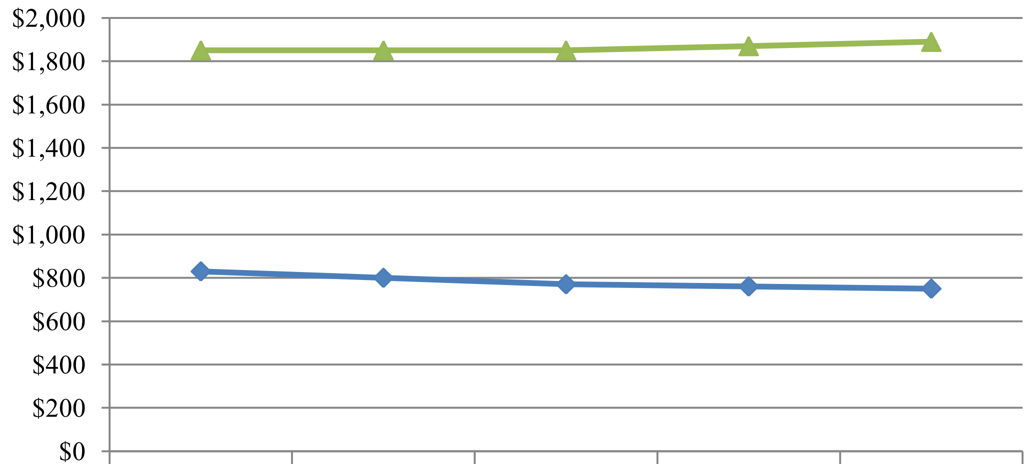
Reduced Planned GO Bond Authorizations Restrain Capital Program

The current fiscal and economic climate has pushed the State near or at the debt affordability ratio benchmarks. **Exhibit 1** shows that CDAC reduced the planned level of new GO bond authorizations, as a step towards keeping the State within debt affordability limits, resulting in a total reduction of $745 million over the five-year planning period covering the 2011 through 2015 sessions. CDAC reduced the planned level of new GO bond authorizations in December 2009, just prior to the 2010 session, in a revision to the committee's initial September 2009 recommendation. In September 2010, with no material change in the State's fiscal condition, the committee maintained the reduced authorization levels it recommended in December 2009.

Use of GO Bonds to Relieve Pressure on the Operating Budget Constrains Capital Program

As shown in **Exhibit 2**, the GO bond program has been used to reduce operating budget appropriations and to replace funds transferred from various capital accounts to the general fund. The fiscal situation has limited the use of pay-as-you-go (PAYGO) funds to support the capital program and resulted in the shift of funding for certain grant and loan programs to the bond program. In addition, GO bond funds have been used to fund the State's commitment to the Intercounty Connector (ICC) in lieu of using general funds. Moreover, the use of fund transfers, including fund balance and estimated revenues from various capital program special fund accounts, has been a significant component of the fiscal 2010 and 2011 budget plans.

Exhibit 1
CDAC Recommended GO Bond Authorizations
Fiscal 2012-2016
($ in Millions)



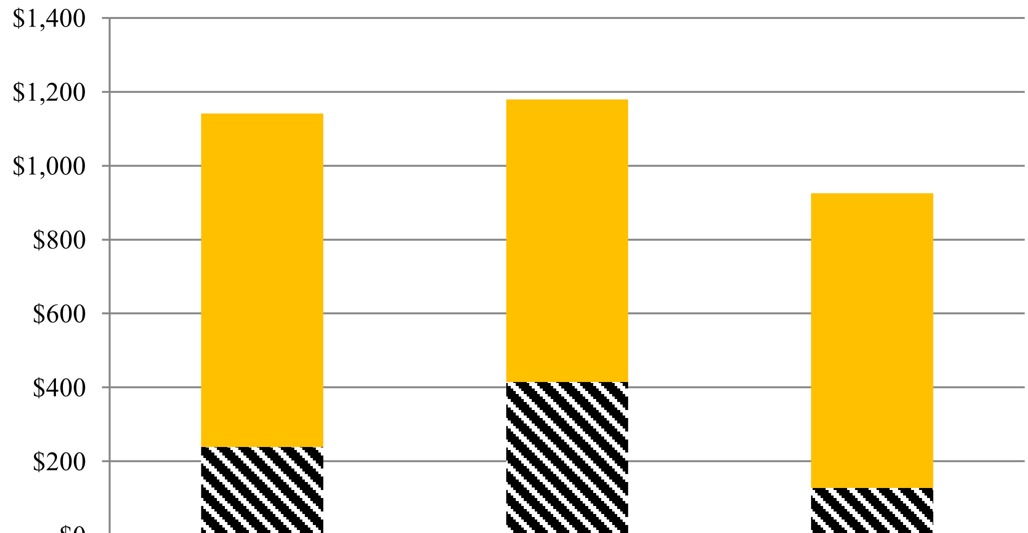
	2012	2013	2014	2015	2016
September 2009 Recommendation	$1,020	$1,050	$1,080	$1,110	$1,140
September 2010 Recommendation	$925	$925	$925	$935	$945
Difference	-$95	-$125	-$155	-$175	-$195

CDAC: Capital Debt Affordability Committee
GO: general obligation

Note: The September 2010 Capital Debt Affordability Committee recommendation is consistent with the committee's December 2009 recommendation which adjusted out-year new general obligation bond authorizations downward in order to maintain compliance with State debt affordability ratio benchmarks.

Source: Report on the Capital Debt Affordability Committee on Recommended Debt Authorizations, September 2009 and September 2010

Exhibit 2
Use of GO Bonds for Operating Budget Relief
Fiscal 2010-2012
($ in Millions)



	2010	2011	2012
Program Funding	$902.7	$764.4	$797.1
Operating Relief	$238.1	$414.3	$127.9

GO: general obligation

Source: Department of Legislative Services *The 90 Day Report*

- **Fiscal 2010:** Included the use of $237.9 million of GO bond authorizations to replace planned general and special fund PAYGO expenditures. This included $102.3 million to replace fiscal 2010 transfer tax revenues and unencumbered Program Open Space (POS) fund balance transferred to the general fund through the Budget Reconciliation and Financing Act (BRFA) of 2009, $52.5 million of GO bonds for the purchase of Medevac helicopters to replace $52.7 million transferred from the State Police Helicopter Replacement Fund to the general fund, $55.0 million for the ICC to replace the general fund payment to the Transportation Trust Fund, and $28.1 million to replace general funds for various grant and loan programs. An additional $70.0 million of POS fund balance was also transferred to the general fund and replaced with POS revenue bonds authorized by Chapter 419 of 2009.

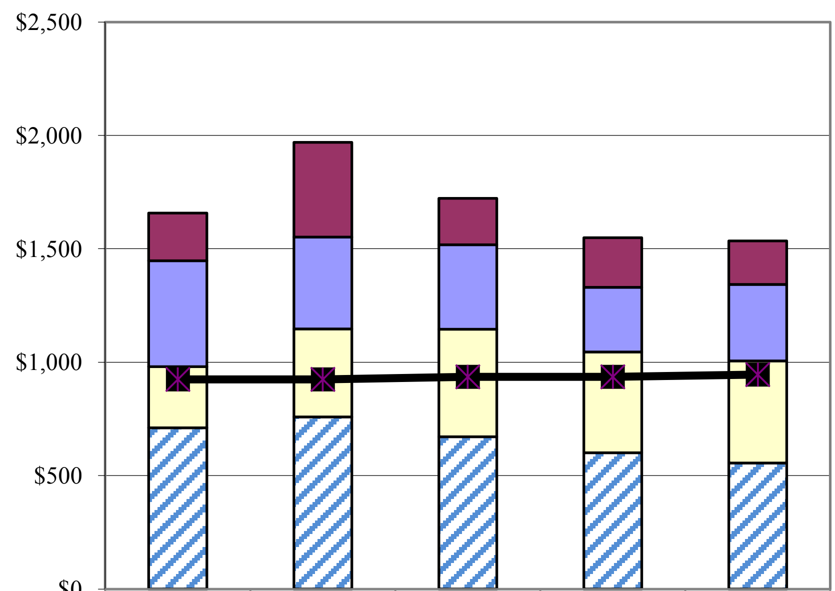
- **Fiscal 2011 and 2012:** Fiscal 2011 included $443.8 million of transfers to the general fund authorized through the BRFA of 2010 from dedicated capital sources. This included $330.1 million of fund balance from a variety of capital program accounts including State and local POS accounts and another $113.7 million of fiscal 2011 revenues that would otherwise be appropriated as special funds in the fiscal 2011 budget for capital purposes. While the budget replaced a portion of the transferred funds with GO bonds in fiscal 2011, the planned replacement was proposed to be spread out over three fiscal years, with another $127.9 million expected in fiscal 2012 and $33.7 million in fiscal 2013.

Fiscal pressures could invite continued use of GO bond authorizations as a measure for balancing the fiscal 2012 operating budget. The decisions made in the 2010 session to balance the fiscal 2011 operating budget already required the use of $127.9 million of what is now a shrinking GO bond authorization level. Should similar fund transfer strategies invoke the use of GO bond replacement the amount of authorizations to meet other pressing capital infrastructure needs could be impacted.

Funding Agency Requests Amidst Reduced Authorization Levels and Operating Budget Relief

Balancing the State's capital infrastructure funding needs amidst the pressures created by declining State revenues, limited GO bond capacity, and use of the limited GO bond capacity to resolve operating budget pressures compounds the already difficult task of allocating scarce resources. Agency requests for fiscal 2012 total $1.65 billion, over $730 million more than the amount available under the recommended GO bond debt limit of $925 million. Capital requests for the next five years total over $8.43 billion, while the projected debt limit for the same period totals approximately $4.67 billion. **Exhibit 3** illustrates the variance between GO bond fund requests and the recommended level of new GO bond authorizations in each of the next five fiscal years.

Exhibit 3
General Obligation (GO) Bond Requests Compared to Recommended GO Bond Authorization Levels
Fiscal 2012-2016
($ in Millions)



	2012	2013	2014	2015	2016
State Facilities and Public Safety	$210	$418	$204	$218	$192
Other	$467	$404	$373	$285	$336
Higher Education	$269	$388	$474	$444	$450
Education	$711	$759	$671	$601	$556
GO Bond Limit	$925	$925	$935	$935	$945

Source: Department of Budget and Management

Revenues and Taxes

Comparative Tax and Revenue Rankings

Based on data compiled by the U.S. Census Bureau, Maryland's overall revenue and spending levels in fiscal 2008 were moderate compared to other states. Maryland remains uniquely reliant on tax revenues, however, with a strong dependence on the income tax.

State and Local Government Spending and Revenues

As reflected in **Exhibit 1**, total State and local government spending and revenues in Maryland are not generally high compared to other states. When comparing all states and the District of Columbia using fiscal 2008 data, Maryland ranks twenty-first and eighteenth, respectively, in total state and local government revenues and spending measured on a per-capita basis and forty-ninth and forty-eighth, respectively, in revenues and spending as a percentage of personal income of residents. However, Maryland relies more on tax revenues than most states and less on nontax revenue sources.

Exhibit 1
Maryland State and Local Government Spending and Revenues
2007-2008

	Maryland Rank Percent of Total	Maryland Rank Per Capita	Maryland Rank Percent of Personal Income
Total Spending	n/a	18	48
Total Revenues	n/a	21	49
Revenues			
Taxes	3	11	37
Intergovernmental from Federal Government	36	34	46
Charges and Utilities[1]	45	47	49
Miscellaneous[2]	39	36	49

[1]Charges include higher education tuition, fees and auxiliary revenues, public hospital revenues, sewer and trash collection, highway tolls, and other user charges and fees. Utilities include gross receipts of publicly owned utilities (water, gas, electric, and transit).

[2]Miscellaneous revenues include interest earnings, net lottery revenues, liquor store revenues, rents, royalties, fines and forfeitures, special assessments, sale of property, and other.

Note: For the rankings, 1 indicates the highest and 51 the lowest.

Source: *2008 Census of Government Finance*, U.S. Bureau of the Census (July 2010)

State and Local Tax Revenues Compared to Neighboring States

Exhibits 2 and **3** compare Maryland's State and local tax revenues in fiscal 2008 to other states in the region. Maryland's reliance on the income tax is high (second on a percentage of income basis and fourth on a per-capita basis) compared to other states, primarily reflecting the statewide local income tax. Maryland ranks thirty-seventh among all states in overall state and local tax revenues as a percentage of personal income and eleventh in overall tax revenues on a per-capita basis. Generally, Maryland ranks in the bottom half of all states with respect to property taxes, corporate income taxes, and sales taxes measured on a percentage of income basis. Maryland ranks twenty-ninth in property taxes, thirty-second for corporate income taxes, and forty-first on sales taxes measured on a per-capita basis. These comparisons only incorporate the impact of changes made to taxes in Maryland and other states through fiscal 2008.

Exhibit 2
Maryland State and Local Tax Revenues
2007-2008 Tax Revenues as a Percentage of Personal Income
Comparison to Selected States

	Property Tax	Personal Income Tax	Corporate Income Tax	Sales and Selective Taxes[1]	License Fees	Other Taxes[2]	All Taxes
Delaware							
Percent	1.7%	3.0%	0.9%	1.4%	3.0%	0.5%	10.5%
Rank	47	14	6	49	1	12	25
District of Columbia							
Percent	4.4%	3.5%	1.1%	3.6%	0.4%	0.9%	13.8%
Rank	7	7	3	28	43	7	4
Maryland							
Percent	**2.4%**	**4.1%**	**0.3%**	**2.5%**	**0.3%**	**0.6%**	**10.2%**
Rank	**39**	**2**	**40**	**44**	**47**	**10**	**37**
New Jersey							
Percent	5.1%	2.8%	0.6%	2.8%	0.4%	0.3%	12.1%
Rank	2	20	10	43	40	20	9
North Carolina							
Percent	2.4%	3.4%	0.4%	3.4%	0.5%	0.1%	10.2%
Rank	40	10	29	33	26	46	34
Pennsylvania							
Percent	3.1%	2.9%	0.4%	3.2%	0.8%	0.5%	10.8%
Rank	24	17	20	39	6	16	20
Virginia							
Percent	3.1%	2.9%	0.2%	2.5%	0.5%	0.3%	9.5%
Rank	26	16	42	45	32	21	41
West Virginia							
Percent	2.2%	2.7%	0.9%	4.1%	0.6%	0.7%	11.2%
Rank	43	22	5	15	14	8	16
United States Average	**3.4%**	**2.5%**	**0.5%**	**3.7%**	**0.6%**	**0.4%**	**10.9%**

[1]Includes the general sales tax along with selective taxes such as excise taxes on alcohol and tobacco products, motor fuel taxes, titling taxes, admissions and amusement taxes, insurance premiums taxes, public utility gross receipts taxes, and others.

[2]Includes death and gift taxes, documentary and stock transfer taxes, severance taxes, and other taxes.

Note: For the rankings, 1 indicates the highest. Rankings are out of 51 except for the personal income tax (out of 44) and the corporate income tax (out of 47).

Source: *2008 Census of Government Finance*, U.S. Bureau of the Census (July 2010)

Exhibit 3
Maryland State and Local Tax Revenues
2007-2008 Tax Revenues Per Capita
Comparison to Selected States

	Property Tax	Personal Income Tax	Corporate Income Tax	Sales and Selective Taxes[1]	License Fees	Other Taxes[2]	All Taxes
Delaware							
Amount	$691	$1,214	$352	$561	$1,208	$211	$4,237
Rank	44	12	5	50	1	13	21
District of Columbia							
Amount	2,929	2,296	712	2,352	238	621	9,148
Rank	1	1	2	4	16	4	2
Maryland							
Amount	**1,168**	**1,977**	**130**	**1,203**	**146**	**263**	**4,887**
Rank	**29**	**4**	**32**	**41**	**42**	**8**	**11**
New Jersey							
Amount	2,621	1,455	327	1,459	201	147	6,209
Rank	2	8	7	22	28	17	6
North Carolina							
Amount	851	1,189	130	1,206	186	29	3,591
Rank	39	14	31	40	33	46	34
Pennsylvania							
Amount	1,236	1,141	175	1,266	308	180	4,306
Rank	24	17	16	35	6	15	19
Virginia							
Amount	1,356	1,298	101	1,100	220	122	4,196
Rank	19	10	40	44	22	19	23
West Virginia							
Amount	682	837	297	1,311	200	216	3,542
Rank	45	31	9	30	29	12	37
United States Average	**$1,346**	**$1,001**	**$190**	**$1,472**	**$219**	**$141**	**$4,371**

[1]Includes the general sales tax along with selective taxes such as excise taxes on alcohol and tobacco products, motor fuel taxes, titling taxes, admissions and amusement taxes, insurance premiums taxes, public utility gross receipts taxes, and others.

[2]Includes death and gift taxes, documentary and stock transfer taxes, severance taxes, and other taxes.

Note: For the rankings, 1 indicates the highest. Rankings are out of 51 except for the personal income tax (out of 44) and the corporate income tax (out of 47).

Source: *2008 Census of Government Finance*, U.S. Bureau of the Census (July 2010)

Revenues and Taxes

Effects of Revenue Measures Enacted Over the 2007-2010 Legislative Term

A variety of significant revenue measures were enacted during the 2007-2010 legislative term, generating a cumulative total of just over $3.6 billion in general and special fund revenues between fiscal 2008 and 2011. Most of these revenue measures were enacted during the 2007 special session and the 2008 session.

Revenue Summaries

Measures to enhance or reduce revenues generally take the form of legislation, with changes to the State property tax being a notable exception. To address the State's structural imbalance between revenues and expenditures, numerous revenue measures were enacted during the 2007-2010 legislative term, including during the 2007 special session. While this paper focuses on these revenue actions, additional actions to reduce spending were also taken during the four-year term.

Exhibit 1 reflects the estimated fiscal impact for the various revenue changes by fiscal year from fiscal 2008 through 2011. As the exhibit shows, total annual revenue increases range from a low of just over $500 million in fiscal 2008 to a high of almost $1.1 billion in fiscal 2011, and total just over $3.6 billion for the four-year period. Approximately 80% of the revenues are for the general fund, with the remaining 20% going to special funds (primarily the Transportation Trust Fund (TTF)).

Exhibit 1
Fiscal Impact of Revenue Measures by Fund Type
Fiscal 2008-2011
($ in Millions)

Fund Type	2008 Actual	2009 Actual	2010 Est.	2011 Est.	Total
General Fund	$444.2	$879.3	$809.1	$787.7	$2,920.3
Special Fund	59.2	155.9	179.8	308.7	703.6
Total	**$503.4**	**$1,035.2**	**$988.9**	**$1,096.4**	**$3,623.9**

Note: Exhibit includes only revenue measures with a specified dollar impact.

As a point of comparison, revenue changes enacted during the 2003-2006 legislative term increased revenues by a total of $2.9 billion over the four-year period from fiscal 2004 to 2007, ranging from a low of $360 million in fiscal 2004 to a high of $912 million in fiscal 2005. Of that $2.9 billion, approximately 39% was for the general fund, with the remaining 61% going to special funds (primarily the Annuity Bond Fund and the TTF).

Exhibit 2 outlines the major revenue actions enacted in each session and their effect from fiscal 2008 through 2011.

Exhibit 2
Significant Revenue Measures
Fiscal 2008-2011
($ in Millions)

	2008 Actual	2009 Actual	2010 Est.	2011 Est.	Four Year Cumulative Totals
2007 Session					
Income Tax – Captive Real Estate Inv't Trusts	$10.0	$13.3	$10.0	$10.0	$43.3
Miscellaneous Fees and Assessments	4.6	2.1	2.6	0.3	9.6
Miscellaneous Tax Credits/Measures	1.0	0.1	-0.6	-0.6	-2.3
Subtotal	**$13.6**	**$15.3**	**$12.0**	**$9.7**	**$50.6**
2007 Special Session					
Sales Tax – Rate Increase	$304.7	$603.4	$579.0	$613.1	$2,100.2
Sales Tax – Computer Services Tax	0.0	214.0	220.4	227.1	661.5
Sales Tax – Vendor Credit Reduction	8.2	16.3	15.7	16.6	56.8
Sales Tax – Tax Holidays	0.0	0.0	0.0	-9.6	-9.6
Vehicle Excise Tax – Rate Increase/Trade-in	23.6	36.9	36.9	39.6	137.0
Vehicle Certificate of Title Fee	14.0	23.0	22.9	23.5	83.4
Tobacco Tax – Rate Increase	101.0	133.0	127.0	121.0	482.0
Electronic Gaming Machines Tax	2.5	8.0	11.0	10.0	31.5
Personal Income Tax – Rate Adjustments*	23.1	243.5	174.3	163.6	604.5
Personal Income Tax – Personal Exemption	-26.5	-133.4	-107.5	-110.0	-377.4
Personal Income Tax – Earned Income Credit	0.0	-38.5	-40.2	-39.8	-118.5
Corporate Income Tax – Rate Increase	39.2	118.6	110.3	107.9	376.0
Transfer Tax – Controlling Interest	0.0	14.1	14.1	14.1	42.3
Gaming – Video Lottery Terminals	0.0	0.0	13.8	132.1	145.9
Subtotal	**$489.8**	**$1,238.9**	**$1,177.7**	**$1,309.2**	**$4,215.6**

Exhibit 2 (continued)

	2008 Actual	2009 Actual	2010 Est.	2011 Est.	Four Year Cumulative Totals
2008 Session					
Income Tax – 6.25% Rate**		$0	$0	$0	$0
Sales Tax – Repeal Computer Services Tax		-214.0	-220.4	-227.1	-661.5
Electronic Gaming Machines – Prohibition		-5.0	-5.0	-5.0	-15.0
			-		
Subtotal		**-$219.0**	**$225.4**	**-$232.1**	**-$676.5**
2009 Session					
Speed Monitoring System			$11.6	$15.6	$27.2
Electronic Gaming Machines – Extension			9.9	9.9	19.8
Workplace Fraud Act			5.3	5.3	10.6
Maryland Mined Coal Credit – Reduction			4.5	4.5	9.0
Tax Amnesty Program			27.8	5.4	33.2
ARRA – Unemployment Compensation			-15.5	0.0	-15.5
ARRA – Earned Income Tax Credit Increase			-10.3	-10.0	-20.3
ARRA – Sales Tax Deduction for Vehicle Sales			-10.2	0.0	-10.2
Inheritance Tax – Domestic Partners Exemption			-1.0	-1.0	-2.0
Miscellaneous Fees and Assessments			2.5	1.6	4.1
Subtotal			**$24.6**	**$31.3**	**$55.9**
2010 Session					
Sustainable Communities Act				-$10.0	-$10.0
Job Creation and Recovery Tax Credit				-20.0	-20.0
Collection of State Debt – Tax Refund/Lottery Prize Interception				2.4	2.4
Fishing License and Registration Fees				3.0	3.0
Oil Disaster/Contaminated Site Fees				2.9	2.9
Subtotal				**-$21.7**	**-$21.7**
Total	**$503.4**	**$1,035.2**	**$988.9**	**$1,096.4**	**$3,623.9**

*Includes 2008 session rate adjustments.
**Included in 2007 special session rate adjustment.

ARRA: American Recovery and Reinvestment Act of 2009

2007 Session

Several revenue increases were adopted during the 2007 session, increasing overall revenues by $13.6 million in fiscal 2008 and by just over $50 million for the four-year period. The primary revenue increase was related to the elimination of the use of captive real estate investment trusts (REITs) for income tax purposes, which increased revenues by $10.0 million in fiscal 2008 and $13.3 million in fiscal 2009.

2007 Special Session

During the 2007 special session, legislation was enacted to significantly revise several major State taxes, including the State personal income tax, sales and use tax, and corporate income tax. Legislation was also enacted to authorize video lottery terminals at five locations around the State, subject to voter approval at the November 2008 election. Overall, the legislation enacted during the 2007 special session increased revenues by about $490 million for fiscal 2008, by over $1.2 billion for fiscal 2009, and by a total of $4.2 billion over the four-year period.

An increase in the sales and use tax rate from 5.0 to 6.0% provided approximately half of the revenues generated from the special session changes for fiscal 2008 through 2011 ($2.1 billion). In addition, a four-year reduction in the sales tax vendor credit yields an additional $57 million in revenues over the four-year period. As enacted during the special session, 6.5% of general sales and use tax revenues were to be deposited in the TTF beginning in fiscal 2009. During the 2008 session, this distribution to the TTF was reduced to 5.3% of sales tax revenues for fiscal 2009 through 2013. To provide a small offset to the sales tax rate increase, certain sales tax holidays were enacted beginning in calendar 2010 (a reduction of $9.6 million in fiscal 2011).

Approximately $662 million over the four-year period was anticipated from a new sales and use tax on certain computer services to be imposed for a five-year period beginning July 1, 2008; this tax was repealed in the 2008 session, and the revenues expected from the tax partially replaced by a new 6.25% income tax rate on taxable income exceeding $1 million for tax years 2008 through 2010 (discussed below).

Legislation enacted during the special session established new individual income tax brackets and rates beginning in tax year 2008, estimated to yield $605 million over the four-year period (including revenues resulting from the 6.25% rate enacted during the 2008 session). This is offset by a revenue reduction of $377 million resulting from an increase in the personal income tax exemption from $2,400 to $3,200 for most taxpayers and a reduction of $119 million from an expansion of the earned income tax credit. An increase in the corporate income tax rate from 7.0 to 8.25% provided $376 million over the four-year period. Beginning in fiscal 2008, a portion of these revenues are dedicated to the newly created Higher Education Investment Fund.

An increase in the motor vehicle excise tax rate from 5.0 to 6.0% increased TTF revenues by an estimated $137.0 million over the four-year period, which includes a reduction in revenues resulting from a deduction allowed for the full value of a trade-in. An increase in the vehicle certificate of title fee raised an estimated $83 million over the same time period.

A doubling of the tobacco tax rate to $2.00 provides $482 million over the four-year period, and initial license fees and proceeds from video lottery terminals will provide an additional $146 million.

2008 Session

In the 2008 session, legislation resulted in an overall revenue reduction of $219 million for fiscal 2009 and a total decrease of $677 million over the four-year period. This is primarily due to the repeal of the sales tax on certain computer services that was first enacted during the 2007 special session – while the same legislation repealing the computer services tax also imposed a new income tax rate of 6.25% on income over $1 million for tax years 2008 through 2010 (as discussed above), the revenue impacts of the 6.25% income tax rate are reflected as part of the additional income tax changes made during the 2007 special session.

2009 Session

Revenue actions during the 2009 session resulted in a small overall increase in revenues for fiscal 2010. Almost $28 million in fiscal 2010 revenues were generated from the one-time tax amnesty period held in the fall of 2009, with a revenue reduction of approximately $35 million as a result of federal tax changes made through the American Recovery and Reinvestment Act of 2009. Several tax compliance and other measures were passed that are expected to increase revenues beginning in fiscal 2011; these include the Workplace Fraud Act and revenues related to a sunset extension for the operation of certain electronic gaming machines through July 1, 2012.

2010 Session

Actions taken in the 2010 session resulted in an overall revenue decrease of $21.7 million for fiscal 2011, primarily due to the Job Creation and Recovery Tax Credit and the extension of the Sustainable Communities Tax Credit (formerly the Heritage Structure Rehabilitation Tax Credit). Several tax compliance measures and fee increases that offset the revenue losses associated with these tax credit programs were also adopted.

For further information contact: Michael D. Sanelli Phone: (410) 946/(301) 970-5510

Revenues and Taxes

Video Lottery Terminals – Overview

The Video Lottery Facility Location Commission has awarded three of the five video lottery operation licenses authorized in the Maryland Constitution. The first video lottery terminal facility in the State opened in Cecil County in September 2010, and a second facility in Worcester County is scheduled to open in late 2010. While Maryland continues implementing its video lottery terminal program, Delaware, Pennsylvania, and West Virginia continue to expand gambling opportunities in their states.

Constitutional Amendment and Implementing Legislation

During the 2007 special session, the General Assembly adopted two pieces of legislation pertaining to video lottery terminal (VLT) gambling – Chapter 4 (Senate Bill 3) and Chapter 5 (House Bill 4). Chapter 5 was a constitutional amendment approved by the voters at the November 2008 general election that authorized the expansion of gambling subject to specified restrictions. The constitutional amendment provided that (1) a maximum of five VLT facility licenses may be awarded in specified areas of the State; (2) no more than one facility license may be awarded in any county or Baltimore City; (3) a maximum of 15,000 VLTs may be authorized; and (4) VLT facilities must comply with any applicable planning and zoning laws of a local jurisdiction.

Chapter 4, which was contingent on ratification of Chapter 5, established the operational and regulatory framework for the VLT program. Under Chapter 4, VLT facility operation licenses are awarded by the Video Lottery Facility Location Commission (Location Commission). The State Lottery Commission oversees VLT operations and owns/leases the VLTs and a central monitor and control system. Chapter 4 allows for a maximum of 15,000 VLT's, distributed as follows: 4,750 VLTs in Anne Arundel County; 3,750 VLTs in Baltimore City; 2,500 VLTs in Worcester County; 2,500 VLTs in Cecil County; and 1,500 VLTs on State property located in the Rocky Gap State Park in Allegany County. In addition, geographic parameters for each jurisdiction within which a VLT facility may be located are provided.

Chapter 624 of 2010 (Senate Bill 882) made a variety of clarifying and technical changes to the VLT law and also altered provisions regarding the authorized VLT facility in Allegany County. Contingent upon the purchase of the Rocky Gap Lodge and Golf Resort by the licensee, the 2.5% of VLT proceeds from the Allegany County facility for the first five years of operations that would otherwise be distributed to the Racetrack Facility Renewal Account would instead be distributed to the Allegany County facility licensee.

Video Lottery Operation License Proposals

Submission of Proposals

Pursuant to State law and the request for proposals (RFP) released in December 2008, initial proposals for video lottery operation licenses were required to be submitted by February 2, 2009. The Location Commission received six proposals on that date – two for Anne Arundel County and one each for the other four locations. On February 12, 2009, the commission determined that four of the six proposals met the minimum requirements of the statute and the RFP – one of the proposals for Anne Arundel County and the proposal for Allegany County were rejected by the commission for failing to meet the minimum requirements, including failing to pay the required initial license fee.

Qualification of Applicants

Chapter 4 requires the State Lottery Commission to conduct background investigations of the operation license applicants and their principals – the Lottery Commission must qualify an applicant before an operation license may be awarded by the Location Commission. As of November 2010, the Lottery Commission has found the applicants for a VLT operation license in Anne Arundel, Cecil, and Worcester counties qualified to hold a license.

Award of Licenses and Initiation of VLT Operations

In fall 2009, the Location Commission awarded three video lottery operation licenses. Penn Cecil Maryland, Inc. (Penn Cecil) was awarded a license to operate a facility with 1,500 VLTs in Perryville in Cecil County. The facility opened to the public with 1,500 VLTs on September 27, 2010. The Lottery Agency reports that the facility has generated $13.5 million in revenues as of November 5, 2010.

Ocean Enterprise 589, LLC (OE 589) was awarded a license to operate a facility with 800 VLTs at Ocean Downs Racetrack in Worcester County. The plan for the facility called for renovation of the grandstand at Ocean Downs. Structural difficulties (*e.g.*, asbestos and weak structural steel) discovered during the demolition phase of the renovation has delayed the opening, which was originally set for May 2010. The facility is now expected to open in late 2010 with 750 VLTs, with the full complement of 800 VLTs in place by spring 2011.

Power Plant Entertainment (PPE) Casino Resorts Maryland, LLC was awarded a license to operate a 4,750 VLT facility in Hanover (Arundel Mills Mall) in Anne Arundel County, contingent upon local zoning approval. County officials approved zoning legislation in December 2009, but that legislation was petitioned to a local voter referendum at the November 2010 election. On November 2, 2010, Anne Arundel County voters approved the zoning legislation, thus allowing the Arundel Mills VLT facility to go forward.

In February 2009, the Location Commission rejected the single proposal for Allegany County for failing to meet the minimum requirements of the VLT law and the Request for Proposals, including failure to pay the required initial license fee. The Location Commission rebid the Allegany County location in July 2010, with proposals due in November.

In December 2009, the commission rejected the single proposal for Baltimore City, finding that the proposal was not in the best interest of the State. A protest of the commission's rejection of the Baltimore City proposal is pending before the State Board of Contract Appeals.

Video Lottery Terminals and Other Gambling Opportunities in Surrounding States

Maryland's competition for gambling revenues comes primarily from three surrounding states: Delaware, Pennsylvania, and West Virginia. As of September 2010, three racetrack facilities with approximately 7,000 VLTs are operating in Delaware, 10 facilities with almost 27,000 VLTs are operating in Pennsylvania, and four racetrack facilities with approximately 10,000 VLTs are operating in West Virginia. Average win-per-day per VLT for the 12-month period ending September 2010 ranged from $170 to $240 for the Delaware locations, from $162 to $337 in Pennsylvania, and $106 to $232 in West Virginia.

West Virginia also has table games (*e.g.*, blackjack) at its four VLT racetrack facilities. Table games are also available at the Greenbrier Resort, which became the state's fifth VLT location in October 2009. Limited numbers of VLTs are also available at licensed West Virginia bars, clubs, and fraternal organizations. As of June 30, 2009, 7,960 of the 9,000 maximum VLTs authorized for bars, clubs, and fraternal organizations were operating at over 1,600 licensed locations throughout the state.

Both Pennsylvania and Delaware recently authorized table games at their VLT facilities. Pennsylvania law authorizes up to 250 table games each at large facilities and 50 games each at smaller resort facilities. Pennsylvania table gaming began in July 2010; as of August 2010, nearly 640 table games were operating statewide. Delaware table gaming began in May 2010; as of September 2010, about 160 table games were operating in the state. Delaware has also recently reinstated limited betting on National Football League games.

For further information contact: Scott P. Gates Phone: (410) 946/(301) 970-5510

State Retirement and Pension System Investment Performance and Contribution Rates

The pension fund's fiscal 2010 return was 14.0%. This is the first time in three years that investment returns were positive. The system's asset valuation policy mitigates against sharp increases and decreases in market performance by smoothing gains and losses over five years. Consequently, the plan recognizes only a small portion of the gains, which is less than projected liabilities. The plan's funded status declines to 64.1%, compared to 65.0% at the end of fiscal 2009. The average contribution rate increases to 15.67% in fiscal 2012, compared to 14.33% in fiscal 2011.

Recovery of Financial Markets Leads to Improved Investment Performance

The State Retirement and Pension System's (SRPS) investment return for the year ended June 30, 2010, was 14.0%, the first time in three years that investment returns were positive. The strong performance was driven primarily by the recovery of domestic and international public equity markets. The system's public equity holdings, which made up slightly more than half of the portfolio, returned 15.6% for the year. Fixed income holdings, which make up almost one-fifth of the system's holdings, also rebounded strongly from the credit crunch that paralyzed markets for much of 2009, earning 14.3% for the year. The fund's real estate holdings continued to struggle in light of the prolonged downturn in commercial real estate markets, returning only 3.6% for the year. In total, the plan surpassed the system's actuarial target of 7.75%, and outperformed its policy benchmark by 2.22%.

Despite Strong Returns, the System's Financial Condition Deteriorates

Even with the strong investment returns experienced in fiscal 2010, the SRPS's funded status (the ratio of projected assets to projected liabilities) dropped slightly from 65.0 to 64.1%. The deterioration in the system's funded status is driven primarily by the continued recognition of financial losses suffered in the prior two years. The system's asset valuation policy is designed to mitigate against sharp rises and falls in market performance by "smoothing" gains and losses over five years. Therefore, the plan recognized only a small portion of the gains earned in fiscal 2010 but continued to recognize a portion of the sizeable losses experienced in fiscal 2008 and 2009. As a result, while smoothed assets increased by 1.2%, they increased less than projected liabilities, which rose by 2.6%. This caused the system's funded status to drop.

Increased Liabilities and Declining Payroll Prompt Increased Contributions

Exhibit 1 shows that the employer contribution rate for teachers will increase from 14.34% in fiscal 2011 to 15.45% in fiscal 2012, and the contribution rate for State employees will increase from 11.69% in fiscal 2011 to 13.40% in fiscal 2012. The aggregate State contribution rate, including contributions for public safety employees and judges, increases from 14.33% in fiscal 2011 to 15.67% in fiscal 2012. Based on projected payroll growth, the SRPS actuary estimates that total State pension contributions will increase by $159 million (11.3%), from $1.40 billion in fiscal 2011 to $1.56 billion in fiscal 2012.

Exhibit 1
State Pension Contribution Rates
Fiscal 2011 and 2012

	FY 2011		FY 2012	
Plan	**Rate (%)**	**$ in Millions**	**Rate (%)**	**$ in Millions**
Teachers	14.34%	$919	15.45%	$1,000
Employees	11.69%	370	13.40%	439
State Police	57.03%	51	61.01%	53
Judges	59.07%	24	60.37%	25
Law Enforcement Officers	47.67%	43	49.26%	45
Aggregate	**14.33%**	**$1,403**	**15.67%**	**$1,562**

Note: Contribution rates reflect State funds only, excluding municipal contributions.

Source: Gabriel, Roeder, Smith & Co.

Other factors besides investment returns that contributed modestly to changes in the State's contribution rate include declining payrolls in most plans, the 0.0% cost-of-living adjustment (COLA) adopted during the 2010 legislative session, and the underfunding prompted by the implementation of the corridor funding method. Because employer contribution rates are expressed as a percentage of payroll, any reduction in payroll causes contribution rates to increase. During fiscal 2010, member payroll for all but the teachers' combined systems declined over fiscal 2009 levels, with the two largest decreases occurring in the State Police Retirement System (-4.5%) and the State employees' combined systems (-2.7%).

Under the corridor funding method passed during the 2002 legislative session, as long as the combined teachers' and combined employees' plans remain below the 90% funding level, employer contributions increase by an amount equal to one-fifth of the difference between the prior year's rate and the "true" actuarial rate required to fully fund the systems. Although the corridor method has kept contribution rate increases to manageable levels, they are creating a future obligation that the State may not be able to afford. The structure of the corridor method allows for underfunding of the true actuarial rates with the understanding that any gaps will be made up in later years. With the gap between true actuarial rates and corridor rates growing, the size of the State's future obligation to make up for those gaps also keeps growing.

The 0.0% COLA actually offset some of the upward pressure on contribution rates created by investment losses and other factors discussed above. The annual liability calculations by the actuary assume that retirees earn COLAs of between 2.75 and 3.5%, based on the Consumer Price Index for Urban Consumers (CPI-U). However, the CPI-U declined for the year which would have prompted negative COLAs for some retirees. Instead, the 0.0% COLA was enacted to hold retirees harmless, thereby generating an actuarial gain. Had the negative COLAs been implemented, the actuarial gain would have been even greater.

Personnel

State Workforce and Payroll

Since fiscal 2002, the number of State positions has decreased from 81,113 to 79,493. Declines in Executive Branch positions were partially offset by increases in higher education, judicial, and legislative positions. From fiscal 2002 to 2011, personnel costs increased by 34%, annual salary costs increased by 32%, budgeted State health care subsidies increased by 81%, and retirement contributions increased by 139%

Budgeted Positions

Regular Positions

Regular full-time equivalent (FTE) positions are requested by the Administration and authorized by the General Assembly when the State budget is passed. Section 36 of the fiscal 2011 budget bill limits position growth above that level by allowing the Board of Public Works (BPW) to authorize no more than 100 additional positions during the 2011 fiscal year except for hardship, manpower statutes, block grants, new facilities, and/or emergencies. The total does not include higher education institutions, the Maryland Aviation Administration, and the Maryland Port Administration.

Budget spending limits, positions caps restricting growth, attrition, and abolitions prompted by budgetary constraints have decreased the nonhigher education Executive Branch workforce from 55,980 FTE positions in fiscal 2002 to 51,383 in the fiscal 2011 legislative appropriation. Included in this count is a reduction required by Section 44 of the fiscal 2011 budget bill that instructed the Governor to abolish 500 positions across the Executive Branch by June 30, 2011. The distribution by agency of these abolitions has yet to be determined.

Exhibit 1 shows that three major agencies represent 70% of the net decrease: the Department of Human Resources, the Department of Health and Mental Hygiene, and the Maryland Department of Transportation. These reductions, however, have been offset by new positions created in higher education institutions, the Judicial Branch, and legal agencies (primarily, the Office of the Public Defender).

Exhibit 1

Regular Full-time Equivalent Position Changes

Fiscal 2002 Actual to Fiscal 2011 Legislative Appropriation

Department/Service Area	2002 Actual	2011 Legislative Appropriation	2002-2011 Change
Health and Human Services			
Health and Mental Hygiene	8,555	6,570	*-1,985*
Human Resources	7,364	6,707	*-657*
Juvenile Services	2,123	2,240	*117*
Subtotal	***18,041***	***15,517***	***-2,524***
Public Safety			
Public Safety and Correctional Services	11,663	11,304	*-359*
Police and Fire Marshal	2,590	2,421	*-169*
Subtotal	***14,252***	***13,724***	***-528***
Transportation	9,538	8,979	*-559*
Other Executive			
Legal (Excluding Judiciary)	1,364	1,489	*125*
Executive and Administrative Control	1,603	1,620	*17*
Financial and Revenue Administration	2,151	1,971	*-180*
Budget and Management	517	451	*-66*
Retirement	194	207	*14*
General Services	793	593	*-200*
Natural Resources	1,618	1,284	*-334*
Agriculture	480	413	*-68*
Labor, Licensing, and Regulation	1,706	1,669	*-37*
MSDE and Other Education	1,956	1,951	*-5*
Housing and Community Development	416	311	*-105*
Business and Economic Development	324	236	*-88*
Environment	1,028	970	*-58*
Subtotal	***14,149***	***13,163***	***-986***
Executive Branch Subtotal	**55,980**	**51,383**	***-4,597***
*Fiscal 2011 Budget Bill Section 44 Reduction**	-	-500	*-500*
Higher Education+	21,393	24,282	*2,890*

Exhibit 1 (Continued)

Department/Service Area	2002 Actual	2011 Legislative Appropriation	2002-2011 Change
Judiciary	3,010	3,581	*572*
Legislature	730	747	*17*
Grand Total	**81,113**	**79,493**	**-1,619**

MSDE: Maryland State Department of Education

*The General Assembly instructed the Governor to abolish 500 positions across the Executive Branch by June 30, 2011, but the distribution by agency of these positions has yet to be determined.

+ The fiscal 2011 legislative appropriation includes 435.37 positions created by the higher education institutions through "flex" personnel autonomy.

Note: Numbers may not sum due to rounding.

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

Higher Education

Chapters 239 and 273 of 2004 provide the University System of Maryland (USM) and Morgan State University (MSU) with autonomy from the General Assembly to establish staffing levels absent specific legislative constraints, as did Chapter 401 of 2003 for St. Mary's College of Maryland. By the end of October 2010, the fiscal 2011 impact of these bills was the addition of 435 FTE positions to higher education facilities, 405 of which originated in USM and 30 in MSU.

Regular Position Compensation Expenditures

The budgeted expenditure for salaries totals $4.55 billion in fiscal 2011, a 31.5% increase from the actual level of salaries in fiscal 2002, as is shown in **Exhibit 2**. However, this amount is $123 million lower than the fiscal 2010 working appropriation reported at this time last year. Reductions in position complements, employee furloughs, and the absence of cost-of-living adjustments and merit increases are the principal causes of the reversal of a formerly upward trend in salary base.

Exhibit 2
Regular Employee Compensation
Fiscal 2002 Actual to 2011 Legislative Appropriation
($ in Millions)

	Actual 2002	Leg. Appr. 2011	$ Change 2002 to 2011	% Change 2002 to 2011
Earnings				
Salary	$3,458.0	$4,548.3	$1,090.4	31.5%
Other Earnings	113.2	117.1	3.9	3.5%
Earnings Subtotal	**$3,571.1**	**$4,665.4**	**$1,094.3**	
Other Compensation				
Health	$486.7	$884.5	397.8	81.7%
Retirement/Pensions	239.9	574.3	334.4	139.4%
Salary-dependent Fringe	258.6	353.3	94.7	36.6%
Agency-related Fringe	99.5	79.2	-20.3	-20.4%
Other Compensation Subtotal	**$1,084.7**	**$1,891.3**	**$806.6**	
Total Compensation	**$4,655.8**	**$6,556.7**	**$1,900.9**	**40.8%**

Other Earnings = Overtime and Shift Differentials
Health = Employee and Retiree Health Insurance
Retirement/Pensions = All Pension/Retirement Systems
Salary-dependent Fringe = Social Security and Unemployment Compensation
Agency-related Fringe = Other Post Employment Benefits, Deferred Compensation Match, Workers' Compensation, and Tuition Waivers

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

The cost of fringe benefits, on the contrary, continues to grow. The State subsidy for employee and retiree health insurance was the fringe benefit area posting the largest dollar growth since fiscal 2002, as it has increased by $397.8 million, or 81.7%. Several years of double-digit percent increases on the cost side and the exhaustion of previously held balances, caused the majority of this growth. Retirement contributions made by the State have grown by 139.4% since fiscal 2002, making it the area of employee compensation with the largest percent increase over the time period. The increase is primarily due to enhancements enacted in 2006 that raised the benefit multiplier and, more recently, investment losses that raise the required employer contribution level.

Personnel

The Public Employees' and Retirees' Benefit Sustainability Commission

The Maryland General Assembly has expressed concerns about the long-term costs of employee benefits. To examine costs and make recommendations, the Budget Reconciliation and Financing Act of 2010 (Chapter 484) created the Public Employees' and Retirees' Benefit Sustainability Commission. The commission began meeting in October 2010 and will complete its interim work in December 2010. The commission is required to make recommendations for the 2011 session by December 15, 2010. A final report is due on June 30, 2011.

Background

State Retirement and Pension System Losses

Following the collapse of the financial markets in 2008 and 2009, total system assets for the State Retirement and Pension System (SRPS) fell from an all-time high of $40.9 billion on October 31, 2007, to $36.6 billion on June 30, 2008. As of December 31, 2008, the value of the system's assets had fallen to $27.6 billion, a 25.0% drop in value from June 30, 2008. However, by June 30, 2009, the value of the system's assets had increased slightly to $28.45 billion, resulting in a 22.0% decrease in value from fiscal 2008. The funding level for SRPS also experienced a significant decline from 78.6% funded in fiscal 2008 to 65.0% funded in fiscal 2009. By June 30, 2010, SRPS was 64.0% funded. Accordingly, under the corridor-funding methodology, total State pension contribution rates increased from 12.62% in fiscal 2010 to 14.33% in fiscal 2011. Based on projected payroll growth, total State pension contributions increased by $189 million, from $1.236 billion in fiscal 2010 to $1.425 billion in fiscal 2011.

State Retiree Health Care Liabilities

Accounting standards issued by the Government Accounting Standards Board's (GASB) Statement 45 in 2004 require governmental employers to account for liabilities associated with the employers' commitment to what is referred to as Other Post Employment Benefits (OPEB), such as retiree health insurance. If the State carries large unfunded OPEB liabilities on its balance sheet, bond rating agencies could downgrade the State's bond rating from its long-held AAA status, costing the State millions of dollars in interest payments on its general obligation bonds. A 2009 valuation conducted by Buck Consultants concluded that the State's unfunded OPEB liability for retiree health benefits was as high as $15.3 billion, requiring an annual State contribution of approximately $1.2 billion to avoid carrying unfunded OPEB liabilities on its balance sheets.

The Benefit Sustainability Commission

In light of the significant decline in the funding status of SRPS and increased costs to the State's contribution to the system, coupled with the $15.3 billion retiree health care liability in 2009, language was included in the Budget Reconciliation and Financing Act of 2010 (Chapter 484) establishing a Public Employees' and Retirees' Benefit Sustainability Commission. This commission consists of eight members, including the State Treasurer and seven members of the public appointed by the Governor, the President of the Senate, and the Speaker of the House of Delegates. Chapter 484 provides that with regard to the selection of the seven public members, special consideration shall be given to individuals who have knowledge of public or private compensation practices, benefits, and financial matters.

Chapter 484 charges the commission to study and make recommendations with respect to all aspects of State funded benefits and pensions provided to State and public education employees and retirees in the State. Specifically, the commission is charged to review and evaluate the recruitment practices, retention incentives, actuarial liabilities, actuarial funding method, cost drivers, employee contribution rates, and the comparability and affordability of benefit levels of:

- the State Employees' Retirement and Pension System;
- the State Employee and Retiree Health and Welfare Benefits Program; and
- the Teachers' Retirement and Pension System.

Chapter 484 requires the commission to issue an interim report of its findings and include recommendations that are specific and actionable to the Governor, the Senate Budget and Taxation Committee, the House Appropriations Committee, the Joint Committee on Pensions, and the Blue Ribbon Commission to Study Retiree Health Care Funding Options by December 15, 2010. In addition, on or before June 30, 2011, the commission is required to issue a final report of its findings and recommendations to the same individuals.

Benefit Sustainability Commission Briefings

As of November 1, 2010, the commission has met twice. At its first meeting, the commission received two briefings from the Department of Legislative Services (DLS) that addressed the comparison of public and private sector compensation and retirement benefits and an overview of the history and benefits of SRPS. In addition, the commission also received a briefing from the National Conference of State Legislatures regarding the recent pension reforms adopted by other states.

At its second meeting, the commission received briefings from DLS and the Department of Budget and Management that focused on State employee and retiree health benefits and how Maryland's employee and retiree health benefits compare to other states. The commission's actuary presented an overview on employee and retiree health benefit reform in other states. Finally, DLS presented the commission with two additional briefings. The first briefing addressed the funding status and investment performance of SRPS, while the second briefing addressed the implications that GASB's Statement 45 has on the State's retiree health care liability.

Testimony to the Benefit Sustainability Commission can be found on the Internet at the following address: http://mlis.state.md.us/other/BenefitsSustainabilityCommission/index.htm.

Education

Education Aid Increase for Fiscal 2012 is Moderate But Need for New General Funds is Huge

State aid for public primary and secondary education is projected to increase by $135.4 million in fiscal 2012, including an increase of $62.0 million in direct State aid and an increase of $73.4 million for teachers' retirement, which is paid by the State on behalf of local school systems. Funding the 2.4% increase, however, will require an increase of $922.5 million in general funds, mostly due to the expiration of federal stimulus funds and a one-time special fund transfer that combined to pay for $772.3 million in education aid in fiscal 2011. The Maryland State Department of Education plans to submit legislation in 2011 to delay a planned study of adequate funding levels; if successful, the legislation would effectively maintain the current State aid structure for at least another five years.

Education Aid Projected to Increase by $135.4 Million

Public schools could receive an estimated $5.9 billion in fiscal 2012, representing a $135.4 million (2.4%) increase over 2011. More than half of the increase ($73.4 million) is in teachers' retirement payments, which are made by the State on behalf of local school systems. Aid that flows directly to the local school systems is projected to grow by $62.0 million (1.3%). This increase is driven by an expected rise in the per pupil foundation amount and an increase in overall enrollment.

New General Funds Will Be Needed to Replace Expiring Funds

A staggering $922.5 million in new general funds will be needed in fiscal 2012 to cover the projected increase of $135.4 million in education aid and the expected drop-off in federal, special, and bond funds. As shown in **Exhibit 1**, fiscal 2011 education formulas were supported with $422.3 million in federal stabilization funds from the American Recovery and Reinvestment Act of 2009 (ARRA), which represents the final portion of ARRA funds available. Also, general funds must replace $350.0 million in special funds that were transferred from the local income tax reserve account to the Education Trust Fund in 2011 in accordance with Chapter 484 of 2010 (Budget Reconciliation and Financing Act). Fiscal 2012 Education Trust Fund revenues from video lottery terminal license fees and gambling revenues are also projected to be $8.6 million below the amount budgeted in fiscal 2011. Finally, the Aging Schools Program was supported with $6.1 million in bonds in fiscal 2011, but it is assumed to be funded with general funds in 2012.

Exhibit 1
Explanation of General Fund Increase in Baseline Education Aid
($ in Millions)

Replace Federal Stabilization Funds	$422.3
Replace Local Income Tax Reserve Account Transfer	350.0
Replace Decrease in Video Lottery Revenues	8.6
Replace Bond Funds	6.1
Increase in Education Aid	135.4
Increase in General Funds Based on Current Budget	**$922.5**

Source: Department of Legislative Services

Although the projected general fund increase in fiscal 2012 is 19.1% over 2011, **Exhibit 2** shows that it is only a 6.8% increase over 2009. Considering all funds, fiscal 2012 baseline education aid is 8.8% higher than in 2009. In effect, federal funds and the $350.0 million transfer from the local income tax reserve account have enabled education aid to continue growing throughout the economic crisis. Without these funds in fiscal 2012, it will be difficult to maintain this trend.

Exhibit 2
Financing Education Aid
Fiscal 2009-2012
($ in Millions)

Type of Funds	Actual FY 2009	Actual FY 2010	Budget FY 2011	Baseline FY 2012	% Chg FY11-12	% Chg FY09-12
General Funds	$5,380.0	$5,192.7	$4,825.0	$5,747.4	19.1%	6.8%
Stabilization Funds	0.0	297.3	422.3	0.0	-100.0%	-
Education Trust Fund	0.0	10.8	464.0	105.4	-77.3%	-
Bonds (aging schools)	0.0	6.1	6.1	0.0	-100.0%	-
Total Aid	**$5,380.0**	**$5,507.0**	**$5,717.5**	**$5,852.8**	**2.4%**	**8.8%**

Source: Department of Legislative Services

To add to the complex financing structure that has developed over the last two years, Maryland was granted $178.9 million from the federal Education Jobs Fund to save or create education jobs during the 2010-2011 school year. The Maryland State Department of Education will retain $350,000 of the grant to administer the program, and the remaining $178.6 million will be distributed to local school systems in accordance with State formula funding. Of the amount devoted to local school systems, $35.7 million is expected to represent one-time enhancement funding for fiscal 2011 and thus does not affect the 2012 baseline budget. The remaining amount is expected to replace fiscal 2011 general fund spending for education, resulting in a savings of $142.9 million. These funds will then be held and used in fiscal 2012 to support the education budget. The federal funds were received in September 2010 and, therefore, were not included in the fiscal 2011 budget approved by the General Assembly.

Foundation and Most Other Direct Aid Programs Will Increase Slightly

The foundation program is projected to total $2.8 billion in fiscal 2012, an increase of $27.1 million (1.0%) over 2011, as shown in **Exhibit 3**. The per pupil foundation amount is estimated at $6,749, a 0.8% increase from fiscal 2011 and the first increase since fiscal 2008. The annual inflation factor used in the per pupil amount was frozen in fiscal 2009 and 2010 by Chapter 2 of the 2007 special session, and inflation levels were negative in fiscal 2011. Fiscal 2012 inflation is capped at 1.0% by Chapter 487 of 2009 (Budget Reconciliation and Financing Act), but the actual inflation rate is expected to be slightly below the statutory limit. The per pupil foundation amount is used in five of the larger State aid formulas (the foundation program; geographic cost of education index; and the compensatory education, special education, and limited English proficiency formulas) that together account for more than three-quarters of total education aid. Limited inflation results in limited growth in State education aid.

Exhibit 3
Estimated State Aid for Education
Fiscal 2011 and 2012
($ in Millions)

Program	FY 2011	Estimated FY 2012	$ Change	% Change
Foundation Program	$2,763.5	$2,790.6	$27.1	1.0%
Geographic Cost of Education Index	126.6	127.7	1.1	0.9%
Supplemental Grants	46.5	46.5	0.0	0.0%
Compensatory Education	1,041.1	1,058.9	17.8	1.7%
Special Education Formula	264.0	265.4	1.4	0.5%
Limited English Proficiency	151.2	162.8	11.6	7.7%
Guaranteed Tax Base	47.4	42.8	-4.6	-9.7%
Student Transportation	244.4	247.6	3.2	1.3%
Nonpublic Special Education	112.8	118.4	5.6	5.0%
Other Programs	70.2	68.8	-1.4	-2.0%
Direct Aid Subtotal	**$4,867.6**	**$4,929.6**	**$62.0**	**1.3%**
Teachers' Retirement	849.8	923.3	73.4	8.6%
Total	**$5,717.5**	**$5,852.8**	**$135.4**	**2.4%**

Source: Department of Legislative Services

After the foundation program, the compensatory aid and limited English proficiency formulas are projected to have the largest dollar increases in fiscal 2012 among the direct aid programs. A portion of the increases are due to projected enrollment growth, and the rest of the increases can be attributed to the increase in the per pupil foundation amount. The compensatory aid program is expected to reach $1.1 billion in fiscal 2012, representing a $17.8 million (1.7%) increase. This program provides additional funding to local school systems based on enrollments of students eligible for free and reduced price meals. The limited English proficiency program provides additional resources based on local school system counts of English language learners and is expected to increase by $11.6 million (7.7%) to $162.8 million.

Offsetting increases in other direct aid programs, the guaranteed tax base program is projected to decline by $4.6 million (9.7%). This program provides State funding to local school systems in jurisdictions that have less than 80.0% of statewide wealth per pupil. Eight local school systems are expected to receive grants in fiscal 2012, one fewer than last year because Dorchester County is not expected to qualify in fiscal 2012. Funding for the guaranteed tax base program has been decreasing in recent years because local wealth disparities, which tend to be less pronounced when the economy is bad, have declined.

Retirement Growth Outpaces Direct Aid Growth

State retirement costs for public school teachers and other professional school personnel will total an estimated $923.3 million in fiscal 2012, a $73.4 million increase (8.6%) from 2011. Since fiscal 2007, the average annual increase for teacher retirement has been 15.7%. The fiscal 2012 increase reflects 0.8% growth in the total salary base of school system employees and an increase in the State's retirement contribution rate from 14.34% to 15.45%.

Bridge to Excellence Act Sets Adequacy Study for 2012

Maryland's education aid structure was established by Chapter 288 of 2002, the Bridge to Excellence in Public Schools Act. The legislation is based on the concept of "adequacy" – an empirical estimate of the funding that schools and school systems require in order to obtain the resources they need to reasonably expect that students can meet the State's academic performance standards. A study was conducted by a private consultant in 2001 to determine adequate funding, and the results led to the model of adequacy incorporated into the State's school finance structure by the Bridge to Excellence in Public Schools Act of 2002.

The Bridge to Excellence Act requires that a new adequacy study be conducted in 2012. However, the State expects to adopt new performance standards and assessments in the next several years. In recognition of the idea that adequacy must be measured against a specific set of expectations for students and schools, the Maryland State Department of Education intends to submit legislation that would delay the adequacy study until 2016.

Education

Cost of Teacher Pensions Continues to Rise in Fiscal 2012

One of the fastest-growing items in the State budget over the last five years has been pension costs for employees of local boards of education, libraries, and community colleges, a trend that is expected to continue in fiscal 2012 with a $78.2 million increase. Looking to address the escalation in costs, the Budget Reconciliation and Financing Act of 2010 established a commission to study and make recommends about all aspects of State funded benefits and pensions provided to State and public education employees and retirees. The commission will submit a report in December.

State Retirement Costs for Local Employees Approaching $1 Billion

The State began paying the retirement costs for teachers employed by local boards of education in 1927. In 1945, professional and clerical employees of local libraries were added to the Teachers' Retirement System, and the State began paying their retirement costs too. The professional and clerical employees of local community colleges were then added to the system in 1961. As required by law, the State continues to pay the retirement costs for these three categories of local employees.

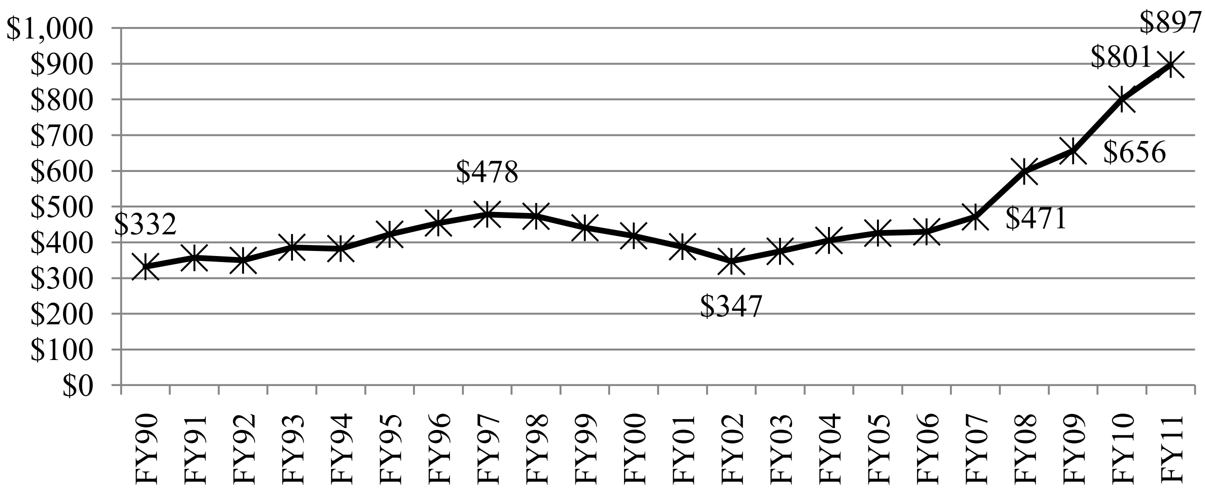
Over the last five years, State retirement payments for local employees in the teachers' pension plans have increased rapidly, fueling questions about the sustainability of the costs and igniting efforts to shift some of the costs to local governments. In fiscal 2012, an increase of $78.2 million is projected for local employees in the pension systems, bringing the total cost to $975.6 million. This is 8.6% higher than the amount appropriated in fiscal 2011, a growth rate well beyond the 3.6% increase in general fund revenues projected for fiscal 2012. To further magnify the problem, $228.1 million in federal stimulus funds are being used to support retirement costs for local board of education employees in fiscal 2011 and will not be available in fiscal 2012.

Recent Growth in Costs Departs from Historical Trends

From fiscal 1990 to 2006, State payments to the teachers' combined plans for local board of education, library, and community college retirement costs increased by nearly $100 million, from $331.8 million in fiscal 1990 to $429.4 million in fiscal 2006. This relatively modest rate of growth, which averaged 1.6% per year over the 16-year period, was aided by strong investment returns in the late 1990s, a system that was fully funded in 2000, and a methodology for calculating annual retirement payments that held the State contribution rate stable despite investment losses in 2001 and 2002.

Over the five years since fiscal 2006, however, increases in retirement costs have averaged almost $94 million per year. By fiscal 2011, State aid payments for teachers' retirement had more than doubled since fiscal 2006, climbing to $897.4 million. This abrupt upswing in retirement aid is shown graphically in **Exhibit 1** and can be explained by a number of factors: the pension enhancement enacted in 2006; steady increases in the teacher salary base; and declines in retirement system assets brought on by the recent economic downturn.

Exhibit 1
State Payments to the Teachers' Retirement and Pension Systems for Local Employees
Fiscal 1990 to 2011
($ in Millions)



Source: Department of Legislative Services

Pension Enhancement

Chapter 110 of 2006 increased benefits for State employees and local employees participating in the Teachers' Pension System. The multiplier used to calculate annual payments to retirees was retroactively increased from 1.4 to 1.8 for years of service dating back to 1998. To help fund the enhancement, employee contributions to the system were phased up from 2% to 5% of salary over a three-year period. The enhancement increased pension liabilities, which ultimately results in higher State contribution rates to cover the projected increase in annual payments to the Teachers' Pension System. At the time the legislation was enacted, the increased payments for the system were estimated at $82 million per year.

Teacher Salary Base Increases

Calculations of annual State retirement payments for local employees use the actual salary bases from the end of the second prior fiscal year. The rapid growth in pension costs from fiscal 2006 to 2011 was influenced, therefore, by salary base increases occurring between fiscal 2004 and 2009. Over this five-year period, the salary base of local employees in the teachers' combined pension plans increased from \$4.4 billion to \$6.0 billion, an increase of 36.9% or an average annual increase of 6.5%. The salary base of local board of education employees, which makes up nearly 95% of the local employee base for the teachers' plans, grew by an average of 6.5% annually, compared to 6.0% annual growth in the local library salary base, and 7.0% annual increases in the community college salary base. Enactment of the Bridge to Excellence in Public Schools Act in 2002 and State aid formula enhancements for libraries in 2005 and community colleges in 2006 contributed to the growth in local employees' salaries.

Declining Assets

From fiscal 2007 to 2009, assets for the State's retirement systems decreased from \$39.4 billion to \$28.6 billion, while liabilities continued to climb due to the 2006 pension enhancement and growing salary bases. When investments decline as liabilities grow, the State must increase its payments to the system to make up for the losses. From fiscal 2006 to 2011, the State contribution rate for the teachers' combined plans increased from 9.35% of salaries to 14.34%, an increase of 53.4% or 8.9% per year. Assets had rebounded to \$34.2 billion by September 2010; however, the system is only 64% funded and further increases to the State contribution rate are anticipated for the coming years. In fiscal 2012 the State contribution rate will increase to 15.45%, an increase of 7.7% over the fiscal 2011 rate.

Escalating Costs Lead to Cost-sharing Legislation

Several bills over the last three years have proposed ways to share the costs of teachers' retirement with local governments; however, only one, the Senate's version of Senate Bill 141 (the Budget Reconciliation and Financing Act of 2010), was successful in either chamber. As passed by the Senate, the bill would have required local employers to pay 1% of local salary bases in fiscal 2012, a proposal that would have shifted approximately \$63.1 million to local employers next year. This percentage would have increased to 3% in fiscal 2013 and 5% in fiscal 2014 and 2015 before "floating" in future years to cover 50% of the total combined costs of retirement and Social Security. The Senate's proposal was deleted from the final version of the bill in conference committee. Instead, the bill established the Public Employees' and Retirees' Benefit Sustainability Commission to study and make recommendations about State funded benefits and pensions provided to State and public education employees and retirees, including an evaluation of the appropriate levels of contribution for the direct employer of public education employees in the State, and specifically an evaluation of the provisions of the Senate's version of Senate Bill 141.

The commission is scheduled to examine pension costs for local employees and hold a public hearing in November 2010 before submitting a report in December 2010. A final report is due from the commission by June 30, 2011.

For further information contact: Mark W. Collins Phone: (410) 946/(301) 970-5510

Education

Fiscal 2011 Maintenance of Effort Waiver Requests

After denying three requests for waivers of the State's maintenance of effort requirement for fiscal 2010, the State Board of Education approved two fiscal 2011 waiver requests. In making its decision to approve waiver applications from Montgomery and Wicomico counties, the board considered maintenance of effort legislation that failed to receive final approval on the last day of the 2010 session. The board identified several flaws in the current maintenance of effort law that it believes the General Assembly should address in legislation during the upcoming session.

Maintenance of Effort Waivers Granted for Fiscal 2011

For the second consecutive year, the State Board of Education was faced with determining whether to grant or deny requests for waivers from the State's primary and secondary education maintenance of effort (MOE) requirement. Under State law, in order to receive an increase in State education aid, a county must provide at least the same amount of funding per student as was provided in the previous fiscal year. This is known as the MOE requirement.

In order to allow time for the General Assembly to consider bills during the 2010 session that would have changed the MOE process (discussed below), the State board allowed counties to submit a letter of intent to file a waiver request by April 1, 2010, rather than requiring a waiver application to be filed by that date. Five counties filed letters of intent, but only Montgomery and Wicomico counties requested waivers from the maintenance of effort requirement for fiscal 2011. Unlike the previous year, when the State board denied three waiver requests for fiscal 2010, the State Board of Education granted both fiscal 2011 requests. (See *Issue Papers – 2010 Legislative Session* for more information on the fiscal 2010 MOE waiver decisions.) The board's decision to approve the fiscal 2011 waiver applications was based on several intervening occurrences.

First, after the board denied requests for fiscal 2010 waivers, bills were introduced in the 2010 legislative session to provide a legislative waiver. Ultimately two counties, Montgomery and Prince George's, did not meet the fiscal 2010 MOE requirement, but due to the way the board calculated the MOE penalty, only Montgomery County needed a waiver. Chapters 73 and 74 of 2010 waived the penalty for not meeting the required MOE funding level in fiscal 2010. The law also required a legislative study of the calculation and application of the penalty provision prior to the 2011 legislative session. The State board considered this legislation as "predictive and as guidance" that the legislature "does not want to punish the school system which is the victim of the county's failure to meet the MOE target." Current law requires the State to withhold any increase in State funding from a county that does not meet the MOE requirement, thus imposing a double penalty on the county school system. The board views this as a significant flaw in State law.

In addition, the Joint Legislative Workgroup to Study State, County, and Municipal Fiscal Relationships formed during the 2009 interim (see Joint Legislative Workgroup to Study State, County, and Municipal Fiscal Relationships of this *Issue Papers – 2011 Legislative Session* for more information on this workgroup) recommended that the State board consider additional factors when determining whether to grant or deny a MOE waiver request. These recommendations followed the board's denial of fiscal 2010 waiver requests. The denials were based on four factors enumerated in State board regulations: external environmental factors such as a loss of a major employer or industry; the tax bases of the county; the rate of inflation relative to the growth of the student population in a county; and the MOE requirement relative to the county's statutory ability to raise revenues. Senate Bill 310 was introduced during the 2010 session to codify the workgroup's recommendations. Specifically, the bill would have added the following factors in addition to the factors applied by the board: a county's history of funding K-12 schools in an amount that exceeded the required MOE amount; an agreement between the county government and the local school board that a waiver from MOE should be granted; a broad economic downturn; and significant reductions in State aid to counties and municipalities.

Senate Bill 310 was amended by a conference committee to also require the State Superintendent of Schools to provide the State Board of Education with a preliminary assessment of a county's MOE waiver request application and to alter the timing of waiver requests and decisions by the board. Although the conference committee report was adopted by the Senate late on the last day of session, there was not enough time for the House to adopt it. Therefore, Senate Bill 310 failed to pass. However, in a letter dated April 22, 2010, the co-chairs of the workgroup requested that the board consider the additional factors that were included in the bill while the board deliberated on the fiscal 2011 MOE waiver applications. Although the board declined to allow the State Superintendent to preliminarily assess the applications due to the very short period of review, the board did consider the additional factors as requested.

Specific to these additional factors, the board found that both Montgomery County and Wicomico County have a history of exceeding the required MOE amount. The State board reported that, from fiscal 2003 to 2009, Wicomico County exceeded MOE by a total of \$3.9 million, or an average of 1.2% per year, while Montgomery County exceeded MOE by \$420 million, an average of 4.8% per year. This compares to the statewide average annual MOE excess of 4.2%. Also, both county boards of education supported the county government's request for a MOE waiver for fiscal 2011.

Finally, the State board urged the General Assembly to address aspects of the MOE law that it considers to be flawed, including the penalty provision for not meeting MOE; the calculation of next year's MOE amount if the board denies a waiver; the calculation of next year's MOE amount when a county exceeds the current year's required amount; and the lack of an inflation factor for calculating the next year's MOE amount.

Impact of the Board's Decision on Fiscal 2011 and 2012 Funding

In most cases, the minimum annual MOE level for a county is calculated by examining the prior year appropriation and adjusting upwards or downwards for changes in enrollment. Because their county appropriations fell below MOE levels in fiscal 2010, Montgomery and Prince George's counties have lower MOE levels for fiscal 2011. Prince George's County did not request a waiver from the MOE requirement in fiscal 2011, but Montgomery County was permitted to waive 8.9% of its fiscal 2011 MOE amount, or $138.8 million. Wicomico County was permitted a 15% reduction, or $7.4 million. After accounting for the reductions approved by the State board for fiscal 2011, Montgomery County will provide $1.3 billion in local MOE funding to the school board, and Wicomico County will provide $43.2 million. The Maryland State Department of Education is reviewing fiscal 2011 county funding levels to see if other counties have appropriated less than the minimum MOE amounts.

The calculation of the required MOE funding level the year after State board approval of a waiver is governed by a separate rule. The year after securing a waiver, a county must provide the local school board with the greater of the amount from the prior fiscal year or the second prior fiscal year. With fiscal 2011 reductions in MOE levels approved by the State board, required fiscal 2012 funding levels for Montgomery and Wicomico counties will be based on fiscal 2010 funding per pupil. The increases necessary to meet the minimum MOE levels in fiscal 2012 will depend on enrollments in the two counties but are expected to be at least $150 million in Montgomery County and approximately $7 million in Wicomico County. Depending on the state of the economy, it is possible that one or both counties will need to request waivers again next year.

For further information contact: Erika S. Schissler Phone: (410) 946/(301) 970-5530

Education

Maryland Receives $250 Million in Federal Race to the Top Funds

Maryland is 1 of 12 states to receive a Race to the Top grant from the federal government. The grant will be used to support State education reforms focused on improving college and career readiness, primarily through curriculum standards and assessments, greater linkage and use of data from prekindergarten into the workforce (P-20), and improved instruction and school leadership. The Maryland State Department of Education will use half of the $250 million grant to implement reforms, with the other half allocated to 22 school systems that agreed to participate in the grant.

Education Reforms to Be Implemented with Race to the Top Funds

On August 24, 2010, Maryland was awarded a federal Race to the Top (RTTT) grant in the amount of $250 million over four years. The Maryland State Department of Education (MSDE) will receive $125 million to support school reform, and the 22 participating local school systems will collectively receive $125 million distributed over four years. Maryland received the full amount of funds requested in its application and is 1 of only 12 states and the District of Columbia to receive RTTT funding. RTTT is a competitive grant program for states to improve education and was approved as part of the American Recovery and Reinvestment Act of 2009.

MSDE will use its $125 million from the RTTT fund to implement 54 projects specified in the State's RTTT application as shown in **Exhibit 1**. Maryland's primary RTTT reforms are to (1) revise the PreK-12 Maryland State Curriculum, assessments, and accountability system based on the Common Core Standards to assure that all graduates are college- and career-ready; (2) build a statewide technology infrastructure that links all data elements with analytic and instructional tools to monitor and promote student achievement; (3) redesign the model for preparation, development, retention, and evaluation of teachers and principals; and (4) fully implement the innovative Breakthrough Center approach for transforming low-performing schools and districts.

$17.8 Million for the Development of Standards and Assessments

The RTTT grant provides a total of $15.7 million for two projects associated with developing the Common Core State Standards (CCSS). The National Governors Association in association with many nonprofit education policy centers established the CCSS Initiative to develop college- and career-ready standards for K-12 English, language arts, and math. The CCSS are intended to replace the current state-by-state standards and serve as a basis for common assessments that will replace the Maryland State Assessments and the High School Assessments. The State Board of Education adopted the Common Core Standards in June 2010, and in the summer of 2010, MSDE and representatives from local school systems and higher education institutions used an online tool to determine the alignment of Maryland's State Curriculum with the CCSS. A State curriculum aligned with the CCSS will be presented to the State Board of Education in June 2011 for adoption. Although this is a state-led national effort, a national assessment will not be developed. However, states are pooling resources and expertise to develop assessments based on the Common Core Standards. It is expected that the development of the assessments will result in a final product by the 2014-2015 school year.

In addition, $2.1 million will be used for science, technology, and math (STEM) initiatives: $1.8 million to develop STEM modules in world languages, and $0.3 million to develop the curriculum and assessments for two STEM programs.

Exhibit 1
Distribution of State RTTT Grant
($ in Thousands)

Project Type	Projects	Funding	FTE Staff
Program Evaluation and Administration	2	$5,741	2.0
Development of Standards and Assessments	5	17,789	22.0
Data Systems to Support Instruction	20	47,284	13.0
Great Teachers and Leaders	16	40,651	9.5
Turning Around the Lowest-achieving Schools	9	9,075	8.5
Charter Schools	1	3,323	1.0
Statewide Centralized Student Transcript System	1	1,137	0.0
Total	**54**	**$125,000**	**56.0**

FTE: Full-time equivalent
Source: Maryland State Department of Education

$47.3 Million for Data Systems to Support Instruction

The RTTT grant provides a total of $47.3 million for the State to develop its data systems to support instruction, of which $8.7 million will be used to develop the overall technology infrastructure necessary to support the RTTT grant initiatives. Implementation of the Maryland longitudinal data system (MLDS) will receive $15 million, including $10.0 million for four projects that will enhance the MLDS capabilities and train staff to use the data. MLDS was established by Chapter 190 of 2010 to serve as a data warehouse to link P-12, higher education, and workforce data. These MLDS projects will address many of the same needs as a $13.1 million federal grant that Maryland applied for but did not receive. However, the RTTT grant does not cover approximately $1.0 million for MLDS projects administered by the Maryland Higher Education Commission and the Department of Labor, Licensing, and

Regulation. MSDE will use an additional $1.0 million to develop a centralized student transcript system, which will facilitate the linking of P-12 and higher education data.

The CCSS will receive an additional $6.8 million for four projects to develop data systems and provide support for aligning CCSS with the State curriculum. Five projects associated with developing test questions aligned with the CCSS that can be used for adaptive testing will receive a total of $6.6 million. Teachers will be able to access the test bank to produce multiple equivalent paper test forms in a variety of formats. Alternatively, students will be able to take the tests on a school computer. These computer-based tests will be able to adapt to a student's level, thus making the test shorter and more accurate. The computer tests can also be individually paced to accommodate for learning and test taking styles.

Student instructional intervention projects, including the development of online instructional modules, will receive $5.6 million. The development and implementation of a centralized professional development course registration system, which will also track professional development history, will cost $2.6 million. A project linking teachers and principals to STEM professionals will receive $2.0 million from the RTTT grant.

$40.7 Million to Support Great Teachers and Leaders

A total of $40.7 million will go to teacher and principal development, incentive programs designed to retain highly qualified teachers and principals in high-need areas, and the evaluation of teachers and principals. The teacher development projects range from a teacher induction program for new teachers to professional development programs to recruitment programs for shortage areas. The new model educator evaluation system is currently being developed by a group appointed by the Governor and will go into effect during the 2012-2013 school year (see Education Reform Act and Council for Educator Effectiveness of this *Issue Papers – 2011 Legislative Session* for more information).

$9.1 Million for Turning Around the Lowest-achieving Schools

The RTTT grant will provide $9.1 million to support nine projects aimed at turning around the lowest-achieving schools. The largest project is the expansion of the Breakthrough Center, which MSDE established in 2008 to provide intensive technical support to schools that "feed" students into a low-performing middle or high school in a school system (collectively called a Breakthrough Zone). With $4.3 million from the grant, the center will be able to serve an additional 10 low-achieving feeder schools. The remaining $4.7 million will be used to support eight projects, including $1.4 million to build the system's capacity for the Positive Behavioral Interventions and Supports Initiative to address disruptive students and $1.1 million to evaluate and improve student services teams at existing Breakthrough Zone schools.

The State will also use $3.3 million to partner with the two school systems that have the greatest number of low-performing schools (Baltimore City and Prince George's County) and provide an incentive for these systems to convert two of their schools in restructuring to charter schools and provide incentives for existing charter schools to pilot a new self assessment process aimed at measuring school quality.

Allocation of $125 million to Local School Systems

The 22 participating local school systems will receive a share of the $125 million that is proportionate to their Title I participation as shown in **Exhibit 2**. Local school officials had to endorse the State's RTTT application in order to participate in the grant. Montgomery and Frederick counties chose not to participate in the State's RTTT application; therefore, those two counties will not receive any of the $125 million that will be distributed to the local school systems. However, MSDE reports that the U.S. Department of Education has agreed to allow MSDE to permit those two counties to apply for certain grants that will be supported by MSDE's portion of the grant. The funds allocated to the local school systems will be used to implement the reforms identified in the State's RTTT application and the detailed scopes of work submitted to the U.S. Department of Education on November 22.

Exhibit 2

Allocation of RTTT Funding to Local School Systems

($ in Thousands)

Local School System	Allocation	Local School System	Allocation
Allegany	$1,715	Harford	$2,905
Anne Arundel	6,851	Howard	823
Baltimore City	52,790	Kent	334
Baltimore	17,403	Prince George's	23,572
Calvert	847	Queen Anne's	479
Caroline	780	St. Mary's	1,603
Carroll	521	Somerset	1,029
Cecil	1,960	Talbot	490
Charles	1,831	Washington	3,106
Dorchester	925	Wicomico	3,082
Garrett	833	Worcester	1,121
		Total	**$125,000**

Source: Maryland State Department of Education

Education

Legislative Committee Rejects Proposed Regulations to Implement the Education Reform Act

The Maryland State Department of Education proposed regulations to implement the Education Reform Act of 2010 that, while consistent with assurances provided in the State's Race to the Top application, were found not consistent with legislative intent by the Administrative, Executive, and Legislative Review Committee. The Governor must decide whether to implement the regulations despite the committee's rejection or to direct the State Board of Education to submit new regulations. It is not clear to what degree the State's Race to the Top grant could be in jeopardy if the regulations are not adopted in their current form.

Education Reform Act of 2010

The Education Reform Act of 2010 (Chapter 189) lengthened the amount of time until a teacher gains tenure from two to three years, required "student growth" to be a "significant" component of a teacher's performance evaluation, and established a program of incentives for teachers and principals who teach in low-achieving or other specified schools with a potentially challenging demographic or socioeconomic population. The Act also required nontenured teachers to be evaluated annually and to be assigned mentors promptly if not on track to qualify for tenure.

In part, these legislative reforms were responsive to Race to the Top (RTTT), the U.S. Department of Education's (USDE) $4 billion competitive grant program authorized under the federal American Recovery and Reinvestment Act of 2009. RTTT sought to encourage and reward states that were implementing significant reforms around four specific areas, one of which was recruiting, developing, and retaining effective teachers and principals and turning around the lowest-achieving schools. The State of Maryland submitted its RTTT application in June 2010, and in August, Maryland was awarded $250 million in RTTT funds (see Maryland Receives $250 Million in Federal Race to the Top Funding of this *Issue Papers – 2011 Legislative Session* for more information).

Proposed Regulations

Following submission of the State's RTTT application, the Maryland State Department of Education (MSDE) published proposed regulations to implement the Education Reform Act consistent with the assurances and policy direction of its RTTT application. The proposed regulations alter the requirements relating to the performance evaluations of certificated employees (*i.e.*, teachers and principals). First, the proposed regulations require MSDE to solicit information and recommendations from local school systems and other stakeholders regarding general evaluation standards, model performance evaluation criteria, and a rating scale that includes definitions of highly effective, effective, and ineffective employees. Next, the proposed regulations require a presentation of the information gathered to the State Board of Education (State board) by January 1, 2011. Beginning with the 2012-2013 school year, the proposed regulations establish general standards relating to performance evaluations. Specifically, the regulations identify the student growth component as at least 50% of the evaluation and prohibit any single performance evaluation criterion from accounting for more than 35% of the total performance evaluation criteria. The proposed regulations require all teachers to be evaluated at least once annually based on student growth and at least every other year based on the multiple measures of student growth, planning and preparation, classroom environment, instruction, and professional responsibility. Principals are required to be evaluated annually based on student growth and specific instructional leadership outcomes.

AELR Review of the Proposed Regulations

On November 8, 2010, the Administrative, Executive, and Legislative Review Committee (AELR Committee) held a public hearing relating to whether the proposed regulations comply with statutory authority and the legislative intent of the law. Testimony at the hearing included a discussion of several potential issues of legal concern with the proposed regulations, specifically (1) whether the regulations comply with the statutory requirement that the State board solicit information and *convene* a meeting *prior* to proposing regulations that establish general standards; (2) whether the requirement that the student growth component be at least 50% of an evaluation – a provision also contained in the State's RTTT application – is a power reserved to the State board as part of its authority to establish *general standards* for performance evaluations or is a power reserved to the county boards of education as part of their authority to establish *specific performance evaluation criteria*, subject to mutual agreement with the local bargaining unit in that jurisdiction, and to be agreed upon within six months of the final adoption of the State board's model policy (which, presumably, would include the "at least 50%" determination); (3) the frequency and type of evaluations that must take place; and (4) the seemingly arbitrary date of the 2012-2013 school year for implementation of the law, rather than following the sequence of events required under the law.

On November 10, 2010, following a vote of 12-3 to oppose the adoption of the proposed regulations, the AELR Committee sent a letter to the State Superintendent of Schools and the Governor explaining its action. Specifically, the AELR Committee moved to reject the proposed regulations as not being consistent with the legislative intent of the law. The committee also requested that the Governor direct the State board to withdraw the regulations and resubmit them in compliance with the law and encouraged the Maryland Council for Educator Effectiveness to continue its work on the model performance evaluation criteria and to include whatever prescriptive criteria, including percentages, are appropriate. Finally, the committee letter asked the Governor to contact the U.S. Secretary of Education to notify the Secretary that corrections need to be made to the regulations implementing the Education Reform Act that also may result in the need for minor changes to the State's RTTT application.

Maryland Council for Educator Effectiveness

The Governor established the Maryland Council for Educator Effectiveness (MCEE) by executive order to develop recommendations for the State's model evaluation system for educators required by the Education Reform Act. MCEE is co-chaired by the State Superintendent and the vice president of the Maryland State Education Association, and is comprised of representatives of educators, school boards, the business industry, State agencies, and legislators. Before formulating its recommendations, MCEE is charged with reviewing existing evaluation systems used throughout the State, determining how to measure student growth, determining specifically how to measure student growth in nontested subject areas, and defining "effective" and "highly effective" teachers and principals. As of mid-November 2010, MCEE has met four times, and presentations have included the experiences of other states and school systems, including the Montgomery County Peer Assistance and Review Program. In order to assist the work of MCEE, subcommittees and an advisory panel of experts have been created. The four subcommittees are exploring prekindergarten through third grade, fourth grade through eighth grade, high school, and nontested areas in all grades. The council is expected to complete its work and make recommendations by December 31, 2010.

Impact of the AELR Committee Action

It is unclear what, if any, impact the actions of the AELR Committee will have on the proposed regulations, the work of MCEE, or the State's RTTT award. Although the AELR Committee rejected the proposed regulations, the decision as to whether or not the proposed regulations go into effect notwithstanding this rejection rests with the Governor. If the Governor directs the State board to resubmit new proposed regulations, MCEE's charge may be altered, possibly to include a model evaluation system based on a different percentage to be used for student growth as part of a performance evaluation. Currently MCEE is basing its work on the 50% requirement in the proposed regulations and the RTTT application. Regarding the $250 million RTTT award, USDE has not indicated how far, if at all, a state may deviate from the assurances and policy direction of its RTTT application before any or all funds would be rescinded. Depending on the outcome of the proposed regulations, legislation could be introduced in the 2011 session to clarify the statutory authority and legislative intent regarding implementation of the Education Reform Act and the assurances and policies contained in the State's RTTT application.

For further information contact: Sara C. Fidler/Yvette W. Smallwood Phone: (410) 946/(301) 970-5350

Education

Charter Schools Update

Forty-four charter schools are now operating in the State, with 34 of them located in Baltimore City. The State Board of Education is reviewing the charter school program, and three specific issues for further study have emerged: whether additional chartering authorities should be permitted; whether the State should provide facility aid; and whether increased autonomy, specifically related to collective bargaining requirements, should be granted. Addressing any of these issues would require statutory changes. Unsuccessful legislation was introduced in the 2010 legislative session related to facility funding and collective bargaining requirements.

Forty-four Charter Schools Operating in Maryland

There are 44 charter schools operating in Maryland during the 2010-2011 school year. Of these, 34 are located in Baltimore City, 5 are in Prince George's County, 2 are in Anne Arundel County, and there is 1 each in Baltimore, Frederick, and St. Mary's counties. Statewide enrollment in charter schools is approaching 14,000 students. This compares to about 7,200 students enrolled in 30 charter schools across the State in 2008. Most charter schools that have opened in the State either serve, or intend to serve once they are fully operational, students in kindergarten through grade eight.

Since 2003, the Maryland Public Charter School Program has enabled public school staff, parents of public school students, nonsectarian nonprofit entities, and nonsectarian institutions of higher education to apply to a local board of education to establish a public charter school. The schools must be nonsectarian and open to all students in the local school system on a space-available basis. The professional staff of a charter school must hold appropriate certification, and they have the same rights as other public school employees in that jurisdiction with respect to employee organizations. Under State law, charter schools may not charge tuition; instead, they receive public funds on a per pupil basis commensurate with the amount of funds disbursed to other public schools in the school systems in which they operate. Charter schools must comply with the laws, regulations, and policies that govern other public schools, although waivers from some rules may be requested through an appeal to the State Board of Education (State board).

State Board of Education Reviews Charter School Program

The State board has been reviewing the State's charter school program, and three specific issues for further consideration have emerged: expanding chartering authorities; providing charter school facility funding; and increasing the operational and managerial autonomy of charter schools, including loosening collective bargaining requirements. Over several meetings during the 2010 interim, the State board heard presentations on these issues from representatives of charter schools, local boards of education, and national charter school advocacy groups.

Chartering Authorities

Under State law, the local boards of education have primary chartering authority and the State board has secondary chartering authority when acting in its appeal review capacity or as the public chartering authority for a restructured school. The application to establish a public charter school must be submitted to the local board of education in the jurisdiction in which the charter school will be located. If the local board denies the application, the applicant can appeal the decision to the State board.

At least half of the states that have charter school laws provide several entities with the authority to approve and oversee charter schools. Many charter school advocates recommend that the Maryland charter school law be amended to allow additional entities to approve charter school applications, including the State board, an independent chartering board, or a higher education institution. However, the State board has expressed some concern that maintaining the requisite accountability for a chartering authority other than a local board or the State board may be difficult.

Facility Funding

Currently, state per pupil aid programs for charter school facilities are provided in the District of Columbia and 10 states: Arizona, California, Colorado, Florida, Massachusetts, Minnesota, New Mexico, Pennsylvania, Tennessee, and Utah. In addition, eight jurisdictions currently offer some form of grant funding for charter school facilities, such as the Charter School Facility Grant Program in California and the Charter Schools Incentive Fund in Oklahoma. Five jurisdictions have publicly funded loan programs to assist with charter school facility funding, such as the charter school revolving fund programs in California and Utah. States with per pupil facility aid programs are eligible for the federal State Facilities Incentive Grant program. The program provides federal funds to match nonfederal dollars used by a state to fund charter school facilities on a per pupil basis. Grants are for five years, and states pay an increasing share of the costs of the program.

If a Maryland charter school is located in a public school building owned by the local board of education, the charter school is eligible to receive State funding if the project is included in the school system's *Capital Improvement Program* and is approved by the county governing body and the Board of Public Works under the State's public school construction program. However, most of Maryland's public charter schools do not receive State facilities aid. Funding for capital costs is not included in the per pupil amount each local school board is required to disburse to public charter schools in the district. In order to pay for capital expenses, a charter school must either use a portion of the funds it receives for operational expenses or use funds from other sources.

Although unsuccessful, legislation was introduced during the 2010 session that would have assisted Maryland public charter schools with facility funding and financing. Senate Bill 366/House Bill 610 would have created a Public Charter School Facility Revolving Loan Fund to lend money to approved applicants for public charter school facilities. Similarly, Senate Bill 738 would have established a Public Charter School Facilities Debt Reserve Fund to enhance the ability of public charter schools to finance the construction, purchase, and renovation of their facilities. Specifically, the bill would have provided leverage to encourage financial institutions to assist with financing, security for bonds issued on behalf of a public charter school by the Maryland Health and Higher Educational Facilities Authority or a local government, and assistance in obtaining bond financing on favorable terms by specifying a source of money that could be used to make debt service payments if the school failed to make the payments. Also, the bill would have required the Maryland State Department of Education to examine and report on the feasibility of and the mechanism for providing facilities aid for public charter schools.

Increased Autonomy – Collective Bargaining Requirements

In the majority of the 40 jurisdictions that have enacted legislation to authorize charter schools, teachers at the schools are not bound by school district collective bargaining agreements or have the option to choose whether or not they are covered. In the states where they are not covered by district agreements, some charter school teachers have the option to negotiate as a separate unit.

In Maryland, certificated and noncertificated charter school employees are employees of the local school system in the jurisdiction in which the public charter school is located and have the same rights as other public school employees in that jurisdiction, including rights regarding collective bargaining. If a collective bargaining agreement is already in existence in the county where a public charter school is located, the employee organization and the public charter school may mutually agree to negotiate amendments to the existing agreement to address the needs of the particular public charter school.

During the 2010 session, legislation was introduced that would have changed collective bargaining requirements for charter school employees. Senate Bill 741 of 2010 would have exempted certificated public charter school employees from a collective bargaining agreement reached between a local school system and an employee organization representing certificated employees in that jurisdiction unless the majority of the charter school employees elected to be represented by the employee organization. The bill would have allowed certificated professional public charter school employees to elect to form an independent employee organization for collective bargaining. Each employee organization that consisted solely of certificated employees of a public charter school would have been a separate bargaining unit. Like the charter schools facilities legislation introduced in 2010, Senate Bill 741 was unsuccessful.

Higher Education

Funding for Public Higher Education

State support for public four-year institutions of higher education has been relatively stable during the current fiscal crisis, which marks a significant improvement from the fiscal 2002-2004 economic downturn when funding for the institutions decreased by 13.5%. Language in the 2010 *Joint Chairmen's Report* expressed legislative intent that fiscal 2011 State funding per student for the public four-year institutions be maintained in fiscal 2012 if fiscal conditions do not improve. If the intent language is followed, funding will increase by an estimated $11.1 million in fiscal 2012.

Higher Education Weathers Recession Without Large Operating Cuts (So Far)

Since fiscal 2009, aggregate State funding of the University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) has remained fairly stable, declining 0.2%, or $1.8 million from fiscal 2009 to 2011 as shown in **Exhibit 1**. The relatively small reduction reflects the importance the State placed on maintaining higher education funding in comparison to the previous economic downturn, when State funding was reduced $120 million, or 13.5%, from fiscal 2002 to 2004. Cost containment measures taken by the Board of Public Works during both time periods were nearly equal, resulting in base reductions of $84.8 million in the earlier recession and $80.9 million in the more recent recession. Increases in State funding to offset the loss of tuition revenue resulting from a freeze on resident undergraduate tuition mitigated other reductions in State funding during the more recent recession. Additionally, in fiscal 2009 through 2011, institutions' wage and salary budgets were reduced $53.0 million as part of the statewide furlough plan.

Exhibit 1

State Funding of Public Four-year Institutions in Recent Recessions

($ in Millions)

Current Recession	Fiscal 2009	Fiscal 2010	Fiscal 2011	% Change FY09-11
University System of Maryland	$1,001.9	$1,000.5	$999.4	-0.3%
Morgan State University	72.8	73.9	72.9	0.2%
St. Mary's College of Maryland	16.9	17.2	17.5	3.5%
Public Four-year Totals	**$1,091.7**	**$1,091.5**	**$1,089.8**	**-0.2%**
2002-2004 Recession	**Fiscal 2002**	**Fiscal 2003**	**Fiscal 2004**	**% Change FY02-04**
University System of Maryland	$822.7	$760.8	$707.6	-14.0%
Morgan State University	52.0	51.1	48.2	-7.4%
St. Mary's College of Maryland	14.7	13.9	13.7	-7.1%
Public Four-year Totals	**$889.5**	**$825.8**	**$769.5**	**-13.5%**

While State funding of Maryland's public four-year higher education institutions remained relatively stable from fiscal 2009 to 2011, significant transfers to the general fund have been authorized from the State-supported portions of USM and MSU fund balances in recent years. Excluding savings related to employee furloughs, the Budget Reconciliation and Financing Acts of 2009 and 2010 transferred a total of $142.3 million from the fund balances of USM institutions and $0.6 million from the MSU fund balance. (A total of $1.3 million was also transferred from the State supported fund balance of Baltimore City Community College (BCCC) in fiscal 2010.) Fund balances of the universities are primarily used to support outstanding auxiliary debt and other financing. The State-supported portions of the fund balances include tuition and fee revenues and other unrestricted revenue and exclude auxiliary revenues related to nonacademic purposes. USM and MSU still have sufficient fund balances, although several institutions have negative State-supported balances and have borrowed from their non-State-supported balances to make the mandated transfers. These institutions have plans to repay the funds.

One factor that helped the State maintain funding of higher education during the current economic crisis is the federal American Recovery and Reinvestment Act of 2009 (ARRA), which provided Maryland with $719.7 million through the State Fiscal Stabilization Fund that had to be used to support State funding of public primary and secondary and higher education. ARRA established specific funding priorities for education that required total State funding for degree-granting public higher education institutions (including BCCC) and local community colleges to be funded at the fiscal 2009 level in order to use the ARRA stabilization funds exclusively for K-12 education aid increases. By maintaining State funding for public institutions of higher education, the State was able to use all of the stabilization funds to support K-12 education.

Impact of 2010 Legislative Intent

In the 2010 legislative session, language was adopted to restrict the growth of State funding for higher education. As stated in the 2010 *Joint Chairmen's Report*, if the State's economic condition does not improve, then USM, MSU, and SMCM should receive the same amount of State funding per full-time equivalent student (FTES) as provided in fiscal 2011. An enrollment increase of 1,953 FTES, or 1.6%, is projected for fiscal 2012.

Without the constraint on the growth, State funding for USM, MSU, and SMCM would increase by an estimated $29.9 million, or 2.6%, over fiscal 2011. This represents the State funding portion of the institutions' mandatory costs, which includes personnel, new facilities, and other operating expenditures. However, when taking account of the restrictive language in the *Joint Chairmen's Report*, the State funding increase is expected to slow to $11.1 million, or 1.0% growth. Institutions could make up the $18.7 million difference in State funding through other sources of revenues, such as undergraduate and graduate tuition.

Although the purpose of the *Joint Chairmen's Report* language is to slow the growth of State higher education funding, an increase of $11.1 million in fiscal 2012 would be the largest increase the institutions have received since fiscal 2009, when aggregate funding increased by $59.3 million over the fiscal 2008 appropriations. After State funding increased in fiscal 2009, funding declined by $0.1 million in fiscal 2010 and by another $1.7 million in fiscal 2011.

The estimated impact of the legislative intent through fiscal 2017 is shown by segment in **Exhibit 2**. The savings continue into future years since expected growth in higher education spending will continue from the lower fiscal 2012 base. Reduced funding for public four-year institutions consequently impacts State funding for community colleges and independent institutions because their funding is determined by statutory formulas that are based on State appropriations to the public four-year institutions. The forecasted figures account for campus enrollment growth, inflation based on the Higher Education Price Index, and other adjustments that are set in statute. By fiscal 2017, annual savings would grow to $29.6 million, and cumulative savings amount to an estimated $157.2 million.

Exhibit 2

Estimated Savings from Legislative Intent Language

Fiscal 2012-2017
($ in Millions)

	Public Four-year Institutions	Community Colleges	Independent Institutions	Annual Savings	Cumulative Savings
Fiscal 2012	$18.7	$0.1	$0.0	$18.8	$18.8
Fiscal 2013	19.1	5.8	0.9	25.8	44.5
Fiscal 2014	19.5	6.3	0.9	26.7	71.3
Fiscal 2015	19.9	6.7	1.0	27.7	98.9
Fiscal 2016	20.3	7.2	1.1	28.6	127.5
Fiscal 2017	20.8	7.7	1.2	29.6	157.2

Higher Education

Four-year Tuition Freeze Lifted for Fiscal 2011

After freezing resident undergraduate tuition rates for four consecutive years, tuition increased 3% in fall 2010 at the University System of Maryland and Morgan State University. Maryland public universities have become relatively more affordable since the tuition freeze began, dropping from seventh to nineteenth most expensive in the country since fiscal 2005. Legislation enacted in 2010 sets a goal to limit future tuition increases by tying increases to growth in Maryland median family income, which would keep tuition increases below 3% in fiscal 2012. Meanwhile, demand for State need-based financial aid has skyrocketed since fiscal 2009, with more students needing greater amounts of assistance.

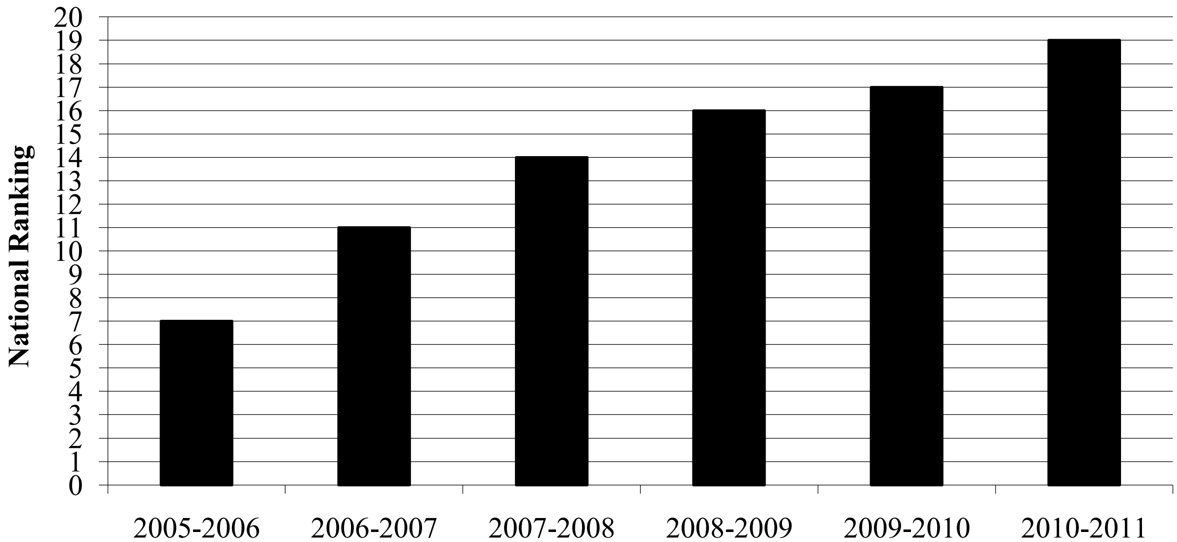
Tuition Freeze Improves State's Ranking in College Affordability

From fiscal 2007 to 2010, the State funded a tuition freeze for resident undergraduates at all public four-year institutions except St. Mary's College of Maryland (SMCM). The tuition freeze began in response to rapidly rising tuition and fee rates at the State's public colleges and universities, which grew by 41.1% between fiscal 2002 and 2006 and resulted in Maryland universities being ranked the seventh most expensive in the country. At that time, tuition rose largely in response to a reduction in State funding during the 2002-2003 economic downturn. A repeat of this situation due to the 2007-2009 recession has so far been prevented partly by the tuition freeze that began in fall 2006. From fall 2006 to 2009, in-state tuition rates were held at the fall 2005 level, and only fees increased. SMCM was exempt from the freeze, however, and increased rates by an average of 5.0% a year.

This practice ended in fall 2010 after the legislature approved a fiscal 2011 State budget that included a tuition increase of 3% and \$8.5 million specifically to prevent further increases. Fall 2010 tuition and fee rates range from \$5,382 at Coppin State University (CSU) to \$9,171 at the University of Maryland Baltimore County. **Exhibit 1** shows that despite the increase in fall 2010, Maryland universities continued to grow more affordable when compared nationally. After rating seventh most expensive in 2005, Maryland's universities are now the nineteenth most expensive.

One way to measure how effective the tuition freeze was for students and families is to compare rates with four-year institutions that did not freeze tuition. From fall 2005 to fall 2010, tuition and fee rates at Maryland's private, nonprofit colleges and universities increased 29.3% compared to 11.2% at Maryland's public institutions. At public institutions, increases ranged from 6.4% at the University of Maryland University College to 14.2% at CSU. On the other hand, only two private, nonprofit colleges had rate increases under 25%: Capitol College at 12.7%; and Washington Adventist University at 17.3%.

Exhibit 1
Average Tuition and Fee Rates at Maryland Public Four-year Universities Compared Nationally
Fall 2005-Fall 2010



Source: College Board

Limiting Tuition Increases in the Future

Chapters 192 and 193 of 2010, which made permanent the Higher Education Investment Fund (HEIF) established in the 2007 special session, could help limit future tuition increases at the University System of Maryland and Morgan State University. In addition to making the 6.0% distribution of corporate income tax revenues to HEIF permanent, Chapters 192 and 193 also established the Tuition Stabilization Trust Account within HEIF to retain funds for stabilizing tuition costs for resident undergraduate students. In years of increasing corporate income tax revenues, funds must be deposited into the trust account. The Board of Revenue Estimates projects an increase in corporate income tax revenues in fiscal 2012, but revenues will remain well below the fiscal 2010 level. The legislation also established a goal that any increase in resident undergraduate tuition and academic fees at public four-year institutions be no more than the increase in the three-year rolling average of the State's median family income, or 4.3% in fiscal 2011 and an estimated 2.6% in fiscal 2012. The University System of Maryland is planning a 5% tuition increase for fall 2011. Chapters 192 and 193 exempted SMCM from receiving funds from HEIF, and the goal of limiting tuition increases does not apply to SMCM.

Wait List for Need-based Aid Continues to Grow

In addition to tuition and fee rates, financial aid significantly impacts the affordability of higher education for Maryland students. Aid options include federal programs, aid provided by the State, and financial assistance offered by institutions. Between fiscal 2006 and 2011, funding for the State's largest need-based financial aid program, Educational Excellence Awards (EEA) increased 21.7%, exceeding the 11.2% increase in tuition and fees at public four-year institutions over the same period. Growth occurred largely between fiscal 2006 and 2007 due to a policy shift away from merit- and career-based aid to need-based aid. Since fiscal 2007, however, EEA funding has increased only 1.3% while demand for need-based aid increased considerably, particularly between fiscal 2009 and 2011 due to the global recession.

Exhibit 2 shows trends in EEA appropriations and applications from fiscal 2009 to 2011. While appropriations for State need-based aid remained level, student need grew significantly over this period. The number of EEA applicants increased 34% between fiscal 2009 and 2011, and those applying demonstrated greater financial need. Expected family contribution (EFC) is a key measure of student need. In general, the lower the EFC, the greater the financial need of a student. Between fiscal 2009 and 2011, the number of EEA applicants with $0 EFC increased 64%. As a result of growing need, EEA aid reaches students with lower and lower EFCs each year. To date, in fiscal 2011 the Maryland Higher Education Commission has awarded EEA grants to students with EFCs up to $2,500, while the same funding in fiscal 2009 reached students with EFCs up to $10,300. As a result of growing demand and level funding, the EEA wait list has grown by over 13,600 students or 282% between fiscal 2009 and 2011.

Exhibit 2
Educational Excellence Awards
Fiscal 2009-2011

	Fiscal 2009	Fiscal 2010	Fiscal 2011	% Increase
Appropriation	$76,742,322	$76,458,474	$77,328,411	0.8%
EEA Applicants	109,300	129,300	145,944	33.5%
EEA Applicants with $0 EFC	15,942	24,672	26,112	63.8%
EFC Awarded	$10,300	$8,764	$2,500	N/A
Wait List as of May 1	4,846	11,333	18,504	281.8%

Source: Maryland Higher Education Commission

Institutional aid is another important source of financial aid to Maryland students. Institutional aid at University System of Maryland institutions and Morgan State University increased 39.2% between fiscal 2006 and 2011. Unlike State need-based aid, institutional aid has kept pace with tuition and fee increases. Between fiscal 2009 and 2011, institutional aid increased 4.5% or $5.6 million at Maryland public four-year institutions affected by the tuition freeze, just short of the 4.6% increase in tuition and fees over this period.

For further information contact: Richard H. Harris/Rachel N. Silberman Phone: (410) 946/(301) 970-5530

Higher Education

Remediation Rates and Efforts to Increase College Readiness

Increasing college readiness through better delivery of remedial courses is one factor in Maryland achieving its 55% college completion goal by 2025. Overall, 73% of Maryland high school students who enrolled in a Maryland community college and 20% of students who enrolled in a Maryland university required remedial coursework in math, English, and reading in 2007-2008. These and other data demonstrate that many Maryland students are not ready for college, even students who take a college preparatory curriculum in high school. Further, while students taking remedial courses at community colleges go on to progress toward a degree at roughly the same rate as students who were college ready, the same is not true at most four-year institutions.

Many High School Graduates Not Prepared for College Level Courses

In response to the national goal of increasing college degree completion, the Governor has announced the State goal that at least 55% of Maryland's residents will have at least one degree credential by the year 2025, an 11 percentage point increase over Maryland's current degree attainment rate of 44% of residents aged 25-64 years old. (Please see College Productivity of this *Issue Papers – 2011 Legislative Session* for a complete discussion of Maryland's degree productivity efforts). One critical impediment to achieving this goal is the large number of students that must take remedial education classes at Maryland's postsecondary institutions.

Remedial education is provided to students who enter college without the necessary reading, writing, or math skills to enroll in entry-level credit-bearing courses. Every community college and most public four-year institutions in Maryland offer remedial education, delivered as courses, skill labs, learning centers, and/or tutoring. In the 2007-2008 academic year 73% of community college students and 20% of students entering public four-year institutions required remediation. This rate is expected to increase as the number of Maryland residents in historically underserved populations continues to rise.

Remediation rates are higher in math than reading or English, and vary widely across counties. **Exhibit 1** shows the percentage of students who took a college preparatory curriculum in high school (core students) and required remedial education after enrolling in a Maryland community college or public four-year institution. Math remediation rates range from 9% in Dorchester County to 57% in Somerset County, and for English from 4% in Dorchester to 26% in Washington County. The proportion of students requiring remediation who have not had a college preparatory curriculum is higher in every subject in most counties.

Exhibit 1
Percent of Core Students Needing Remediation

	Math	English	Reading
Allegany	21%	7%	4%
Anne Arundel	31%	4%	5%
Baltimore City	37%	10%	16%
Baltimore County	32%	11%	15%
Calvert	20%	9%	7%
Caroline	34%	19%	19%
Carroll	36%	12%	16%
Cecil	44%	13%	9%
Charles	21%	12%	12%
Dorchester	9%	4%	9%
Frederick	24%	7%	12%
Garrett	31%	15%	5%
Harford	39%	12%	16%
Howard	22%	7%	9%
Kent	23%	23%	23%
Montgomery	30%	12%	11%
Prince George's	42%	15%	24%
Queen Anne's	32%	13%	13%
St. Mary's	18%	11%	7%
Somerset	57%	23%	30%
Talbot	34%	15%	22%
Washington	31%	26%	16%
Wicomico	38%	16%	8%
Worcester	33%	14%	11%
All Maryland	**32%**	**11%**	**13%**

Note: Data includes students graduating from Maryland high schools in 2006 and also enrolled in a Maryland college or university in the 2006-2007 academic year.

Source: *Student Outcomes and Achievement Report 2009*, Maryland Higher Education Commission

Remediation Rates and Standards Differ at Colleges and Universities

Remediation rates at the individual community colleges hover close to the segment average of 73% except for the College of Southern Maryland at 51%. However, the percentage of students at public four-year universities entering remedial courses varies. Students at historically black institutions enter into remedial education at nearly the same rate as community college students, likely due to the institutions' mission to admit students from underserved populations. Meanwhile, institutions such as the University of Maryland, College Park (UMCP) and the University of Maryland Baltimore County have remediation rates of 10% or less, well below the public four-year average of 20.5%. In addition, five four-year institutions do not offer remedial courses: Salisbury University; St. Mary's College of Maryland; University of Baltimore; University of Maryland, Baltimore; and University of Maryland University College.

Maryland community colleges use uniform standards to determine student preparedness for credit-bearing coursework. All community colleges use the COMPASS or ACCUPLACER exam and the same cutoff scores to determine whether students require remediation. In addition, community colleges uniformly exempt only students with at least a 550 SAT or 21 ACT score from placement testing. In contrast, public four-year institutions use a variety of measures to determine college readiness including ACCUPLACER, ACT, SAT, and Advanced Placement test scores, and tests developed by the institution. Standards to determine whether placement testing is necessary also differ. For example, students at Coppin State University with a math SAT score of 470 are considered ready for credit-bearing coursework while students at UMCP must score at least a 600. As a result, the variation in remediation rates at public four-year institutions may not only be a result of the type of students that enroll at each university, but also of each institution's college-ready standard.

Initiatives to Increase Students' Readiness for College

Recognizing the need for improvement in the State's remediation rates, the strategy for improving college readiness includes several initiatives: adopting a common meaning of college-ready across the State; ensuring that high school curricula and graduation requirements are aligned with college entrance requirements; establishing a longitudinal data system (LDS) linking high school data with college data; and adopting the Common Core achievement standards. Work has begun on all of these initiatives as part of the State's federal Race to the Top grant award and is discussed further in Maryland Receives $250 Million in Federal Race to the Top Funds of this *Issue Papers – 2011 Legislative Session*.

Is Remedial Education Successful?

One measure of the quality of remedial education is student success in the first credit-bearing course. Data collected by the Maryland Higher Education Commission (MHEC) shows that community college students that require and complete remediation succeed (receive an A, B, or C) in their first credit-bearing course at almost the same rate as students who did not require remediation. In contrast, more than half of four-year institutions reporting data show gaps greater than 10 percentage points between the percent of students who enrolled college ready and received an A, B, or C in the first credit-bearing course and those that required remediation. In an effort to learn about and share best practices in the delivery of remedial education, MHEC has been studying the success and per student cost of remedial education courses at community colleges and public four-year institutions in Maryland. This report is expected in early 2011.

For further information contact: Erika S. Schissler/Rachel N. Silberman Phone: (410) 946/(301) 970-5530

Higher Education

Goals Set to Improve College Degree Attainment and Productivity

After dropping in international college attainment rankings, the United States and Maryland have responded by setting goals to dramatically increase college degree attainment over the next 10 to 15 years. Maryland institutions must increase associate's and bachelor's degree productivity by 21,000 degrees annually to achieve the goal that 55% of adults age 25 to 34 will have a college degree by 2025. A team of State leaders in education, business, and government are working to develop strategies and set targets to achieve the 2025 goal and an interim goal of 6,500 additional degrees awarded by 2015.

U.S. Sets Goal to Regain Lead in College Attainment

In 2008, the College Board's National Commission on Access, Admissions, and Success in Higher Education issued a wake-up call about the United States losing its global educational competitive edge in a report entitled *Coming to Our Senses: Education and the American Future.* The report showed that although the United States ranks second among developed nations in the percentage of adults over the age of 55 that have a postsecondary credential, the United States falls to eleventh in the percentage of adults age 25 to 34 that have a postsecondary credential. In the most highly educated nations, 55% of adults age 25 to 34 have obtained a postsecondary credential; however, only approximately 40% of adults in the United States age 25 to 34 have a postsecondary credential. The *Coming to Our Senses* report concluded that in order for the United States to reclaim its position as a global educational leader, 55% of young Americans must obtain an associate's degree or bachelor's degree by 2025.

Drawing from the recommendations in the *Coming to Our Senses* report, President Obama has set a goal for the United States to have the highest proportion of college graduates in the world by 2020. Similarly, Complete College America has set a goal that 60% of young adults will have a college credential by 2020, and the Lumina Foundation has set a goal to increase the proportion of Americans with high-quality degrees and credentials to 60% by 2025. Certificate programs of varying lengths as well as associate's and bachelor's degrees may count toward the Complete College America and Lumina goals.

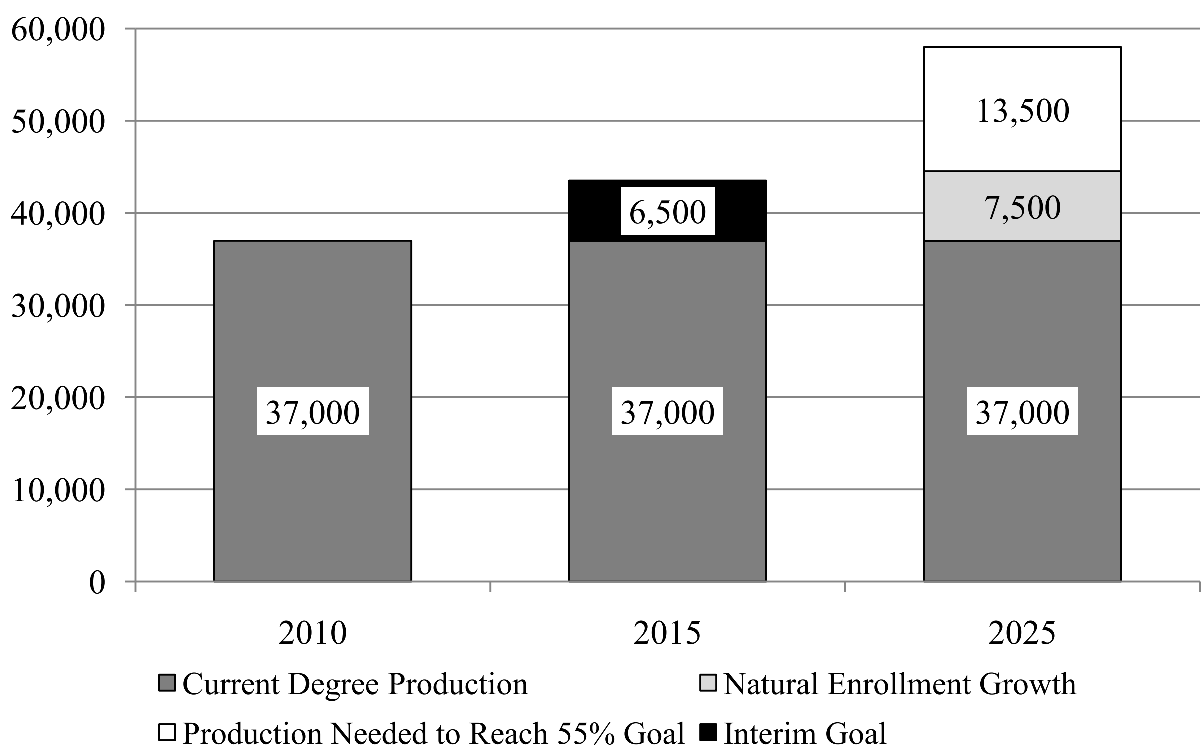
Maryland Sets College Attainment Goals

In Maryland, Governor O'Malley has set a similar statewide goal that at least 55% of the State's residents age 25 to 64 will obtain either an associate's degree or bachelor's degree by 2025. Maryland's goal is lower than the Complete College America and Lumina goals because currently Maryland is not counting certificates toward the goal. Maryland's current associate's and bachelor's degree attainment rate is 44%; therefore, an 11 point increase will be required over the next 15 years in order to reach the 55% goal.

Maryland's public and independent institutions currently produce approximately 37,000 associate's and bachelor's degrees each year. In order to reach the level of degree awards necessary for 55% educational attainment by 2025, Maryland must produce approximately 21,000 additional degrees each year, or a total of approximately 58,000 degrees each year. An interim goal to increase the total degree production by 6,500 by 2015 has been established.

Projections show that an additional 7,000 to 8,000 degrees each year will be produced by Maryland's public and independent institutions through natural enrollment growth by 2025. Therefore, in order to reach the 55% goal or 21,000 additional degrees each year by 2025, additional efforts will be required to produce the other 13,000 to 14,000 degrees that will be necessary each year on top of the increases due to natural enrollment growth. **Exhibit 1** shows the degree production that will be required in order to reach the 55% goal by 2025.

Exhibit 1
Degree Production Required to Reach 55% Goal by 2025



Source: Complete College America State Team Self Assessment, September 2010

Efforts to Achieve the Maryland Goals

One of the ways Maryland is working toward achieving the 55% college attainment goal is through participation with the Lumina Foundation, a private independent foundation dedicated to increasing students' access to and success in postsecondary education. According to Lumina, the postsecondary system must become more productive so that it can effectively serve more students. Toward that end, Lumina awarded initial $150,000 one-year grants in 2008 to 11 states, including Maryland, to develop innovative strategies in key policy areas to promote sustainable improvements in productivity. In 2009, Lumina awarded seven states, including Maryland, follow-up grants to implement the proposed innovative strategies. The main innovations that set Maryland apart from other grant recipients are its plans to include all public and private nonprofit colleges in its efficiency efforts and to redesign 24 general education courses at both public and private colleges.

Maryland is also working with Complete College America, a national nonprofit that aims to significantly increase the number of Americans with a college degree or credential of value and aims to close attainment gaps for traditionally underrepresented populations. Maryland is 1 of 24 states participating with Complete College America and has established a Complete College America State Team that consists of leaders in the education, workforce, business, and legislative communities.

The Complete College America State Team has stated its commitment to increase college productivity rates in Maryland by focusing on college readiness, remediation, and college completion. The State team is also collecting data on certificate programs offered in Maryland to align them with the State's workforce priorities and to determine those one-year and other high-value programs that will be incorporated into the State's college attainment goals. In order to achieve the college attainment goals, the team is working with the segments of higher education to identify degree productivity targets by segment and by institution to reach the interim goal of 6,500 additional degrees by 2015 as well as the long-term goal.

The State team has committed to collect and report on certain outcome and progress metrics that were developed by the Work Group on Common College Completion Metrics under the National Governor's Association. These metrics will be used to track the progress of higher education students toward degree completion and will help to determine if certain policies and programs are working to improve completion rates and increase productivity in higher education. Outcome metrics measure how well students, institutions, and the State are performing on the ultimate goal of increased postsecondary attainment. The common outcome metrics encompass data that Maryland already collects, such as graduation and transfer rates, and some that are not currently collected and aggregated across institutions including:

- **Degrees and certificates awarded** – annual number and percentage of certificates, associate's degrees, and bachelor's degrees awarded; and

- **Time and credits to degree** – average length of time in years and average number of credits that graduating students took to earn a certificate, an associate's degree, or a bachelor's degree.

Progress metrics measure student progress during each semester and each year toward the completion of an academic program. By measuring the progress of students along the way, the State and the institutions can see whether or not innovations are working and the institutions can target intervention and support services to help increase students' likelihood of completion. The common progress metrics that Maryland plans to track, most of which are not currently aggregated across institutions, include:

- **Enrollment in remedial education** – number and percentage of entering first-time undergraduate students who place into and enroll in remedial math, English, or both;

- **Success beyond remedial education** – number and percentage of first-time undergraduate students who complete a remedial education course in math, English, or both and complete a college-level course in the same subject;

- **Success in first-year college courses** – annual number and percentage of entering first-time undergraduate students who complete entry college-level math and English courses within the first two consecutive academic years;

- **Credit accumulation** – number and percentage of first-time undergraduate students completing 24 credit hours (for full-time students) or 12 credit hours (for part-time students) within their first academic year;

- **Retention rates** – number and percentage of entering undergraduate students who enroll consecutively from fall-to-spring and fall-to-fall at an institution of higher education; and

- **Course completion** – percentage of credit hours completed out of those attempted during an academic year.

Health and Health Insurance

The Impact of Federal Reform on Maryland

Following the passage of major federal health care reform legislation in March 2010, attention has shifted to the states in terms of implementation. Maryland has been active in this regard; legislation was passed to begin the implementation of the federal reform effort in the 2010 session. Additional legislative and budgetary initiatives are anticipated in the 2011 session.

Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act, signed by President Barack H. Obama on March 23, 2010, is intended to expand health care coverage, control health care costs, and improve the health care delivery system. The new law has far-reaching implications for the states, as well as individuals. Major features of the law include:

Individual mandate: Most U.S. citizens and legal residents will be required to have qualifying health coverage or face a tax penalty.

Employer mandate: Employers with more than 50 employees that do not offer insurance or do not offer insurance that is affordable to their lower income employees will pay a penalty or provide vouchers to lower income employees to purchase coverage through an exchange.

Expansion of Medicaid: Individuals under age 65 with incomes up to 133% of federal poverty guidelines (FPG) will become eligible for Medicaid.

Health insurance exchanges: States will have the ability to create American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges for individuals and small businesses to purchase coverage and receive subsidies and tax credits.

Premium and cost-sharing subsidies: Individuals and families with incomes between 133 and 400% FPG will be eligible for premium credits and cost-sharing subsidies through an exchange. Employees who are offered coverage by their employer are not eligible, unless the coverage is not comprehensive or affordable.

Small business tax credits: Small employers with no more than 25 employees and average annual wages of less than $50,000 that purchase health insurance for employees may qualify for a tax credit.

Changes to private insurance: A number of changes, with varying effective dates, make it easier to obtain insurance and protect patients:

- A temporary high-risk pool subsidizes insurance for individuals with a pre-existing health condition who have been uninsured for at least six months.

- Patient protections that took effect on September 23, 2010, for new policies upon issuance and for existing policies upon renewal include coverage for children up to age 26 on a parent's policy, a ban on lifetime limits and on pre-existing condition limitations on children, a restriction on annual limits, and coverage of certain preventive services without cost-sharing.

- Beginning January 1, 2014, insurers must issue and renew all of their individual and small employer plans to anyone who wants them, regardless of pre-existing conditions.

Grandfathered plans: Individuals and employers that like their existing health plans as they existed on March 23, 2010, may keep them, although the grandfathered plans are subject to many of the patient protections listed above. To keep its grandfathered status, a health plan may not reduce benefits or increase premiums or cost-sharing, except to keep up with inflation.

Key Responsibilities for the State

While health care reform will impact the entire health care delivery system, the most immediate responsibilities for the State fall into the following areas: Medicaid, an insurance exchange, insurance regulation, federal high risk pool, and the State Employee and Retiree Health and Welfare Benefits Program.

Medicaid

Health care reform builds on many of Medicaid's current roles by expanding coverage with enhanced federal financing and adding options for providing long-term care supports and coordinating care for dually eligible individuals (those eligible for both Medicaid and Medicare). Under federal reform, by January 1, 2014, Medicaid eligibility will be expanded to nearly all individuals under age 65 with incomes up to 133% FPG.

The Department of Health and Mental Hygiene (DHMH) is responsible for implementing the Medicaid expansion, transitioning to a new income eligibility methodology based on modified adjusted gross income, maintaining adequate provider networks for Medicaid enrollees, and most notably, developing a new eligibility system that will coordinate with a State health insurance exchange (discussed below) and existing programs. DHMH is working with stakeholders to identify systems requirements and determine how to integrate a new system with existing systems, while awaiting official federal standards for eligibility system development. A new eligibility system is initially estimated to cost at least $31 million, with initial outlays expected beginning in fiscal 2012. However, DHMH is only just beginning the planning for this system, and this estimate is very preliminary. Additionally, DHMH is holding stakeholder meetings to critically review available Medicaid long-term care options and implementing Medicaid fraud and abuse provisions.

Insurance Exchange

By 2014, the State must establish an American Health Benefit Exchange that facilitates the individual purchase of qualified health plans and includes a SHOP Exchange for small businesses. The State will need to enact legislation to establish the exchange. Key decisions to be made include:

- governance and operation of the exchange (must be run by a government agency or a nonprofit entity);
- how many exchanges to establish (*i.e.,* combine individuals and small businesses, consider regional and multistate exchanges);
- functions of the exchange (*i.e.,* ensure that the State exchange meets federal requirements such as certifying qualified plans);
- market considerations (*i.e.,* should the State require carriers to participate, regulate plans inside and outside the exchange differently, collect premiums from small businesses, and direct the contributions to the insurance plans chosen by employers?);
- participation by small businesses (whether to allow employers with up to 50 or up to 100 employees to participate);
- required benefits (with approximately 42 benefits currently mandated by law, Maryland has more mandated benefits than most other states. The General Assembly will have to decide, probably at the 2012 session, whether or not to mandate benefits beyond the federally defined essential health benefits for insurance plans sold through the exchange and how to defray the extra cost of those benefits); and
- financing (the exchange must be self-supporting by 2015).

In September 2010, the U.S. Department of Health and Human Services awarded Maryland a $1 million grant to assist with the establishment of an exchange. The grant will help create an information infrastructure plan, develop an outreach and communications strategy, fund Maryland-specific studies to determine whether to merge the individual and small group markets, develop governance options and a sustainable business model, determine whether existing public or private sector capacity could be adapted for online public access, and develop a request for proposals for eligibility system expansion or acquisition.

Insurance Regulation

As the State's insurance regulator, the Maryland Insurance Administration (MIA) is responsible for overseeing and enforcing many of the new federal and State insurance requirements. While the individual and employer mandates will be enforced primarily by the federal government, partly through information generated through the exchange, MIA will regulate insurance sold both inside and outside the exchange. MIA will ensure that insurers are adhering to all of the new consumer protections in the federal law and has already begun to do so for the protections that took effect on September 23, 2010. Chapter 17 of 2010 gave the Insurance Commissioner broad authority to enforce the provisions of the federal reform law; however, the authority was only extended until July 1, 2011. Legislation is anticipated at the 2011 session to amend the specific sections of the Insurance Article that are out of compliance with the provisions of federal law that took effect in 2010 or will take effect in 2011.

In the small group insurance market, the Maryland Health Care Commission (MHCC) regulates the benefit package for insurance plans. MHCC proposed regulatory changes to the benefit package in September 2010 to comply with the federal provisions that took effect September 23. MHCC is scheduled to take final action on the regulations at its November 18, 2010 meeting.

Maryland was one of 46 states that each received a $1 million grant to enhance its current processes for reviewing health insurance premium increases. MIA will use the grant to improve the health insurance premium review process by contracting for consulting services to provide recommendations on which data elements should be included in rate filing submissions, which markets should require additional data elements in their rate filings, and the implementation of policies and procedures to carry out a more robust rate review process. The grant will also be used to make more information about rate filings publicly available to consumers and policymakers.

Federal High Risk Pool

The federal law establishes a temporary high risk pool to help uninsured individuals gain access to health insurance before the major health care reforms take effect in January 2014. The high risk pool provides health coverage and subsidized premiums to U.S. citizens and legal immigrants who have pre-existing health conditions and have been uninsured for at least six months. Dependents are not eligible. In Maryland, as a result of Chapter 173 of 2010, the high risk pool is operated by the Maryland Health Insurance Plan (MHIP) and operates side-by-side with the existing State high risk pool. In contrast with the State high risk pool, which offers several preferred provider, HMO, and high deductible plans, the federal high risk pool offers only a high deductible plan with a combined $1,500 medical/drug deductible and no co-pay or coinsurance, except for certain brand-name drugs. Monthly premiums vary from $141 to $354 per enrollee, depending on age. The benefits are similar to the benefits under the State high risk pool with the major difference being that the federal high risk pool will not pay for abortions. MHIP implemented the new federal high risk pool in September and, as of October 2010, had received 120 applications and enrolled 34 individuals in the plan.

State Employee and Retiree Health and Welfare Benefits Program

The Department of Budget and Management (DBM) has determined that the State Employee and Retiree Health and Welfare Benefits Program is a grandfathered plan under the reform law and, as such, is exempt from a prohibition on employee cost-sharing for certain preventive health services and from a requirement to set up a more structured internal and external benefits appeal process. The exemption from the preventive services cost-sharing prohibition will save the State approximately $5.4 million. The program would lose its grandfathered status by significantly increasing the share of costs borne by employees or reducing benefits. Even with its grandfathered status, the State will need to make some changes for the fiscal 2012 plan year, including expanding coverage to adult children from age 25 up to age 26 (children no longer need to be dependents); and eliminating the lifetime maximum benefits in the preferred provider organization (PPO) and point of service (POS) plans.

DBM expects the changes (almost entirely from the expanded young adult coverage) to cost approximately $16 million. Beginning in 2014, the employer mandate will require the State to provide a voucher or pay a penalty for employees who qualify for a subsidy under the exchange. The State could also be subject to a new "Cadillac" tax on high-cost health insurance plans. While DBM has not yet conducted a comprehensive assessment of the State's exposure to these provisions, a preliminary assessment suggests that State employees are unlikely to qualify for a subsidy and the Cadillac tax will not apply.

DBM is participating in the federal Early Retiree Reinsurance Program under the reform law. Participating employers receive reinsurance for the health insurance claims of high-cost retirees age 55 and older who are not yet eligible for Medicare, and their eligible spouses, including surviving spouses, and dependents. The amount of the reimbursement to the employer is 80% of medical claims costs for the health benefits of an individual between $15,000 and $90,000. The program ends on January 1, 2014, when state health insurance exchanges are scheduled to become operational.

Maryland Health Care Reform Coordinating Council

In response to the new federal law, Governor Martin J. O'Malley issued an executive order to establish the Maryland Health Care Reform Coordinating Council. The council, co-chaired by Lieutenant Governor Anthony Brown and Secretary of Health and Mental Hygiene John Colmers, consists of legislators and representatives of the Executive Branch. The council was required to submit to the Governor by July 15, 2010, a comprehensive evaluation, including the impact on the State general fund budget, of the federal legislation and identify critical decision points that must be considered by the State. By January 1, 2011, the council must submit a comprehensive document with policy recommendations and implementation strategies.

In its evaluation, the council estimated that health care reform would cut the State's uninsured rate by half, from 800,000 (14.0% of the total population) to approximately 400,000 (6.7%). The council also estimated that the State would realize net savings of $829 million over the period of 2010 through 2020, as a result of health care reform. However, costs begin to climb in the latter part of that time period, as more of the costs of the Medicaid expansion are assumed by the State.

The council established six workgroups to further examine aspects of health care reform: Exchange and Insurance Markets; Entry into Coverage; Outreach and Education; Public Health, Safety Net, and Special Populations; Health Care Workforce; and Health Care Delivery System. The workgroups held briefings, public hearings, and discussion meetings throughout the fall, and each one submitted a report of its findings to the council. The council will review the reports, hold public hearings around the State, and develop its own recommendations for its final meeting on December 17.

Legal Challenges to Health Care Reform

In response to passage of health reform, legislation has been introduced in at least 40 state legislatures (including three bills in Maryland during the 2010 session) to limit, alter, or oppose selected state or federal actions, including single-payer provisions and the individual mandate. Furthermore, at least three major challenges to the federal law have been filed in federal court.

Judge George Steeh of the U.S. District Court for the Eastern District of Michigan dismissed *Thomas More Center v. Obama*, which challenged both the constitutionality of the individual mandate and the related penalty, on October 7, 2010. Judge Steeh ruled that the individual mandate is constitutional because choosing not to obtain health insurance qualifies as an example of "activities that substantially affect interstate commerce," and Congress may regulate interstate commerce under the Commerce Clause. Judge Steeh also found that the individual mandate penalty was not an improperly apportioned direct tax, but a sanction that is allowed under the Commerce Clause.

In *State of Florida v. U.S. Department of Health and Human Services,* Judge Roger Vinson of the U.S. District Court for the Northern District of Florida ruled on October 15, 2010, that the plaintiffs (20 state attorneys general or governors, a nonprofit corporation, and two individuals) may pursue two of the suit's original six counts – the constitutionality of an individual mandate and the expansion of Medicaid. Judge Vinson also ruled that the individual mandate penalty is indeed a penalty and not a tax, as the federal government had argued. A summary judgment hearing is scheduled for December 16, 2010.

In *Commonwealth of Virginia v. Sebelius*, Judge Henry E. Hudson of the U.S. District Court for the Eastern District of Virginia denied a motion to dismiss the case and heard oral arguments regarding a summary judgment motion on October 18, 2010. The suit charges that the individual mandate provision is unconstitutional and conflicts with a previously passed state law, which violates the Commonwealth's sovereignty. A ruling on the case is anticipated by the end of the year.

Actions Required in 2011

As mentioned above, legislation is anticipated in 2011 to amend several sections of the Insurance Article affected by federal health reform. While the Maryland Health Care Reform Coordinating Council will not complete its work until December, the council's legislative proposals are likely to be modest and focus on the creation of an entity to develop more substantive recommendations for the insurance exchange as well as budgetary initiatives around a new eligibility system. Although the council will complete the work required under the executive order by January 1, 2011, there is clearly much work remaining, and there could be legislation or an amendment to the executive order to continue the council or establish a successor to continue to coordinate health care reform implementation efforts. Key health care reform decisions will likely be presented to the General Assembly for action at the 2012 session.

For further information contact: Jennifer B. Chasse/Linda L. Stahr Phone: (410) 946/(301) 970-5510

Health and Health Insurance

Medicaid Population and Financing Trends

Use of Medical Assistance programs remains high. In addition to normal cost drivers, the anticipated end of the enhanced federal match for Medicaid will place a tremendous burden on the State general fund in fiscal 2012.

Overview

Maryland's Medical Assistance Programs (Medicaid, Maryland Children's Health Program (MCHP), Primary Adult Care, Employed Individuals with Disabilities, Family Planning Program, and Kidney Disease Program) provide eligible low-income individuals with comprehensive health care coverage. Funding is derived from both federal and State sources, with a federal fund participation rate of 50% for Medicaid and 65% for the MCHP. The federal matching rate has been temporarily increased by the federal American Recovery and Reinvestment Act of 2009 (ARRA). The enhanced match rate provided by the ARRA is scheduled to decline after January 1, 2011, and end beginning July 1, 2011.

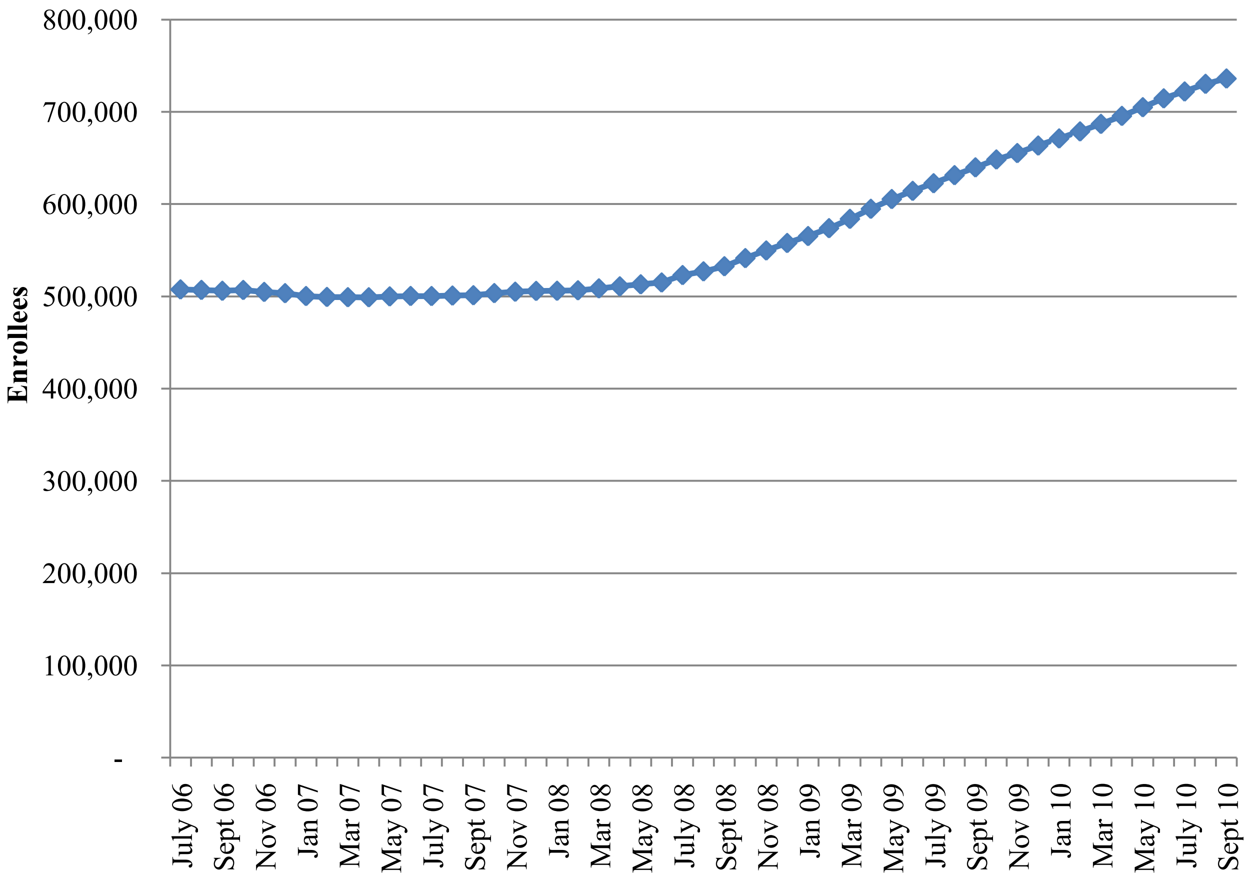
Medicaid also remains one of the fastest growing segments of the State budget. Over the next five years (fiscal 2012 through 2016), general fund expenditures for Medical Assistance Programs are expected to rise at a rate of about 12.5% annually.

Fiscal 2011 Outlook

The fiscal 2011 Medical Assistance Programs working appropriation of just under \$6.1 billion (\$1.7 billion in general funds) appears to be over \$450 million less than the anticipated need (\$225 million in general funds). The additional need for fiscal 2011 funding above what was originally assumed to be adequate is primarily attributed to:

- the assumption built into the budget concerning the expectation of the ARRA-enhanced match was that it would continue through fiscal 2011. The reduced enhanced match, which is now anticipated for the second half of fiscal 2011, combined with expectations of higher expenditures due to rate increases and enrollment growth (see below), results in a general deficit of \$147 million;
- higher than expected enrollment growth. While year-over-year enrollment growth is slowing, fiscal 2011 enrollment appears likely to be significantly higher (13.0%) than anticipated during the 2010 legislative session (4.0%). The most significant enrollment growth, as shown in **Exhibit 1**, is in the Medicaid program. This additional growth equates to an additional general fund need of \$46 million; and

Exhibit 1
Medicaid Monthly Enrollment
Fiscal 2007-2011 Year-to-date



Source: Department of Legislative Services; Department of Health and Mental Hygiene

- a 4.4% calendar 2011 managed care rate increase that was not included in the fiscal 2011 budget ($32 million general funds). The managed care increase is historically budgeted through a deficiency appropriation.

Fiscal 2012 Forecast

In fiscal 2012, the expenditures for the Medical Assistance Programs are estimated to be just over $7 billion, a 7.4% increase from the fiscal 2011 estimate. This estimate is based on a moderation of enrollment growth (4.7%) compared to the most recent increases, continued constraints on medical inflation/utilization, and the continuation of budget cuts (including the fiscal 2011 assessment on hospital rates/revenues that generated $123 million).

However, general fund need is expected to grow by over $916 million (48.1%) over the fiscal 2011 estimate or over $1.1 billion (67.9%) over the legislative appropriation. Indeed, the rebalancing of the fund splits in the Medical Assistance Programs with the anticipated end of any enhanced federal fund support in fiscal 2012 is the major budgetary change between fiscal 2011 and 2012. The loss of the enhanced federal match at the end of fiscal 2012 will increase the general fund need by $749 million.

Further, because the Administration allocated the entire amount of federal enhanced matching funds for Medicaid in the Medical Assistance Programs rather than in all the different agencies with Medicaid spending (for example the Mental Hygiene Administration, the Developmental Disabilities Administration, and school-based health programs funded through Aid to Education), federal funds in those programs are understated and general funds are overstated. Conversely, in the Medical Assistance Programs, the reverse is true. Thus, the fiscal 2012 realignment of this fund-split imbalance requires an additional amount of general fund support ($145 million).

Beyond these technical adjustments, the fiscal 2012 forecast assumes the State will provide rate increases to the managed care organizations (4.4% increase amounting to $130.5 million in total funds); accommodate fiscal 2011 growth ($92.0 million in total funds); and see increased costs due to higher enrollment, medical inflation, and utilization ($270.0 million total funds).

Enrollment and expenditure data are summarized in **Exhibit 2**.

Exhibit 2
Enrollment and Service Year Expenditures*
Fiscal 2010-2012

	2010 Actual	2011 Estimate	2012 Estimate	2011-2012 % Change
Enrollment by Category				
Medicaid	614,472	702,291	734,941	4.65%
MCHP	97,997	96,781	95,682	-1.14%
Medicaid Expansion to Parents	53,276	75,091	84,319	12.29%
Total	**765,745**	**874,162**	**914,941**	**4.66%**
Cost per Enrollee	**$7,862**	**$7,498**	**$7,691**	**2.57%**
Total Funds ($ in Millions)	**$6,020**	**$6,554**	**$7,037**	**7.37%**

MCHP: Maryland Children's Health Program

*Expenditures by fiscal year are based on the cost of providing services during that fiscal year rather than the year that the bills were actually paid. Cases and funding associated with the Maryland Primary Adult Care Program and the Kidney Disease Program are excluded from the chart.

Source: Department of Legislative Services

Health and Health Insurance

Medical Marijuana

Legislation to adopt a medical marijuana program in the 2010 session failed. At this point, 15 other jurisdictions have enacted such programs. The Maryland 2010 proposal is broadly consistent with the programs in other states but with some notable differences.

Background

In the 2010 General Assembly session, Senate Bill 627 was passed by the Senate to establish a medical marijuana program in Maryland. The cross file, House Bill 712, received a hearing but was never voted out of committee. Although the bill ultimately failed, 15 other jurisdictions have legalized the use of marijuana for medical purposes.[1] Overall, Maryland's proposal is similar to those of other jurisdictions, though with a few notable differences.

State Control of Program

Under Senate Bill 627 of 2010, the Department of Health and Mental Hygiene (DHMH) would run the medical marijuana program and establish a regulatory framework to license growers, dispensaries, and allow for doctors to recommend marijuana. The department would also have been required to establish a registry of qualifying patients and issue registration cards to patients who apply and qualify for the program. This is the same as most jurisdictions; although, in a minority of other jurisdictions, public safety or agriculture agencies have a role in medical marijuana programs.

Two jurisdictions give local governments control over at least some aspect of their medical marijuana programs. In California, the local authorities are in charge of determining how the marijuana will be dispensed and may allow a patient to have possession of more marijuana than is allowed under state statute. Both provisions are widely considered to make enforcement and regulation of the program more difficult. In Colorado, local governments were recently given the ability to ban dispensaries from the jurisdiction although the effects of this change are yet to be determined.

[1] Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia. Both New Jersey and the District of Columbia have not yet fully implemented their medical marijuana programs.

Physicians

The physicians' role in the medical marijuana program proposed in 2010 is basically the same as most other jurisdictions. Under Senate Bill 627, only a physician who is licensed by the State Board of Physicians and has a bona fide relationship with the patient may issue a written certification of need for marijuana. Furthermore, the physician's treatment of the patient may not be limited to authorization of medical marijuana or consultation for that purpose. Maryland would also provide protections against punitive actions, such as arrest or disciplinary action by the Board of Physicians, if the physician acts in accordance with the requirements of the program.

Key differences found in a small number of jurisdictions include allowing physicians in other states to complete the written certification that is required to register as a qualifying patient or allowing health care practitioners other than doctors to complete the certification. A few jurisdictions also only recognize a written certification if it was issued within a certain time period prior to the patient applying for the medical marijuana program.

Patients and Primary Caregivers

The requirements under the 2010 proposal regarding patients and primary caregivers are similar to other jurisdictions with a few exceptions. In Maryland, a patient would meet the requirements for the medical marijuana program if the patient suffers from a debilitating medical condition and is a resident of Maryland. The patient is required to submit an application, including proof of residency and an application or renewal fee (which could be set on a sliding scale). For patients who need a caregiver, the proposal requires primary caregivers be at least 18 years old and a resident of the State. Primary caregivers must also submit to a criminal background check and may not be the patient's physician or the primary caregiver to any other individual utilizing medical marijuana.

Other jurisdictions allow minors to apply but have additional application requirements if the qualifying patient is a minor. A majority of jurisdictions have a petition process through which debilitating conditions may be added to the list. While most jurisdictions only provide protection to patients who are residents of the jurisdiction, four jurisdictions recognize cards issued by other jurisdictions, at least to some extent. Also, under the proposal, Maryland would be in the minority of jurisdictions that require a background check for the primary caregiver. Some jurisdictions prohibit an individual from serving as a primary caregiver if the individual has been convicted of a drug offense.

Distributors

Jurisdictions vary widely on the issue of the distribution of medical marijuana. Under Senate Bill 627, DHMH would establish a registration permit program to authorize entities to distribute medical marijuana. Entities that may register include pharmacies licensed by the Board of Pharmacy and dispensing centers. Distributors may not dispense more than six ounces of marijuana for a 30-day period to an individual patient unless a qualifying patient's primary caregiver presents certification that more is required. In order to register, the pharmacy or dispensing center must submit background checks for employees and certify security measures.

There is a wide range of how other jurisdictions deal with the distribution of medical marijuana. The statutes and regulations of nine jurisdictions either do not address how the patient is to get medical marijuana or limits any dispensing of marijuana to between the patient and the primary caregiver. One jurisdiction, California, gives the local governments the authority to set the rules regarding the dispensing of marijuana. Five jurisdictions have a dispensing system where the marijuana is distributed through an entity, which is usually required to be a nonprofit organization, and have wide-ranging requirements regarding the security of the dispensaries. However, no other jurisdictions distribute marijuana through pharmacies.

Another difference is that the distributors in Maryland would be prohibited from growing marijuana, where in other jurisdictions, distributors grow as well as distribute marijuana. Also, Maryland is on the higher-end in terms of the amount of marijuana that a dispensary or pharmacy may dispense, with the limit usually being 5.0 ounces or less for a 30-day supply. Most jurisdictions distinguish between the amount of marijuana that can be distributed to the patient at one time by an entity and the amount, which is usually 2.5 ounces or less, that a patient is allowed to possess to have protection from arrest and other criminal penalties that medical marijuana statutes provide. Maryland does not have such a distinction.

Authorized Growers

Maryland's 2010 proposal regarding authorized growers is unique with only one other jurisdiction having anything similar. DHMH must issue a request for proposals (RFP) to select authorized growers of medical marijuana and may select as many as necessary to provide marijuana in all geographic regions of the State. The initial RFP must call for a minimum proposal of $100,000 in total product. The department may then set the minimum proposal amount for any subsequent RFPs. DHMH, in conjunction with the Maryland Department of the Environment, must adopt regulations that growers must follow. Growers must submit to a pharmacological testing of the marijuana to ensure consistency and to ensure there is no contamination and submit background checks.

The only other jurisdiction that has a system where an entity other than a dispensing center or distributor grows medical marijuana is the District of Columbia. Cultivation centers in the District of Columbia are the only entity that may grow medical marijuana; however, unlike authorized growers in Maryland, cultivation centers may distribute the medical marijuana. Regulations setting up and governing the cultivation centers have not been promulgated. It should be noted that New Jersey attempted to limit the growing of marijuana to Rutgers University; however, Rutgers University declined to participate because of fear of losing federal funding.

Use Restrictions

Another area where Maryland's 2010 proposal is similar to other medical marijuana programs is use restrictions. Maryland's proposal places limits on when and where medical marijuana may be used. Maryland would prohibit an individual from operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of marijuana and would also prohibit the individual from smoking marijuana in a public place or in a motor vehicle. Thirteen other jurisdictions have these types of restrictions. Maryland would also prohibit an individual from smoking marijuana on private property that is either rented from a landlord and subject to a policy that prohibits the smoking of marijuana on the property or is subject to a policy that prohibits smoking on the property, if the policy is adopted by a homeowners association or a council of unit owners of a condominium. Maryland would be in a small minority regarding smoking on private property.

Most medical marijuana jurisdictions have a provision that specifically states that insurers, including Medicaid, are not required to reimburse an individual for costs associated with medical marijuana use. Such a provision was not included in Maryland's proposal.

There are two emerging issues regarding the use of medical marijuana. Qualified patients in several states have been denied custody of children due to their medical use of medical marijuana. This issue is addressed by only 2 jurisdictions, both of which prohibit the denial of child custody unless it could be contrary to the best interests of the child. The other issue is the use of medical marijuana at the workplace. Only 3 jurisdictions prohibit a patient from using medical marijuana at the workplace, and in 13 jurisdictions, employers are not required to accommodate a patient's use. State courts have interpreted these provisions differently when the question involves the effect of positive drug tests and other employment-related issues that do not involve the patient using the medical marijuana at the workplace.

Conclusion

The 2010 legislation that proposed a medical marijuana program in Maryland contains all of the elements common to programs in other states. Further, for the most part, the specific proposal was in line with those found in other states, the chief exception being the entity authorized to grow marijuana sold in the program.

For further information contact: Jodie L. Chilson/Erin M. Dorrien Phone: (410) 946/(301) 970-5350

Health and Health Insurance

Health Care-associated Infections

Heath care-associated infections can result in significant additional inpatient stays, health care costs, and patient deaths. A recent report, drawn from data from 17 states including Maryland, revealed that for one particular class of infection, Maryland had the highest rate of infection. The State has developed various plans to reduce health care-associated infections, but adoption of some basic strategies such as seasonal influenza vaccination amongst health care workers remains mixed.

Background

Health care-associated infections (HAIs) are infections that patients acquire during the course of receiving medical treatment for other conditions. HAIs are the most common complication affecting hospitalized patients, with between 5 and 10% of patients acquiring one or more infections during their hospitalization. According to the federal Centers for Disease Control and Prevention (CDC), HAIs account for an estimated 1.7 million infections and 99,000 associated deaths in hospitals annually. A 2006 Pennsylvania report showed that patients with an HAI were hospitalized for 20.6 days, compared to 4.5 days for patients without infections. Further, insurers paid almost 5.5 times the amount of money for their stay compared to patients without an HAI.[2]

Four categories of infections account for approximately three quarters of HAIs in the acute care hospital setting. These include: (1) surgical site infections; (2) central line-associated bloodstream infections (CLABSIs) which are primarily associated with the use of a central vascular catheter; (3) ventilator-associated pneumonia; and (4) catheter-associated urinary tract infections.

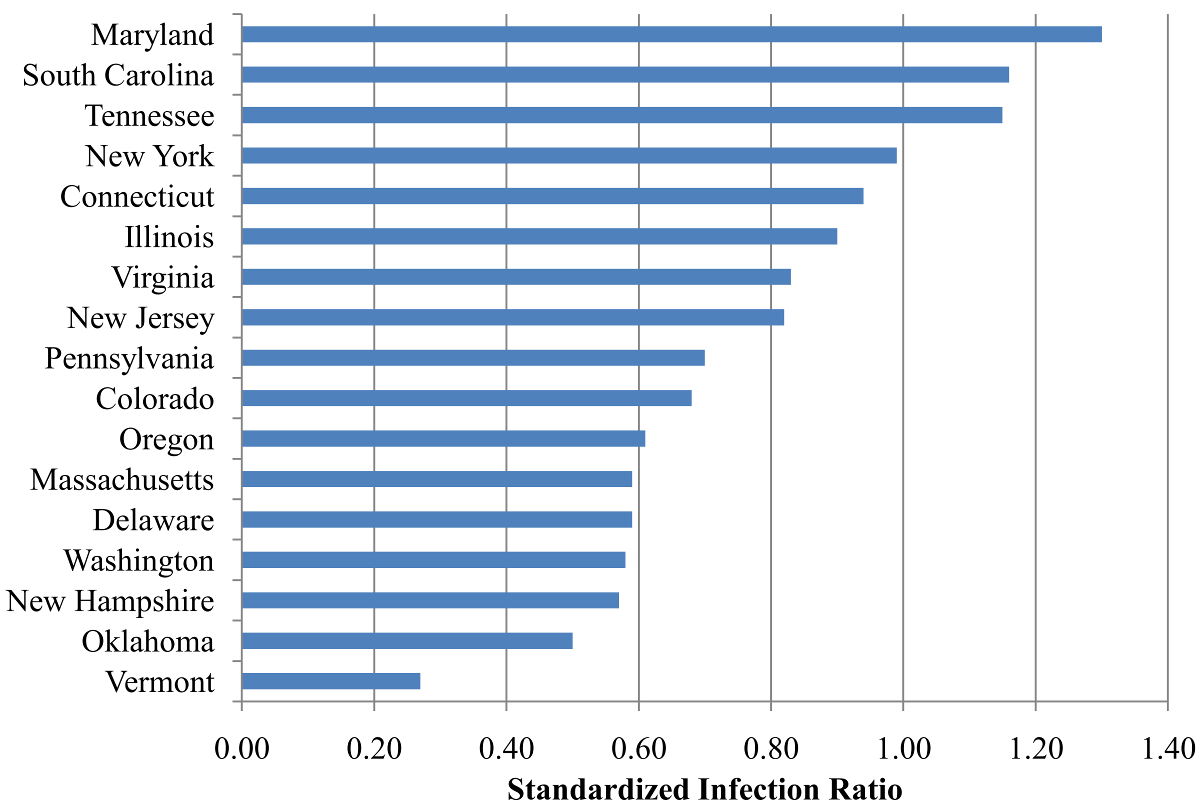
Public Reporting

Public reporting of HAIs has grown significantly at the state level, amid the belief that promoting transparency will improve care, expand and improve infection prevention measures, reduce the morbidity and mortality associated with HAIs, and cut health care costs. The National Healthcare Safety Network (NHSN) is a public health surveillance system maintained by the CDC and used by a number of states, including Maryland, for reporting of HAI.

[2] *Lessons from the Pioneers: Reporting Healthcare-Associated Infections,* National Conference of State Legislatures

CLABSIs are one of the HAI types for which reporting is most frequently mandated by states. Maryland is 1 of 17 states that require hospitals to report CLABSIs through the NHSN. As shown in **Exhibit 1**, a recent CDC report (*First State-Specific Healthcare-Associated Infections Summary Data Report*) found that Maryland has the highest rate of CLABSIs of all states that require reporting. Exhibit 1 shows CLABSI data using the Standardized Infection Ratio (SIR) for all 17 states. The SIR is used to measure the relative difference of CLABSI occurrences during the reporting period against a common referent period. Maryland has an SIR of 1.30 which indicates that there is an excess of observed CLABSIs compared to the predicted number nationally.

Exhibit 1
Central Line-associated Bloodstream Infection Occurrence by State



Source: Centers for Disease Control and Prevention (CDC)

Maryland-specific Activities

In response to the significant impact that HAIs have had on both patients and the health care system, the Maryland Health Care Commission (MHCC) formed an HAI Advisory Committee in 2009. In January 2010, the committee developed an HAI prevention plan based on a template developed by the CDC, that focuses on four main targets: (1) program infrastructure; (2) surveillance, detection, reporting, and response; (3) prevention; and (4) evaluation, oversight, and communications. The plan focuses on acute care hospitals, but officials anticipate expanding the scope to include nursing homes, ambulatory surgical centers, and other health care providers.

Three main State entities direct the implementation of HAI prevention and reporting activities: MHCC, Infectious Disease and Environmental Health Administration (IDEHA), and the Maryland Health Quality and Cost Council. **Exhibit 2** below describes the major activities undertaken by each entity.

Exhibit 2

Health Care-associated Infection Prevention Activities

Maryland Health Care Commission	State law requires MHCC to collect and report data on HAIs through the Maryland Hospital Performance Evaluation Guide. This Guide includes measures that compare hospital performance on processes of care that are designed to prevent infections for patients undergoing surgery. The fall 2010 update to the guide, for the first time, includes a hospital-by-hospital comparison of CLABSI rates.
Infectious Disease and Environmental Health Administration	IDEHA conducts surveillance for, and investigates outbreaks and unusual cases of, communicable diseases in Maryland's population. Maryland is one of 10 states that participate in the Emerging Infections Program, a population-based network of the CDC, USDA, FDA and state health departments to assess the public health impact of emerging infections and to evaluate methods for their prevention and control.
Maryland Health Quality and Cost Council	Formed in 2007, the council is tasked with developing strategic health policy reforms to improve the health of Maryland's citizens, maximize the quality of health care services, and contain health care costs. The council has prioritized conducting a statewide hand hygiene initiative and prevention of health care associated infections as part of its work plan.

CDC: Centers for Disease Control
CLABSIs: central line-associated bloodstream infections
FDA: Food and Drug Administration
HAI: Health care-associated infections
IDEHA: Infectious Disease and Environmental Health Administration
MHCC: Maryland Health Care Commission
USDA: U.S. Department of Agriculture

Source: *Maryland Healthcare-Associated Infections Prevention Plan,* Maryland Health Care Commission

In addition, the Office of Health Care Quality established a new initiative in fiscal 2010 to improve quality assurance of ambulatory surgical centers by implementing a survey process to promote better infection control practices, increase the extent to which infection control deficiencies are both identified and remedied, and prevent future serious infections. While reporting by ambulatory surgical centers is not required, it does help to identify sources of HAIs in the State.

Health Care Worker Seasonal Influenza Vaccination Rates

According to the CDC, "Achieving high influenza vaccination rates of health care personnel and patients is a critical step in preventing health care transmission of influenza from health care personnel to patients and from patients to health care personnel. Systematic strategies employed by some institutions to improve health care personnel vaccination rates have included providing incentives, providing vaccine at no cost to health care personnel, improving access (*e.g.*, offering vaccination at work and during work hours), requiring personnel to sign declination forms to acknowledge that they have been educated about the benefits and risks of vaccination, and mandating influenza vaccination for all health care personnel without contraindication."

Using an online survey instrument, all Maryland hospitals submitted aggregate data on health care worker influenza vaccination rates for all paid, full- and part-time employees who received FluMist® or an injectable flu vaccine onsite or offsite between September 1, 2009, and April 15, 2010. The data collected for the 2009/2010 flu season was reported in the Maryland Hospital Performance Evaluation Guide in July 2010 and showed that 78.1% of the hospital workforce received the flu vaccine. However, vaccination rates among hospitals varied widely. Greater Baltimore Medical Center, Union Hospital of Cecil County, Harbor Hospital Center, and Union Memorial Hospital reported vaccination rates of 99.0% or higher. Other hospitals, such as Anne Arundel Medical Center, Washington Adventist Hospital, and Prince George's Hospital Center, reported vaccination rates below 50.0%.[3]

Nursing homes participating in the Maryland Medical Assistance Program also were surveyed on their seasonal influenza vaccination rate among health care workers for the period of September 1, 2009, to April 15, 2010. The survey found an average vaccination rate of 60.2% (21,722 employees), which exceeds the national estimated rate of 54.0% but lags the Maryland rate for hospital health workers of 78.1%. The range of rates among nursing homes reporting was strikingly large: 9.9 to 99.1%.

Conclusion

While the recent CDC report on CLABSIs is not good news for Maryland, the State is responding to the issue of HAIs though public reporting of HAI rates and seasonal influenza vaccination rates as part of a State strategy to improve health care quality and patient outcomes. However, as the wide-ranging seasonal influenza vaccination rates among certain health care workers demonstrate, there is clearly room for improvement.

For further information contact: Kathleen K. Wunderlich Phone: (410) 946/(301) 970-5530

[3] Maryland Health Care Commission, *Maryland Hospital Performance Evaluation Guide*, 2010

Health and Health Insurance

Regulation of Abortion Procedures

A recent incident during an abortion conducted on a pregnant teenager in Elkton resulted in the need for emergency surgery at Johns Hopkins. The incident reveals limitations on the ability of State agencies to regulate individual abortion procedures that span State lines as well as regulatory differences between Maryland and surrounding states with regard to facilities where abortions are performed.

Background

In August 2010, the Maryland Board of Physicians disciplined three physicians for their involvement in a multi-state abortion operation through American Women's Services (AWS), which provides abortion services in several states including New Jersey, Pennsylvania, Virginia, and Maryland. The owner of AWS, a physician who was not licensed in Maryland, often provided abortion services over a two-day period across state lines. The physician would start the procedure in New Jersey, and then advise patients to return to the same facility the next day where they were instructed to use their personal vehicles to drive to a location in Maryland where the abortion procedure was completed. The procedure could not be completed in New Jersey because AWS clinics did not meet safety requirements mandated by New Jersey law. The owner of AWS hired a Maryland-licensed physician to complete some surgical procedures in Maryland clinics. However, the board's investigation identified that the unlicensed physician also completed abortions independently.

On August 13, 2010, the Maryland-licensed physician performed three abortions in an AWS clinic in Elkton, which was initiated by the owner of AWS in New Jersey. The unlicensed physician was present and directed the procedures. One of these patients was 18 years old and approximately 21 weeks pregnant at the time. During the procedure, the Maryland-licensed physician perforated the patient's uterus and bowel and subsequently transported the patient to the hospital in a personal vehicle. The patient then had to be transported to Johns Hopkins for emergency surgery. Both the Elkton Police Department and a physician from Johns Hopkins submitted complaints to the board based on the transport of a critically injured patient in a private vehicle, and the concern that patients were being transported across state lines to complete medical care.

On August 25, 2010, the board issued a cease and desist order in which the owner of AWS was ordered to immediately stop practicing medicine in Maryland without a license, based on the fact that he had been observed performing surgical procedures on approximately 50 occasions in Maryland at the Elkton location since January 2010. On August 31, 2010, the board summarily suspended the license of the physician who performed the surgical procedure in Maryland for exercising poor judgment and exposing patients to harm and for aiding an unauthorized person, the owner of the clinics, in the practice of medicine. The board has also suspended the license of the part-time medical director of AWS's four Maryland clinics for unprofessional conduct, and aiding an unauthorized person, the owner of the clinics, in the practice of medicine in Maryland.

It is important to note that the owner of the AWS clinics maintains the patient medical records in New Jersey. The owner of the AWS clinics has advised the board that he is unwilling to comply with the board's subpoenas for medical records because he is not a licensee. The Maryland-licensed physicians do not maintain the medical records. Thus, patients are treated in Maryland while the medical record is stored in New Jersey, precluding regulatory agencies from monitoring and ensuring patient safety.

State Regulation of Abortion Procedures

Maryland

Maryland law requires that an abortion be performed by a licensed physician. The State may not interfere with the decision of a woman to terminate a pregnancy before the fetus is viable or at any time during the woman's pregnancy if the termination procedure is necessary to protect the life or health of the woman or the fetus is affected by genetic defect or serious deformity or abnormality. A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician's best medical judgment following accepted standards of medical practice.

Doctors' offices and free-standing health care clinics, where abortions are performed, are not licensed by the Department of Health and Mental Hygiene (DHMH), although the State does regulate other "freestanding ambulatory care facilities." "Freestanding ambulatory care facility" includes ambulatory surgical facilities, freestanding endoscopy facilities, a freestanding facility utilizing major medical equipment, and a kidney dialysis center or a freestanding birthing center. Legislation introduced in 2004 would have altered the definition of "freestanding ambulatory care facility" to include certain facilities that provide abortion services in order to provide State regulation of the facilities.

New Jersey

New Jersey law requires an abortion to be performed by a physician licensed to practice in New Jersey. An abortion performed after 14 weeks from the day of the last menstrual period (LMP), other than a dilatation and evacuation (D&E), must be performed in a licensed hospital. After 14 weeks and through 18 weeks LMP, a D&E procedure may be performed in a licensed hospital or in a licensed ambulatory care facility authorized to perform surgical procedures by the Department of Health. A physician planning to perform a D&E procedure after 18 weeks LMP and through 20 weeks LMP in a licensed ambulatory care facility is required to first file with the State Board of Medical Examiners a certification signed by the medical director that the physician meets certain eligibility standards, including that the procedures shall be done in a licensed ambulatory care facility and the physician has certain training and experience in performing the procedure. A physician may request from the board permission to perform a D&E procedure after 20 weeks LMP, which must be accompanied by proof of superior training and experience and that the procedure will be performed in a facility that is adequate to accommodate the increased risk to the patient of the procedure. Furthermore, a procedure performed after 18 weeks may only be performed in a clinic that is within 20 minutes driving time of a hospital that is accessible during the usual hours of operation of the clinic.

Pennsylvania

Pennsylvania law requires any medical facility that provides abortions to meet certain requirements including the availability of equipment and drugs necessary for resuscitation. Abortions may only be performed by a physician who possesses the requisite professional skill and competence as determined and approved by the medical facility in accordance with appropriate procedures. Each medical facility is required to arrange for at least one physician who is board eligible by the American Board of Obstetrics and Gynecology or the American Osteopathic Board of Obstetrics and Gynecology to be available either as a staff member or as a consultant for the purpose of providing consultation for maintaining satisfactory quality of treatment.

Each freestanding clinic that provides abortion services is required to have a written transfer agreement with a hospital that is capable of providing specified routine emergency services and that is not farther than 30 minutes by ambulance from the clinic. Pennsylvania law also includes requirements related to the administration of anesthesia, supervision, size and arrangement of passageways in the procedure room, and preservation of fetal tissue.

Virginia

Virginia law requires abortions to be performed by a physician licensed in Virginia. Abortions performed during the second trimester and prior to the third trimester must be performed in a hospital licensed by the Virginia Department of Health or operated by the Department of Behavioral Health and Developmental Services. Abortions performed in a stage of pregnancy subsequent to the second trimester must meet the following conditions: (1) the operation must be performed in a hospital licensed by the Virginia Department of Health or operated by the Department of Behavioral Health and Developmental Services; (2) the physician and two consulting physicians certify and so enter in the hospital record of the woman, that in their medical opinion, based on their best clinical judgment, the continuation of the pregnancy is likely to result in the death of the woman or substantially and irremediably impair the mental or physical health of the woman; and (3) measures for life support for the product of the abortion must be available and utilized if there is any clearly visible evidence of viability.

Conclusion

The incident with AWS highlights issues concerning the lack of regulation of abortion procedures that begin in another state and are completed in Maryland. Perhaps more starkly, the incident highlights the differences between Maryland and the surrounding states in terms of the regulation of facilities where abortions may be performed. AWS clinics in New Jersey, Pennsylvania, and Virginia must meet certain requirements established in state law. The clinic in New Jersey where the procedure was initiated did not meet New Jersey state requirements; therefore, patients were advised to drive to Maryland to complete the procedure. Currently, DHMH has no authority to regulate freestanding facilities where abortions are performed.

For further information contact: Erin R. Hopwood/ Erin M. Dorrien Phone: (410) 946/(301) 970-5350

Health and Health Insurance

Unnecessary Coronary Stent Procedures

Recent allegations concerning unnecessary coronary stent procedures at St. Joseph's Medical Center have raised concerns over the State's ability to readily identify other instances where unnecessary procedures are being undertaken.

Background

St. Joseph's Medical Center (SJMC) in Towson is one of the busiest heart catheterization centers in the State. Recent events at SJMC regarding the unnecessary placement of coronary stents have sparked concern that despite patient safety measures currently undertaken by the federal and State governments, as well as steps taken by the hospital industry, unnecessary medical procedures still take place. The specific case from which this issue paper is drawn is still under litigation. However, a review of State practices generated as a result of this case offers salutary lessons.

St. Joseph's Medical Center Findings

In April 2009, at the request of federal investigators and in response to a patient complaint, SJMC began to investigate whether cardiac patients at the hospital were unnecessarily implanted with coronary stents. At the center of SJMC's investigation was Dr. Mark G. Midei. According to an external panel of peer reviewers, Dr. Midei placed coronary stents in nearly 600 patients when it may not have been medically necessary. Based on these findings, Dr. Midei lost his privileges at the hospital in July 2009. The hospital notified 585 of Dr. Midei's patients that they may have received an unnecessary coronary stent procedure, and at least 104 of these patients have filed claims in the State's Health Care Alternative Dispute Resolution Office against Dr. Midei and SJMC.

In November 2010, SJMC agreed to pay $22 million to settle federal claims related to kickbacks the hospital paid to MidAtlantic Cardiovascular Associates for referring cardiovascular procedures to the hospital from 1996 to 2006. Under the settlement, the hospital agreed to repay the federal funds that it received for the unnecessary coronary stent procedures performed by Dr. Midei. SJMC also signed a five-year Corporate Integrity Agreement with the U.S. Department of Health and Human Services, Office of the Inspector General to ensure future compliance with federal regulations.

In October 2010, Dr. Midei filed a lawsuit in Baltimore City Circuit Court against SJMC and its parent organization Catholic Health Initiatives seeking $60 million in compensatory damages. In his lawsuit, Dr. Midei contends he provided proper care and was used as a decoy to deflect attention away from other improper financial transactions.

State Response

In response to a legislative request, the Department of Health and Mental Hygiene (DHMH) looked into whether patients at other hospitals may have received unnecessary coronary stents, or if they were at risk of receiving other unnecessary invasive procedures. Furthermore, the department examined how patient safety measures failed to prevent or quickly detect the unnecessary procedures performed at SJMC. DHMH submitted a written report of its findings and recommendations in September 2010. Highlights of the report follow.

State Board of Physicians Investigation

According to the DHMH report, on June 7, 2010, the State Board of Physicians charged Dr. Midei with violations of the Maryland Medical Practice Act including, but not limited to, willfully making a false report on record, gross overutilization of health care services, and failure to maintain adequate medical records. As of mid-November, the case is still under review, and no action has been taken against Dr. Midei's license.

Improving the Peer Review Process and Patient Safety

The Office of Health Care Quality (OHCQ) at DHMH conducted an onsite survey of SJMC that concluded in March 2010. The office found that SJMC was unaware that Dr. Midei was performing unnecessary coronary stent procedures because he was able to avoid the hospital's peer review process due to his position as department head, where he chose which cases would be reviewed, an allegation Dr. Midei has denied. SJMC has since revised its practices to ensure that all clinical heads, division chiefs, and Peer Review Committee Chairs are neither selecting nor reviewing their own cases. Furthermore, the medical necessity of coronary stent procedures is now reviewed during the peer review process.

To prevent unnecessary procedures from occurring at other hospitals in the State, DHMH is in the process of implementing regulatory changes to strengthen and change the focus of hospital peer review standards to require the peer review process to include review of volume and medical necessity of procedures. DHMH advises new standards will require hospitals to implement clear and consistent standards for peer review, and records would be maintained to track and audit the peer review process.

To prevent or detect similar unnecessary procedures from occurring in the future, the department also plans on broadening current regulations related to patient safety. Currently, regulations only require death or serious injury to be reported to OHCQ, and there is uncertainty as to whether an unnecessary procedure causes serious injury. Therefore, DHMH is in the process of broadening the reporting requirements under the Maryland Patient Safety regulations to require events to be reported that are unnecessary, regardless of whether harm in the traditional sense has occurred.

Review of Additional Hospitals

DHMH advises that hospital data available to the Health Services Cost Review Commission (HSCRC) may also be used to identify hospitals that overutilize coronary stent procedures. However, onsite clinical investigation is necessary to confirm whether there may be overutilization of procedures or services. DHMH advises that it does not have the resources to conduct systematic onsite clinical review of hospital records, although it could conduct periodic "spot checks" to investigate trends revealed in data analysis to encourage hospitals to engage in their own review of utilization practices.

DHMH hoped to begin such periodic onsite reviews during summer 2010, but HSCRC has experienced difficulties analyzing its data to launch the investigations. If the process is successful, DHMH asserts the review of utilization practices could, and should, be extended to nonhospital settings where other costly medical procedures take place. In addition to the current data that is collected by HSCRC, additional data on cardiac procedures is now collected by the Maryland Health Care Commission (MHCC). Furthermore, MHCC has organized a standing Maryland State Cardiac Data Advisory Committee to assist in implementing coronary stent procedure data reporting requirements.

Recommendations for Legislative and Other Policy Changes

DHMH advises while State agencies have used the tools available to them to ensure that unnecessary coronary stent placement does not continue at SJMC, State regulatory agencies are not currently equipped with sufficient resources or with sufficient scope of authority, to prevent unnecessary medical procedures from occurring at other hospitals. DHMH recommends specific legislative actions are needed to enhance coordination between agencies to improve future investigations:

- amending current law to permit the names of physicians to be disclosed by HSCRC to MHCC and OHCQ;

- permitting the State Board of Physicians to disclose information contained on record to the Secretary of the Department of Health and Mental Hygiene and HSCRC; and

- granting Medical Review Committee status to a meeting of multiple regulatory agencies, and the Secretary of Health and Mental Hygiene or the Secretary's designee.

DHMH asserts these legislative actions are necessary to grant regulatory agencies permission to discuss allegations that cross agency jurisdictions and to protect the integrity of shared investigations.

In addition to the legislative actions recommended by DHMH, the American College of Cardiology, Maryland Chapter and the Society of Cardiovascular Angiography and Interventions are jointly recommending legislation that would require all cardiovascular catheterization laboratories in the State to be accredited by a national accrediting organization that is dedicated to this purpose. The legislation would also require independent external peer review of the laboratories and use of the National Cardiovascular Data Registry for quality and appropriateness of care reviews.

Social Programs

Public Assistance Population and Financing Trends

Use of public assistance programs remains high. Although the caseload and total program cost of Temporary Cash Assistance is projected to decrease in fiscal 2012, State general fund support will need to increase significantly due to the depletion of federal funds available for the program.

Background

The poor economy has put increased pressure on public assistance programs, notably Temporary Cash Assistance (TCA), the Supplemental Nutrition Assistance Program (SNAP) (formerly Food Stamps), and the Temporary Disability Assistance Program (TDAP). TCA provides monthly cash grants to needy children and their parents or caretaker relatives. TCA is funded with general funds, federal Temporary Assistance for Needy Families (TANF) block grant dollars, and certain child support collections. SNAP helps low-income people buy the food they need for good health. Benefits under SNAP are provided entirely from federal funds. TDAP provides a cash grant to childless adults who are temporarily disabled or who have a long-term disability and are applying for federal Supplemental Security Income benefits. TDAP is funded primarily with general fund dollars.

Temporary Cash Assistance Caseload Trends

In the early years of welfare reform, efforts to transition individuals from welfare to work and a growing economy led to a rapid reduction in the number of TCA recipients. After dropping at rates exceeding 20.0% per year during the 1990s, the pace of caseload decline slowed considerably in the early years of the first decade of the new millennium. With the recovering economy and the implementation of a universal engagement policy in fall 2003 – a policy that requires participation in activities such as up-front job search, orientation, assessment of employability, development of an Independence Plan, training, and subsidized employment – the caseload decline accelerated again, falling by 1.1% in fiscal 2004, 7.2% in fiscal 2005, 12.5% in fiscal 2006, and 12.9% in fiscal 2007. Deteriorating economic conditions reversed this trend and led to increases in the average monthly caseload of 2.4% in fiscal 2008, 13.5% in fiscal 2009, and 15.7% in fiscal 2010.

As shown in **Exhibit 1**, the Department of Legislative Services assumes a slight increase in the TCA caseload in fiscal 2011, with the average monthly enrollment rising to 67,556, and a decline in fiscal 2012 to 65,164. This represents an increase of just 0.2% in fiscal 2011 and a 3.5% decrease in fiscal 2012.

Exhibit 1
Temporary Cash Assistance Enrollment and Funding Trends
Fiscal 2010-2012

	2010 Actual	2011 Approp.	2011 Estimate	2012 Estimate	2011-2012 % Change
Average Monthly Enrollment	67,422	63,987	67,556	65,164	-3.5%
Average Monthly Grant	$174.17	$180.31	$174.17	$178.51	2.5%
Funds in Millions					
General Funds	$53.10	$7.10	$7.10	$60.80	752.1%
Total Funds	**$140.90**	**$138.50**	**$141.20**	**$139.60**	**-1.1%**

Source: Department of Human Resources; Department of Legislative Services

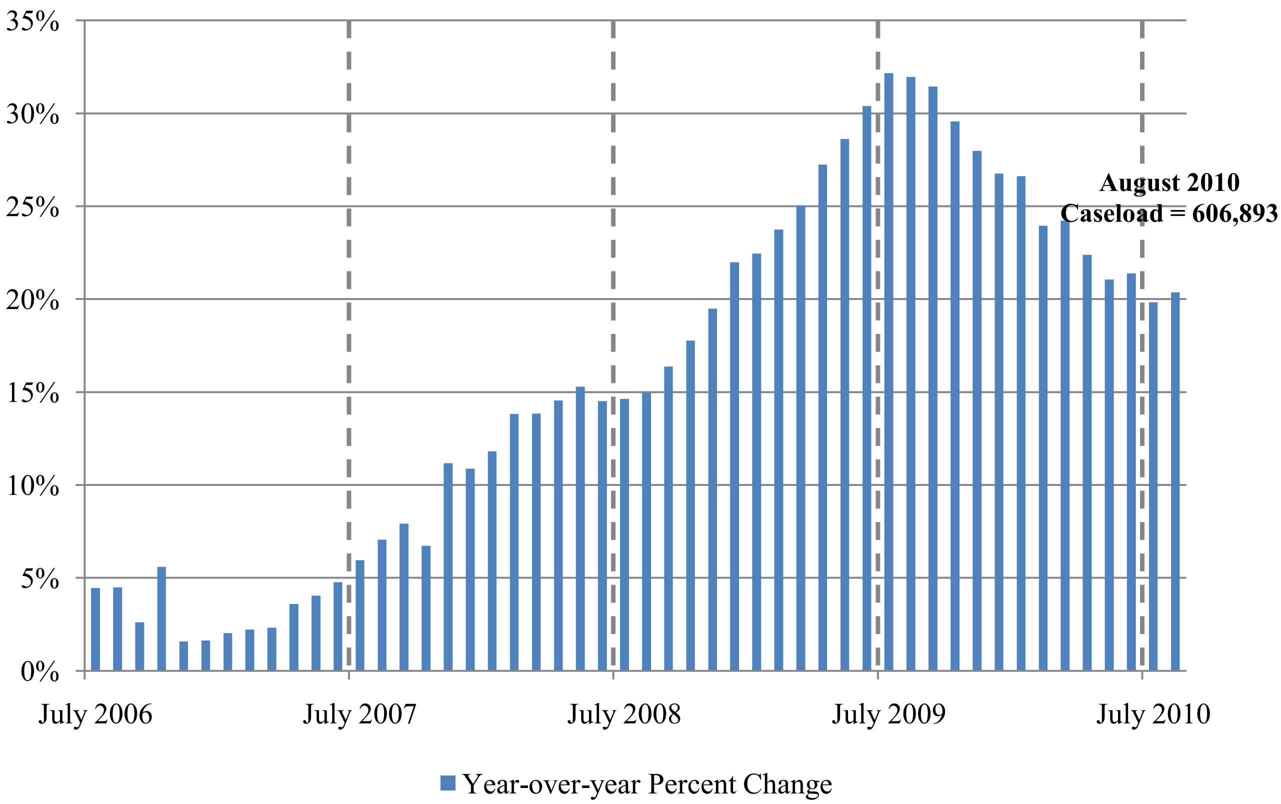
The calculated fiscal 2011 average monthly TCA grant amount will remain unchanged through fiscal 2011. This flat grant amount is made possible because of the increase in the food stamp benefit provided by the American Recovery and Reinvestment Act of 2009. State law provides that the combined value of TCA and food stamp benefits should be no less than 61% of the Maryland Minimum Living Level (MMLL). The increase in the food stamp benefit amount will obviate the need to increase the TCA grant amount in order to meet the MMLL.

The fiscal 2011 budget for TCA is projected to be $2.7 million short of the need based on the estimated caseload increase. It is expected that this shortfall can be covered by TANF funds. In fiscal 2012, despite the estimated decrease in the caseload and total program cost, general fund support will need to increase significantly. With the projected depletion of the TANF balance by the end of fiscal 2011, general fund support is projected to grow to $60.8 million, an increase of $53.7 million over fiscal 2011

Supplemental Nutrition Assistance Program Caseload Trends

The worsening economic climate, combined with increased outreach efforts, has led to steady increases in the number of SNAP recipients over the past two and a half years. As shown in **Exhibit 2**, the caseload grew at an increasing rate in fiscal 2008 and 2009 and continued to grow, albeit at a slower rate, in fiscal 2010. In July 2006, there were 306,002 people receiving food stamp assistance. By August 2010, this number had grown to 606,893. This 100% federally funded benefit resulted in nearly $837 million in spending in Maryland in fiscal 2010.

Exhibit 2
Food Stamp Caseloads
July 2006-August 2010



Source: Department of Human Resources; Department of Legislative Services

Temporary Disability Assistance Caseload and Funding Trends

The downturn in the economy has also resulted in an increase in the TDAP caseload. It is thought that with the increase in the statewide unemployment rate, many of the disabled adults who were marginally employed have lost employment and are seeking TDAP benefits as the program of last resort for this population, which is not eligible to receive TCA benefits. Although the program is relatively small compared to TCA, since it is fully funded with State dollars, the increasing caseload only exacerbates the general fund problem facing the State.

Exhibit 3 shows the large increases in the TDAP caseload and funding that occurred in fiscal 2009 and 2010. The caseload is projected to continue to increase throughout fiscal 2011, topping 21,000 by the end of the year, and remain at that level throughout fiscal 2012 with the average monthly caseload in fiscal 2012 projected at 21,325.

Exhibit 3
TDAP Enrollment and Funding Trends
Fiscal 2006-2012
($ in Millions)

Fiscal Year	Average Monthly Caseload	Total Funding
2006	10,972	$23.8
2007	11,491	24.2
2008	11,645	24.9
2009	15,355	33.4
2010	19,080	41.6
2011 Est.	20,751	45.2
2012 Est.	21,325	46.4

TDAP: Temporary Disability Assistance Program

Source: Department of Human Resources; Department of Legislative Services

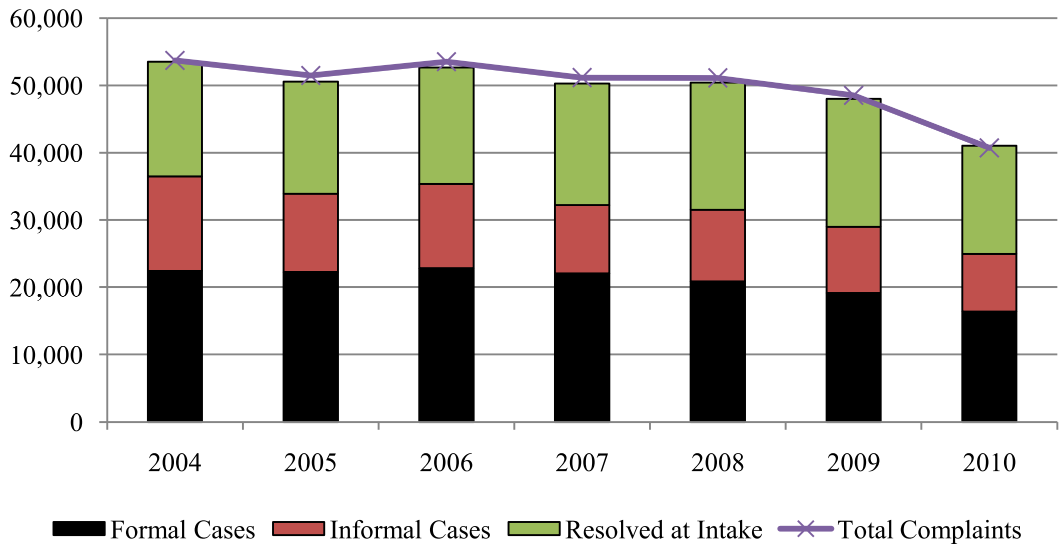
Department of Juvenile Services Population and Financing Trends

For the most part, recent trends in complaints, complaint disposition, and juvenile populations continued in fiscal 2010. The department's budget outlook appears to indicate lower levels of deficiencies than often experienced in recent years.

Population Trends

Exhibit 1 details the total number of complaints received by the Department of Juvenile Services (DJS) in recent years, as well as complaint disposition.

Exhibit 1
Juvenile Complaint and Complaint Disposition
Fiscal 2004-2010



Note: Total complaints typically are 1 to 2% higher than the sum of those resolved at intake and the informal and formal caseload. The difference relates to jurisdictional issues or cases in which a decision is not recorded.

Source: Department of Juvenile Services; Department of Legislative Services

As shown in the exhibit:

- The total number of complaints continues to decline for the third consecutive fiscal year. DJS handled just over 40,700 complaints in fiscal 2010, which reflects a 16.1% decrease when compared with fiscal 2009.

- Formal caseloads, those where DJS believes court intervention is required, continued to fall significantly, with a sharp drop between fiscal 2009 and 2010 (14.5%). However, as a percent of total case dispositions, formal caseloads remained steady at approximately 40.0% of total caseload for the period shown.

- The number of cases resolved at intake dropped 15.1% between fiscal 2009 and 2010. However, as a proportion of the total caseload, cases resolved at intake continue to increase. These cases now account for almost 40.0% of all complaint dispositions. Those cases that are considered to require some form of intervention, but do not rise to the level of court intervention (the informal caseload), also show a similar decline in the actual number of cases (13.1%), but continue to represent a larger fraction of total case dispositions (21.0%).

In terms of youth requiring out-of-home placements, **Exhibit 2** illustrates trends for certain pre- and post-disposition residential placements.

Specific trends identified in the exhibit include:

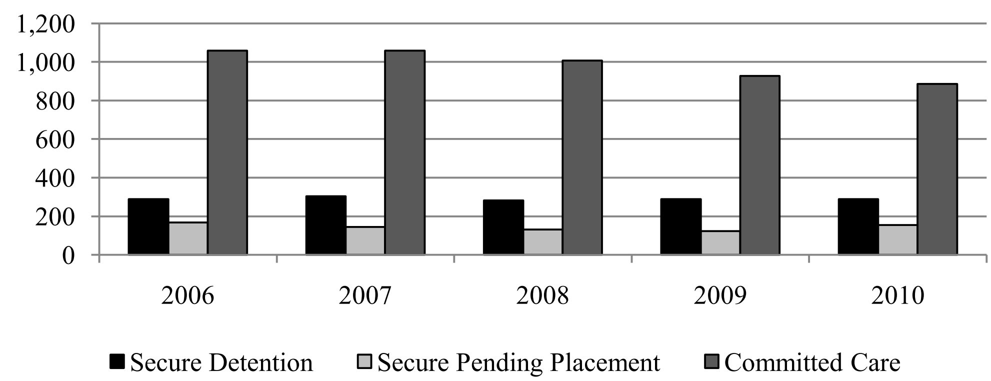
- The utilization of secure detention facilities for pre-disposition youth has remained stable for the second consecutive fiscal year, with an average daily population of 289 youth.

Exhibit 2

Selected Average Daily Population Trends

Department of Juvenile Services

Fiscal 2006-2010



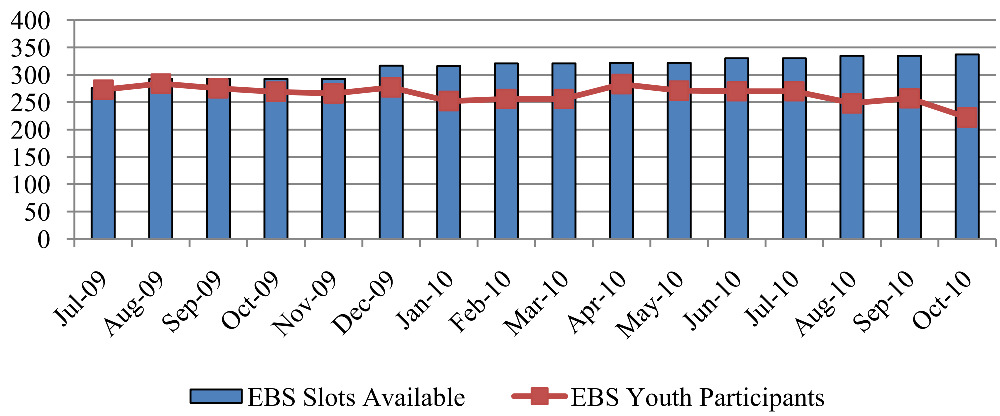
Source: Department of Juvenile Services; Department of Legislative Services

- The number of post-disposition youth held in secure detention facilities pending a permanent residential placement had been in decline for four consecutive fiscal years. Fiscal 2010, however, saw a 25.2% increase over fiscal 2009.

- The average daily population of youth in committed residential placement continued to decline for the fifth consecutive year. The department had 886 youth in committed care in fiscal 2010, a 4.4% drop over fiscal 2009.

DJS is working to reduce the number of out-of-home placements by increasing the utilization of evidence-based services (EBS) programs, such as Family Functional Therapy, Multi-systemic Therapy, and Multi-dimensional Therapy Foster Care. **Exhibit 3** shows the number of EBS slots available for DJS use and the number of youth receiving those services. The department has consistently been able to increase the number of available slots, increasing from 276 in July 2009 to 337 as of October 2010. DJS has been less successful, however, at utilizing those slots. The utilization rate for EBS slots has varied from month to month but has mostly been in decline since the second half of fiscal 2009. DJS attributes this to a combination of factors including staffing issues, a mismatch between slot availability and demand (something the department is seeking to redress by moving slots to different locations), and a lack of referrals.

Exhibit 3
Evidence Based Services Programming Slots
Department of Juvenile Services
Fiscal 2010-2011 (YTD)



EBS: evidence-based services

Source: Department of Juvenile Services; Department of Legislative Services

Financial Trends

Per Diems

With the decline in complaints and out-of-home committed care placements, and after numerous annual deficiency appropriations, it appears that the department's budget for residential per diems is adequately funded. With the new attention placed on expanding in-home evidence-based-services, however, it is likely that DJS will be deficient in funding for these programs.

Staffing

Despite falling populations, overtime levels at many DJS facilities, as well as the use of contractual staff, particularly at the detention facilities, are projected to be much higher than budgeted. This higher level of staffing is considered by DJS to be required to maintain proper oversight and programming at those facilities.

Title IV-E Funding

Although it appeared as a repeat finding in a recent Office of Legislative Audits report, DJS has reached a settlement with the federal government that will allow the department to resolve any outstanding budget issues regarding previous Title IV-E funding assumptions and include funds in the fiscal 2012 budget from this program.

For further information contact: Rebecca J. Ruff Phone: (410) 946/(301) 970-5530

Social Programs

Funding of Home Energy Assistance Programs

Demand for energy assistance programs appears to continue to outpace available funding. The number of applications and households receiving benefits has grown each year since fiscal 2002. Without additional funding, the Department of Human Resources may have difficulty serving the caseload in fiscal 2012.

Background

The Department of Human Resources (DHR) operates two energy assistance programs through the Office of Home Energy Programs (OHEP). The Maryland Energy Assistance Program (MEAP) operates with funds from the federal Low Income Home Energy Assistance Program (LIHEAP) and provides bill payment, crisis assistance, and furnace repair/replacements for a variety of energy sources. The Electric Universal Service Program (EUSP), funded primarily through a surcharge on the bills of electric customers, provides bill and arrearage assistance to electric customers. Arrearage assistance is only available to customers once every seven years. These programs serve households with incomes at or below 175% of the federal poverty level.

Funding Sources and Trends

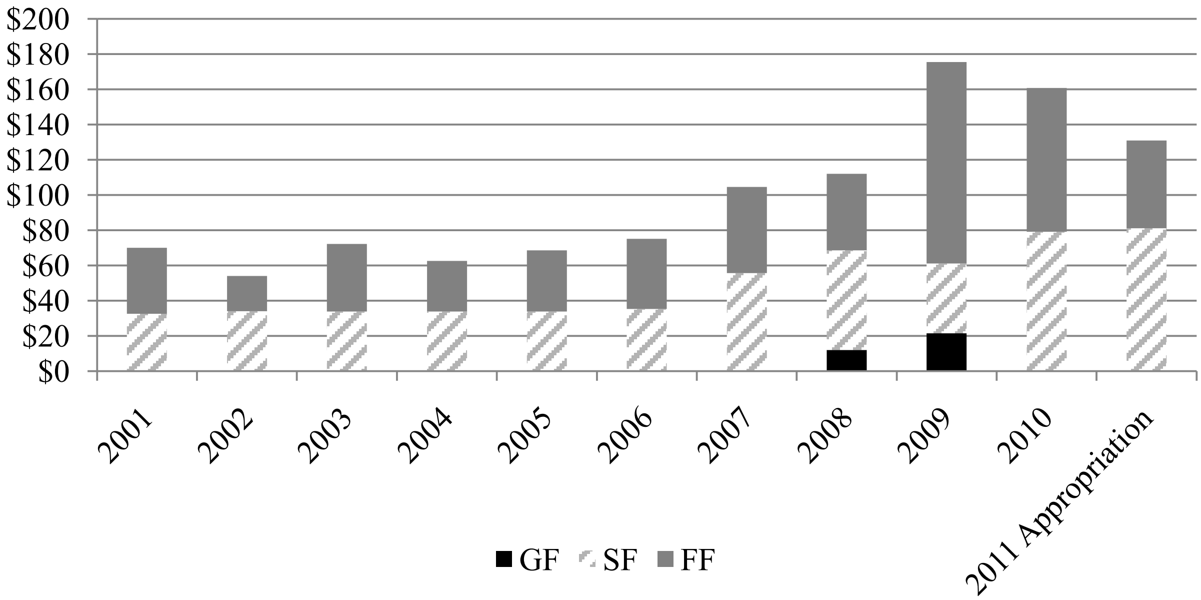
As shown in **Exhibit 1**, OHEP had relatively stable expenditures between fiscal 2001 and 2006, ranging between approximately $54.0 million and $75.2 million. Expenditures dramatically increased in fiscal 2009, from approximately $112.0 million to $175.4 million, but declined in fiscal 2010. The fiscal 2011 budget decreases by approximately $29.8 million from the fiscal 2010 level.

Low Income Home Energy Assistance Program

The majority of funds received by the State from LIHEAP are from a block grant allocation. Other funding may be available to the State through allocations of emergency contingency funds, leveraging grants, or other sources. The State's LIHEAP allocation remained relatively steady from federal fiscal 1985 to 2007, with the allocation below $20 million in only three years and exceeding $36 million in only one year.

In each year of federal fiscal 2009 and 2010, the appropriation for LIHEAP was $5.1 billion nationally, the highest level in program history. The increased national appropriation provided Maryland with approximately $110.2 million in federal fiscal 2009, but changes in the block grant allocation reduced Maryland's share of funding to approximately $90.0 million in federal fiscal 2010. Benefit expenditures, carryover funding, and differences in the State and federal fiscal year typically result in differences between LIHEAP expenditures and the State's share of the appropriation.

Exhibit 1
OHEP Funding and Expenditure History
Fiscal 2001-2011



FF: federal funds
GF: general funds
OHEP: Office of Home Energy Programs
SF: special funds

Source: Governor's Budget Books, Fiscal 2011

The federal fiscal 2011 appropriation for LIHEAP has not been determined. Under President Barack H. Obama's proposal, the LIHEAP appropriation would be $3.3 billion, but a mandatory trigger would provide additional funding if energy costs or poverty rise by a certain level. Through early December 2010, the program is operating under a continuing resolution. Maryland's fiscal 2011 budget assumes closer to historic levels of funding rather than recent experience.

Electric Universal Service Program

EUSP initially collected funding of $34.0 million with $1.0 million of the funding dedicated to weatherization assistance. Chapter 5 of the 2006 special session increased the amount of funds to be collected from electric customers for EUSP to $37.0 million ($24.7 million from commercial and industrial customers and $9.6 million from residential customers). The Budget Reconciliation and Financing Act (BRFA) of 2009 removed the requirement that $1.0 million of the EUSP funds be used for the weatherization program.

Strategic Energy Investment Fund

Chapters 127 and 128 of 2008 allocated 17% of the funds from the Strategic Energy Investment Fund (SEIF) to EUSP and other electricity assistance. The SEIF is composed primarily of the proceeds from the quarterly Regional Greenhouse Gas Initiative carbon dioxide emission allowances. The BRFA of 2009 altered the allocation of the revenue for auctions held between March 1, 2009, and June 30, 2011, to provide up to 50% of the revenue for energy assistance. The BRFA of 2010 extends that allocation through June 30, 2012.

Funding available from SEIF was less than originally anticipated in fiscal 2010 and continues to be lower than expected in fiscal 2011 due to declining allowance prices, which fell to the minimum accepted price ($1.86) in the most recent auction with some allowances failing to sell. The Department of Legislative Services (DLS) anticipates revenue from the SEIF in fiscal 2011 will be approximately $37.3 million rather than the $42.7 million assumed in the budget.

Other Funding

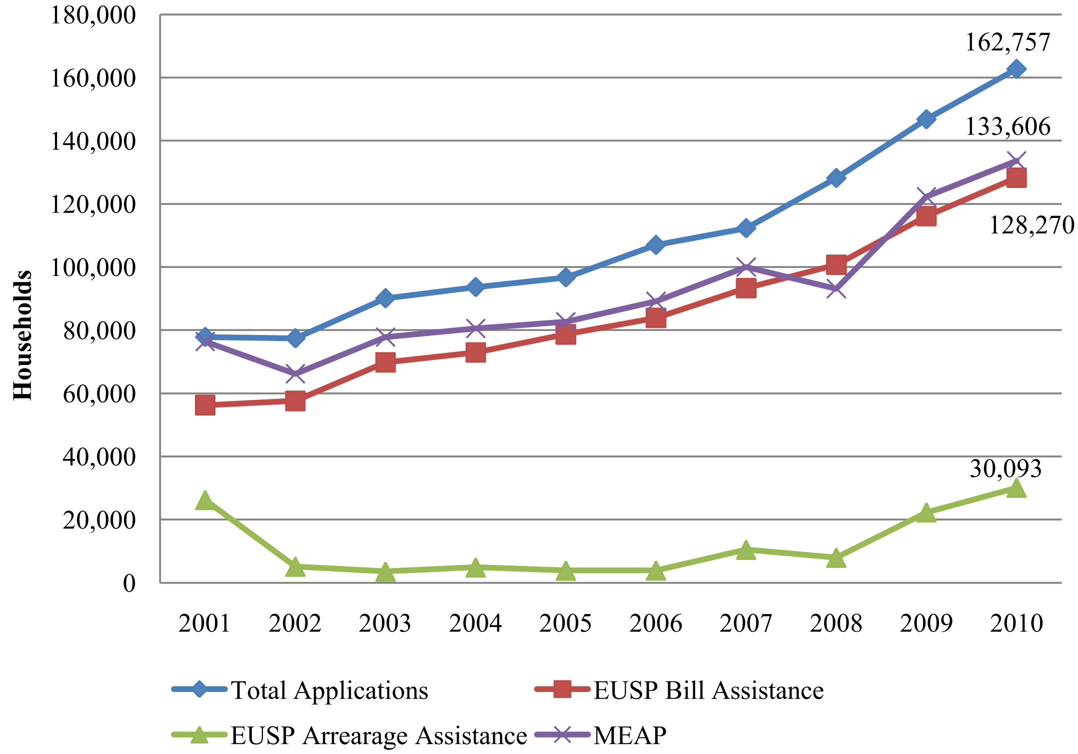
In fiscal 2006 to 2008, funds were available from the dedicated purpose account to support the energy assistance programs. In fiscal 2008 and 2009, general funds were available to support these programs. No general funds were available to support the program in fiscal 2010 and none are currently planned in fiscal 2011.

Application and Benefit Trends

The energy assistance programs have generally experienced growth in the number of applications and households receiving benefits in each year since fiscal 2002, as shown in **Exhibit 2**. The growth has been particularly dramatic since fiscal 2006 due to such factors as rapidly increasing utility costs, the effects of the recession, and an increase in the income eligibility limit. This growth trend is continuing in fiscal 2011. Through September 2010, total applications (9.6%), applications for MEAP (8.6%), and applications for EUSP (8.6%) have outpaced those received in the same time period in fiscal 2010, although applications for arrearage assistance have decreased by 17.9%.

DHR has taken steps to contain costs in the programs, given that the number of households served has increased while available funding has decreased. In fiscal 2010, DHR reduced the percent of the bill paid for the two bill payment assistance programs. Despite declines in bill assistance benefits, arrearage assistance benefits continued to grow, with an average benefit of more than $1,000 in fiscal 2010. In fiscal 2011, DHR intends to reduce the percent of the electric bill paid with EUSP, but for those households with electric heat, the total percent of the bill paid is expected to be equivalent to fiscal 2010 as a result of the MEAP benefit.

Exhibit 2
Application and Benefit Provision History
Fiscal 2001-2010



EUSP: Electric Universal Service Program
MEAP: Maryland Energy Assistance Program

Source: Department of Human Resources

Potential Issues for Fiscal 2011 and Beyond

Given the anticipated availability of funds in fiscal 2011 and current application trends, it is uncertain whether DHR will be able to serve all eligible applicants within the program's appropriation. The fiscal 2012 funding picture is also bleak, as DLS anticipates even lower levels of SEIF revenue (approximately $30.3 million). Without additional funding, beyond the historic federal funding levels and anticipated State funding levels, DHR may have difficulty serving the caseload in fiscal 2012.

Transportation

Overview of the Draft *Consolidated Transportation Program*

The Maryland Department of Transportation's draft 2011 *Consolidated Transportation Program* lists all capital projects funded in the current fiscal year and those planned for the next five years. The 2011 draft *Consolidated Transportation Program* totals $9.4 billion, a $267.4 million increase from the 2010 *Consolidated Transportation Program*, largely due to rebounding revenues, additional bond sales, and the addition of federal funding for the Red and Purple transit lines.

Overview

The *Consolidated Transportation Program* (CTP) is Maryland's six-year capital budget for transportation projects. It is updated annually and includes all major and minor capital projects that the department, its modal administration, and the Washington Metropolitan Area Transit Authority (WMATA) are undertaking in the current year and over the next five-year planning period. Capital projects for the Maryland Transportation Authority are also included in the CTP but are excluded from this analysis. **Exhibit 1** compares six-year spending contained in the 2010 CTP to the 2011 draft CTP.

Exhibit 1
Comparison of Six-year Capital Spending
($ in Millions)

	2010-2015 CTP	2011-2016 Draft CTP	Change	Percent Change
Special Funds	$4,732.7	$5,036.1	$303.4	6.4%
Federal Funds	3,315.1	3,393.4	78.3	2.4%
Other Funds *	1,058.8	944.5	-114.3	-10.8%
Total Funds	**$9,106.6**	**$9,374.0**	**$267.4**	**2.9%**

* Other funds include funds from the Maryland Transportation Authority, customer and passenger facility charges, and certain types of federal aid that do not pass through the Transportation Trust Fund.

Source: Maryland Department of Transportation, 2010 Final *Consolidated Transportation Program*, 2011 Draft *Consolidated Transportation Program*

The total funding level in the 2011 draft CTP increases by $267.4 million (2.9%) from the 2010 CTP. This net increase is due to the following:

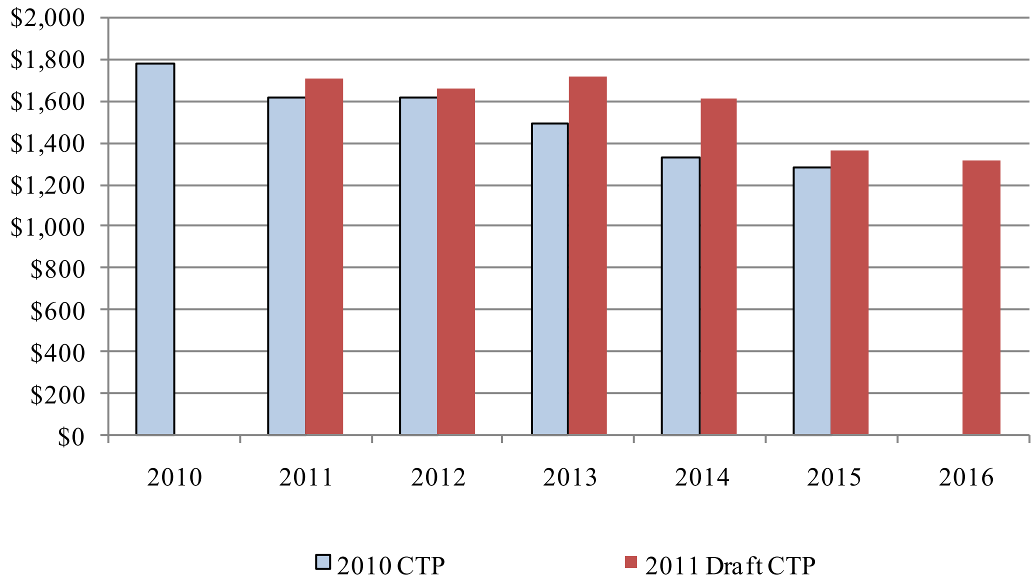
- a $303.4 million increase in special funds due to an expected rebound in transportation revenues following a national recession and increased bond sales. The increase in special funds is driven by increased capital payments to WMATA as required by a new capital funding agreement executed in July 2010 and the State's matching share for two new transit lines currently in the planning stages;

- a $78.3 million increase in federal funds, driven primarily by an increase in expected funds from the federal New Starts Program for two new transit lines, the Purple Line and the Red Line; and

- a $114.3 million decrease in other funds, including a $55.9 million decrease in pass-through federal funds for WMATA and a $57.9 million decrease in other funds for the Maryland Aviation Administration (MAA) largely due to downward revisions to passenger facility charge revenue estimates.

Exhibit 2 compares total capital spending by year in the 2010 CTP to the 2011 draft CTP. Capital spending in each year of the 2011 draft CTP is higher than the comparable years from the 2010 CTP. Significant increases in expected expenditures in fiscal 2013 and 2014 are largely the result of $303.9 million in additional funding for the Red and Purple transit lines to fund completion of engineering and right-of-way acquisitions costs. The additional funding for the new transit lines includes an increase of $220.2 million in federal funds and $83.7 million in special funds to reflect the State's mandatory matching contribution. Despite the expiration in fiscal 2011 of federal funds available through the American Recovery and Reinvestment Act of 2009 (ARRA), capital spending in fiscal 2012 and 2013 is maintained through higher bond sales.

Exhibit 2
Total Capital Spending
Fiscal 2010-2016
($ in Millions)

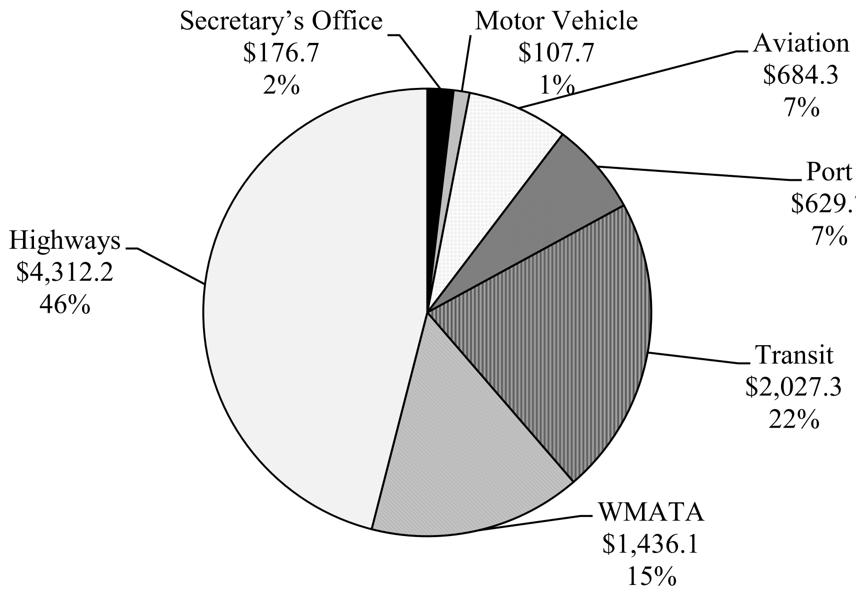


CTP: *Consolidated Transportation Program*

Source: Maryland Department of Transportation, 2010 Final *Consolidated Transportation Program*, 2011 Draft *Consolidated Transportation Program*

Exhibit 3 shows total capital spending for the entire six-year period by mode. As is typical, the State Highway Administration (SHA) receives just under half of total capital funding, and transit (including both the Maryland Transit Administration (MTA) and WMATA) receives just over one-third of the funding.

Exhibit 3
Total Capital Spending by Mode
($ in Millions)



Total Capital Spending: $9.4 Billion

WMATA: Washington Metropolitan Area Transit Authority

Source: Maryland Department of Transportation, 2011 Draft *Consolidated Transportation Program*

Major Project Changes

In total, $119.9 million worth of projects were added to the 2011 draft CTP. Two of these projects with funding totaling $72.3 million are funded through the ARRA. Major project changes include:

- three SHA projects were added to the Construction Program, with a total cost of $26.0 million;
- two projects with a total cost of $62.5 million were added to the Development and Evaluation Program, including one project in the Secretary's Office and one in SHA; and
- two projects totaling $31.4 million were moved from the Development and Evaluation Program to the Construction Program, including one project each from MAA and MTA.

Transportation

Distracted Driving

Traffic fatalities caused by distracted driving, especially those related to texting, have been the focus of state legislative and national attention. The effectiveness of distracted driving laws, the need for additional measures, and the best way to enforce distracted driving restrictions and prohibitions continue to be issues of debate.

Background

In 2008, the National Highway Traffic Safety Administration reported that 5,870 people were killed and 515,000 people were injured in motor vehicle crashes involving driver distraction. In 2009, the federal Department of Transportation convened the first of what is likely to become an annual distracted driving summit involving numerous transportation stakeholders to identify opportunities to establish anti-distracted driving initiatives. At the summit, a determination was made that there are three main types of distracted driving: (1) visual (taking the driver's eyes off the road); (2) manual (taking the driver's hands off the wheel); and (3) cognitive (taking the driver's mind off the task of driving). Although driving distractions may include such activities as using a cell phone, eating and drinking, reading (including maps), grooming, and watching video display equipment, there was a consensus at the summit that the use of a text messaging device is the most alarming because, in doing so, a driver usually must engage in all three types of distraction.

State Laws

The most common approaches that states have taken to address the dangers of distracted driving are to enact variations of bans on the use of handheld cell phones and text messaging devices while driving. According to the federal Department of Transportation, eight states and Washington, DC have banned the use of handheld cell phones while driving, and 30 states and Washington, DC have banned the use of text messaging devices while driving. In addition, some states have enacted bans on the use of handheld cell phones or text messaging devices by novice drivers or bus drivers, or in school or construction zones. Other states have addressed distracted driving issues in a more general manner by prohibiting the practice of distracted driving generally, or by criminalizing a broad and varied set of distracting behaviors, including the use of cell phones and text messaging devices, if the behavior results in the unsafe operation of the motor vehicle. Most of these bans are enforced as a primary offense, meaning that a law enforcement officer may issue a citation for the offense without another motor vehicle offense taking place. A small minority of these bans are enforced as a secondary offense, meaning that a law enforcement officer may only issue a citation if the driver is detained for another motor vehicle offense. Finally, according to the National Conference of State Legislatures and the

Consumer Electronics Association, at least 37 states, including Maryland, restrict or prohibit the placement of certain video display devices in motor vehicles.

Maryland Legislation

In Maryland, a number of legislative initiatives addressing distracted driving issues have been enacted. Chapter 543 of 2005 prohibits a holder of a learner's instructional permit, or provisional driver's license who is younger than the age of 18 years, from using a wireless communications device (including a text messaging device) while operating a motor vehicle. This prohibition is enforced as a secondary offense. Chapter 195 of 2009 prohibits any person from using a text messaging device to write or send a text message while operating a motor vehicle in motion or in the travel portion of a roadway. The reading of a text message, however, was not prohibited. The texting prohibition is enforced as a primary offense. Chapter 538 of 2010 severely restricts a person's ability to use handheld telephones while operating a motor vehicle. (The prohibition does not pertain to commercial vehicle operators who use handheld telephones with push-to-talk technology and are exempted by Chapter 716 of 2010.) Chapter 538 prohibits a driver of a school vehicle that is carrying passengers and is in motion, or a holder of a learner's instructional permit or provisional driver's license who is 18 years of age or older, from using a handheld telephone while operating a motor vehicle. Other drivers 18 years of age or older are restricted to using hands free devices, except when turning the device on or off or initiating or terminating a call. These prohibitions are enforced as secondary offenses. Of the eight states (California, Connecticut, Delaware, Maryland, New Jersey, New York, Oregon, and Washington) and the District of Columbia that prohibit drivers from using handheld telephones while driving, only in Maryland is the offense subject to secondary enforcement. In the other seven states, the offense is subject to primary enforcement.

During the 2010 session, the General Assembly considered but did not pass other legislation to address distracted driving. Various bills attempted to update Maryland law by prohibiting video display equipment that is visible to the driver while driving yet clarifying the authority to use this equipment exclusively for safety purposes. In addition, a bill would have prohibited a person from using a text messaging device to read a text message while operating a motor vehicle in motion or in the travel portion of a roadway. Finally, bills would have addressed distracted driving in a more general manner, as some other states have done. Specifically, the bills would have prohibited a person from operating a motor vehicle in an unsafe manner because of inattention caused by a preoccupying activity, including reading or writing, grooming, eating or drinking, or using a cell phone or text messaging device.

For further information contact: Patrick T. Tracy Phone: (410) 946/(301) 970-5350

Business Regulation

Electricity Markets

Retail electric competition is continuing to develop in the residential sector, as electricity supplier rate offers have been below standard offer service rates for several years. Although demand growth has slowed, discussions continue over the adequacy of future electricity supply. Net energy metering legislation passed last session may need some alteration based on Public Service Commission's (PSC) technical working group recommendations. Power outages from recent storms have caused PSC to investigate the reliability of electric company distribution and communication systems.

Electric Restructuring and Generation Supply

Effective July 2000, the Maryland Electric Customer Choice and Competition Act of 1999 restructured the electric utility industry in the State to allow electric retail customers to potentially shop for electric power from various electricity suppliers. Due to many factors, the robust competitive retail electricity market that some anticipated in 1999 has just recently started to develop in the State. Despite a lack of any substantial new generating capacity in the State, constrained transmission facilities, and little in the way of substantial increase in transmission capacity, the State's growth in electricity demand has been mitigated from energy efficiency and demand side management programs and from consumers using less energy due to the economic downturn.

Residential Retail Competition Legislation and Regulations

During the 2010 legislative session, several measures were aimed at advancing the competitive market for electricity in the State. House Bill 1340 would have required each electric distribution utility to provide competitive suppliers with specified customer account information for its residential and small commercial customers. House Bill 1372 would have required PSC to provide specified user-friendly information on electric customer choice on its website. The latter bill would also have required PSC to develop and air public service announcements publicizing customer choice and to convene a workgroup to advise it on additional customer education mechanisms on customer choice and an appropriate schedule for developing, funding, and deploying customer education materials on customer choice.

While these measures did not pass, PSC indicated during last session that it would pursue five no- or low-cost approaches to customer education, to the extent budgetary resources would allow. These include (1) website enhancement; (2) utility websites; (3) media; (4) in-person education; and (5) coordination with social services agencies.

Further, PSC has adopted regulations that electricity suppliers have supported as ways to provide an environment conducive to market entrants. Electric distribution utilities must bill customers for the electricity suppliers' services and pay electricity suppliers the amount due minus a PSC-approved percentage that reflects a measure of realized uncollectible expenses. With respect to credit, collections, and disconnection of service, electric distribution utilities must impose the same terms on customers receiving standard offer service (SOS) as on those supplied by competitive suppliers. Recent regulations allow the electric distribution utilities to choose whether their consolidated billing agreements will include the purchase of supplier receivables or proration of customer payments. If the electric distribution utility chooses to purchase supplier receivables, the receivables must be purchased with full and timely cost recovery for the electric distribution utility. If the electric distribution utility chooses to prorate customer payments, a payment must be allocated between the electric distribution utility, the competitive supplier, and any other party in proportion to the percentage of the combined charges on the customer's total bill.

Rates, Alternative Suppliers, and Competition

While introducing "customer choice" of supply services, the 1999 restructuring act set a mandated rate reduction and a cap on the reduced rates. Rate cap restrictions have now expired for all customers in the State, meaning that all customers are subject to market rates, either by directly choosing a competitive supplier, or by taking SOS from the electric distribution utility. For residential SOS customers, the price of supply depends on the results of wholesale electric supply auctions which use a bid request process for each electric distribution utility's load obligations. Bid offers with the lowest price are selected. Prices of commodities used to generate electricity have recently decreased, resulting in lower SOS rates.

Exhibit 1 shows the percentage increases for the average annual total bill of a residential consumer from the auctions to procure power during the period from July 1, 2004, to May 31, 2011, for the investor-owned utilities (IOUs). Although early on electric restructuring primarily benefited big electricity users such as industrial customers and State and local government operations, residential customers are now starting to realize some benefits as suppliers have started to offer products to these customers. As of September 2010, competitive suppliers served approximately 9.6% of residential customers, as compared with 25.8% of small commercial, 52.9% of mid-commercial, and 87.8% of large commercial/industrial customers. The average annual total bill generally increased every year until the bills customers have or will receive during the June 1, 2010 through May 31, 2011 period.

Exhibit 1

Percentage of Rate Increase/Decrease for Average Annual Total Bill[1]
SOS Auctions for Residential Load
July 1, 2004 – May 31, 2011

	Date Rate Caps Ended	2004 Auctions: July 1, 2004-May 31, 2005	2005 Auctions: June 1, 2005-May 31, 2006	2006 Auctions: June 1, 2006 for Pepco/Delmarva; July 1, 2006 for BGE – May 31, 2007
Pepco	June 30, 2004	16%	4.5%	39%
Delmarva	June 30, 2004	12%	5.8%	35%
BGE	June 30, 2006	Not applicable	Not applicable	72%[2]
Allegheny	Jan. 1, 2009	Not applicable	Not applicable	Not applicable

	2007 Auctions: June 1, 2007-May 31, 2008	2007/08 Auctions: June 1, 2008-May 31, 2009	2008/09 Auctions: June 1, 2009-May 31, 2010	2009/10 Auctions: June 1, 2010-May 31, 2011
Pepco	6.9%	5.5%[3]	5.3%	(8.9%)
Delmarva	5.1%	2.7%[3]	(0.6%)	(6.7%)
BGE	50.4%	7.6%[4]	0.8%	(8.4%)
Allegheny	Not applicable	15.7%[5]	5.9%	(3.3%)

	Average Estimated Annual Bill: June 1, 2010 – May 31, 2011
Pepco	$1,765 (at avg. consumption of 950 kWh/mo.)
Delmarva	$1,703 (at avg. consumption of 1,100 kWh/mo.)
BGE	$1,826 (at avg. consumption of 1,000 kWh/mo.)
Allegheny	$1,442 (at avg. consumption of 1,300 kWh/mo.)

(1)Average annual total bill includes distribution, transmission, and SOS costs.
(2)Under Chapter 5 of the 2006 special session, the actual increase billed to customers was limited to 15% for 11 months; the remainder was deferred under Rate Stabilization Plan I.
(3)The impact of recent distribution rate increases is included in the percentage increase.
(4)The impact of charges for recovery of deferred Senate Bill 1 revenue and credits for nuclear decommissioning and reinstatement of the SOS margin in June 2008 are included in the percent increase.
(5)Effective January 1, 2009, through May 31, 2010; includes an estimated rate for the Rate Transition Surcharge associated with the phased-in 15% year-over-year rate increase.

SOS: Standard Offer Service

Source: Public Service Commission

As of November 2010, nine competitive electricity suppliers are offering a total of 20 alternative plans to SOS for BGE residential customers, at least 13 of which were below SOS rates; three suppliers are offering 8 alternative plans to Delmarva customers, at least 4 of which were below SOS rates; four suppliers are offering 12 alternative plans to Pepco customers, at least 7 of which were below SOS rates; and three suppliers are offering 8 alternative plans to Allegheny customers, 5 of which were below SOS rates. Although most of these plans have a "green" energy component, many of the offers are lower than SOS rates. Among the IOUs service territories, as of November 2010, the price to compare for BGE's SOS was \$0.1003/kWh, Delmarva's SOS was \$0.0940/kWh, Pepco's SOS was \$0.1024/kWh, and Allegheny's SOS was \$.0787/kWh. Over 128,300 BGE residential customers (11.5% of total customers), almost 6,100 Delmarva residential customers (3.5%), over 51,300 Pepco residential customers (10.6%), and over 6,300 Allegheny residential customers (2.9%) had switched to competitive supply by September 2010. SOS prices in the service territories of electric cooperatives have so far discouraged all competitive supplier offers – as of November 2010, SMECO's SOS price was \$.0946/kWh and Choptank's was \$.0812/kWh.

Adequacy of Electric Supply

For the past several years, portions of the State east of Frederick have experienced higher electricity prices than most other areas in the Mid-Atlantic region due in part to increasing demand for electricity and a dearth of corresponding increases in the capacity of economically efficient transmission and generating facilities serving central and southern Maryland and the Eastern Shore. Under federally approved tariffs, the regional transmission operator PJM Interconnection has imposed surcharges on electricity delivered in these areas in order to stimulate development of new transmission and generating facilities by the private sector.

Maryland legislators and regulators have responded by studying options to address the imbalances in the demand for and supply of electricity in three ways – increasing or upgrading transmission facilities serving the region; increasing, upgrading, and recommissioning generating facilities in the region; and implementing demand response, energy efficiency, and conservation measures. Chapter 549 of 2007 required PSC to include, among a number of matters relating to restructuring, a study of the electricity industry's capacity to serve Maryland in the near future, focusing on the available and planned generation and transmission facilities. PSC responded with options to alter the State's regulatory structure under the general rubric of "reregulation," although that term was purposely expanded to include many different options for enhanced State control over a competitive market as well as a strict return to the former rate regulation regime.

Gap RFP and Demand-response

Following up on the findings of its reports under Chapter 549, PSC instituted Case No. 9149, the "Gap RFP" case, in August 2008, to explore means to cover a then-perceived gap between expected demand in the State and the electric supply resources needed to meet that demand. As of 2008, PSC and PJM had both expected a shortfall in the electricity available to be delivered in the State as soon as 2011 – with the possibility of rolling brownouts in the immediately ensuing years. The proceeding developed a model request for proposals (RFP) for utilities to use for procuring certain generation resources and demand response measures to close the gap in resources needed for reliable electricity delivery.

IOUs used the model RFP to procure firm demand-response contracts from curtailment service providers (CSP) through an interruptible load for reliability program. CSPs manage the electric supply demand of customers, chiefly larger industrial and commercial customers, whose operations are flexible enough to shut down or reduce demand on a temporary basis with short notice. Based on weather and economic forecasts, PJM and the utilities project electric supply demand days in advance. When demand is likely to strain the resources available to supply and deliver electricity in the region, such as a hot summer afternoon in central Maryland, CSPs will be notified to decrease electricity use at the facilities they manage so that all customers with uninterruptible demand will receive electricity as needed and managed brownouts will not be needed to balance supply and demand. Although demand response is now settled in the utilities' EmPOWER Maryland portfolios, potential devaluation of demand responses resources by PJM has caused PSC to conduct proceedings to forestall that from occurring.

Long-term Contracts

At the start of electric restructuring, many expected acceleration in the development of competitive power merchant plants (not tied to a traditional distribution facility). Until recently, few merchant plants in Maryland have proceeded beyond obtaining a Certificate of Public Need and Convenience. One plant, fired by natural gas, was proposed in Southern Maryland by Competitive Power Ventures (CPV). Originally expected to be financed by venture capital, the CPV plant had difficulty in obtaining sufficient private financing to proceed to construction for two reasons – the dearth of capital available in a severely strained economy and uncertainty in the ability of a merchant plant to remain profitable over the long term needed to finance its construction. The former reason was beyond anyone's control, while the latter reason was peculiar to a deregulated environment where electricity customers are free to move to a less costly supplier. Absent the ability of a merchant plant's owner to include the construction charge in customers' rate base and so guarantee a long-term income stream, the profitability of the merchant plant is subject to fluctuations in fuel costs and the possibility that a competitor may enter the market with a newer, more efficient plant before the merchant plant is paid off.

In spring 2009, CPV filed a motion with PSC in an existing SOS proceeding, Case No. 9117, asking PSC to evaluate whether one or more distribution companies should be ordered to enter into a long-term supply contract with the CPV plant, essentially bringing the supply into the companies' distribution rate base, or otherwise blending that supply into the utilities' SOS. Rather than approve or disapprove the motion, PSC bifurcated the proceeding, placing the issue under a new case (9214). In the new case, PSC asked whether there were any other offers that compare with CPV's proposal, and set a December 2009 deadline for responses. Although the concept of long-term contracts had previously been raised by PSC in its Chapter 567 studies, the contract model had a tepid reception in related legislative proceedings. Although CPV has not moved forward in 2010, Case No. 9214 is ongoing at PSC as a forum for assessing different methods to stimulate development of supply, transmission, and demand response to meet the State's forecasted electricity needs. It remains to be seen whether long-term contracts will resurface in the 2011 session, or whether other means to finance merchant plants in a tight economy will garner legislative attention.

Transmission Upgrades

Among the resources identified in the Gap RFP process, the subsequent RPM auctions for capacity in later years, and the economic recession that developed in late 2008, PJM now forecasts that reliability gap concerns for central Maryland have been delayed until 2014 or later. That forecast relies on the premise that certain new and upgraded transmission facilities will come online in a timely fashion.

PJM maintains a regional transmission expansion planning process as a mandatory evaluation system. Three transmission lines are identified in the queue to serve central and eastern Maryland – the TrAIL, PATH, and MAPP lines. TrAIL will run as a 765 kilovolt (kV) facility from southern Pennsylvania through West Virginia to Loudon County, Virginia, and is under construction with a scheduled in-service date of 2011. The PATH line is planned at the same 765 kV level to run from the John Amos generating station in West Virginia to a proposed substation near Kemptown, Maryland. PATH has received partial approvals in West Virginia and Virginia, and has its application pending at PSC. PJM believes that PATH will be needed in 2015, assuming that the TrAIL line is in service in 2011. MAPP has been scaled back to run only from Virginia to the Eastern Shore, terminating at Indian River, Delaware. In light of lower demand projections following the economic recession, this line may not be needed until after 2014. The application for MAPP at PSC is suspended, though it may be restarted. Uncertainty regarding the fate of the proposed Calvert Cliffs 3 nuclear power plant may alter the assessment of the need and timing of MAPP. All three lines have encountered opposition at the local level.

An additional proposal has surfaced in the news. In October 2010, Google, Inc. announced formation of a business partnership to propose installation of an offshore transmission line extending from the New Jersey shore south as far as North Carolina. The line would provide support for offshore wind turbines generating in the relatively strong and constant wind currents a few miles off of the Mid-Atlantic coastline. Details are not yet forthcoming about how far offshore the transmission line would be, nor where connecting lines would bring wind-generated electricity on shore. The project has not yet been filed in with PJM. Until more concrete plans are announced, it is uncertain whether this transmission line would fall under PSC's jurisdiction.

Long-term Electric Supply Report

To assess future electric energy use requirements, Executive Order 01.01.2010.16 requires the Department of Natural Resources' Power Plant Assessment Program to prepare a long-term electricity report for the State by December 1, 2011; this report will be updated every five years. The report must analyze electric energy use and peak electric demand forecasts, including existing and planned generation and demand response capacity in the State; demand related to the transition to an electricity-based transportation system; existing transmission system in the PJM region and any planned improvements and expansions; and the extent to which the State's power supply requirements over the 20-year analysis period exceed the capacity of existing and planned generation resources. The report must examine alternative sources of electric capacity to address any gaps between supply requirements and the capabilities of existing and planned electric generation and transmission system resources. In examining sources, the report must consider the costs of generation, reliability of supply, adverse environmental impacts, conventional and renewable generation capacity additions, options for fuel-switching, energy conservation and energy efficiency, demand response, smart grid technologies, energy storage technologies, and transmission system congestion and expansion. In preparing the report, the department must consider input from a variety of interests including representatives of government, electric and gas companies and suppliers, consumer advocates, and environmental groups. The department must hold public meetings to review its findings.

Net Energy Metering

Net energy metering measures the difference between the electricity that is supplied by an electric company and the electricity that is generated by an eligible customer-generator and fed back to the electric company over the eligible customer-generator's billing period, and bills the customer only for the difference. An "eligible customer-generator" is a customer that owns and operates, or leases and operates, a biomass, solar, wind, or micro-combined heat and power electric generating facility that is: located on the customer's premises or contiguous property; interconnected and operated in parallel with an electric company's transmission and distribution facilities; and intended primarily to offset the customer's own electricity usage.

Chapters 437/438 of 2010 changed the way an eligible customer-generator may accrue credits from excess generation from a kilowatt-hour (kWh) basis to a dollar basis. The acts repealed the requirement that an accrued generation credit expire at the end of a 12-month period and required that the value of generation credits be based on the prevailing market price of electricity in the PJM energy market. The acts specified conditions under which an electric company must provide payment to an eligible customer-generator for excess generation credits. In implementing regulations, PSC was required to consider a number of factors, including the technology available at each electric company and the appropriate value of generation credits.

The acts also required PSC to convene a technical working group to address issues relating to the pricing mechanisms for different hours and seasons, meter aggregation, and the transfer of generation credits or aggregation of generation among separate accounts. PSC must report by January 1, 2011, to the Governor and appropriate committees on the technical workgroup's recommendations. PSC's workgroup was duly appointed and met during the summer, but was unable to reach consensus on regulations to propose to PSC.

Ultimately, at a rulemaking session on October 26, 2010, PSC adopted regulations that would require generation credits to be valued based on PJM's locational marginal pricing mechanism, even though the acknowledged result would decrease the value of credits for most net-metered generation other than summer-peak solar generation. The regulations also include physical and virtual aggregation of multiple meters for certain customer sectors in accordance with legislative suggestions to the working group in Chapters 437 and 438. It is expected that legislation will be introduced in the 2011 legislative session to clarify or further alter the pricing mechanism for generation credits in order to support the value of existing installed net metering generation systems and the deployment of additional similar distributed generation.

Reliability of Pepco's Distribution and Communication Systems

Several violent thunderstorms hit the Pepco service territory on July 25, August 5, and August 12, 2010, causing power outages to 297,000, 75,000, and 98,000 customers, respectively. PSC received many complaints about the outages, including the failure of Pepco's automated communication system during the outages. Due to the frequency, number, and duration of the power outages and the apparent breakdown of adequate communication by Pepco to its customers during the outages, PSC initiated an investigation – Case No. 9240 – into the reliability of Pepco's substations and infrastructure in extreme weather situations, the quality of distribution service Pepco provides its customers, and Pepco's storm preparedness efforts.

In response to PSC, Pepco filed a major storm report; emergency response, reliability enhancement, and storm restoration plans; an internal residential customer satisfaction survey relating to electric system reliability; a report indicting costs for reliability distribution system activities; a report relating to the effectiveness of tree wire in preventing or mitigating outages; a report indicating procedures for determining and disseminating estimated times of restoration to customers and communicating with customers during outage situations; a report indicating measures taken to remediate and prevent the reliability, restoration, and communication problems that occurred; and a report indicating standards used in providing customer service and assuring reliability in connection with restoration and communication during outage events.

A report by the independent consultant selected to review reliability of Pepco's electric distribution system, including a survey of best practices from electric companies in other states and a compilation of standards used by other utility commissions to measure distribution system reliability, is to be filed by March 4, 2011. As an evidentiary proceeding, PSC set a procedural schedule that requires the filing of testimony in May 2011 and hearings in June 2011.

Business Regulation

Workers' Compensation Insurance

Overall, the workers' compensation system in Maryland continues on a stable course, with a minimal increase in premiums for employers; however, some cost drivers and benefit concerns remain. Several legislative issues governing workers' compensation in the 2011 session may be related to fair and equitable benefits provided to dependents, the regulation of the Injured Workers' Insurance Fund, medical presumptions, and prescription drug costs.

Workers' Compensation System Is Stable but Costs May Climb

Maryland's pure premium rate filed by the National Council on Compensation Insurance (NCCI) will increase by 5.7% in 2011, meaning employers in the State will pay more in workers' compensation insurance premiums next year. The premium rate increased for the second consecutive year, after decreasing each year between 2006 and 2009. Pure premium rates, one component of overall premium rates, are set at a level necessary to prefund projected claim loss payments to injured workers. Despite the 2011 increase, the cumulative rate change between 2006 and 2011 is a slight increase (1.6%), which indicates a relatively stable market in the State. According to NCCI, Maryland's premium rate index per $100 of payroll – accounting for the 2011 adjustment – is the ninth lowest in the nation. Further, according to a 2008 study by Actuarial & Technical Solutions, Inc., the State ranks tenth lowest in premiums for manufacturing jobs and seventh lowest in premiums for office and clerical operations jobs.

Although the State workers' compensation system is considered one of the more stable and functional systems in the country with good benefits and low costs as compared to other states, worrisome trends exist that warrant monitoring. The State's national ranking, twenty-second out of the 46 states included in a NCCI study, for lowest average total benefits (medical and indemnity) per employee is slightly less favorable to injured workers than the State's standing *vis à vis* costs to employers and insurers. However, employers and insurers can expect that medical costs for injuries suffered on the job will follow the nationwide trend and continue to rise. Moreover, the number of workers 45 to 64 years of age peaked in 2010; the injuries incurred by these workers tend to be more severe and sometimes more difficult to treat, with longer recovery periods and corresponding higher costs.

Workers' compensation costs may also trend upward over the coming 12 to 24 months if the current economic conditions improve in the near future. Job losses during a recession typically mean that younger, lesser-experienced workers are laid off and fewer claims are filed. It is assumed that these individuals eventually become employed, meaning that the volume of claims – which has been declining steadily in recent years – may increase. Additionally, the economic downturn may be depressing wages and employers' payrolls, on which workers' compensation premiums are based, further limiting costs. Nonetheless, the State's unemployment rate is somewhat lower than the national average, which may limit the extent economic changes affect the provision of workers' compensation in the State.

Legislative Issues Likely to Surface in 2011

Workers' compensation-related legislation in the 2011 session will likely include proposals introduced during the 2010 session, as well as issues that have not been addressed in recent years. Legislation was introduced during the 2010 session that would have changed the calculation of benefits paid by employers or insurers to surviving spouses, children, and other dependents to replace income lost when a person dies due to a work-related accident or occupational disease. The General Assembly also considered legislation that would have changed the status of the Injured Workers' Insurance Fund (IWIF) from that of a State agency to a statutorily created not-for-profit, mutual insurer. Legislation that would have altered the occupational disease presumption related to firefighters and other similar personnel is also likely to be reintroduced. Additionally, attempts may be made in 2011 to restrict physicians from dispensing repackaged prescription drugs which drives up medical costs in workers' compensation claims. The Joint Committee on Workers' Compensation Benefit and Insurance Oversight may meet in early 2011 to review these and other potential issues.

Death Benefits

Under current law, if an employee dies while receiving certain workers' compensation benefits or the employee dies as the result of a compensable injury, the employee's dependents are entitled to a weekly benefit. The benefits vary, depending upon whether the dependents are partial or total dependents. The law does not explicitly define total and partial dependents and instead authorizes the Workers' Compensation Commission (WCC) to determine dependency on a case-by-case basis. Partial dependents are entitled to a benefit equal to two-thirds of the deceased employee's average weekly wage, not to exceed the State average weekly wage, for the period of the dependency or until an overall total of $75,000 has been paid (this cap was increased from $60,000 under Chapters 616 and 617 of 2009).

Wholly dependents (a surviving spouse or a child) are entitled to a benefit equal to two-thirds of the deceased employee's average weekly wage, not to exceed the State average weekly wage, up to an overall total of $45,000. If the wholly dependent remains wholly dependent after the $45,000 cap is reached, he or she is entitled to continued payments. If the wholly dependent becomes partially self-supporting, the weekly benefit is paid similar to that provided to individuals who were partly self-supporting at the time of death (for the period of the dependency or until an overall total of $75,000 has been paid).

During the 2009 session, the General Assembly required WCC to form a workgroup during the 2009 interim to study the statutory provisions related to death benefit payments to dependent individuals. Part of the impetus for studying the State's death benefits provisions resulted from the perceived inequity of the provision of benefits following the deaths of two workers in a Western Maryland mining accident in 2008. Each miner left behind a dependent spouse. Because one of the spouses had a part-time job and earned a small income, her benefits were capped at $60,000; the spouse who did not work was entitled to lifetime benefits (assuming her dependency status did not change).

Senate Bill 507/House Bill 1008 – which reflected the workgroup's recommendations to address this disparity – were introduced during the 2010 session, but neither bill was enacted into law due to an unresolved issue. Generally, the bills would have required benefits to be paid to dependents proportionally to reflect family income. The actual amount of benefits received by the dependents would have been based on the average weekly wage of the deceased and the percentage of the total earnings the deceased contributed. Dependents would have received their calculated benefits for at least 5 and up to 12 years. There would have been several exceptions, including that all dependents terminate on the date the deceased would have reached 70 years of age, if 5 years of benefits had been paid. Following the 2010 session, WCC was requested to reconvene the workgroup during the 2010 interim to further discuss the unresolved issue. The issue relates to the "stacking of death benefits with other similar benefits provided under a retirement or pension system for dependents of public safety employees who are also subject to the workers' compensation presumption provisions. Local governments are concerned about the fiscal implications of such "stacked" benefits. The workgroup is anticipated to meet in late November 2010 and report its recommendations before the 2011 session.

Regulation of the Injured Workers' Insurance Fund

IWIF administers workers' compensation for the State and provides workers' compensation insurance to firms unable to procure insurance in the private market. IWIF was established in 1914 as the State Accident Fund, part of the State Industrial Accident Commission. In 1941, it became a separate agency and took its current name in 1990. IWIF only writes policies in Maryland and is the exclusive residual workers' compensation insurer in the State. IWIF cannot decline businesses that seek coverage and must adjust rates in response to changing market conditions. In Maryland, IWIF is a major insurer with approximately one-fourth share of the market.

An October 2009 report by Conning Research and Consulting, a firm specializing in insurance industry analysis, found that workers' compensation state funds, such as IWIF, have achieved a significant share of the overall insured market countrywide. The report found that state funds write approximately 25% of the workers' compensation policies nationwide and that the market share of these funds is increasing in many of the states in which they write.

About 24 states currently have state statutorily created funds of which (1) four state funds are "exclusive state funds," meaning that private insurers are not authorized to operate in those states; and (2) 20 state funds are "competitive state funds," meaning that a voluntary market also exists to provide employers with the choice of purchasing coverage from the state fund or a private insurer or being self-insured. In the remaining 26 states and Washington, DC, private insurers provide all workers' compensation coverage to employers except for those that self-insure. Over the past decade, state legislatures have made changes with regard to the charter of their state statutorily created funds; for example, both Nevada's and West Virginia's exclusive state funds were privatized into private mutual companies and Arizona's competitive state fund was converted from a state insurer to a mutual company. Further, there have been attempts in several states to use the surplus of state statutorily created funds to balance state budgets.

Senate Bill 507/House Bill 1318 of 2010 (failed) would have altered the organization and regulation of IWIF to make the insurer more independent from State government. IWIF would have retained its public purpose as the insurer of last resort and would still have been required to guarantee the availability of workers' compensation insurance in the State. Moreover, the bills did not affect IWIF's core functions, but specified that IWIF is not a unit of State government, the State has no interest in the assets of the company (assets are held by IWIF in trust for policyholders, injured workers, and the company's creditors) and, except as specifically identified in law, IWIF is not subject to any law that affects governmental units. The Budget Reconciliation and Financing Act of 2010 would have transferred $20 million from IWIF to the State's general fund to help balance the budget. This provision was stricken as discussions ensued as to whether the State has the authority to take these funds. A Maryland Attorney General Letter of Advice dated February 19, 2010, implies that the authority to make such a transfer would be strengthened under certain circumstances, such as a prepayment of premium tax should legislation making IWIF subject to the tax be proposed or payment in exchange for legislation making IWIF independent.

Medical Presumptions

A 2007 study conducted by the University of Cincinnati analyzed information on 110,000 firefighters from around the nation and found that firefighters are at a greater risk of developing several types of cancer than the general population. According to the study, firefighters are exposed to many compounds that the International Agency for Research on Cancer has designated as carcinogens; these include benzene, diesel engine exhaust, chloroform, soot, styrene, and formaldehyde. The substances can be inhaled or absorbed through the skin and occur both at the scene of a fire and in the firehouse. The study found that firefighters are at increased risk of developing testicular, prostate, skin, brain, rectum, stomach, and colon cancers as well as multiple myeloma, non-Hodgkin's lymphoma, and malignant melanoma.

Workers' compensation law establishes a presumption of compensable occupational disease to certain public employees who are exposed to unusual hazards in the course of their employment. In general, the employees specified by the law may be presumed to have an occupational disease that was incurred in the line of duty if (1) the employee has heart disease, hypertension, or lung disease that results in partial or total disability or death; or (2) the employee suffers from leukemia or pancreatic, prostate, rectal, or throat cancer (caused by contact with a toxic substance encountered in the line of duty) and the disease prevents the employee from performing normal job duties.

In expanding the types of occupational diseases that would be applicable under the presumption provision, Senate Bill 646/House Bill 1280 of 2010 (failed) would have stipulated that paid or volunteer firefighters or other similar personnel are presumed to have an occupational disease if they have (1) a strain of hepatitis recognized by the medical community; (2) meningococcal meningitis; or (3) tuberculosis that is suffered in the line of duty and results in partial or total disability or death. The employees specified by the bill would also have been presumed to have an occupational disease if they suffer from multiple myeloma, melanoma, esophageal, lymphatic, testicular, brain, lung, bladder, kidney, breast, liver, ovarian, cervical, or urethral cancer – or cancer located in the digestive system – that is caused by contact with a toxic substance that the individual has encountered in the line of duty. As passed by the House, House Bill 1280 added a provision specifying that it is rebuttable as to whether employees are presumed to have an occupational disease that was incurred in the line of duty.

Prescription Drug Cost Management

A growing number of prescribing physicians are repackaging and dispensing medications normally dispensed by retail pharmacies; repackaging and dispensing of drugs by physicians increases medical costs for the workers' compensation system because physicians often bypass state fee schedules and pharmacy cost controls and improperly inflate the average wholesale price of commonly dispensed drugs. Thus, the dispensing physician may profit from the repackaging of prescription drugs, but costs to the workers' compensation system increase as a result. According to NCCI, the cost per claim in cases where physicians dispensed prescription drugs increased in Maryland from about $70 per claim in 2007 to about $150 per claim in 2008.

Several states have attempted to curb the practice of physician dispensed or repackaged drugs in an effort to lower medical expenses in workers' compensation claims. For example, in 2007, California required physician dispensed or repackaged medications to be reimbursed at the California fee schedule. A California Workers' Compensation Institute-initiated study indicated that repackaged drugs represented over half (55%) of all filled prescriptions and 59% of all workers' compensation prescription payments in California prior to 2007. However, as a result of the 2007 reforms, repackaged drugs accounted for just 8% of workers' compensation prescriptions and 6% of pharmaceutical payments in 2008.

Business Regulation

Unemployment Insurance

Despite an infusion of federal funds from the passage of unemployment insurance modifications made last session, Maryland employers will continue to pay from the highest tax rate table for calendar 2011 due to the low balance of the Unemployment Insurance Trust Fund. As directed by 2010 measures, the Joint Committee on Unemployment Insurance Oversight is anticipated to consider a package of changes to the benefits structure with an overall cost-neutral impact and changes to the provisions relating to employers engaged in seasonal industries.

Unemployment insurance (UI) provides temporary, partial wage replacement benefits to persons who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Funding for the program is provided by employers through UI taxes paid to both the federal government for administrative expenses and to the states for deposit in their respective UI trust funds.

Employer Taxes 2007 to 2010

Legislation enacted in Maryland in 2005 altered Maryland's UI charging and taxation system by creating a series of experience tax rate tables that are based on the balance in the Maryland UI trust fund. An employer's unemployment experience determines the rate charged within each table. If the balance of the UI trust fund exceeds 5% of total taxable wages in the State (as measured on September 30 of the current year), the lowest tax rate table (Table A) is used to calculate employer rates for the following calendar year. For calendar 2007 and 2008, employers paid from Table A, which imposes a minimum tax rate of 0.3% (on the first $8,500 of annual wages of each employee) or $25.50 per employee. Since the UI trust fund balance on September 30, 2008 was short by $53 million of the amount needed to remain in the lowest tax table for the following calendar year, employers paid from Table B in calendar 2009 (a minimum tax rate of 0.6% or $51 per employee). On September 30, 2009, the balance in the UI trust fund fell to $302 million. This significant decline, combined with a recent decline of the taxable wage base to $17.8 billion, placed Maryland employers in the highest tax table for calendar 2010. Table F requires employers to pay a minimum of 2.2% and a maximum of 13.5% ($187 to $1,147.50 per employee).

The UI Trust Fund and Outlook for Employer Taxes in Calendar 2011

The balance of the UI trust fund has fluctuated over the years, growing in good economic times to over $1 billion in each of calendar 2007 and 2008, and diminishing in bad economic times to a level that required the UI trust fund to borrow $133.8 million from the federal government in February 2010. On September 30, 2010, the balance in the UI trust fund fell to $271.0 million, despite an infusion of $126.8 million in May 2010 of federal modernization incentive funds. With the balance half of what is needed to allow employers to pay from a lower rate tax table in calendar 2011, Maryland employers will continue to pay from the highest tax table for another year.

Chapter 2 of 2010 enacted a number of measures to mitigate the impact of increased UI contributions charged to employers. For calendar 2010 and 2011, the Maryland Unemployment Insurance Division must offer a variety of payment plan options to employers, allowing contributions due on taxable wages for the first nine months of the calendar year to be paid through December. The division also has to adopt regulations offering employers a payment plan for any calendar year after 2011 in which employer contributions are to be calculated using Table F. These payment plans must allow payments for contributions due for the first six months of the year to be spread through August of that year. The Act also reduces the interest rate charged to businesses that fail to make employer contributions or reimbursement when payment is due under certain circumstances. The monthly interest rate is reduced from 1.5% to 0.5% of the outstanding balance for calendar 2010 and 2011 and any year thereafter in which employer contributions are calculated using tax rate Table F. This equates to reducing the interest penalty from 18% to 6% on an annualized basis.

The main driver of the continued decline of the UI trust fund is the increased claims for UI benefits resulting from the economic downturn. The State's unemployment rate went from 4.5% at the end of September 2008 to 7.3% by September 2009, where it has hovered through August 2010. Average monthly payouts from the UI trust fund grew from $36 million in calendar 2007 to $89 million in calendar 2009; during the first eight months of calendar 2010, the average monthly payouts amounted to $80 million. Monthly benefit payouts reached a peak of $115 million in March 2009. Initial claims grew from about 222,000 in calendar 2007 to about 362,000 in calendar 2008, and over 416,000 in calendar 2009; for the first eight months of calendar 2010, initial claims amounted to over 253,000.

Exhibit 1 shows the balance of the UI trust fund on September 30 of each year since 1999 (as certified by the division), the annual payout amounts since 1999, and Maryland's seasonally adjusted unemployment rate each year since 1999. Also shown in Exhibit 1 are the tax tables employers paid from during calendar 2006 to 2010 and will pay from during calendar 2011.

Exhibit 1
Maryland's Unemployment Rate, UI Trust Fund Balance, and Annual Benefit Payouts
1999-2011

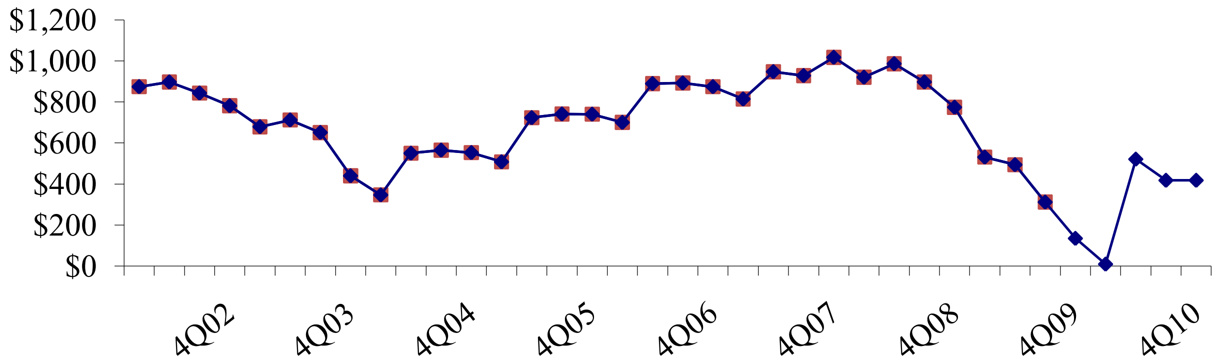
Tax Calendar Year	Percentage Unemployment Rate at End of Year[1]	UI Trust Fund Balance as of Prior September 30 ($ in Millions)[2]	Tax Rate Table in Effect	Annual Benefit Payouts[3] ($ in Millions)
1999	3.5%	$741.6		$265.0
2000	3.5%	815.8		261.4
2001	4.5%	882.8		394.5
2002	4.4%	866.9		498.9
2003	4.3%	824.7		512.1
2004	4.3%	638.5		430.8
2005	3.8%	703.6		384.7
2006	3.7%	883.1	B	383.5
2007	3.5%	1,032.5	A	433.3
2008	5.8%	1,057.8	A	785.2
2009	7.4%	895.4	B	1,068.8
2010	7.3%	301.7	F	642.5
2011	N/A	271.0	F	N/A

[1]Unemployment rate for 2010 is as of August 2010.
[2]Calendar 2003 includes $142.9 million of Reed Act funds provided by the federal government. Calendar 2010 includes $133.8 million in borrowed funds (February 2010) and $126.8 million in federal modernization funds (May 2010); borrowed funds are anticipated to be repaid in full by December 2010.
[3]2009 payout amount is as of August 2010.
Note: The historic high unemployment rate for Maryland was 8.3% in August 1982, and the historical low was 3.3% in March 2000.

Source: U.S. Department of Labor; Department of Labor, Licensing, and Regulation

Exhibit 2 details quarterly activity in the UI trust fund since the infusion of the federal Reed Act funds in 2002. In the two-year aftermath of September 11, withdrawals from the trust fund significantly outpaced deposits, resulting in a 10-year low in the first quarter of 2004. Conversely, in healthier economic times from calendar 2004 to 2006, deposits to the UI trust fund were greater than withdrawals, leading to a steady climb in the UI trust fund balance. The recent economic downturn has manifested itself in the fluctuations in the UI trust fund in calendar 2007 and 2008 and a sharp decline in 2009. In general, withdrawals have significantly outpaced deposits, driving down the balance and triggering a move from Table B in 2009 to Table F in calendar 2010 and 2011. In the first quarter of 2010, the balance hits rock bottom before increasing due to $133.8 million in borrowed funds in February 2010, and $126.8 million in federal modernization incentive funds in May 2010.

Exhibit 2
Unemployment Insurance Trust Fund
Quarterly Ending Balances
Calendar 2002-2010
($ in Millions)



Source: U.S. Department of Treasury

When funds are fully depleted, states may borrow from the federal government's unemployment trust fund. Maryland's UI trust fund was depleted in February 2010, causing the Maryland UI trust fund to borrow $133.8 million from the federal government; all borrowed funds are anticipated to be repaid by December 2010. As of September 2010, 32 states have borrowed money to pay benefits. In order to prevent interest from accruing, which must be paid with general funds, loans must be repaid within a year.

2010 Legislation Modifies Unemployment Insurance System

The American Recovery and Reinvestment Act of 2009 (ARRA) included $7 billion in federal incentives to be provided to states that enact specified UI system alterations. Maryland's allotment of the total incentive funding was $126.8 million; however, these funds were only available to the State UI trust fund if UI benefits were expanded in specified ways. To qualify for the full amount of federal stimulus funds, Maryland enacted Chapter 2 of 2010. This measure (1) adopts an alternative base period; (2) makes part-time workers eligible for benefits (only minor changes were needed to the part-time eligibility law adopted during the 2009 session); and (3) provides Workforce Investment Act (WIA) training benefits for at least 26 weeks in high demand industries; these benefit changes are effective March 1, 2011.

The base period is the time period during which a claimant's wages earned are examined to determine a claimant's eligibility for UI benefits. In Maryland, and most states historically, the first four of the last five completed calendar quarters preceding the claim are considered the base period. Using the traditional base period, a lag of up to six months between the end of the base period and the date on which an individual becomes unemployed and files an unemployment claim may occur. As a result, the worker's most recent employment history is not considered when determining eligibility for UI benefits. Chapter 2 allows an individual who does not qualify for UI benefits under the traditional base period to use an "alternative base period" for determining eligibility. The alternative base period consists of the four most recently completed calendar quarters preceding the start of the benefit year.

Chapter 2 allows an individual who is unemployed and has exhausted all rights to UI benefits under State and federal law to seek the equivalent of up to 26 times the individual's average weekly benefit amount by enrolling in an employment training program authorized by WIA that prepares the individual for entry into a "demand occupation." The individual must be separated from a "declining occupation" or must have been involuntarily terminated from employment as a result of a permanent reduction of operations at the individual's former place of employment.

To offset the cost of expanded UI benefits, Chapter 2 also reduces UI benefit eligibility to certain claimants. The Act increases the minimum amount of qualifying wages an individual must earn during the base period to be eligible for UI benefits from $900 to $1,800 effective March 1, 2012. Accordingly, the minimum weekly available benefit amount is increased from $25 to $50, reflecting the current amount available to a claimant with at least $1,800 in qualifying earnings.

The Act also (1) abolishes UI benefits for claimants who become ill or disabled and are unable to seek work after filing for benefits due to the illness or disability; (2) increases the disqualification penalty for claimants who are dismissed for misconduct or gross misconduct; and (3) reduces the amount of earnings a claimant who becomes partially employed may receive that do not affect a claimant's weekly benefit (called "earnings disregard"). This amount is decreased from $100 to $50 effective March 1, 2011.

Joint Committee on Unemployment Insurance Oversight

The Joint Committee on Unemployment Insurance Oversight monitors laws and policies that affect the State unemployment system, including administrative and federal funding issues and studies other potential legislative changes to UI benefits. The joint committee anticipates holding its first 2010 interim meeting in mid-November 2010. The joint committee anticipates reporting to the Governor and the General Assembly on its activities by December 1, 2010.

In addition to monitoring the benefit changes discussed above, the joint committee, as directed by Chapter 2, anticipates studying changes and making recommendations on a cost-neutral plan to implement a graduated increase of the maximum weekly benefit to equal

54% of the average weekly wage. Effective October 3, 2010, the maximum weekly benefit increased to $430 which replaces approximately 44% of the average weekly wage. To reach the 54% target, the maximum weekly benefit amount would have to increase to approximately $525. Benefit changes discussed in previous years that the joint committee may consider include (1) implementing a waiting week, meaning that a claimant would not receive a check for the first week the claimant was unemployed; however, the claimant would still be eligible for 26 weeks (13 states including Maryland have not implemented a waiting week); and (2) implementing variable duration, meaning that the number of weeks that a claimant could be eligible would depend on the length of time the claimant worked (9 states including Maryland use a 26-week uniform duration for all claimants; the duration provisions vary greatly among the other states).

As required under Chapter 2, the study, including any research findings, must include a determination of whether (1) the impact of lowering the earnings disregard serves as a disincentive for claimants to return to work (possibly part-time work which may turn into full-time work); and (2) the earnings disregard should be changed from a flat amount to a fraction of weekly wages or benefits. If the study indicates that the amount of the wages subtracted in the calculation of the weekly benefit amount should be increased above $50, the joint committee has to determine a method to offset that amount with equivalent savings to the UI trust fund. If the study is inconclusive, the joint committee has to monitor the impact of lowering the earnings disregard.

Chapters 515 and 516 of 2010 require the joint committee to study State and federal UI law as it relates to employers engaged in seasonal industries. Sixteen states, not including Maryland, have special provisions relating to workers employed in season industries; generally benefits based on seasonal work are limited to unemployment occurring during the operating period of the seasonal industry. The study must consider the impact of UI benefit payments on employers in a county where the average unemployment rate exceeds the State average, and how the obligations and payments may be reduced for employer units engaged in seasonal industries.

For further information contact: Tami D. Burt/Erica M. White Phone: (410) 946/(301) 970-5530

Business Regulation

Project Labor Agreements and Public Construction Contracts

Efforts were made in 2010 to encourage the use of project labor agreements (PLAs) on public construction projects in Maryland. Proponents claim that PLAs reduce project costs by reducing project length through easy access to skilled labor, coordination of work schedules, and fewer work stoppages; opponents contend that PLAs increase project costs due to higher wages and benefits and fewer competitive bids vying for a project. Research is inconclusive as to whether PLAs result in beneficial or detrimental policy outcomes.

Project Labor Agreements

Project labor agreements (PLAs) are pre-hire collective bargaining agreements negotiated between property owners and labor unions that establish the terms and conditions of employment for a specific construction project. Under a PLA, a successful bidder – whether they operate with union or nonunion employees – must adhere to requirements for union referral, union security, and collectively bargained compensation. At the same time, unions must guarantee timely access to labor and usually agree to coordinate work scheduling across trades, make pay concessions, and forfeit the right to strike.

PLAs are employed in the private as well as public sectors on large-scale construction projects like manufacturing plants, power plants, parking structures, and stadiums. PLAs have been used by the federal government and at the state and municipal levels in all 50 states and the District of Columbia.

Policy Implications

PLAs banning work stoppages and establishing both uniform pay and leave provisions across trades came into widespread use after World War II on atomic energy, defense, and space projects. Project owners and contractors preferred PLAs because they banned strikes and frequently resulted in better terms than alternative agreements. With the growth of the open-shop sector in the 1970s and 1980s, however, more and more nonunion contractors objected to public-sector PLAs as anti-competitive to nonunion contractors. After 1993, when the Supreme Court held in its "Boston Harbor" decision that project labor agreements on public projects were not preempted by federal law, challenges by open-shop contractor associations like the Associated Builders and Contractors have been primarily political rather than legal.[1]

---

[1] According to Bruner and O'Connor on Construction Law (October 2010), PLAs have been challenged in state courts on constitutional grounds and under competitive bidding laws, with varying results.

Nowhere has the political fight over PLAs been more evident than in recent federal executive actions. PLAs were ubiquitous in federal contracting from the 1950 until 1992, when President George H. W. Bush issued an executive order banning PLAs on new federally funded projects. President William J. Clinton quickly revoked the order in 1993, and then issued a memorandum in 1997 establishing criteria for using PLAs as well as minimum terms for all agreements. The cycle then repeated itself. In 2001, President George W. Bush issued an executive order banning the use of PLAs. Subsequently, on February 6, 2009, President Obama restored the use of PLAs when he issued an executive order encouraging agencies to consider requiring the use of PLAs when they engage in large-scale construction projects; the President supplemented his order by establishing an Inter-agency PLA Working Group to provide technical assistance to agencies on PLAs.

PLA proponents maintain that PLAs reduce project length and project costs by providing quick, easy access to skilled labor, better productivity through coordinated work schedules among trades, fewer work stoppages, and more favorable wage rates. Proponents further maintain that savings are inevitable when projects take less time to complete with reduced labor input, especially on projects expected to produce revenue or prevent expensive logistical problems.

PLA opponents disagree, arguing that requiring contractors to follow union employment practices results in higher costs due to higher wages and benefits and inefficient labor practices. They also maintain that bid costs increase due to fewer bids from open-shop firms. They further argue that PLAs result in discrimination against open-shop contractors because PLAs favor union companies.

Empirical Research on PLAs

Based on a review of policy studies on PLAs, it is difficult to say whether or not PLAs result in beneficial or detrimental policy outcomes. While literature about PLAs is abundant, unbiased studies on PLAs are not. Moreover, a survey of the unbiased research produces partly inconclusive and partly divergent results. For example, a 1998 General Accounting Office study – *Project Labor Agreements: The Extent of Their Use and Related Information* – reported that proponents and opponents of PLAs believe that contract performance comparisons between federal construction projects with PLAs and without PLAs would be difficult, because projects tend to differ too significantly. Even if similar projects were found, GAO argued that it would be too difficult to demonstrate conclusively any performance differences due to the possibility of factors unrelated to the use or nonuse of a PLA. A January 2010 study – *Project Labor Agreements' Effect on School Construction Costs in Massachusetts* – reached similar conclusions, while noting that PLAs may be advantageous on projects that hinge on timely completion.

A March 2009 study by the Associate Director of Cornell's Construction Industry Program, however, is less reserved. In *Project Labor Agreements in New York State: In the Public Interest*, Fred B. Kotler concludes that there is no evidence to support claims that PLAs limit the pool of bidders or increase actual construction costs, that PLA provisions can expand opportunities for apprentice training and minority, women, and low-income workers, and that PLA savings include direct and indirect costs, which can be substantial.

On the other hand, a September 2001 *Erie County Courthouse Construction Projects Project Labor Agreement Study* by Ernst & Young determined that the continued use of a PLA on the second phase of a specific project would harm taxpayers and diminish the likelihood of hiring appropriate craft and tradesman because the PLA would have the practical effect of eliminating competition. Ernst & Young's research found that the use of PLAs strongly inhibits participation in public bidding by nonunion contractors.

PLA Legislation in Maryland

Various efforts were made in 2010 to encourage the use of PLAs on public construction projects in Maryland. Senate Bill 785/House Bill 1317 (failed) "The Public Investment Protection Act" would have required employers who receive at least $250,000 in State economic development funds to enter into agreements with labor unions that provide for collective bargaining on behalf of employees and prohibit the unions from organizing against the employer. Affected employers who employ construction workers would have had to use labor union hiring halls to hire their employees. Neither bill received a vote in committee.

Baltimore City also considered, but did not pass, Ordinance 10-0455, which would have required companies establishing contracts worth more than $5 million with the city to enter into "community partnership agreements" that operate like PLAs. Under the measure companies would have to seek workers from local union halls for 48 hours before they could open a project's hiring pool to others. While union-affiliated organizations supported the State and Baltimore City measures, organizations like the Associated Builders and Contractors were firmly opposed.

Business Regulation

Debt Settlement Services

The Federal Trade Commission amended the federal Telemarketing Sales Rule to include providers of debt settlement services. While the federal action added significant consumer protections for consumers using debt settlement services, there are limitations and gaps in the federal rule. The Commissioner of Financial Regulation, in consultation with the Consumer Protection Division, established a workgroup to study how best to regulate the debt settlement industry in light of the amended Telemarketing Sales Rule.

Background

The debt relief industry comprises various subindustries, including the debt management services industry and the expanding debt settlement services industry. A provider of debt management services (a debt management company) typically negotiates with a consumer's creditors to obtain reduced monthly payments, interest rates, and fees for the consumer and then consolidates all of the consumer's monthly debt payments. The consumer makes a single monthly payment to the debt management company, which deducts its fees and then pays the consumer's creditors. In Maryland, debt management companies are subject to the licensing and regulatory provisions of the Maryland Debt Management Services Act, which is enforced by the Commissioner of Financial Regulation.

A provider of debt settlement services (a debt settlement company), on the other hand, typically does not manage a consumer's funds. Instead, a debt settlement company directs the consumer to set aside a certain amount each month into a bank account from which the company's fees are deducted. The remaining funds are held in the account while the debt settlement company attempts to negotiate lump-sum settlements with the consumer's creditors. Often, a debt settlement company will not attempt to settle the consumer's debts until the balance of the bank account reaches a certain amount. Although more than 30 states regulate debt settlement companies, Maryland does not.

Of the states that regulate debt settlement companies, the majority requires the companies to be licensed or registered before they provide debt settlement services. Many states also limit the fees debt settlement companies may charge and requires the companies to post performance bonds. Some states allow only nonprofit entities to provide debt settlement services, while a few states completely prohibit the practice.

Prior State Legislative Efforts to Regulate Debt Settlement Companies

Consumer complaints concerning debt settlement companies, and reports of some companies' unscrupulous business practices, have led to a debate in the last several years among Maryland policymakers and various interest groups regarding the need to regulate, as well as the method of regulating, debt settlement companies in the State. During the 2008 session, the General Assembly considered a bill that would have required debt settlement companies to obtain a license to operate in the State, meet bonding requirements, and enter into debt settlement agreements with consumers and disclose certain information to consumers before providing debt settlement services. The bill also would have imposed limits on the fees charged by debt settlement companies.

The General Assembly again considered legislation aimed at regulating debt settlement companies during the 2010 session. Unlike the legislation proposed in 2008, the 2010 proposal would not have required debt settlement companies to obtain a license to operate in the State. As introduced, the bill would have prohibited debt settlement companies from imposing fees on a consumer, or receiving any payments on behalf of the consumer, until after (1) a written agreement is executed and (2) the debt settlement services are completed. Upon completion of the services, a debt settlement services company would have been able to charge 15% of the total amount by which the consumer's debt was reduced.

As the Senate Finance Committee and the House Economic Matters Committee considered the 2010 legislative proposal and the potential impact of the proposal on the various business models used by debt settlement companies, it was clear that more discussion was needed as to how to best regulate the industry. Accordingly, the General Assembly directed the Commissioner of Financial Regulation, in consultation with the Consumer Protection Division of the Office of the Attorney General, to assemble a workgroup to study the debt settlement services industry and determine how the industry should be regulated in the State. The commissioner's findings and recommendations are to be reported to the committees on or before December 1, 2010.

Federal Telemarketing Sales Rule Addresses Debt Settlement Services

The federal Telemarketing Sales Rule requires that persons engaged in interstate telemarketing comply with the rule's consumer protection provisions. Effective October 27, 2010, the Federal Trade Commission amended the rule to specifically cover sellers and marketers of debt relief services. The amended rule defines the term "debt relief services" broadly to include debt settlement services as well as debt management services. However, the amended rule does not cover services provided by bona fide nonprofit organizations. The following summarizes some of the provisions of the amended rule:

- The rule has always covered debt relief companies engaged in telemarketing; however, the amendments expand the rule's scope to cover not only outbound telemarketing calls but also inbound calls from a consumer in response to an advertisement for debt relief services.

- Debt relief companies may not charge upfront fees. The amended rule prohibits the collection of any fee for debt relief services unless (1) the customer's debt is settled or renegotiated pursuant to a debt settlement agreement, debt management plan, or similar contractual agreement to alter the customer's debt; and (2) the customer has made at least one payment to a creditor as a result of the agreement.

- A customer may at any time withdraw from debt relief services without penalty.

- If a debt relief company requires a customer to set aside money in a dedicated account for fees and payments to creditors, the customer owns the funds held in the account. The customer is entitled to all the money in the account, minus any fees earned by the company, if the customer withdraws from the debt relief services.

- Debt relief companies must make certain disclosures before a customer signs an agreement, including the amount of time it will take to obtain debt relief; how much the services will cost; in the case of debt settlement services, how much money a customer must save before the company will make a settlement offer to creditors; the negative consequences that could result from using the services; and the customer's rights with respect to funds set aside in a dedicated account.

- Debt relief companies may not misrepresent their services, including making false or unsubstantiated claims about the services.

Debt Settlement Services Workgroup

As directed by the General Assembly, the Commissioner of Financial Regulation established a workgroup comprised of relevant stakeholders to discuss how to best regulate Maryland's debt settlement industry. At its first meeting on September 23, 2010, the workgroup discussed the amended federal Telemarketing Sales Rule as it relates to debt settlement companies. In light of regulatory gaps in the federal rule, the workgroup identified areas where State legislative or regulatory action might be needed. The following is a summary of some of the issues the workgroup considered.

- ***Require registration of debt settlement companies rather than licensure:*** The 2010 legislation directed the commissioner to examine the option of licensing debt settlement companies in Maryland. However, the workgroup agreed that a licensing program would be difficult to design due to uncertainty surrounding the number of debt settlement companies that will continue to operate in the State after the amendments to the federal rule go into effect. The workgroup noted that requiring debt settlement companies to be registered on an interim basis would allow the commissioner to gather information about the industry while also providing the commissioner with enforcement and investigative authority over the industry.

- ***Expand consumer protections to cover other methods of consumer contact:*** The federal rule only covers the practice of *interstate telemarketing* in connection with debt relief services. The rule does not cover debt relief services provided via the Internet or intrastate telemarketing calls (calls made and received within the same state). Because the rule only applies to telemarketing activities, it also does not cover "face-to-face" meetings. The workgroup favored extending consumer protections to cover activities beyond interstate telemarketing.

- ***Expand coverage to include nonprofit companies and lead generation companies:*** The federal rule does not cover debt settlement services provided by nonprofit entities. Further, there is uncertainty as to whether companies that provide lead generation services to debt settlement companies are covered by the federal rule. The workgroup discussed including nonprofits and lead generation companies within any proposal to regulate debt settlement companies in Maryland.

- ***Establish fee caps:*** Although the amended federal rule prohibits upfront fees, the rule does not cap the fees that may be charged. The workgroup discussed whether proposed Maryland legislation should include a fee cap but did not reach a consensus on the issue.

- ***Require additional disclosures:*** As discussed above, the amended federal rule requires that debt relief companies make certain disclosures. The workgroup considered whether any legislative proposal should require additional disclosures by debt settlement companies. For example, the 2010 proposed legislation would have required debt settlement companies to disclose that a debt settlement customer may have to pay taxes on the amount by which the consumer's debt is reduced. However, the workgroup did not reach a consensus on whether to require additional disclosures.

After receiving comments from the various stakeholders, the commissioner's office anticipates reporting its findings and recommendations by December 1, 2010.

Public Safety

Sex Offenders

Maryland has seen many changes in its sex offender laws in recent years, including legislative changes intended to bring the State into compliance with the 2006 federal Sex Offender Registration and Notification Act. The State is expected to apply for a designation of "substantially compliant" before the July 2011 deadline. Failure to comply puts a state at risk of losing 10% of Byrne Justice Assistance grants.

Background

Although Maryland had enacted many laws specifically targeting sex offenders over the years (including the original "Megan's Law" in 1995), Chapter 4 of the 2006 special session significantly increased the State's oversight of and penalties against sex offenders. Among its many provisions, the Act subjected certain offenders to extended parole supervision for at least three years to a maximum of life, with the ability to petition for discharge after the minimum period. The Parole Commission was required to enter into agreements with offenders that set specific conditions of parole supervision, which could include global positioning system monitoring, geographic restrictions on residence or presence, restrictions on employment or other activities, participation in sex offender treatment, prohibitions against using illicit drugs or abusing alcohol, authorization for parole agents to access an offender's personal computer, consent to take polygraph exams, and prohibitions against contacting specific individuals or categories of individuals.

Chapter 4 also created sexual offender management teams and a Sexual Offender Advisory Board; imposed stricter requirements for offender registrations; provided for more comprehensive community notifications; generally prohibited a registrant from knowingly entering on real property used for elementary or secondary education, or on which a registered family day care home or a licensed child care home or institution is located; and required, when the victim is under age 13, a mandatory minimum, nonsuspendable 25-year sentence for a person at least 18 years old convicted of first degree rape or first degree sexual offense. A similar 5-year minimum sentence was required under the same circumstances for a second degree rape or second degree sexual offense.

However, two significant developments subsequent to that special session led to the introduction of many related legislative initiatives from 2007 through 2010: (1) passage of the federal Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248); and (2) difficulties in fully implementing Chapter 4.

The Adam Walsh Act and SORNA

The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Walsh Act, requires conformity by the states with various aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. Failure to comply with SORNA puts a state at risk to lose 10% of Byrne Justice Assistance grants, which all states use to pay for such things as drug task forces, anti-gang units, police overtime, and other law enforcement activities. State compliance with SORNA is overseen by the federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office).

Under the federal American Recovery and Reinvestment Act of 2009 (the federal "stimulus bill"), the Byrne formula grants program was reauthorized from fiscal 2009 through 2011. Maryland received an estimated $26.6 million in fiscal 2010 and will receive $18.5 million in fiscal 2011. Because a second one-year extension for SORNA compliance was sought by and granted to Maryland, the State will not be at risk to lose any Byrne funding during fiscal 2011. Byrne funding levels for fiscal 2012 have not yet been set.

2010 Enactments

Chapters 174 and 175 of 2010 substantially revised Maryland's sex offender registration law in an effort to comply with SORNA, and increased penalties for certain sex offenses committed against minors. Among their many provisions, these enactments:

- replace references to the four categories of sexual offenders in Maryland with the three tiers of categorization under SORNA;
- specify that a Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life;
- require a sex offender who is homeless to register in person within a specified period of time with the local law enforcement unit in the county where the registrant habitually lives and to reregister weekly while habitually living in the county;
- generally narrow all registration, change of information, and notification deadlines to three days;
- add new in-person reporting requirements relating to institutions of higher education;

- add information that must be included in a registration statement, such as a copy of the registrant's passport or immigration papers, Social Security number (and purported Social Security numbers), locations where all vehicles are kept, and landline and mobile telephone numbers;

- require a registrant who establishes a new electronic mail address or other online identity to provide written notice of the new online identity to the sexual offender registry;

- make certain registration provisions retroactive;

- establish a listing of juvenile sex offenders that is maintained by the Department of Public Safety and Correctional Services and is accessible only by law enforcement personnel for law enforcement purposes; and

- increase the maximum and mandatory minimum penalties for a person convicted of rape in the second degree of a child under the age of 13 years, or sexual offense in the second degree against a child under the age of 13 years, to life imprisonment and 15 years, respectively.

Chapters 176 and 177 of 2010 strengthened Chapter 4 of the 2006 special session and addressed unintentional operational difficulties that had arisen since the 2006 law was enacted. The Acts require the lifetime supervision of certain sexual offenders, with possible special conditions, for a crime committed on or after October 1, 2010, including violent sex offenders and child sex offenders. The Acts prohibit a person subject to lifetime supervision from knowingly or willfully violating the conditions of the supervision and subject a violator to additional monetary and incarceration penalties. The sentencing court must hear and adjudicate a petition for discharge from lifetime sexual offender supervision. The court may not discharge a person unless the court makes a finding on the record that the petitioner is no longer a danger to others. Chapters 176 and 177 also require notice to victims or victims' representatives of hearings relating to lifetime sexual offender supervision and expand and alter the list of persons who may be included on a sexual offender management team.

Other enactments from the 2010 session reconstituted and expanded the Sexual Offender Advisory Board; set restrictions on the pretrial release of sex offenders and required sex offender information to be included on a "RAP" sheet; created a new crime that prohibits a person charged with committing a sexual crime against a minor from violating a condition of pretrial or posttrial release and prohibits the person from contacting the victim; prohibited the earning of diminution credits by State or local correctional facility inmates convicted of certain sexual offenses; authorized any individual to notify the local department of social services or law enforcement if a child lives with, or is in the regular presence of, a certain registered sexual offender; and expanded the prohibition on human trafficking to include forced participation in a "sexually explicit performance."

The SMART Office and Maryland Compliance

Maryland is expected to apply to the SMART Office for a designation of "substantially compliant" with SORNA well before the July 2011 deadline. In September 2010, the SMART Office announced the availability of more than $13.1 million in federal fiscal 2010 grant assistance for state, local, and tribal governments to use in implementing, maintaining, and enhancing sex offender programming. Also in September, the SMART Office announced that Ohio, South Dakota, Delaware, Florida, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes and Bands of the Yakama Nation have been designated as having substantially implemented SORNA.

In addition, the outcome of pending litigation across the country may affect elements of state enactments to comply with SORNA, including retroactivity provisions.

For further information contact: Guy G. Cherry Phone: (410) 946/(301) 970-5510

Public Safety

State Correctional System Update

The Department of Public Safety and Correctional Services is managing several construction projects designed to address capacity and support services needs. The most significant project is a new youth detention center in Baltimore City; the department has received construction bids for this project, but is waiting to award a contract pending resolution of an issue concerning adequate bed space. The department also has been working to reduce the presence of cell phones and other contraband in prison facilities.

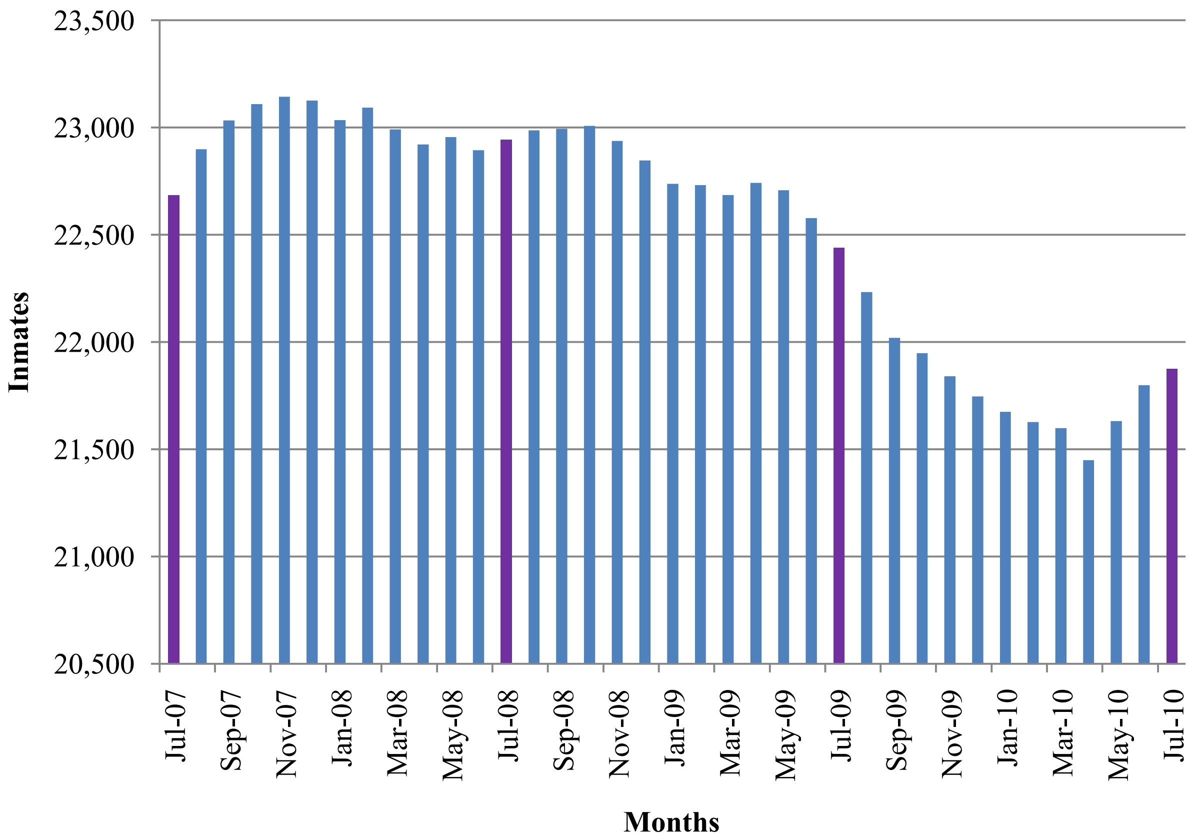
Background

The primary focus of the Department of Public Safety and Correctional Services (DPSCS) is the supervision and management of Maryland's criminal population. Three agencies within DPSCS focus on those criminals sentenced to terms of confinement by the courts: the Division of Correction (DOC), the Patuxent Institution, and the Division of Pretrial Detention and Services (DPDS). DPDS also manages those awaiting trial in Baltimore City. The Division of Parole and Probation focuses on criminals sentenced to probation by the courts or released from correctional facilities.

Population Trends

Maryland's inmate population has experienced an overall decline since its peak of 23,633 inmates in fiscal 2003. **Exhibit 1** shows the monthly variance in the average daily population (ADP) for sentenced inmates in the Division of Correction over the past three fiscal years. DOC reported having 21,979 sentenced inmates in its custody as of August 2010, a 7.3% decrease from the fiscal 2003 peak inmate population. Fiscal 2010, in particular, saw a significant reduction in the inmate population; a 4.4% decrease in the first 10 months lowered the population to just below 21,500. However, since April 2010, the ADP has increased each month.

Exhibit 1
Division of Correction
Average Daily Population of Sentenced Inmates by Month
Fiscal 2008-2010



Source: Department of Public Safety and Correctional Services; Department of Legislative Services

For information regarding inmate characteristics, see *Volume VIII – Maryland's Criminal and Juvenile Justice Process* of the Legislative Handbook Series.

Capital Construction

DPSCS is managing several capital construction projects designed to address capacity and support services needs. In the Hagerstown region, the department opened a 192-bed housing unit in June 2010 and will be completing all components of the support services upgrade by April 2011. In the Western Maryland region, the department is addressing inmate idleness by opening a new Maryland Correctional Enterprises plant and a vocational education building in

November and December 2011, respectively. All of these facilities will have an impact on the fiscal 2012 operating budget.

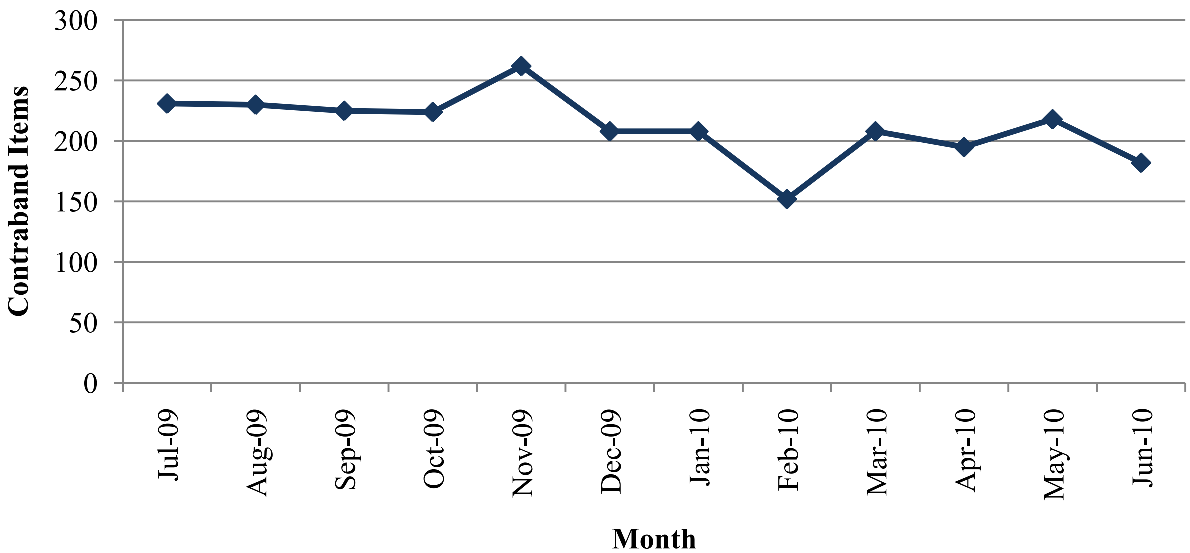
The most significant construction project for the department is the new Youth Detention Center in Baltimore City. The new facility will provide bed space for 180 youths who have been charged as adults and will also address the functional requirements for this special population by providing space for educational and program services, administrative support, visitation, and medical, recreation, and food services, as well as ensuring sight and sound separation from the adult offender population. The new facility will also provide a separate booking and intake center for the youth population, which will ease processing of offenders at the current intake facility. Construction of the new facility is a major component in achieving compliance with the memorandum of agreement (MOA) between DPSCS and the U.S. Department of Justice. The MOA was the result of an investigation in 2000 into the conditions of confinement at the current youth detention facility.

To date, the General Assembly has authorized $32.7 million for the design and initial construction of the facility. The total estimated cost is approximately $99.7 million. The department received construction bids for the project in July 2010; however, no decision on the award of the contract has been made. Several Baltimore-based activist groups, including Baltimore's Safe and Sound Campaign, have challenged the validity of the State's population projections, arguing that the estimated 180 beds is too high. The current population of youths charged as adults is approximately 104 youths. The department is waiting to award a construction contract pending the resolution of the policy issue of adequate bed space for this population. The current bid submissions are valid until December 2010. Once a contract is awarded, the construction period is estimated to be approximately 30 months.

Cell Phones and Contraband in Prison Facilities

The department has been working to reduce the presence of cell phones and other contraband within its prison facilities in order to create a safer, more secure environment. **Exhibit 2** shows the number of contraband items seized from DPSCS facilities each month in fiscal 2010. Although the total amount of contraband seized each month averages over 200 items, there has been a slight decline in the amount of contraband found over the course of the fiscal year. DPSCS attributes the decline to more frequent and randomized searches and improved intelligence. Contraband is most frequently found in minimum security facilities and largely consists of inmate-made weapons and cell phones.

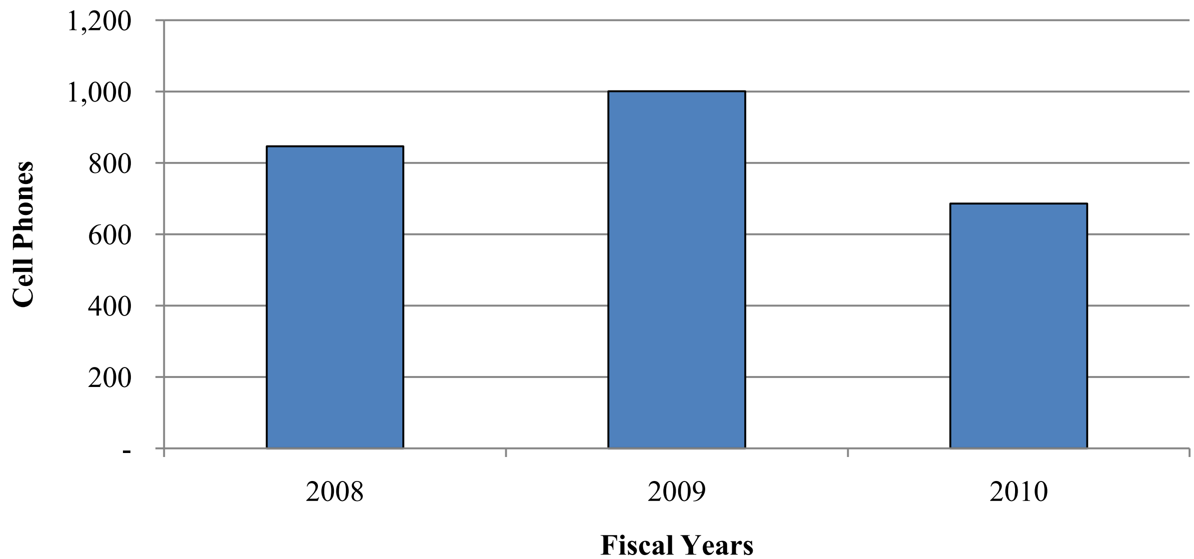
Exhibit 2
Department of Public Safety and Correctional Services
Contraband Seizures
Fiscal 2010



Source: State Stat; Department of Legislative Services

Exhibit 3 shows the total number of cell phones recovered in the past three fiscal years. DPSCS has reported a 31% decline in the number of cell phones recovered at DOC facilities between fiscal 2009 and 2010. The department attributes this to increased efforts to seize cell phones prior to entering facilities. Maryland is one of the first states to employ a cell phone detecting canine unit and train its own dogs. Additionally, the department began using Body Orifice Security Scanner chairs in November 2009 to assist in the electronic detection of contraband on entering inmates, visitors, and staff.

Exhibit 3
Division of Correction
Cell Phones Found at DOC Facilities
Fiscal 2008-2010



Source: State Stat; Department of Legislative Services

DPSCS is also working with other states and the federal government to enact federal legislation that would allow for the use of cell phone jamming devices in prison facilities. The department held a cell phone detection demonstration in September 2009 and conducted a pilot program at three DPSCS facilities in December 2009 to observe how cell phone disruption/detection equipment worked in an operating correctional facility. Mississippi is the first state to implement a managed access cell phone intercept system, which routes all calls within a certain area to a third-party provider, distinguishes between authorized and unauthorized calls, and blocks any numbers that are not in the approved database. Mississippi, which began using the system in August 2010, included the managed access component as part of the contract with its inmate telephone service provider.

Public Safety

Unauthorized Immigrants

Despite general agreement that the federal government has the duty and is in the best position to enforce immigration laws, comprehensive federal immigration reform continues to languish, leaving state and local governments to grapple with the challenges of unauthorized immigrant populations.

Background

Immigration policy has become a topic of intense interest throughout the country. Comprehensive immigration reform has stalled on the federal level, and state and local officials are being asked to address various issues relating to immigration. While the U.S. Constitution does not explicitly grant to the federal government the sole authority to regulate immigration matters, the federal government has retained broad and exclusive power to regulate immigration laws and foreign nationals residing in the United States. Courts consistently note that immigration constitutes a federal concern, not a state or local matter, and Congress has made clear its intent that federal law preempts state law in the area of immigration. Nonetheless, state legislatures, including the Maryland General Assembly, continue to tackle the issue of immigration, most recently with a focus on the issue of unauthorized immigrants.

Legislative Action

State laws related to immigration have increased dramatically in recent years. According to the National Conference of State Legislatures, 300 immigration-related bills were introduced in the states in 2005. In the first six months of 2010, that number was up to 1,374 as every state in regular session considered such bills. The states enacted 191 new laws and adopted 128 resolutions involving immigrants and refugees, resulting in a 21% increase in enactments over the same period in 2009.

Arizona's Experience

The U.S. Department of Homeland Security (DHS) estimates that Arizona has one of the fastest growing unauthorized immigrant populations in the United States, increasing from 330,000 in 2000 to 560,000 by 2008. As a result, Arizona has been at the forefront of state efforts to curb unauthorized immigration. In 2007, Arizona enacted the Legal Arizona Workers Act prohibiting employers from knowingly employing unauthorized immigrants, imposing penalties for violations, and requiring employers to use the federal E-Verify system to verify employment eligibility of new hires. Most recently, Arizona passed a controversial omnibus law addressing unauthorized immigration.

In April 2010, Arizona's legislature passed, and the governor signed, the "Support our Law Enforcement and Safe Neighborhoods Act," commonly referred to as SB 1070. Among other provisions, SB 1070 (1) creates a state trespassing misdemeanor for unlawful presence; (2) adds penalties for harboring and transporting unauthorized immigrants; (3) requires law enforcement to check the legal residency of persons stopped for other offenses; and (4) authorizes an officer to make a warrantless arrest if probable cause exists to believe the person has committed a deportable offense. SB 1070 also creates or amends crimes for the smuggling of persons, failure of an alien to apply for or carry registration papers, and the performance of work by unauthorized aliens. In the civil arena, SB 1070 authorizes legal residents to sue a state official or agency for adopting a policy restricting enforcement of federal immigration laws to less than the full extent permitted by federal law, and prohibits state officials from limiting the enforcement of federal immigration laws.

In the last week of its 2010 session, Arizona's legislature amended SB 1070 to address racial profiling concerns expressed about the original language. The amendments specified that a law enforcement officer may not consider race, color, or national origin when implementing the law, except as permitted by the U.S. or state constitution. The amendments also clarified the original language regarding "reasonable suspicion" by requiring law enforcement to reasonably attempt to determine the immigration status of a person only while in the process of a lawful stop, detention, or arrest made in the enforcement of any other state or local law.

In advance of the July 29, 2010 effective date of SB 1070, citizens and organizations filed legal challenges to the Act based on equal protection and due process rights and federal preemption of immigration law. In early July, the U.S. Department of Justice filed a lawsuit stating that SB 1070 was preempted by federal law and U.S. foreign policy, and that the state law violated the Supremacy Clause and the Commerce Clause of the U.S. Constitution. On July 28, 2010, a federal district judge issued a partial preliminary injunction enjoining the enforcement of sections relating to (1) determining immigration status during a lawful stop; (2) the crime of failing to carry federally issued registration documents; (3) warrantless arrest on probable cause that a person has committed an offense for which the person could be deported; and (4) the crime of an unauthorized immigrant knowingly applying for work.

The enjoined sections of SB 1070 are now under appeal before the Ninth Circuit Court of Appeals; oral arguments were scheduled for November 1, 2010.

Maryland's Experience

Maryland is a major destination for immigrants, with over 20,000 legal immigrants coming to the State each year. Since 2000, approximately 72.5% of immigrants to Maryland have located in Frederick, Montgomery, and Prince George's counties. According to estimates made by private research organizations, a significant portion of Maryland's immigrants are undocumented. The Pew Hispanic Center estimated that there were between 225,000 and 275,000 unauthorized immigrants in the State in 2005 – the eleventh highest number of unauthorized immigrants among all states.

In Maryland, bills related to employment, health, and law enforcement that uniquely affect immigrants were passed in the 2010 session. In addition, the 2008 General Assembly established a Commission to Study the Impact of Immigrants in Maryland (Chapter 553 of 2008). The commission is currently studying the demographic profile and impact of immigrants on the State as well as the economic and fiscal impact of immigrants and will report its findings and recommendations to the Governor and the General Assembly by January 1, 2011.

Immigration Enforcement by Local Law Enforcement Agencies

Section 287(g) of the Immigration and Nationality Act (INA) authorizes the federal government to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions. Under this program, U.S. Immigration and Customs Enforcement (ICE) officers provide state and local law enforcement officers with the training and subsequent authorization to identify, process, and detain immigration offenders they encounter during their normal law enforcement activities.

ICE has 71 active agreements in 26 states, and more than 1,120 law enforcement officers have been trained and certified under the program. As of July 2010, 115,841 unauthorized immigrants had been deported as a result of this program since 2006. Over 26,000 of these deportations were initiated by local law enforcement efforts in Maricopa County, Arizona. In Maryland, only the Frederick County Sheriff's Office has participated in this program.

"Secure Communities" is a DHS initiative to modernize the criminal alien enforcement process by increasing and strengthening efforts to identify and remove from the United States criminal aliens deemed "most dangerous." The program provides the technology to help local law enforcement agencies complete an integrated records check to determine both the criminal history and immigration status of individuals in their custody. There are 617 jurisdictions in 31 states using this system, including four counties in Maryland: Frederick, Prince George's, Queen Anne's, and St. Mary's counties.

The Montgomery County Police Department has implemented a policy of notifying ICE of every person who has committed 1 of 24 violent crimes listed in statute or a handgun violation, regardless of race or ethnicity. Montgomery County Corrections sends a weekly list of every foreign-born inmate to ICE, based on the inmate's self-reported status. This reporting is not required and is unique to Montgomery County. Under a program recently expanded by President Obama and expected to be implemented in nearly all local jails by the end of 2012, immigration checks at the local level will be automatic – fingerprints that are run through the FBI's criminal history database will also be matched against immigration databases maintained by DHS. This initiative, however, would not identify people who have never been fingerprinted by U.S. authorities.

Fiscal Impact of Unauthorized Immigrant Enforcement in the State

Implementing legislation related to unauthorized immigrants could have a significant fiscal impact on the State. Court costs could increase at the State and local level as a result of trying additional cases. Revenues could increase as a result of fines imposed under new legislation. Expenditures may also increase at the State and local level to train law enforcement officers to enforce laws related to immigration. If unauthorized immigrants flee the State in large numbers, fewer unauthorized immigrants would be apprehended and jailed, potentially decreasing incarceration costs. Excluding overhead, the average cost of housing a new inmate for fiscal 2011 (including variable medical care and variable operating costs) is $409 per month. If new legislation results in an increase in incarceration rates involving long sentences, however, costs may increase.

Potential Legislation

Based on legislation introduced in previous sessions and legislative activity in other states, it is likely that the 2011 General Assembly will consider bills relating to unauthorized immigrants, including bills that (1) require local law enforcement to enforce federal immigration laws under the Section 287(g) Program; (2) require law enforcement to obtain residency status information from detainees; (3) allow legal residents to file for injunctive relief by claiming State or local agencies acted in conflict with federal immigration laws; or (4) require employers to verify the residency status of their employees. In addition, the report and recommendations of the Commission to Study the Impact of Immigrants in Maryland, due by January 1, 2011, may be the catalyst for additional legislative proposals.

For further information contact: Lindsay A. Eastwood/Susan O. McNamee Phone: (410) 946/(301) 970-5350

Criminal Law

Death Penalty

Since proposed regulations to administer the death penalty were not adopted within the one-year timeframe required by law, new regulations have been proposed. The General Assembly considered but did not pass legislative proposals to expand the types of evidence eligible for death penalty in the 2010 session.

2009 Legislation

During the 2009 session, the General Assembly passed legislation altering the application of the death penalty in Maryland. Chapter 186 of 2009 restricted death penalty eligibility only to cases in which the State presents the court or jury with (1) biological or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. A defendant may not be sentenced to death if the State relies solely on evidence provided by eyewitnesses in the case. Since enactment of Chapter 186, there are currently five active cases in which a prosecutor has formally filed notice of the State's intention to seek the death penalty and a number of cases in which the death penalty is under consideration by local prosecutors.

Maryland Court Decision

Executions in the State have been halted since the December 2006 decision by the Maryland Court of Appeals in *Evans v. State*, 396 Md. 256 (2006). In that case, the court heard arguments on an appeal of a death sentence by Vernon L. Evans, Jr. Evans' appeal was based on four claims, only one of which was considered to have merit by the Court of Appeals. The Court of Appeals upheld Evans' claim that the regulatory procedures for carrying out the death sentence, including execution by lethal injection, were adopted without the public input required by the Administrative Procedure Act (APA). The court held that the Division of Correction protocols are ineffective until either (1) the protocols are adopted as regulations under the APA; or (2) the General Assembly exempts the protocols from the procedures required by the APA.

Proposed Regulations

On June 24, 2009, the Department of Public Safety and Correctional Services (DPSCS) released the new proposed regulations. Among other things, the proposed regulations:

- require the Commissioner of Correction to ensure that individuals assigned to the lethal injection team are trained and certified to administer the authorized pharmaceuticals used during the execution process and insert intravenous catheters into the inmate, if required;
- require that two injection sites and two intravenous lines be established and that one extra syringe of each of three drugs administered be prepared as a standby;
- require a certified or contracted paramedic to be present to resuscitate the inmate if a stay of execution is granted;
- require a pre-execution examination of the inmate to determine optimal locations for the insertion of intravenous needles during the execution;
- permit the placement of an injection in an area other than the inmate's arm if a vein cannot be palpated in the arm;
- ban the use of the "cut down" procedure, in which an individual's vein is cut in order to administer an injection; and
- permit the continued use of pancuronium bromide as part of the lethal cocktail of drugs used during executions.

Death penalty opponents voiced numerous objections to the proposed regulations, particularly over the drugs administered, participation of medical personnel, and lack of specifics.

As previously stated, the regulations authorize the continued use of pancuronium bromide, a muscle relaxant, as part of the three-drug cocktail administered to an inmate during an execution. Objections to the drug are centered on the fact that this paralytic agent completely immobilizes an individual to the point that he or she would not be able to express pain or communicate as to the effectiveness of the anesthetic. The chemical is prohibited for use in animal euthanasia in Maryland and some other states. The Administrative, Executive, and Legislative Review Committee (AELR) also questioned the continued use of three drugs when the relevant statute specifies that two drugs may be used to induce death.

The regulations would also require that a physician be present to pronounce death, as well as the presence of trained or certified personnel to administer the drugs. The presence of a physician is a requirement in almost one-half of the 35 states that permit the death penalty.

However, opponents raised concerns that the presence of medical personnel may create a conflict with professional ethics, since Opinion 2.06 of the American Medical Association's Code of Medical Ethics states that a physician "should not be a participant in a legally authorized execution." In February 2010, the American Board of Anesthesiologists adopted a policy to revoke the certification of any member who participates in an execution by lethal injection. While an anesthesiologist may obtain a medical license without certification, most hospitals also require anesthesiologists to be certified.

As for the lack of specifics, the regulations do not specify a limit on the time the lethal injection team can take to find an inmate's vein or qualifications for members of the lethal injection team.

In September 2009, AELR formally requested that DPSCS delay final adoption of the death penalty procedure regulations so that the committee could conduct a more detailed study of the issues. On October 12, 2009, the AELR Committee placed the regulations on hold for further study. The committee's concerns centered on whether the regulations were specific enough on the administration of lethal injections, the use of a three-drug protocol, the training of execution personnel, and whether the regulations ensure that mishandled executions will not take place. The committee's concerns echoed concerns expressed nationally regarding the administration of lethal injections.

DPSCS submitted its response to the AELR letter on May 7, 2010. Under State law, if a proposed regulation is not adopted within one year after its last publication in the *Maryland Register*, the regulations are considered withdrawn. The one-year deadline for the death penalty regulations was July 30, 2010. Since the regulations were not adopted by that date, the regulation adoption process must begin anew. As a result, DPSCS must submit a new set of proposed regulations to AELR, and another opportunity for public comment will be granted. DPSCS submitted the new regulations in October 2010, which are substantially the same as the regulations submitted in 2009.

Status of the Death Penalty Nationally

Thirty-five states currently permit the death penalty. As of January 1, 2010, there were 3,261 inmates on death row in the United States, including inmates in the custody of the federal government and the United States military. Five of these death row inmates are in Maryland, giving Maryland the seventh smallest death row population in the nation. In June 2010, it was reported that Maryland's death row inmates were transferred from the former supermax facility in Baltimore City to the North Branch Correctional Institution in Western Maryland. As of October 2010, 41 inmates were executed in the United States this year, with Texas accounting for 14 of those executions. According to the Bureau of Justice Statistics, 111 defendants received death sentences in 2008, which is the lowest number of death sentences issued in a single year since 1973.

Potential 2011 Legislation

Several bills expanding eligibility for the death penalty were introduced during the 2010 session. Though none of the bills passed, these bills would have (1) authorized prosecutors to pursue the death penalty in cases in which fingerprints or photographs link the defendant to the capital crime; and (2) applied the death penalty to crimes in which scientific evidence links the defendant to the crime.

For further information contact: Amy A. Devadas Phone: (410) 946/(301) 970-5510

Criminal Law

Ignition Interlock Devices

Ignition interlock programs in 48 states, including Maryland, allow imposition of an ignition interlock device for certain alcohol-related driving offenses. Maryland is not among the 12 states that require all first-time offenders to use the device.

Background

A report by the National Highway Traffic Safety Administration indicates that while overall traffic fatalities declined in Maryland between 2008 and 2009, the number of alcohol-related traffic deaths increased by 12%. Specifically, there were 162 deaths in alcohol-related accidents in 2009 compared to 145 in 2008.

In 2009, there were 24,422 arrests for drunk driving in the State, according to the Motor Vehicle Administration (MVA). Of those arrests, 7,403 involved driving with an alcohol concentration of 0.15 or more; 6,452 involved refusal to submit to testing; 1,421 involved repeat offenders; and 1,943 involved offenders younger than age 21 years. In fiscal 2010, the District Court disposed of 11,751 alcohol-related driving citations by probation before judgment.

Ignition Interlocks

An ignition interlock device connects to a vehicle's ignition system and measures breath alcohol content (BAC). A driver must blow into the device, which prevents the vehicle from starting if the BAC is above .025%. Retests require a driver to provide breath tests at regular intervals while driving. If a driver fails a retest, the vehicle continues to operate, but the failure is recorded as a violation.

National surveys have found broad public support for the mandatory use of ignition interlock devices in certain instances, and public opinion in Maryland appears consistent with those findings. A report issued by the University of Maryland School of Public Health in 2009 found that 86% of surveyed Maryland motorists support making the devices mandatory for repeat offenders, and 44% endorse installation of the devices after a first conviction.

Maryland's Ignition Interlock System Program

In accordance with the Maryland Vehicle Law, MVA has established an Ignition Interlock System Program. In relatively few cases, participation in the program is mandatory because a court orders a driver to participate as a condition of probation or as a part of a sentence for an alcohol-related driving offense. Much more often, participation is discretionary, but there is a strong incentive for participation because the person may continue to be licensed to drive with a device rather than have his or her license suspended or revoked. However, a driver may not be a participant in the program unless the driver is "eligible" (*i.e.*, the driver must have a valid Maryland driver's license at the time of the alcohol-related violation, and the violation must not have resulted in a death, or serious physical injury, to another person).

Discretionary participation may occur in two ways. Often an eligible driver may choose to participate rather than attend an administrative hearing and face a license suspension or revocation. Sometimes, an eligible driver may participate only if an administrative law judge allows the driver to be a participant following an administrative hearing.

According to MVA, as of June 30, 2010, there were 8,293 participants in the program. In fiscal 2010, 3,244 people successfully completed the program and 2,997 people withdrew due to failure to complete program requirements. Participants generally are repeat offenders or offenders who refused a BAC test or had a BAC test result of .15 or more.

A participant must pay a fee to an ignition interlock provider unless exempted due to financial hardship. These fees are not regulated by MVA. MVA does not impose a program fee although it has statutory authority to do so. The participant must have the device serviced and data downloaded by the vendor every 30 days. MVA monitors participants through the data reports from the vendors. Violations, such as attempting to start or operate a vehicle with a BAC greater than .025%, failing to submit to a retest after starting the vehicle, tampering with the interlock device, having another person blow into the device, or operating a vehicle without a device, can result in removal from the program or an extension of the person's required period of participation.

In 2010, MVA altered its regulations to address an initial test failure that may result from transient mouth alcohol from certain foods, medication, or mouthwash. The new regulations provide that if there is a successful retest within five minutes of a failure, the failure is not counted against the driver.

Laws of Other States

According to the National Conference of State Legislatures, all but two states (Alabama and South Dakota) have laws permitting the imposition of ignition interlock devices and 12 states (Alaska, Arizona, Arkansas, Hawaii, Illinois, Louisiana, Nebraska, New Mexico, New York, Oregon, Utah, and Washington) require participation in an ignition interlock program for any drunk driving conviction, including a first offense, involving a BAC of 0.08 or greater. Hawaii's law takes effect in 2011. In addition, Colorado, while not technically mandating ignition interlock use for first-time offenders, has established such a strong incentive to participate that it, in effect, operates as a mandate. Many states also require participation in an ignition interlock program for repeat offenders or for high BAC offenders.

For further information contact: Effie C. Rife Phone: (410)946/(301)970-5350

Criminal Law

Videotaping/Audio Taping of Police Officers

The recent prosecution under the Maryland Wiretap Act of a citizen who recorded a police officer making a traffic stop has raised legal questions as to whether such activity is the exercise of an existing right made more convenient by new technology or is an unauthorized recording of a private conversation.

Background

Since the videotaping of Rodney King being beaten by Los Angeles police officers in 1991 and the proliferation of portable video cameras and cell phone recorders, videos of alleged police misconduct are increasingly appearing in the news media and on the Internet. In Maryland and elsewhere, police have sometimes, with mixed success, responded by charging or threatening to arrest the persons recording such encounters with a violation of anti-wiretapping or eavesdropping statutes.

Maryland Wiretap Act

The Maryland Wiretapping and Electronic Surveillance Act (also referred to as the Maryland Wiretap Act), which was first enacted in 1973, was based in large part on the federal wiretapping and electronic surveillance law, although it is in some respects more protective of privacy than the federal law. Except as specifically authorized in the statute, an individual may not "willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communications." It is also unlawful to willfully use or disclose the contents of a communication obtained in violation of the Wiretap Act. Under the Act, "intercept" is defined, in part, as "the…acquisition of the contents of any…oral communication through the use of any…device." Therefore, the Wiretap Act does not regulate a video recording that does not contain an audio component. "Oral communication" is defined as "any conversation or words spoken to or by a person in private conversation." The statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called "two-party consent"). Maryland is one of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a "reasonable expectation of privacy."

Each interception in violation of the Wiretap Act may be prosecuted as a felony, punishable by up to five years imprisonment, and/or a $5,000 fine. A person who is the victim of a violation of the Wiretap Act has a civil cause of action against the wiretapper for damages, attorney's fees, and litigation costs.

Recent Maryland Developments

The application of the Maryland Wiretap Act to citizen recordings of police activity has made recent headlines, particularly in reference to an incident in Harford County involving a motorcyclist.

On March 5, 2010, Anthony Graber was on his motorcycle traveling well above the speed limit on Interstate 95 when an off-duty State trooper in an unmarked vehicle cut him off, forcing him to the side of the road. The trooper, who was dressed in plain clothes, got out of his car, pointed his gun at Graber, and yelled before identifying himself as "State police." Graber caught the incident on a video camera attached to his helmet and posted the video on YouTube. After the video went viral, police searched Graber's house, seized his computers, and put him in jail for 26 hours. On March 15, the trooper obtained an arrest warrant charging Graber with a violation of the Maryland Wiretap Act for audio taping the encounter. Several weeks later, the Harford County State's Attorney obtained a grand jury indictment that added several additional motor vehicle and wiretap violations. Graber faced 16 years in prison as a result of the charges.

The incident sparked national debate, with the American Civil Liberties Union (which represented Graber) calling Graber's prosecution an "abusive use of state wiretap laws." The State's Attorney prosecuting the case defended his actions and indicated that he hoped that his pursuit of the case would draw attention to the Maryland Wiretap Act and motivate lawmakers to revisit the law, particularly the two-party consent requirement.

On September 27, 2010, a Harford County judge dismissed the wiretapping charges against Graber. In his ruling, Judge Emory A. Plitt, Jr. wrote that the traffic stop "took place on a public highway in full view of the public. Under such circumstances, I cannot, by any stretch, conclude that the troopers had any reasonable expectation of privacy in their conversation with the defendant which society would be prepared to recognize as reasonable." Judge Plitt went on to note that "[t]hose of us who are public officials and are entrusted with the power of the state are ultimately accountable to the public. When we exercise that power in the public fora, we should not expect our actions to be shielded from public scrutiny."

The ruling echoed predictions made in a July 7, 2010 advisory opinion issued by the Office of the Attorney General in response to an inquiry by a legislator on the application of the Maryland Wiretap Act to situations in which citizens record the public activities of police officers. In the opinion, the Attorney General concluded that of the possible outcomes to such a case under the State Wiretap Act, a Maryland court would most likely hold that a police stop of an individual is not a private conversation, and that the recording of one would be found not to violate the Wiretap Act. The Office of the Attorney General cited an opinion it issued in 2000 as to whether a police officer who had inadvertently made an audio recording as part of a video recording of a traffic stop had violated the Act. Though Maryland had enacted a specific exception authorizing interceptions of oral communications by police officers during traffic stops in specified circumstances, the officer had failed to meet the requirements of the exception. Nevertheless, citing federal and State precedents, the Attorney General advised the police in 2000 that a traffic stop was difficult to characterize as "private" and that the wiretap statute did not, therefore, appear to have been violated. Thus, the July 2010 letter from the Attorney General advised that if a police officer would not face prosecution or liability under the Act for recording an arrest or traffic stop in a public place, the same reasoning should apply to a private person involved in the same type of incident. Finally, the Attorney General reviewed cases from other jurisdictions on the issue. The letter noted that while no statute was exactly the same as Maryland's, a number of states had concluded that such recordings did not violate their respective wiretap or eavesdropping statutes.

Conclusion

While Maryland law currently authorizes the interception of a private conversation if all parties to the conversation give prior consent, some have suggested that Maryland amend its wiretap statute to require "one-person consent." Under one-party consent, the recording of a conversation would be permitted if at least one party consents to the recording. Such a change to Maryland law might also allow the introduction of evidence in certain cases that prosecutors currently think the law prohibits, like the recording by a victim of a criminal threat. Simply changing to a one-person consent law, however, might still leave open the possibility of the prosecution of third-party recorders of police-citizen encounters, the allowance of which some may find to be beneficial for the public as an added assurance of professional police conduct. Other critics of the Maryland statute urge that an express exception be made for the recording of any public official performing public duties, whether or not the person recording the communication is a participant in the conversation.

For further information contact: John J. Joyce Phone: (410) 946/(301) 970-5350

Courts and Civil Proceedings

Domestic Violence

A continuing issue is the standard of proof needed to obtain a protective order and to provide for the protection of pets and service animals in domestic violence orders.

Protective Orders

Protective orders are civil orders issued by a court to individuals in certain familial relationships (petitioners) who allege that they have been victims of domestic violence. Although short-term orders, known as either interim or temporary orders, may be issued *ex parte*, or without hearing from the alleged abuser (respondent), a final protective order may only be granted after a hearing that includes the opportunity for both the petitioner and respondent to be heard. In addition to ordering a respondent to refrain from abuse or threats of abuse, final protective orders may provide other types of relief, including (1) ordering the respondent to refrain from contacting the petitioner and to stay away from the petitioner's residence and place of employment; (2) establishing temporary custody of a minor child; (3) awarding emergency family maintenance; (4) ordering the respondent to vacate the home; and (5) ordering the respondent to surrender any firearms in the respondent's possession. Petitions for protective orders may be filed in the District Court or a circuit court, or with a District Court Commissioner if the courts are closed. In fiscal 2009, the District Court and circuit courts issued over 10,000 final protective orders.

Domestic Violence Central Repository

Chapter 687 of 2010 required the Judiciary to maintain a domestic violence central repository (DVCR), a statewide database that stores all interim, temporary, and final protective orders entered in the State, as well as peace orders (*i.e.,* orders for protection from violence issued on behalf of individuals who are not in the familial relationships specified under the protective order statute). The DVCR provides law enforcement agencies with secure and immediate access to imaged copies of protective orders and peace orders. This enables law enforcement to verify the existence and content of an order at any time, to make immediate arrests when violations occur, and to facilitate the service of orders. The DVCR is also intended to improve communication between the District Court and the circuit courts that share concurrent jurisdiction over protective order cases and to eliminate conflicting or simultaneous orders.

Although the Judiciary, with funds awarded from the Office of Violence Against Women, had been operating the DVCR since July 1, 2008, Chapter 687 of 2010 codified the practice. As of October 6, 2010, there were over 12,000 active orders in the DVCR.

Legislative Activity

In recent years, the General Assembly has passed numerous bills regarding final protective orders, including requiring respondents to relinquish and refrain from possessing firearms for the duration of a final protective order (Chapters 488 and 489 of 2009); lengthening the period of time for which a final protective order may be extended (Chapters 620 and 621 of 2010); and extending the maximum duration of protective orders under certain circumstances (Chapters 611 and 612 of 2009).

Burden of Proof

In order to obtain a final protective order, a judge must find by clear and convincing evidence that abuse has occurred or the respondent must consent to the entry of a final protective order. Bills introduced in recent years would have altered the evidentiary standard for final protective orders from a "clear and convincing evidence" standard to a "preponderance of the evidence standard."

The evidentiary standard known as "preponderance of the evidence" has been described as requiring evidence sufficient to establish that a fact is "more likely true than not true," "more probable than not," or that amounts to at least 51% of the evidence. "Preponderance of the evidence" is the standard applicable in most civil cases. "Clear and convincing evidence" is more than a preponderance of the evidence and less than would be required for the standard "beyond a reasonable doubt."

According to a 2009 study by the American Bar Association's Commission on Domestic Violence, statutes in 20 states (including Delaware and Pennsylvania) specify that the "preponderance of the evidence" standard is used for the granting of a final protective order. The study also identified six additional states that, through case law, provide for the "preponderance of the evidence standard." The majority of the other states have unspecified or vague statutory standards that suggest the use of the court's discretion on a case-by-case basis. The study cites Maryland as the only state with a "clear and convincing evidence" standard.

Protection for Pets or Service Animals

According to the Humane Society, up to 75% of domestic violence victims report that their partner killed or threatened to kill a family pet. Another proposed change to protective orders that has been introduced several times in recent years would allow a District Court Commissioner, when issuing an interim protective order, or a court, when issuing a temporary or final protective order, to order relief relating to a pet or service animal of the petitioner. Such relief would include ordering the respondent to remain away from the pet or service animal, to refrain from cruelty toward the pet or service animal, and, if the respondent has possession of the pet or service animal, to give the pet or service animal to the person eligible for relief, a family member, or a suitable third party.

According to a 2010 report by the National Council of Juvenile and Family Court Judges, at least 13 states have laws specifically providing for the protection of pets in domestic violence orders. Other states have passed laws that reflect the linkage of domestic violence and animal cruelty. For example, in Pennsylvania, killing or threatening to kill a pet constitutes abuse that can provide the grounds for granting a temporary order that requires the defendant to relinquish firearms. In Indiana, the beating, torturing, mutilating, or killing of certain animals with the intent to threaten a family member is considered an act of domestic violence.

Courts and Civil Proceedings

Same-sex Marriages, Civil Unions, and Domestic Partnerships

Future legislative proposals on same-sex marriage will be considered against the background of a 2010 opinion of the Attorney General stating that a Maryland court would likely recognize a same-sex marriage validly performed in another state.

Background

"Same-sex marriage" means a legal marriage between two individuals of the same gender. A "civil union" provides to same-sex partners the same legal rights, protections, and responsibilities under state law as married couples. Generally, these rights are recognized only in the state in which the couple resides. A "domestic partnership" extends certain rights under state or local law to unmarried couples, including (but not necessarily limited to) same-sex couples.

State Responses

Same-sex Marriage Legalized

Massachusetts became the first state to issue marriage licenses to same-sex couples in 2004 after its highest court ruled that authorizing civil unions for same-sex couples while prohibiting them from marrying was unconstitutional. Same-sex marriage is now legal in four other states (Connecticut (2008), Iowa (2009), Vermont (2009), and New Hampshire (2010), and in the District of Columbia (2010)). Three of the seven Iowa Supreme Court justices who ruled in favor of legalizing same-sex marriage in 2009 lost their seats in the November 2010 election.

Same-sex Marriage Prohibited

Forty-one states (including Maryland) have laws that either prohibit same-sex marriages or deny recognition of same-sex marriages solemnized in another jurisdiction. Because statutory bans have been viewed as providing limited protection against a constitutional challenge, many states have also amended their constitutions to limit marriage to opposite sex couples. To date, 30 states have adopted constitutional amendments that define marriage as a union between a man and a woman. California's constitutional ban on same-sex marriage has recently been subject to challenge. In August 2010, a federal district court ruled that the state's constitutional prohibition against same-sex marriage is unconstitutional under the federal constitution. That ruling has been stayed pending an appeal.

Civil Unions, Domestic Partnerships, and Partner Benefits

Currently, only New Jersey authorizes civil unions. California, Colorado, Hawaii, Maine, Nevada, Oregon, Washington, and Wisconsin have created domestic partnership laws that offer varying subsets of the rights and responsibilities of marriage under the laws of those jurisdictions.

Nineteen states, including Maryland, as well as numerous local jurisdictions, offer benefits for same-sex partners of state or local government employees. As of fiscal 2010, Maryland offers its employees health insurance coverage for their same-sex partners.

Federal Law

The federal Defense of Marriage Act of 1996 defines marriage as a legal union between a man and a woman only and allows states to deny recognition of a public act, record, or judicial proceeding of any other state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of the other state.

The General Accounting Office has estimated that there are at least 1,138 federal statutory provisions in which marital status is a factor in determining or receiving benefits, rights, and privileges, including provisions relating to Social Security, taxes, and health care.

Two cases filed in federal court in Massachusetts have challenged the constitutionality of the Defense of Marriage Act based on Fifth Amendment equal protection principles and the Tenth Amendment right of a state to define marriage. In July 2010, the court found the federal law to be unconstitutional in each case, holding that it interferes with a state's right to define marriage and denies federal marriage-based benefits to same-sex couples that are available to similarly situated heterosexual couples. The federal government has appealed both decisions.

Maryland Law

In 1973 Maryland enacted a law providing that only a marriage between a man and a woman is valid in the State. The Court of Appeals upheld the constitutionality of the law in *Conaway v. Deane*, 401 Md. 219 (2007); however, the court cautioned that the opinion "should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex." *Id.* at 325.

Recognition of Same-sex Marriages from Other States

Under the Full Faith and Credit Clause of the U.S. Constitution, states are required to give full faith and credit to the public acts, records, and judicial proceedings of every other state.

Therefore, Maryland generally recognizes foreign marriages that are validly entered into in another state. *See Henderson v. Henderson*, 199 Md. 449 (1952) (recognizing other state's common law marriage). However, the Full Faith and Credit Clause does not require a state to apply another state's law in violation of its own legitimate public policy. See *Nevada v. Hall*, 440 U.S. 410 (1979) and *Henderson*, 199 Md. at 459 (stating that Maryland is not bound to give effect to marriage laws that are "repugnant to its own laws and policy").

Some jurisdictions, such as New York and Rhode Island, have recognized same-sex marriages performed in other jurisdictions.

In February 2010, the Attorney General of Maryland issued a formal opinion on the question of whether Maryland would recognize same-sex marriages legally performed in other jurisdictions. The Attorney General concluded that, although not free from all doubt, the Court of Appeals "…is likely to respect the law of other states and recognize a same-sex marriage contracted validly in another jurisdiction." 95 Op. Att'y Gen. 3 (2010) at 54. The opinion advised that in light of evolving State public policies that favor, at least for some purposes, domestic partnerships and same-sex intimate relationships, the court would not readily invoke the public policy exception to the general rule of recognition of out-of-state marriages. The extent to which the Attorney General's opinion will alter State agency policies and actions toward same-sex spouses who enter, visit, or reside in Maryland remains to be seen.

Following the opinion, the State Department of Budget and Management amended regulations relating to State employees' health benefits to redefine "spouse" without reference to gender as "an individual who is lawfully joined in marriage to an employee or retired employee as recognized by the laws of the State of Maryland."

Unresolved Issues

Based on previous year's legislative proposals, in future years the legislature may be asked to consider measures to (1) amend the State Constitution to either ban or authorize same-sex marriages; (2) amend State law to establish that a marriage between two individuals who are not otherwise prohibited from marring is valid in the State; (3) ban State recognition of same-sex marriages performed in other jurisdictions; and (4) place a moratorium on State recognition of out-of-state same-sex marriages until the issue is addressed and decided by an opinion of the Maryland Court of Appeals or by an enactment of the Maryland General Assembly, among others.

For further information contact: Susan O. McNamee Phone: (410)946(301)970-5350

Courts and Civil Proceedings

Residential Foreclosures and Lending Practices

Emergency legislation passed during the 2008 session reformed the State's residential foreclosure process to provide homeowners with greater time and additional notices before their properties are sold. Additional measures passed in the 2010 session allowed delinquent borrowers to request foreclosure mediation sessions with their respective lenders. Despite these reforms, foreclosure activity remains elevated throughout the State as residents continue to feel the effects of the economic downturn. As the nation's Attorneys General recently announced a joint investigation into flawed affidavits filed in residential foreclosure cases, the Maryland Court of Appeals unanimously approved emergency amendments to the Maryland Rules of Procedure to address similar concerns.

Over the past several years, changes in the real estate market and the economy in general have had a number of negative effects on lenders and borrowers, both nationwide and in Maryland. The beginning of the foreclosure crisis in 2007 was marked by aggressive nonbank lenders that disregarded traditional mortgage underwriting standards to make loans to many uncreditworthy borrowers. The widespread availability of credit, when combined with historically low interest rates, drove housing prices to unsustainable levels and resulted in the boom and subsequent bust of the residential housing market.

Maryland Legislative Actions

To mitigate the effects of the foreclosure crisis on State borrowers and homeowners, the Maryland General Assembly passed substantive legislative reforms of State residential foreclosure procedures and mortgage lending laws.

Chapters 1 and 2 of 2008 reformed the State's residential foreclosure process to provide homeowners with greater time and additional notices before their properties are sold. The Acts required a mortgage lender to send a notice of intent to foreclose (NOI) to a homeowner at least 45 days before filing an action to foreclose a residential mortgage. Except under specified circumstances, Chapters 1 and 2 also prohibited the filing of a residential foreclosure action until the later of 90 days after a mortgage default or 45 days after the NOI is sent.

The NOI must contain the names and telephone numbers of the mortgage lender, the mortgage servicer, the mortgage broker or loan originator, and any agent of the mortgage lender who is authorized to modify the terms of the mortgage loan. A copy of the NOI must also be sent to the Office of the Commissioner of Financial Regulation. The commissioner's office received approximately 120,000 paper copies of NOIs in fiscal 2010 and recently developed an electronic NOI filing system that will be fully operational on December 1, 2010. The commissioner's office anticipates that the electronic filing system will streamline office procedures and enhance its ability to send foreclosure-related outreach materials to homeowners facing foreclosure in a timely manner.

Additional legislation passed during the 2008 session tightened mortgage lending standards and required a lender to give due regard to a borrower's ability to repay a loan. Specifically, Chapters 7 and 8 of 2008 required that a lender verify the borrower's ability to repay a mortgage loan based on certain debt-to-income ratios and gross monthly income. The "ability to repay" requirement addressed the widespread underwriting problems that resulted in borrowers receiving loans they could not afford and has become the industry standard in extending credit for residential mortgage products. Chapters 7 and 8 were based on recommendations made by Homeownership Preservation Task Force and are similar to federal regulations adopted by the Board of Governors of the Federal Reserve System.

Chapters 7 and 8 also expanded the State's licensing requirements for mortgage lenders and originators. Under the federal Secure and Fair Enforcement (SAFE) for Mortgage Licensing Act of 2008, every loan originator taking a residential mortgage loan application from a consumer must obtain a mortgage loan originator license from the state agency in which the property is located; to be licensed, mortgage loan originators are required to pass a test that covers federal laws and regulations for mortgage origination in addition to a state-specific test component. Completion of an application is through the Nationwide Mortgage Licensing System (NMLS), a multi-state electronic system that collects fees for states and tracks the status of each license. The "ability to repay" provisions, as part of the State's Mortgage Lender Law, are regularly tested as part of the Maryland component of the SAFE Mortgage Loan Originator Test.

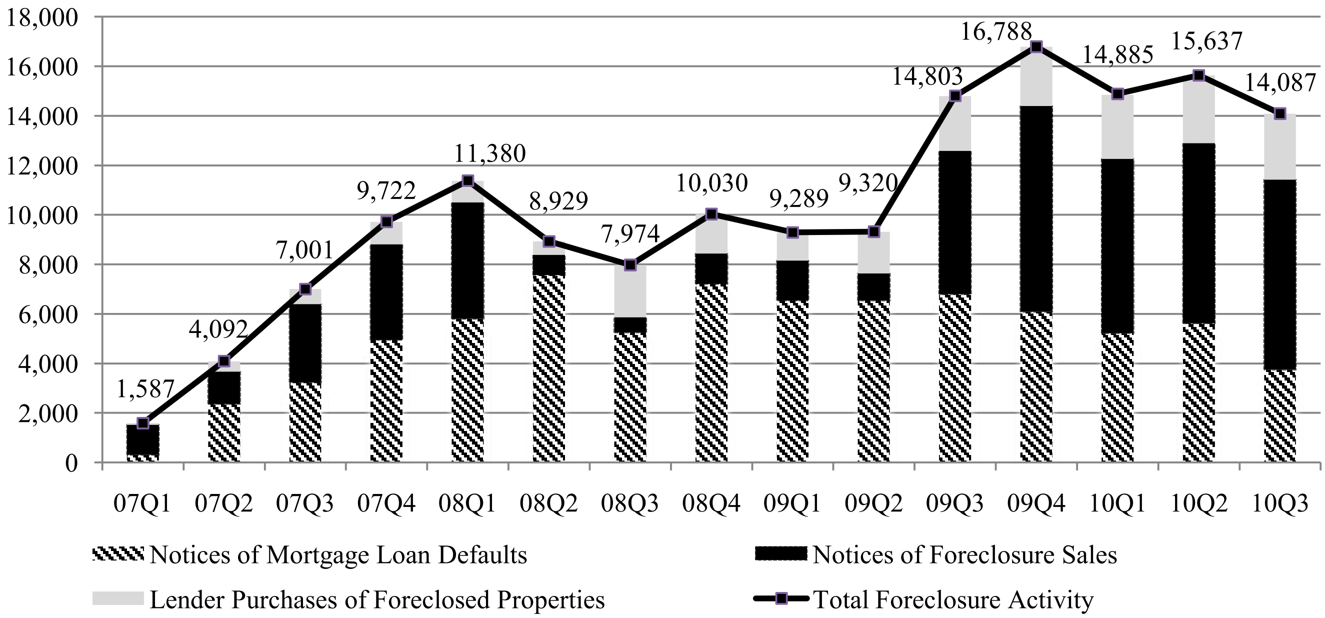
Demand for Foreclosure Mediation Lower Than Expected

To facilitate the utilization of new federal and State homeowner assistance programs, the Administration convened a workgroup of various stakeholders in fall 2009 to explore options for instituting a foreclosure mediation program in Maryland. Chapter 485 of 2010, an emergency Administration measure that grew out of the workgroup's collective efforts, sought to prevent a homeowner from losing his or her home through foreclosure when a loan modification may be available and required the consideration of other loss mitigation options where appropriate. With respect to an owner-occupied residential property subject to a foreclosure action, Chapter 485 allowed a borrower to file with the court a request for foreclosure mediation, to be conducted before the scheduling of the foreclosure sale.

Pursuant to Chapter 485, the Commissioner of Financial Regulation issued emergency regulations that went into effect July 1, 2010. The regulations include a revised residential NOI form; an explanation of the Maryland foreclosure process and timeline, including requests for mediation; preliminary and final loss mitigation affidavits; a foreclosure mediation request form and loss mitigation application; and instructions by the Maryland Office of Administrative Hearings to foreclosure mediation parties.

The Department of Housing and Community Development (DHCD) reported that there were 14,087 residential foreclosure activity filings on Maryland properties in the third quarter of 2010; down slightly from the 15,637 activity filings in the prior quarter (see **Exhibit 1)**. However, as of October 8, 2010, more than three months since the foreclosure mediation law went into effect on July 1, only 156 homeowners had requested and been scheduled for a mediation meeting. As of June 30, 2010, DHCD anticipated handling up to 6,000 mediations in the upcoming year. Recent events concerning the legitimacy of affidavits in the foreclosure process as well as the implementation of the foreclosure mediation law have temporarily slowed the pace of foreclosures in the State. However, it remains to be seen whether the lack of foreclosure mediation requests during the first few months of implementation is temporary in nature, or whether demand for the program is significantly lower than originally expected.

Exhibit 1
Total Foreclosure Activity in the State
First Quarter 2007 – Third Quarter 2010



Source: Department of Legislative Services using DHCD *Property Foreclosures in Maryland Quarterly Report* data attributed to RealtyTrac

Court of Appeals of Maryland Approves Emergency Foreclosure Rules

In October 2010, the Attorneys General of all 50 states launched a joint investigation into improper foreclosure procedures employed by the nation's largest mortgage lenders and loan servicers, a practice commonly referred to as "robo-signing." Thousands of foreclosure affidavits were submitted to courts nationwide that were signed by individuals who had signed so many affidavits on a daily basis, it raised questions as to whether the individuals had sufficient knowledge of the underlying facts to attest to their accuracy. In a recent Florida foreclosure lawsuit, an IndyMac (now called OneWest Bank) representative admitted to routinely signing approximately 6,000 foreclosure-related documents per week; the court in that lawsuit determined it was impossible for the individual to have thoroughly reviewed the foreclosure files and determine whether the information was accurate. The nation's largest lenders, including JPMorgan Chase, Bank of America, Wells Fargo, and Ally Financial, temporarily delayed (and subsequently resumed) residential foreclosures upon reviewing the accuracy of their court filings and examining their internal procedures.

Other revelations in Maryland include attorneys who submitted affidavits in foreclosure court filings that had been signed by others on their behalf. The Secretary of State recently revoked the commissions of six notaries public who verified the signatures of foreclosure attorneys who had not actually signed the respective affidavits. Although the Governor recently joined members of the State's congressional delegation to ask the courts for a 60-day residential foreclosure moratorium, the Court of Appeals of Maryland has taken swift action to combat the use of fraudulent affidavits in residential foreclosure filings by passing emergency amendments to the Maryland Rules of Procedure.

Citing preliminary audits that revealed the filing of hundreds of fraudulent affidavits in residential foreclosure actions in State circuit courts, the Maryland Standing Committee on Rules of Practice and Procedure (Rules Committee) called such behavior an "assault on the integrity of the judicial process itself." Under new Rule 14-207.1, effective October 20, 2010, if a judge has a reason to believe that an affidavit is invalid, the judge may halt the foreclosure for 30 days until the plaintiff (usually the lender or its representative) demonstrates that the affidavit is legally sufficient or that the deficiency has been cured.

The new rule also allows a judge to issue a show cause order to require the individual who signed the affidavit to appear in court and attest, under penalty of perjury, that the individual "read and personally signed the affidavit and has a sufficient basis to attest to the accuracy of the facts stated in the affidavit." Although the Rules Committee recognizes that judges may previously have been able to issue show cause orders to verify the legitimacy of affidavits, the new rule constitutes a "clear statement by the Court of Appeals that the Maryland Judiciary recognizes the seriousness of the problem and has provided an appropriate and measured response to it."

Environment and Natural Resources

Chesapeake Bay Restoration: New Policy Framework Nearly in Place

Efforts to restore the Chesapeake Bay over the past three decades have failed. A new restoration policy framework is emerging that emphasizes stronger federal oversight and shorter term program evaluation and goals. As a result, bay restoration will continue to garner attention during the 2011 session.

Background

The Chesapeake Bay is North America's largest and most biologically diverse estuary, fed by more than 100,000 creeks, streams, and rivers running through six watershed states (Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia) and the District of Columbia. Over the past several decades, the health of the bay has degraded significantly as a result of nutrient (nitrogen and phosphorus) and sediment pollution from wastewater treatment plants, agricultural land, and stormwater runoff. Regional efforts to improve water quality and restore the bay have failed to make significant progress. However, a new, comprehensive bay restoration policy framework is nearly in place. In 2009, President Barack H. Obama signed a federal executive order on bay restoration and protection, and each watershed state and the District of Columbia established two-year bay restoration policy milestones. By the end of 2010, each watershed state and the District of Columbia will have a Phase I Watershed Implementation Plan (WIP) for meeting restoration goals, and the federal government will release a baywide Total Maximum Daily Load (TMDL) or "pollution diet" establishing specific pollution limits.

Recent Bay Policy Developments

Exhibit 1 shows the timeline of major bay policy events. Over the past year, significant federal, state, and local attention has been given to development of a bay TMDL and Phase I WIPs, as described below.

Total Maximum Daily Load

The federal Clean Water Act requires states to designate intended uses for their water bodies, such as swimming and fishing, and to set water quality standards to achieve these uses. Water bodies that do not meet the water quality standards are designated as impaired and are assigned a TMDL, which (1) sets the maximum amount of pollution that a water body can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements among the various sources. The U.S. Environmental Protection Agency (EPA) has been working with watershed states and the District of Columbia to develop a bay TMDL since 2000.

Exhibit 1

Major Bay Policy Developments

Date	**Action**
June 1999	As a result of lawsuits, EPA was required by consent decree to develop TMDLs for certain segments of the bay by 2011.
June 2000	Maryland, Virginia, Pennsylvania, the District of Columbia, the Chesapeake Bay Commission, and EPA signed the Chesapeake 2000 Agreement (C2K), which sought to remove the bay from EPA's impaired waters list by 2010.
January 2009	The Chesapeake Bay Foundation, with others, filed suit against EPA to compel a stronger federal role in the cleanup of the bay (*Fowler v. EPA)*.
May 2009	President Barack H. Obama signed Executive Order 13508 that required, among other things, an annual Chesapeake Bay Action Plan describing how federal funding will be used for bay restoration efforts in the next fiscal year. In addition, new two-year incremental goals called "milestones" for reducing pollution from each jurisdiction were developed.
May 2010	The Plaintiffs in *Fowler* entered into a settlement agreement with EPA creating a legally binding commitment that EPA will take specific actions under its current authority to restore the bay, including establishing the bay TMDL and an effective implementation framework.
September 2010	Based on draft baywide limits for pollution provided by EPA, the watershed states and the District of Columbia submitted draft Phase I WIPs to EPA. EPA released a draft bay TMDL and the first Chesapeake Bay Action Plan was published.
November 2010	States submit final Phase I WIPs to EPA.
December 2010	EPA releases the final bay TMDL.

EPA: U.S. Environmental Protection Agency
TMDL: Total Maximum Daily Load
WIP: Watershed Implementation Plan

EPA published a draft bay TMDL on September 24, 2010, and plans to release the final bay TMDL by December 31, 2010. The draft bay TMDL proposes nitrogen, phosphorus, and sediment limits by jurisdiction, basin, and bay segment. All pollution control measures to fully restore the bay and its tidal tributaries are required to be in place by 2025, with 60% of the measures complete by 2017. However, Maryland has committed to having measures in place by 2020, with 70% of the measures complete by 2017. **Exhibit 2** illustrates Maryland's 2009 pollutant loads and the pollutant loads authorized under the draft bay TMDL.

Exhibit 2

Maryland's Pollution Reduction Goals in the Draft Bay TMDL

(Million Pounds Per Year)

Pollutant	2009 Loads	Draft Target Load	Percent Reduction
Nitrogen	49.42	39.09	21%
Phosphorus	3.30	2.72	18%
Sediment	1,386.65	1,175.47	15%

TMDL: Total Maximum Daily Load

Source: Maryland Department of the Environment; U.S. Environmental Protection Agency

Watershed Implementation Plans

Each watershed state and the District of Columbia submitted a draft Phase I WIP to EPA in September 2010. The WIPs are intended to provide a roadmap for how each jurisdiction will achieve and maintain the bay TMDL. Maryland's draft WIP builds on current restoration efforts and identifies 75 strategy options to reduce nitrogen and phosphorus for wastewater urban run-off, septic systems, agriculture, and air pollution. However, the draft WIP does not address how Maryland will fund these strategies. EPA evaluated Maryland's draft WIP and found that while it met overall statewide allocations for nitrogen, phosphorus, and sediment, several individual river basins exceeded the targets. Also, EPA concluded that none of the WIPs provided adequate assurance that the pollution controls identified could be implemented to achieve pollution reduction targets. If a final WIP fails to meet federal requirements, EPA may institute backstop measures that focus on tightening controls on federally permitted point sources of pollution (*e.g.*, wastewater treatment plants, large animal agriculture operations, and municipal stormwater systems) and/or withholding, conditioning, or reallocating federal funds. In 2011, the jurisdictions are expected to submit Phase II WIPs that allocate the pollutant loads on a geographically smaller scale and provide greater detail about proposed pollutions controls.

Implications for 2011

Efforts to achieve bay restoration goals are expected to demand significant local, State, and federal policy attention. Required restoration program costs will likely far exceed available resources and require difficult decisions about new funding sources, public versus private funding responsibilities, and the distribution of limited public resources. EPA plans to initiate regulatory actions focused on stormwater management, agricultural feeding operations, and air pollution to implement the TMDL, and the State will likely play an important role in these efforts. Finally, State policy proposals that seek to establish more vigorous bay restoration and protection requirements in order to achieve bay commitments are also possible.

Environment and Natural Resources

Addressing the Bay Restoration Fund Deficit

Capital costs of upgrading the State's 67 major publicly owned wastewater treatment plants with enhanced nutrient removal technology are significantly higher than originally anticipated. Several options for addressing the $537 million shortfall, which is expected to begin in fiscal 2012, are being considered by the Bay Restoration Fund Advisory Committee, including increasing the bay restoration fee.

Background

The Bay Restoration Fund (Chapter 428 of 2004) was created to address the significant decline in Chesapeake Bay water quality due to over-enrichment of nutrients such as phosphorus and nitrogen. This dedicated fund is used to upgrade Maryland's 67 major publicly owned wastewater treatment plants (WWTPs) with enhanced nutrient removal (ENR) technology (technology capable of achieving wastewater effluent quality of 3 milligrams per liter (mg/l) total nitrogen and 0.3 mg/l total phosphorus). While ENR grants are the fund's primary expenditure, funds are also dedicated to septic system upgrade grants and the Maryland Department of Agriculture's Cover Crop Program. The fund is financed by a bay restoration fee on users of WWTPs and septic systems. The fee is generally $30 per year for residential users and up to $120,000 per year for commercial and industrial users.

Shortfall in Funds Used to Upgrade WWTPs

While the estimated capital costs of upgrading the major WWTPs with ENR technology were originally $750.0 million to $1.0 billion, current estimates suggest that costs will exceed $1.48 billion. Current projections by the Maryland Department of the Environment (MDE) anticipate only $945.0 million in bay restoration fee revenue and bond proceeds, however. This will result in an estimated $537.0 million shortfall which will begin in fiscal 2012. The shortfall is due to various factors, which include the following:

- Higher Debt Service Payments – During the legislative debate surrounding Chapter 428, MDE noted its intention to issue 20-year bond debt. However, a determination that revenue bonds secured by bay restoration fees are considered State tax-supported debt has limited, pursuant to the Maryland Constitution, the term of the bonds that may be issued to 15 years. Thus, debt service payments have been higher than originally anticipated; and

- Increased Construction Costs – According to MDE, WWTP construction costs on recently opened bids are significantly higher than the original preplanning estimates. Higher costs are attributed to several factors, including uncertainty concerning original construction estimates, inflation of material and labor costs during the housing bubble, restrictive space concerns at some WWTPs requiring more costly technology, and other MDE permit compliance considerations.

Options to Address the Shortfall

The Bay Restoration Fund Advisory Committee (BRFAC), which was also established by Chapter 428, is charged with, among other things, making recommendations regarding the appropriate increase in the bay restoration fee to be assessed in future years as necessary to meet the financing needs of the fund. BRFAC has explored a number of options for addressing the anticipated deficit, including:

- increasing the bay restoration fee;
- reducing grants to below 100% of eligible costs;
- reprioritizing or delaying some ENR upgrades, or forgoing other upgrades based on the specific impacts of certain WWTPs on the Chesapeake Bay;
- allowing bay restoration fee revenue to make debt service payments on bonds issued by local governments that have a term of up to 30 years; and
- redirecting $5 million per year from operating grants to capital funding.

BRFAC is expected to make final recommendations to the legislature in its January 2011 annual report. When considering BRFAC's recommendations, one issue that may need to be addressed relates to equity – will the costs of upgrading the remaining WWTPs be apportioned equally among all jurisdictions or just among the jurisdictions that have not yet received funding for the upgrades?

Although final recommendations are not yet available, a general consensus was reached at the November BRFAC meeting to recommend a 100% increase in the bay restoration fee. A 100% fee increase is expected to be the primary recommendation to be made by BRFAC in its January 2011 annual report. This option is discussed in more detail below.

Fee Increase

With respect to the fee paid by users of WWTPs, the bay restoration fee is currently $2.50 per month ($30 annually) per equivalent dwelling unit (EDU). Based on the current cost estimates for upgrading the 67 major publicly owned wastewater treatment plants with ENR technology, a fee increase of 100% (or an additional $30 per year per EDU) would provide the necessary funding to offset the projected deficit in order to fully fund ENR upgrades with 100% grants. In addition to fully funding ENR upgrades, a fee increase of 100% would provide an estimated $150 million buffer for cost overruns and/or to provide assistance to jurisdictions to upgrade some of the larger minor facilities after the major facilities are completed. These estimates assume that MDE would use the additional fee revenue to finance additional debt, despite potential debt limitations; this issue is discussed more below.

Although the main purpose of a fee increase would be to address the funding deficit for ENR upgrades, the recommended fee increase will likely apply to both users of WWTPs and septic systems. Pursuant to current law, any additional revenue collected from users of septic systems would be used for septic system upgrades and the planting of cover crops on farmland.

Implications for 2011

Upgrading the State's major WWTPs with ENR technology is a key pollution-reduction strategy identified in the draft Phase I Watershed Implementation Plan (WIP), which is the State's roadmap to achieving the nutrient pollution limits in the recently developed baywide draft Total Maximum Daily Load (TMDL), or "pollution diet." Both the WIP and the TMDL are described further in "Chesapeake Bay Restoration: New Policy Framework Nearly in Place" in this section of this *Issue Papers – 2011 Legislative Session*. Unless addressed in some way, the significant funding shortfall in the Bay Restoration Fund will compromise the State's ability to upgrade all 67 of the major publicly owned WWTPs; this may jeopardize the State's ability to meet the pollution limits required under the TMDL.

On the other hand, if the General Assembly approves a significant increase in the bay restoration fee, MDE plans to use the additional revenue generated to finance more debt. While this option would provide additional funding for ENR upgrades, there will likely be restrictions on how much more State debt may be issued. The Capital Debt Affordability Committee estimates that currently projected issuances are maximized and the State has reached its debt capacity. Thus, if the State adheres to current debt limits and additional bay restoration bond issuances are proposed, then the General Assembly will need to make difficult decisions between additional debt authorized for bay restoration versus other capital programs.

For further information contact: Cristen C. Flynn/Andrew D. Gray Phone: (410) 946/(301) 970-5350

Environment and Natural Resources

Fisheries Management

Maintaining the viability of the State's fisheries remains a challenge. A new oyster restoration and aquaculture development plan was instituted in September 2010 to help revive the Chesapeake Bay's oyster population. Growth in the blue crab population indicates that recent management changes may have had a beneficial impact

Background

The Department of Natural Resources (DNR) Fisheries Service is responsible for the conservation, management, and allocation of the State's fisheries resources and for ensuring the long-term sustainability and use of these resources. Over the past year, significant attention has been given to the State's oyster restoration and management programs and policies. Recent increases in the blue crab population may also prompt management changes.

Oyster Restoration and Management

Since 1994, the Chesapeake Bay's oyster population has languished at 1% of historic levels; oyster bars have decreased 80%, and the number of harvesters has dwindled from 2,000 in the mid-1980s to just over 500 annually since 2002. To help reverse this trend, DNR unveiled a new management and restoration plan for oysters and the State's oyster industry in December 2009. The plan increases the State's network of oyster sanctuaries from 9 to 24% of the bay's remaining quality oyster bars, establishes oyster aquaculture leasing opportunities, and maintains 76% of the bay's quality oyster habitat for a public oyster fishery. The plan was adjusted in response to public feedback, and implementing regulations were finalized in September 2010.

As part of its oyster restoration and management efforts, DNR is focusing on promoting oyster aquaculture opportunities and strengthening enforcement of commercial fisheries laws.

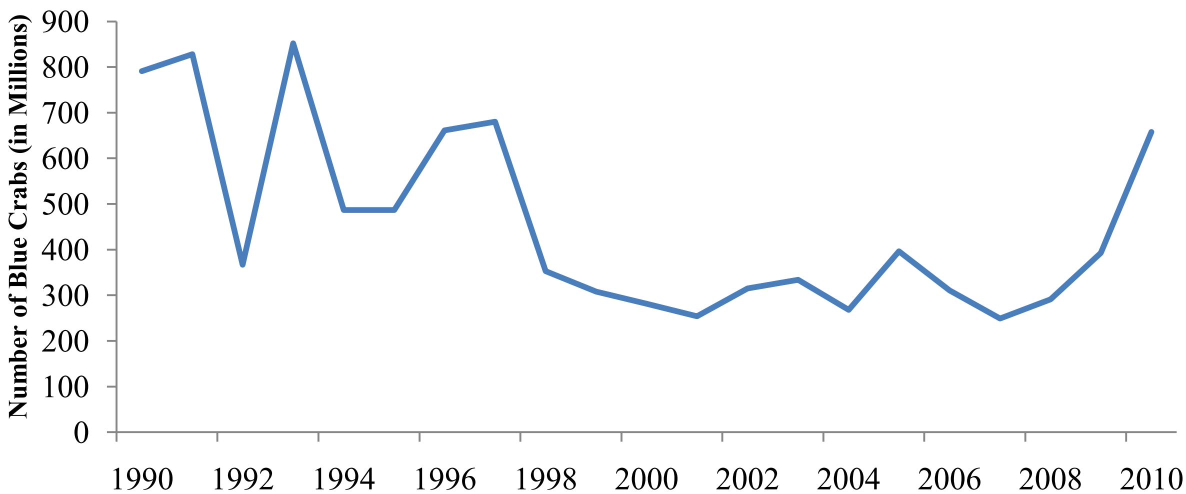
- Aquaculture – To bolster the oyster population, Chapters 173 and 174 of 2009 streamlined the aquaculture regulatory process and opened new areas to leasing to promote industry growth, lessen pressure on wild oysters, and provide alternative economic opportunities for watermen. DNR began accepting new aquaculture applications for leases in early September 2010 and received approximately 16 applications for approximately 2,675 acres within the first month.

- Enforcement – In accordance with Chapter 453 of 2009, DNR introduced a new administrative penalty system to help deter violations of commercial fisheries laws. In order to further enhance enforcement, DNR is also installing a network of radar and camera units to monitor sensitive areas that are prone to oyster poaching. In addition, a pilot program was launched under which the District Court in Anne Arundel County sets aside one day each month to hear all pending natural resources cases.

Blue Crab Population Rebounds

As illustrated in **Exhibit 1,** there are currently an estimated 658 million blue crabs in the bay, a 60% increase over 2009. This population growth indicates that DNR's 2008 management measures aimed at reducing harvest pressure on female crabs may have helped bring the crab population to its highest level since 1997. In response to this population growth, DNR added a week to the 2010 mature female hard crab harvest period for the bay and its tidal tributaries.

Exhibit 1
Chesapeake Bay Blue Crab Population
Calendar 1990-2010



Source: Department of Natural Resources

Policy Implications

In response to recent oyster management changes, legislative or policy proposals to expand shellfish harvest methods and areas, strengthen penalties associated with oyster poaching, and expand financial assistance opportunities for oyster aquaculture enterprises are likely to resurface. Due to growth in the blue crab population, regulatory proposals to expand blue crab harvesting are also anticipated.

Environment and Natural Resources

Energy and the Environment

Energy efficiency, energy conservation, and renewable energy continue to be major issues in Maryland. Efforts to advance the State toward its EmPOWER Maryland and Renewable Energy Portfolio Standard goals will likely continue to garner attention in the 2011 session. Also of interest will be the allocation of State funds generated under the Regional Greenhouse Gas Initiative and the overall amount of funding available for clean energy programs.

Introduction

During the 2008 session, building on earlier efforts, a number of laws seeking to encourage energy efficiency, energy conservation, and the development of renewable energy in the State were enacted. The EmPOWER Maryland program and the Maryland Renewable Energy Portfolio Standard (RPS), which were established and expanded, respectively, in 2008, now serve as two prominent energy-related policies of the State. This paper provides an update on the progress of those efforts and also discusses the current allocation of funding from the Maryland Strategic Energy Investment Fund (SEIF) and its impact on Maryland Energy Administration (MEA) clean energy programs.

Update on EmPOWER Maryland

The EmPOWER Maryland program is predicated on the idea that one of the cheapest ways to meet new capacity needs in the electricity market is to reduce the demand for electricity. The program established the twin goals of reducing per-capita electricity consumption and peak demand in the State by 15% from 2007 levels by the end of 2015.

The EmPOWER Maryland law provides for the goals to largely be achieved through demand response and energy efficiency and conservation programs of Maryland's five major electric utility companies. The law sets per-capita electricity consumption and peak demand goals for those programs, which are similar to the overall State goals, and the programs also have specified interim targets for 2011 and 2013. Several of the utilities' programs have been slow to ramp up, however. When the utilities filed first quarter 2010 EmPOWER Maryland reports with the Public Service Commission, a number of the utilities had only recently begun their programs and had made limited progress toward their 2011 goals. The economic downturn, despite having independently limited electricity usage in the State, is believed to have contributed to low customer participation rates in some of the programs.

Ultimately, the peak demand goal is expected to be more easily achieved by those programs than the electricity consumption goal. Other MEA energy efficiency programs are expected to assist in reaching the State's electricity consumption reduction goal, and advanced metering initiatives proposed by some utilities have the potential to reduce both peak demand and electricity consumption.

Update on Maryland's Renewable Energy Portfolio Standard

Maryland's RPS requires that renewable sources generate specified percentages of Maryland's electricity supply each year, increasing to 20%, including 2% from solar power, by 2022. Electricity suppliers must submit renewable energy credits (RECs) equal to the percentage mandated by statute each year, or pay an alternative compliance penalty (ACP) equivalent to the supplier's shortfall. Any ACP payments made are used by MEA to support new renewable energy sources. While RECs can be obtained by electricity suppliers from outside of the State, solar RECs (SRECs) used to meet the solar RPS requirement will need to originate from within the State beginning in 2012.

To date, electricity suppliers generally have been able to meet their RPS obligations through the submission of RECs, with little reliance on ACP payments. By contrast, initial compliance with the solar obligation has broadly been met with ACP payments, generating $1.2 million in 2008 and $1.1 million in 2009. This appears to be due, in part, to the timing of electricity supply contracts preventing some utilities from initially complying with the solar RPS obligation with SRECs and, in part, to the limited availability of SRECs. Legislation enacted in 2010 (Chapter 494) increased the solar RPS percentages and the ACP payment amounts for the solar RPS from 2011 through 2016, accelerating the ramp up of the solar RPS obligation and increasing the incentive for the installation of solar capacity. To meet the 2% solar obligation in 2022 with SRECs, the installed solar capacity in the State will need to increase from roughly 5 megawatts or less at the end of 2009 to an estimated 1,300 megawatts in 2022.

With Maryland's RPS obligation increasing substantially over the next decade, offshore wind energy could play a significant role in the State's ability to meet the 20% 2022 goal. Offshore wind energy has the largest potential energy output among existing clean energy technologies. Toward this end, Maryland has taken preliminary steps aimed at facilitating offshore wind development, including coordinating with other states and the federal government; seeking information from wind energy developers; and engaging in community/stakeholder outreach and ocean planning and mapping efforts.

Maryland Energy Administration Programs Face Fiscal Challenges

Recent budget reconciliation legislation measures have reduced the amount of revenue generated from the Regional Greenhouse Gas Initiative (RGGI) auctions that is allocated to MEA and its clean energy programs. Pursuant to statute, the RGGI auction revenue is deposited in the SEIF and distributed among low-income electricity assistance programs, rate relief for residential electricity customers, climate change programs, clean energy programs, and MEA administrative costs. In order to reduce general fund expenditures for electricity assistance, budget reconciliation legislation passed in the 2009 session adjusted the statutory allocation established when the SEIF was created in 2008, reducing the amount of funding allocated to MEA and its programs and increasing the amount allocated to electricity assistance programs. Budget reconciliation legislation passed in the 2010 session extended that adjusted allocation through fiscal 2012.

The impact on MEA of the change in the allocation of the SEIF funding has been compounded by the fact that the price of carbon dioxide emissions allowances sold at RGGI auctions has declined from a high of $3.51 per allowance in the March 2009 auction to a low of $1.86 per allowance in the most recent September 2010 auction. Through September2010, the RGGI auctions have generated $139.1 million in revenue for the SEIF. Also, in fiscal 2012, MEA is expected to face a significant reduction in federal funding, as funds received under the American Recovery and Reinvestment Act of 2009 (ARRA) expire; the ARRA funding accounted for a significant portion of the agency's budget in fiscal 2010 and 2011 (27 and 59%, respectively).

Implications for the 2011 Session

Legislative solutions seeking to reduce energy demand and encourage the diversity of energy sources will likely continue to be of interest in the 2011 session, including efforts to advance the State toward its EmPOWER Maryland and RPS objectives. As MEA faces a significant reduction in funding for its clean energy initiatives once federal stimulus funding is fully expended, and as budget reconciliation legislation could further address the allocation of SEIF funds, the level and sources of funding for MEA's energy programs will likely also garner attention in 2011.

For further information contact: Evan M. Isaacson/Scott D. Kennedy Phone: (410) 946/(301) 970-5510

State Government

Election Administration

As the State implemented in-person early voting for the first time during the 2010 gubernatorial elections, State and local election officials also took initial steps to comply with federal requirements governing voting by military and overseas personnel, contemplated potential changes to the State's 2012 presidential election calendar as a result of rules changes adopted by the Democratic and Republican National Committees, and awaited the results of a study commissioned by the General Assembly concerning the State's current Direct Recording Electronic (DRE) touch screen voting machines and proposed new optical scan voting machines.

Early Voting

Early voting was implemented for the first time in Maryland during the 2010 gubernatorial elections for six days prior to both the primary and general elections at 46 early voting centers across the State. Statewide early voting turnout was relatively light in comparison to levels of participation in a number of other states in past elections, likely due in part to this being the State's first experience with early voting.

According to unofficial State Board of Elections statistics, of Maryland voters that cast regular ballots in person at early voting centers or election day polling places (excluding provisional and absentee voters), 10.2% cast their ballots at early voting centers during the 2010 primary election and 12.6% did so at the general election. Among the individual counties, the percentage of in-person voters that voted early ranged from 4.2% in Washington County to 20.7% in Kent County for the primary election and from 4.8% in Allegany County to 24.2% in Talbot County for the general election.

For future elections, State law currently specifies early voting days and hours for the 2012 presidential elections but does not specify early voting days and hours for the Baltimore City elections or statewide elections beyond 2012.

Military and Overseas Voting

Compliance with Federal 45-day Absentee Ballot Requirement

In 2009, Congress passed, and the President signed into law, the Military and Overseas Voter Empowerment Act (MOVE Act), which requires states to, among other things, send absentee ballots to military and overseas voters no later than 45 days before an election for federal office if a request is received prior to that time. Compliance with the requirement was problematic in 2010 for a number of states, including Maryland, that had primary elections scheduled relatively close to the November general election, which did not allow enough time for general election ballots to be finalized and sent 45 days prior to the election.

The MOVE Act allows states to request a waiver from the 45-day requirement for an election under certain circumstances, including when a state's primary election date prohibits compliance. The State Administrator of Elections submitted a request for a waiver for Maryland but subsequently withdrew the request after a solution was identified to meet the requirement. The solution included sending ballots that included all federal contests to military and overseas voters by the 45-day deadline (the MOVE requirement applies to elections for federal office) and then expediting delivery of full ballots, including federal, State, and local contests, once they have been certified, to military and overseas voters eligible to vote in State and local contests. The voters were instructed to fill out and submit both ballots and the election office would count the federal ballot if it was the only ballot received, otherwise the full ballot would be counted. Military and overseas voters also had the option of requesting electronic access to their absentee ballot so that they did not have to wait for it to be sent by mail.

Just after the 45-day MOVE Act deadline, prior to the November general election, a lawsuit was filed in U.S. District Court against the State Board and State Administrator of Elections, claiming that the State board's administration of absentee voting for the general election did not comply with the MOVE Act's 45-day requirement and violated State law and military voters' federal constitutional rights. The court dismissed the claims that the State board had violated the MOVE Act, State law, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. However, the court did determine, irrespective of the MOVE Act requirement, that given when full State ballots (including federal, State, and local contests) were mailed to military and overseas voters (between 31 and 35 days prior to the November 12 deadline for receipt of ballots by local boards of elections) and the obstacles military voters would face in meeting the November 12 deadline, enforcement of the deadline unconstitutionally infringed upon military and overseas voters' fundamental right to vote. The court granted a preliminary injunction requiring that absentee ballots mailed by military and overseas voters on or before election day (November 2) be accepted and counted if they were received prior to November 22.

Among the other states that had primary election dates that made compliance with the 45-day requirement problematic in 2010, three states amended their laws to move their primary elections and nine states and the District of Columbia submitted requests for waivers from the 45-day requirement. One state, Hawaii, was among both the states that amended their laws and those that requested waivers, since the change in its primary election date did not take effect for the 2010 elections. Five of the waiver requests were approved and five were denied. The U.S. Department of Justice entered into various agreements and settlements with the states that were denied waivers, as well as a few others that did not fully comply with the 45-day deadline or waiver conditions, to resolve the states' noncompliance.

Uniform Military and Overseas Voters State Legislation

In July 2010, the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws) approved and recommended for enactment in all states a Uniform Military and Overseas Voters Act. The Act extends the assistance and protections in federal law (including the MOVE Act) for military and overseas voters to state elections, and in many cases the Act enhances the assistance and protections provided. The Act also seeks to bring greater uniformity to the military and overseas voting processes among the states. The Act's prefatory note cites the lack of uniformity of election procedures among states as playing a significant role in the obstacles overseas and military voters face.

National Party Rules and the Presidential Primary Calendar

The Republican and Democratic National Committees (RNC and DNC) recently adopted rule changes applicable to the 2012 presidential elections that prohibit states from holding their presidential primary elections and caucuses prior to the first Tuesday in March, with exceptions made for Iowa, New Hampshire, Nevada, and South Carolina to hold their primaries/caucuses in February. RNC's new rules also require that Republican primary elections or caucuses held prior to April 1 (not including those held by the four states permitted to hold elections/caucuses in February) provide for allocation of delegates on a proportional basis.

The RNC rule changes were made in early August of 2010 (according to an RNC press release that included the text of the changes) and were conditioned on DNC adopting changes that adhered to RNC's changes, with the exception of the proportional delegate allocation requirement applicable to elections/caucuses held prior to April 1. DNC subsequently adopted similar changes which, while somewhat different in their treatment of the four states allowed to hold their primaries/caucuses in February, appear to generally adhere to RNC's changes.

If followed by the states, the rule changes could result in a significant change from the 2008 nominating process when the majority of state presidential primary elections and caucuses were held prior to March after various states, including Maryland, moved their elections/caucuses to earlier dates. Prior to 2008, Maryland's presidential primary election had been scheduled on the first Tuesday in March, but was moved to the second Tuesday in February by Chapter 219 of 2007.

Voting System Study

Concerns about the accuracy and security of the State's Direct Recording Electronic (DRE) touch screen voting machines led to enactment of legislation in 2007 mandating a new voting system. Chapters 547 and 548 of 2007 require the State Board of Elections to certify a voting system that provides a voter-verifiable paper record for use in each election beginning in 2010. However, citing the State's strained finances, the Governor did not include funding for a new system in the fiscal 2011 budget. As a result, the 2010 gubernatorial elections were conducted using the State's current DRE touch screen voting system. The current voting system will continue to be used until the Governor provides funding for a new system.

The Budget Reconciliation and Financing Act of 2010 requires the Department of Legislative Services to hire a consultant to study issues relating to the State's voting system. The department is authorized to spend $150,000 from the Fair Campaign Financing Fund for the study. The consultant is required to study several issues concerning the cost of continuing to use the State's current voting system as compared to the cost of obtaining a new optical scan voting system. The consultant is also required to estimate the life span of the State's current voting system and make recommendations for procuring and implementing an optical scan voting system in a cost effective manner. In making its findings and recommendations, the consultant is required to consult with voting system experts and review the voting system contracts and policies of other jurisdictions. The department selected RTI International to perform the study, which is currently underway. The final study report is due to the Governor and the General Assembly by December 1, 2010.

State Government

Campaign Finance – Corporate Expenditures

The General Assembly and other state legislatures – along with the U.S. Congress – have considered legislative responses to the U.S. Supreme Court's ruling in *Citizen's United v. Federal Election Commission* that dramatically altered the rules governing campaign funding by corporations and union organizations to support or oppose candidates.

Introduction

The U.S. Supreme Court's ruling in *Citizens United v. Federal Election Commission,* 558 U.S. __, 130 S. Ct. 876 (2010), dramatically reshaped campaign finance law by empowering corporations and unions to spend unlimited amounts from their general treasuries for independent expenditures expressly supporting or opposing federal candidates. Congress and many state legislatures have responded to the decision by taking up legislation that would tighten disclosure requirements for corporate and union expenditures in election campaigns and implement other reforms.

Federal Law Before *Citizens United*

Direct corporate contributions to federal candidates have been prohibited since 1907. In 1947, Congress also banned corporations (and unions) from making independent expenditures supporting or opposing federal candidates. In the Federal Election Campaign Act of 1971, Congress allowed corporations to make contributions to candidates and express advocacy independent expenditures through a separate segregated fund, commonly known as a political action committee (PAC). PACs are subject to extensive regulation, and may only solicit contributions in limited amounts from the corporation's executives, stockholders, and employees.

Court rulings narrowed the scope of the prohibition on corporate independent expenditures. At the time *Citizens United* was decided, corporations were forbidden only from using general treasury funds for express advocacy and its "functional equivalent," defined as communications that may not be reasonably interpreted except as an appeal to vote for or against a candidate. Federal law also requires persons making independent expenditures to include disclaimers in their communications and file reports, generally within 24 hours of expenditures aggregating to $10,000.

Citizens United v. Federal Election Commission

Citizens United is a nonprofit corporation that produced a film during the 2008 presidential campaign critical of Senator Hillary Rodham Clinton called *Hillary: The Movie*. The movie and advertisements promoting it were financed by Citizens United's general treasury funds and were arguably the functional equivalent of express advocacy and, therefore, prohibited by federal law. Citizens United filed suit, challenging the constitutionality of the ban on corporate advocacy and the disclosure requirements as applied to these communications. The federal district court upheld the constitutionality of these laws, but the Supreme Court agreed to hear the case.

In January 2010, the court issued its ruling. A majority of five justices struck down the ban on corporate express advocacy independent expenditures as a violation of the First Amendment right of free speech. The speech of corporations may not be suppressed in order to give less wealthy persons a greater voice in political affairs, the court held. The restriction on corporate independent advocacy could also not be justified as a means to combat corruption since expenditures that are not coordinated with a candidate are less likely to be made as part of an improper *quid pro quo* arrangement. Having determined that corporations have the same free speech rights as individuals, the court overruled two of its precedents, *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990), (upholding a Michigan law that prohibited corporations from using general treasury funds to make independent expenditures supporting or opposing candidates) and *McConnell v. FEC*, 54 U.S. 93 (2003), (upholding a federal ban on corporate funding of electioneering communications).

A majority of eight justices strongly affirmed the constitutionality of the federal disclosure and disclaimer requirements for independent expenditures, however. These regulations further the government's interest in providing relevant information to the electorate and do not suppress speech, the court held.

Federal Response to the Decision

The *Citizens United* decision provoked a strong political response. President Obama denounced the decision in his State of the Union address and called on Congress to pass legislation in response to the decision. The congressional leadership's proposal, the "Democracy is Strengthened by Casting Light on Spending in Elections Act" or the DISCLOSE Act, became a high priority of congressional Democrats and the Obama Administration.

The House of Representatives passed the DISCLOSE Act on June 24. As passed by the House, the bill included three major reforms of federal election law: (1) a prohibition on independent political expenditures by government contractors; (2) tighter restrictions on the electoral activity of domestic subsidiaries of foreign corporations; and (3) increased disclosure by entities that make independent expenditures for political advertising.

The DISCLOSE Act would have prohibited federal contractors with contracts larger than $10 million and recipients of assistance under the Troubled Assets Relief Program from making independent expenditures in federal elections. The Act would also have placed restrictions on the political activity of domestic subsidiaries of foreign corporations that are subject to substantial control by foreign nations, including corporations in which a majority of the board of directors is composed of foreign nationals or foreign nationals control specified percentages of voting shares.

The most important provisions of the DISCLOSE Act concerned reporting and disclaimer requirements for independent expenditures. The bill would have made more political advertising subject to reporting and also increased the frequency of reports for some types of communications. The DISCLOSE Act also required entities that make independent expenditures to disclose additional information about their donors. These provisions were intended to prevent corporations, unions, and other persons from keeping their role in funding political advocacy secret by funneling their money through nonprofit organizations that may make political expenditures without disclosing the source of the funds. Covered organizations that make more than $10,000 in independent expenditures would have to report all donations for political purposes and all unrestricted donations in excess of a certain amount. Under the bill, if a covered organization wished to limit its obligation to disclose donors to only those who give to the organization explicitly for political purposes, it could utilize a "campaign related activity account" to make all its independent expenditures. The organization would then only be required to report donors to that account.

The DISCLOSE Act would also have significantly enhanced the disclaimers that political communications must include. In addition to identifying themselves in their political communications, covered organizations would also have to include statements identifying persons who made large donations that funded the communications. The highest ranking official of the organization that paid for the communication would have to personally read the disclaimer statement. Up to five large donors who contributed to funding the communication would have to be identified in the communication, with certain large funders being required to personally read a disclaimer statement.

Finally, the DISCLOSE Act would have required an organization that makes independent expenditures to notify its shareholders, members, or donors about the expenditures in any regular, periodic report it distributes on its finances or activities.

The DISCLOSE Act stalled in the Senate when Republicans unanimously opposed it, preventing the Democratic leadership from obtaining the 60 votes needed to end debate and bring the bill to a vote.

State Responses to the Decision

Citizens United also roiled state legislatures, many of which had to decide how to amend laws that were effectively rendered invalid by the decision. While *Citizens United* dealt directly only with federal law, its reasoning meant that the laws of 24 states that prohibited corporate or union independent expenditures supporting or opposing candidates were highly vulnerable to a court challenge.

Of the states whose laws were affected by *Citizens United*, 17 considered legislation in 2010 that would change those laws. In other states, regulatory actions were taken in response to the decision. Several states, including Maryland, whose laws were not affected by the decision, considered legislation tightening regulation of independent expenditures by corporations and unions. Developments in Maryland are discussed separately below. To date, 15 states have enacted laws or regulations in response to *Citizens United*. These states have overwhelmingly focused on enhancing disclosure of independent expenditures. Although bills requiring shareholder or board approval of independent expenditures were introduced in 10 states, in only 1 state, Iowa, has such a requirement been enacted. Iowa requires the majority of the board of directors of an entity to approve an independent expenditure. For a complete list of states that have taken action in response to *Citizens United* and a summary of the legislation or regulations they have adopted, see the Department of Legislative Services report *Citizens United: The Decision and the Legislative Response*.

Maryland Response

Maryland campaign finance law was not affected by the *Citizens United* decision. Corporations, unions, and other organizations are free to make independent expenditures from their general treasuries to support or oppose candidates or ballot issues in Maryland without the need to form a political action committee for this purpose. Corporations, unions, and other organizations that make independent expenditures in Maryland elections are not required to file any reports concerning those expenditures. Maryland does require persons who make independent expenditures for campaign material to include their name and address on the campaign material and a statement that the material was not authorized by a candidate, if applicable.

Maryland did require persons making independent expenditures for and against the constitutional amendment legalizing video lottery terminals that was submitted to voters in 2008 to file reports. When a person made cumulative expenditures exceeding $10,000, the law required that person to file a report within seven days with the State Board of Elections. Subsequently, the person was required to file campaign finance reports on the same dates and in the same manner as a ballot issue committee. The law applied only to expenditures relating to that one ballot question.

Although *Citizens United* did not change Maryland law, several bills introduced in the 2010 session of the General Assembly were intended to address concerns about corporate election expenditures that were heightened by the decision. The most significant proposals concerned increased disclosure of independent expenditures, shareholder approval of corporate independent expenditures, a prohibition on independent expenditures by state contractors, and a prohibition on direct contributions by business entities. None of these proposals advanced out of a legislative committee. For a complete list of these proposals and a summary of their content, see the Department of Legislative Services report *Citizens United: The Decision and the Legislative Response*. This report also includes a chart that summarizes and compares federal law before and after *Citizens United*, changes in federal law proposed by the DISCLOSE Act, comparable provisions of Maryland law, and related changes in Maryland law proposed in 2010.

For further information contact: Stanford D. Ward Phone: (410) 946/(301) 970-5350

State Government

Validation of Petition Signatures

The process for authenticating petition signatures submitted for a ballot question continues to evolve as the courts weigh in on the viability of State law and regulatory procedures adopted by State and local election officials to implement the law and prior court decisions.

Despite earlier obstacles, voters in Montgomery County were given the opportunity to vote in November 2010 on a ballot question concerning the reimbursement of ambulance fees as a result of a September 2010 decision of the Court of Appeals. In an as yet unpublished opinion, the court ruled that the ambulance fee petition should be placed on the ballot, apparently finding that there was a sufficient number of properly validated petition signatures, seemingly reversing the determinations of both the lower court and the county board of elections and running contrary to State Board of Elections (SBE) guidance on signature validation that was based on a 2008 decision from the same court that called for mandatory compliance with State law. While the outcome of this particular ballot question is purely a local matter, what remains for the State is the larger question of how signatures on petitions should be validated.

Background

The Right to Petition

A citizen's right to petition typically refers to a grass roots effort to put a matter to a vote of the electorate. In Maryland, the right generally concerns putting a name on a ballot, putting a question on a ballot, or creating a new political party. While a ballot question may deal with various issues such as the adoption of home rule, county boundaries, or the adoption of a new constitution, most ballot questions involve a referendum on an enactment of the General Assembly or a home rule county. Title 6 of the Election Law Article contains the bulk of the statutory requirements concerning the exercise of the right to petition, as well as the powers and duties of SBE and local boards of election in regard to this right.

Statutory Provisions Concerning Petition Signatures

Title 6 of the Election Law Article requires that each signature page in a petition must contain, among other information, a space for the name of the county in which each of the signers of that page is a registered voter and a statement, to which each signer subscribes, that the signer supports the purpose of that petition process and, based on the signer's information and belief, the signer is a registered voter in the county specified on the page and is eligible to have his or her signature counted.

Further, to sign a petition an individual must sign the individual's name as it appears on the statewide voter registration list, or the individual's surname of registration and at least one full given name and the initials of any other names. The individual must also include, printed or typed, the signer's name as it was signed, the signer's address, the date of signing, and any other information required by SBE regulations.

The signature of an individual is validated and counted if, among other requirements, the above-mentioned required information is provided by the individual and the individual is a registered voter in the county specified on the signature page and, if applicable, in a particular geographic area of the county. SBE, by regulation, must establish the process to be followed by each local election authority for verifying and counting signatures on petitions. This verifying and counting process must be completed within 20 days after the filing of the petition.

Events in 2008

Doe Case

After the Montgomery County Council passed legislation in November 2007 that added gender identity as a protected characteristic under the county's anti-discrimination laws, a citizens group initiated the referendum process in an attempt to overturn the law. Once the petition was certified, another group of citizens, Jane Doe, *et al.*, filed a complaint in circuit court seeking declaratory relief alleging that the petition contained an insufficient number of valid signatures. Both the county and Jane Doe filed motions for summary judgment, and the circuit court entered summary judgment on behalf of the county. The ruling included the determination that State law provisions on petition signatures were intended to be suggestive rather than mandatory. Both parties petitioned for certiorari. In *Jane Doe v. Montgomery County Board of Elections*, 406 Md. 697 (2008), the Court of Appeals reversed the circuit court decision and stated that the State law provisions concerning signatures are "mandatory, not suggestive." Specifically, the plain meaning of the statutory words require that a voter must sign his or her name "as it appears on the statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names." The court also maintained that these mandatory signature requirements were not unduly burdensome.

Revisions to SBE Practices

Before *Doe*, long-standing SBE and local election board practices had been to consider State law provisions as suggestive and to accept a name on a petition if the identity of the voter could be determined with the information provided on the petition. The prior practice generally had been to try to coordinate both the signature validation requirements with the petition verification provisions and allow signatures that could be validated with reasonable certainty.

However, in light of the explicit ruling in *Doe*, SBE revised its petition acceptance and verification procedures. On its website, SBE currently advises that, among other information, each registered voter signing a petition must include on the signature page:

> **Signer's printed full name, as it appears in voting records.** (SBE's emphasis) For example, if a voter is registered as Margaret Hall Smith, it is permissible for her to sign as Margaret H. Smith or M. Hall Smith. But M.H. Smith or Margaret Smith is not permissible and will be invalidated. If a voter uses a nickname of Peggy Smith, the signature will be invalidated. Also not permitted is the name of Mrs. Smith. If a voter's registered name has a suffix (*i.e.* Jr., Sr., III, *etc.*) the signature will not be invalidated if the signer fails to include it on the petition."

Recent Legislative Proposals

In both the 2009 and 2010 sessions, legislation was introduced that would have amended the State election law statute to put into law what had been the long-standing practice for signature validation before the *Doe* decision. Testimony indicated that SB 1067 (2009) and SB 240 (2010), nearly identical measures, were introduced in response to a zoning law passed by the Howard County Council, Council Bill 58, which dealt with square footage requirements for stores and was applicable to one area of the county, Turf Valley. The primary changes in the proposals were to eliminate the requirement that an individual sign his/her name as it appears on the statewide voter registration list, or the individual's surname of registration and at least one full given name and the initials of any other names, and to require that the signature of an individual be validated and counted if, among other existing requirements (1) the identity of the individual reasonably can be determined from the information required to be included on the petition; (2) the signature reasonably matches the signature for the individual on file with the appropriate election authority; and (3) the individual is a registered voter in Maryland. Both measures failed to pass out of the Senate.

Events of 2010 Interim

Two groups of citizens in Montgomery County sought to petition to referendum two local laws: one passed by the county council in May 2010 that allows the county to recover ambulance transport fees from premiums paid to insurance companies, Medicare, and Medicaid; and another dealing with term limits for the county executive and county council members. The county board of elections, following SBE guidance, determined that both petitions could not go on the November 2010 ballot because too many signatures were found to be invalid. Both petition groups appealed to the circuit court in late August. The term limit petition was denied on a technicality and no further appeal was sought. The ambulance fee petition was also denied, with the circuit court ruling that the board of elections had acted properly in finding that the petition-gatherers had come up short. The ambulance fee petition leader, the Montgomery County Volunteer Fire-Rescue Association, appealed to the Court of Appeals, which ruled on

September 29 that the ambulance fee ballot question should go on the ballot. Since the Court of Appeals has not yet issued a written opinion to explain its decision, it is unclear how this decision might affect other petition challenges and how, if at all, State law might be revised.

State Government

Base Realignment and Closure

Preparations continue at both the State and local levels to address the anticipated influx of up to 60,000 new jobs and 25,000 new households as a result of the 2005 Base Realignment and Closure (BRAC) plans and other military growth. While several major BRAC construction projects are completed or near completion, others are anticipated to be completed during 2011, including lower cost transportation projects. High cost transportation infrastructure improvements will take longer as the State pursues various funding sources.

2005 BRAC Impact on Maryland

In 1990, the U.S. Congress created the Base Realignment and Closure (BRAC) process, a procedural mechanism for streamlining the nation's defense infrastructure. The 2005 BRAC plans, which went into effect in November 2005, require the Department of Defense (DOD) to complete the planned base closures and realignments by September 15, 2011.

Significant federal and private-sector job growth in the State is anticipated as a result of the 2005 BRAC plans. An estimated 27,400 new direct jobs are expected to be created through 2011 at Fort Meade, National Naval Medical Center, Andrews Air Force Base, Aberdeen Proving Ground, and Fort Detrick. This estimated job growth, which includes jobs created as a result of BRAC growth as well as non-BRAC military growth, is detailed in **Exhibit 1**. Approximately 1,500 of these BRAC jobs already have relocated to Maryland, and most of the remaining BRAC jobs will relocate beginning in late January 2011 through August 2011.

To accommodate the new BRAC jobs, major facilities are currently under construction at military installations in the State. The Defense Information Systems Agency (DISA), for example, broke ground on its new headquarters at Fort Meade on April 16, 2008. DISA's new headquarters, a facility of more than one million square feet, will house approximately 4,300 personnel. For a summary of major BRAC construction projects underway at military installations in the State, including estimated completion dates and the number of personnel at each facility, see **Exhibit 2**.

In addition to direct job growth, thousands of indirect and induced jobs are expected to be created for an estimated total of up to 60,000 new federal and private-sector jobs statewide through 2020. It is further estimated that Maryland will gain more than 25,000 households as a result of the BRAC process and other military growth. Estimated household growth by county is as follows: 4,500 new households in Anne Arundel County; 3,700 in Baltimore County; 2,000 in Cecil County; 6,500 in Harford County; 1,800 in Howard County; 2,300 in Montgomery County; 2,000 in Prince George's County; and 2,500 in the City of Baltimore.

Exhibit 1
Impact of BRAC and Other DOD Growth on Maryland
Estimated Employment Gains in Direct Jobs through 2011

Base	Estimated Employment Change
Aberdeen Proving Ground (Harford County)	Gain of 8,800 jobs
Andrews Air Force Base (Prince George's County)	Gain of 3,000 jobs
Fort Meade (Anne Arundel County)	Gain of 11,800 jobs
Fort Detrick (Frederick)	Gain of 1,400 jobs
National Naval Medical Center (Bethesda)	Gain of 2,400 jobs
Total Job Growth	**27,400**

BRAC: Base Realignment and Closure
DOD: Department of Defense

Source: Department of Business and Economic Development

Exhibit 2
Major BRAC Construction Projects Underway

Project	Estimated Personnel at Facility	Estimated Completion Date
Aberdeen Proving Ground (Harford County)		
Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) Campus		
Phase I	5,000	June 2010
Phase II	2,700	March 2011
Andrews Air Force Base (Prince George's County)		
Air National Guard Readiness Center	605	December 2009
Air Force District of Washington Headquarters	2,395	September 2011
Fort Meade (Anne Arundel County)		
Defense Information Systems Agency Headquarters	4,300	December 2010
Adjudication Activities Facility	800	June 2011
Defense Media Activity Headquarters	650	September 2011
National Naval Medical Center (Bethesda)		
Walter Reed National Military Medical Center	2,400	Phase I – October 2010 Phase II – August 2011

BRAC: Base Realignment and Closure

Source: Department of Business and Economic Development; BRAC Subcabinet

Coordination and Oversight of Maryland's BRAC Initiatives

A number of State agencies and local governments are actively preparing for BRAC growth. These efforts include, among other things, upgrades to the State's transportation, water, and wastewater infrastructure; expansion of education opportunities to better serve the BRAC mission; Smart Growth initiatives; and homebuyer programs. The Maryland Military Installation Council, the BRAC Subcabinet, and the Joint Committee on Base Realignment and Closure are responsible for coordinating and overseeing these State and local efforts.

The Maryland Military Installation Council

The General Assembly established the Maryland Military Installation Council (MMIC) in 2003 to serve as an advocate for military facilities located in Maryland and to coordinate State agency planning in response to changes caused by BRAC (Chapter 335 of 2003). Originally named the Maryland Military Installation Strategic Planning Council, the General Assembly renamed the council and expanded the membership from 19 to 22 members in 2006 (Chapter 634 of 2006). Membership of the council was further increased to 24 in 2010 (Chapter 10 of 2010). MMIC members represent various State agencies, military installations, and local liaison organizations. The council is staffed by the Department of Business and Economic Development (DBED), and its annual report is due by December 31 of each year. MMIC met twice during calendar 2010. At both meetings, senior U.S. Department of Defense officials briefed the council about the status of the defense sector and its impact on Maryland military installations. In addition, each of the relocating commands and installations gave a detailed BRAC status report. Each council meeting also provides a public forum for State agencies to give updates as to their BRAC-related efforts underway.

BRAC Subcabinet

The BRAC Subcabinet, created by Chapter 6 of 2007, is chaired by the Lieutenant Governor and includes eight State secretaries of cabinet departments and the State Superintendent of Schools. The subcabinet is charged with a number of tasks, including:

- coordinating and overseeing the implementation of all State action to support the mission of military installations affected by BRAC;
- coordinating and overseeing the development of BRAC-related initiatives in various areas, including workforce readiness, education, business development, health care facilities and services, community infrastructure and growth, environmental stewardship, workforce housing, and transportation;
- working with local jurisdictions affected by BRAC to facilitate planning, coordination, and cooperation with the State; and
- collaborating with and reviewing the recommendations of MMIC.

Working in collaboration with local jurisdictions, the subcabinet completed a State action plan in 2007 to identify and guide critical tasks, programs, projects, and initiatives that address the needs created by the arrival of residents and businesses. The subcabinet issued 2008 and 2009 progress reports and implemented a BRACStat program to compile and analyze statistics relating to BRAC. It is anticipated that the subcabinet will not meet during the 2010 interim.

Joint Legislative Committee on BRAC

Chapter 469 of 2007 established the Joint Committee on Base Realignment and Closure, which consists of eight members of the House of Delegates and eight members of the Senate. The committee is required to provide continuing legislative oversight of the State's response to BRAC-related opportunities and changes. In cooperation with local and State units, it must also oversee and participate in developing systems and processes that fast track the approval of BRAC-related:

- transportation infrastructure;
- water and sewer infrastructure;
- State and local planning processes;
- affordable housing options;
- education facilities, including public school and community college construction; and
- health care facilities and infrastructure.

The committee has not scheduled any meetings during the 2010 interim.

Preparations by State Agencies

Under the coordination of MMIC, State agencies are taking steps to prepare for a significant influx of military personnel, civilian employees, contractors, and families in the affected areas. For example, the Maryland Department of the Environment is engaged in helping local jurisdictions secure new sources of water and wastewater infrastructure funding and keep on track projects that are critical for supporting BRAC growth; the Maryland Department of Planning has implemented a strategy for accommodating and sustaining the incoming BRAC growth consistent with Smart Growth policies; and the Department of Housing and Community Development is promoting its homebuyer programs to relocating families and is aligning community development and rental housing programs to be responsive to BRAC needs in local communities. In addition, the Department of Labor, Licensing, and Regulation continues to implement policies and projects designed to help those seeking employment in connection with BRAC. The Maryland State Department of Education and the Maryland Higher Education Commission have focused on ensuring that Maryland students are highly educated and prepared for the thousands of high-skilled math, science, and technology dependent positions generated by BRAC.

The Maryland Department of Transportation (MDOT) has assessed traffic and other transportation needs in BRAC growth areas and has started work on specific BRAC-related traffic and transit projects. However, Maryland, like many states affected by BRAC, faces significant challenges in completing transportation infrastructure improvements to accommodate BRAC growth. First, major roadway improvements, from initial planning to construction, typically take 10 to 15 years to complete, while the timeframe for BRAC growth is much shorter, occurring over a period of 6 years. Second, recent declines in State transportation revenues have limited the available funding for all State transportation projects, including BRAC-related projects. As a result, MDOT has implemented what it calls a "high/low" investment strategy for BRAC-related transportation projects, targeting lower-cost improvements for potential funding and completion before 2011, while continuing to develop and advance the higher cost long-term projects. MDOT also continues to pursue various sources of funding for transportation improvements, including funding through the U.S. Department of Transportation and DOD's Defense Access Roads Program.

Preparations by Local Governments

The affected local jurisdictions – Anne Arundel, Baltimore, Carroll, Cecil, Frederick, Harford, Howard, Montgomery, Prince George's, Queen Anne's, and Talbot counties; Baltimore City; and the City of Laurel – have been actively engaged in BRAC preparation efforts. They have formed regional alliances, have been meeting and working with MMIC and the subcabinet, have prepared BRAC action plans. Many have applied for and received federal grants to address BRAC-related issues such as transportation, housing, utilities, services, and education.

A number of local governments also have applied to have areas designated as BRAC Zones under the BRAC Community Enhancement Act (Chapter 338 of 2008). The benefits of a BRAC Zone designation are primarily tax-related financial incentives, including State support of up to 100% of the increase in the State property tax of any qualified property in the BRAC Zone and 50% of the local property tax for any increase in the local tax revenues collected on the increased value of qualified property. Qualified property is commercial or residential property that DBED determines enhances economic development. The Secretary of DBED has designated seven areas as BRAC Zones.

Local Government

State Aid to Local Governments

State aid to local governments is projected to total $6.6 billion in fiscal 2012, a $185.0 million or 2.9% increase over the prior year.

Local governments are projected to receive $6.6 billion in State aid in fiscal 2012, a 2.9% increase from the prior year resulting in an additional $185.0 million in State support for local programs and services. As in prior years, most of the State aid is targeted to public schools, while funding for counties and municipalities will account for 6.2% of total aid. Local school systems will receive $5.9 billion in State support, or 88.3% of total aid. Counties and municipalities will receive $410.0 million, community colleges will receive $261.0 million, libraries will receive $70.8 million, and local health departments will receive $37.3 million. In terms of year-over-year funding enhancements, State aid for public schools will increase by $135.4 million (2.4%); library aid will increase by $5.2 million (7.9%); community college aid will increase by $4.9 million (1.9%); and local health departments are level funded at the fiscal 2011 funding level of $37.3 million. County and municipal governments will realize a $39.5 million (10.6%) increase in State aid. **Exhibit 1** shows the change in State aid by governmental entity for fiscal 2012. **Exhibit 2** shows the change in State aid by major programs.

Exhibit 1
State Aid to Local Governments
($ in Millions)

Governmental Entity	FY 2011	FY 2012	$ Difference	% Difference
Public Schools	$5,717.5	$5,852.8	$135.4	2.4%
Counties/Municipalities	370.5	410.0	39.5	10.6%
Community Colleges	256.1	261.0	4.9	1.9%
Libraries	65.5	70.8	5.2	7.9%
Local Health Departments	37.3	37.3	0.0	0.0%
Total	**$6,446.9**	**$6,631.9**	**$185.0**	**2.9%**

Source: Department of Legislative Services

Exhibit 2

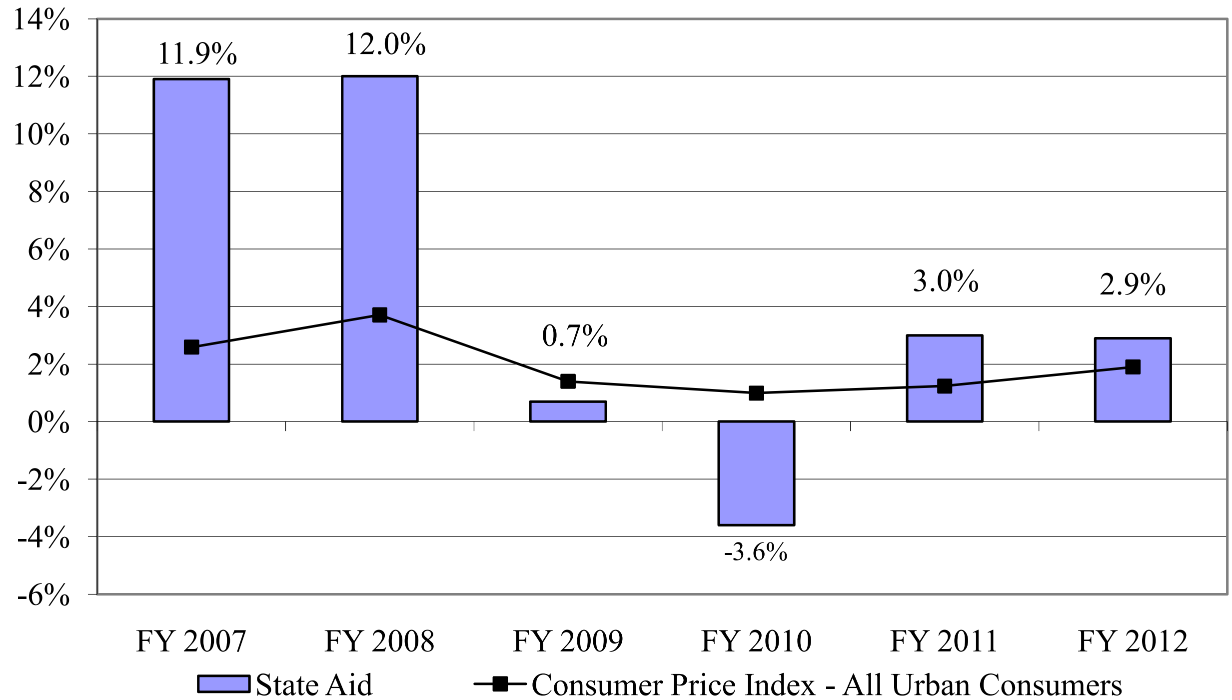
State Aid by Major Programs

Fiscal 2010-2012
State Funds
($ in Millions)

	FY 2010	FY 2011	Baseline FY 2012	$ Change 2011-2012	% Change 2011-2012
Public Schools					
Foundation Program	$2,726.7	$2,763.5	$2,790.6	$27.1	1.0%
Supplemental Grant	51.2	46.5	46.5	0.0	0.0%
Compensatory Aid	940.2	1,041.1	1,058.9	17.8	1.7%
Student Transportation	241.5	244.4	247.6	3.2	1.3%
Special Education – Formula Aid	267.4	264.0	265.4	1.4	0.5%
Special Education – Nonpublic Placements	112.8	112.8	118.4	5.6	5.0%
Limited English Proficiency Grants	148.6	151.2	162.8	11.6	7.7%
Guaranteed Tax Base	63.8	47.4	42.8	-4.6	-9.7%
Geographic Cost Index	126.3	126.6	127.7	1.1	0.9%
Other Education Programs	69.4	70.2	68.8	-1.4	-2.0%
Subtotal Direct Aid	***$4,747.9***	***$4,867.6***	***$4,929.6***	***$62.0***	***1.3%***
Retirement Payments	759.1	849.8	923.3	73.4	8.6%
Total Public School Aid	**$5,507.0**	**$5,717.5**	**$5,852.8**	**$135.4**	**2.4%**
Libraries					
Library Aid Formula	$33.2	$33.0	$35.4	$2.4	7.2%
State Library Network	15.6	15.7	17.5	1.9	11.9%
Subtotal Direct Aid	***$48.8***	***$48.7***	***$52.9***	***$4.2***	***8.7%***
Retirement Payments	15.3	16.9	17.8	1.0	5.7%
Total Library Aid	**$64.1**	**$65.5**	**$70.8**	**$5.2**	**7.9%**
Community Colleges					
Community College Formula	$199.8	$194.4	$194.4	$0.0	0.0%
Other Programs	27.1	28.0	28.9	1.0	3.4%
Subtotal Direct Aid	***$226.9***	***$222.4***	***$223.4***	***$1.0***	***0.4%***
Retirement Payments	29.2	33.7	37.7	3.9	11.7%
Total Community College Aid	**$256.2**	**$256.1**	**$261.0**	**$4.9**	**1.9%**
Local Health Grants	**$37.3**	**$37.3**	**$37.3**	**$0.0**	**0.0%**
County/Municipal Aid					
Transportation	$167.8	$141.5	$145.4	$3.9	2.7%
Public Safety	89.7	83.0	88.0	5.0	6.0%
Program Open Space/Environment	9.6	15.6	30.2	14.6	94.0%
Disparity Grant	121.4	121.4	121.4	0.0	0.0%
Other Grants	8.5	9.0	25.0	15.9	176.7%
Total County/Municipal Aid	**$396.9**	**$370.5**	**$410.0**	**$39.5**	**10.6%**
Total State Aid	**$6,261.5**	**$6,446.9**	**$6,631.9**	**$185.0**	**2.9%**

Exhibit 3 shows annual change in State aid to local governments, beginning with fiscal 2007. The projected growth of 2.9% is significantly below the 6.7% growth projected for fiscal 2011 prior to the 2010 session. The relatively low anticipated growth is largely attributable to statutory limitations on growth in State aid resulting from the 2010 session, not only in fiscal 2011, but also in fiscal 2012 and beyond.

Exhibit 3
Annual Change in State Aid to Local Governments
General and Special Funds



Source: Department of Legislative Services

After several years of record increases in State aid, legislation approved during the 2007 special session reduced funding for several State aid programs beginning in fiscal 2009. Each year since then, the State has addressed general fund budget gaps with further reductions to State aid. **Exhibit 4** shows the net reduction of over $1 billion in fiscal 2011. These statutory changes will continue to affect State aid in the near term. As shown in **Exhibit 5**, State aid is projected to increase by 15% over the next four years or approximately 3.6% annually.

Exhibit 4
State Aid Reductions in Fiscal 2009-2011

	FY 2009	FY 2010	FY 2011
Funding Formulas – Inflation Freeze	-$142,738,100	-$393,068,500	-$469,336,400
Nonpublic Placements	0	-16,110,000	-16,110,000
School Improvement Grants	-2,750,000	-11,379,600	-11,379,600
Aging Schools	0	-5,558,000	-5,558,000
Quality Teacher Incentives	0	-5,300,000	-5,300,000
Student Transportation	0	0	-4,343,700
Headstart Program	0	-1,200,000	-1,200,000
Science and Math Initiative	-169,000	-1,169,000	-1,169,000
Environmental Education	-150,000	-1,075,000	-1,075,000
Gifted and Talented	-121,000	-534,400	-534,400
Food Services	-312,000	-312,000	-312,000
Principal Fellowship Program	-159,700	-159,700	-159,700
School Based Health Centers	-144,000	-144,000	-144,000
Subtotal – Public Schools	**-$146,543,800**	**-$436,010,200**	**-$516,621,800**
Library Aid Formula	-2,479,700	-4,820,400	-4,696,500
State Library Network	-907,700	-2,608,800	-2,608,600
Subtotal – Libraries	**-$3,387,400**	**-$7,429,200**	**-$7,305,100**
Cade Formula	-16,096,000	-38,982,300	-60,466,500
Subtotal – Community Colleges	**-$16,096,000**	**-$38,982,300**	**-$60,466,500**
Local Health Grants	-11,401,200	-31,476,900	-31,476,900
Subtotal – Local Health Departments	**-$11,401,200**	**-$31,476,900**	**-$31,476,900**
Highway User Revenues	-15,700,000	-321,422,400	-339,690,000
Electric Utility Grant	-30,615,200	-30,615,200	-30,615,200
Police Aid Formula	-504,500	-20,611,300	-18,975,500
Program Open Space	-17,556,500	-17,556,500	-17,556,500
Baltimore City Special Grant	0	-500,000	-3,075,000
Local Employee Retirement	0	-2,974,000	-2,974,000
Subtotal – County/Municipal Governments	**-$64,376,200**	**-$393,679,400**	**-$412,886,200**
Total State Aid Reductions	**-$241,804,600**	**-$907,578,000**	**-$1,028,756,500**

Exhibit 5

Forecast of State Aid to Local Governments

($ in Millions)

Governmental Entity	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Public Schools	$5,852.8	$6,015.1	$6,207.9	$6,424.8	$6,621.0
Counties/Municipalities	410.0	451.7	498.9	510.5	515.2
Community Colleges	261.0	308.5	336.1	363.7	389.7
Libraries	70.8	73.4	76.2	79.3	81.0
Local Health Departments	37.3	37.5	38.2	38.5	39.3
Total	**$6,631.9**	**$6,886.1**	**$7,157.3**	**$7,416.9**	**$7,646.1**
Percent Growth	2.9%	3.8%	3.9%	3.6%	3.1%

Source: Department of Legislative Services

Local Government

Local Tax and Salary Actions

The continuing downturn in the State's economy has affected the ability of local governments to provide salary enhancements to their employees. Only one county and three local boards of education granted cost-of-living adjustments in fiscal 2011. Local governments were able to limit tax increases for the current year, with only two jurisdictions raising property tax rates and one jurisdiction raising the local income tax rate.

Local Government Tax Rates

Local tax rates remained relatively stable in fiscal 2011. As shown in **Exhibit 1**, seven counties changed their local property tax rates, with five counties decreasing their rates and two counties increasing them. Local income tax rates remained constant for tax year 2011, except for Baltimore City, which raised its rate to 3.2%. Local recordation, transfer, and admission and amusement tax rates remained the same for 2011. Hotel/motel tax rates remained the same for fiscal 2011, except for Baltimore City, which increased its tax rate to 9.5%. A comparison of local tax rates for fiscal 2010 and 2011 is provided in **Exhibit 2**.

Exhibit 1
Number of Counties Changing Local Tax Rates
Fiscal 2009-2011

	Fiscal 2009		Fiscal 2010		Fiscal 2011	
	▲	▼	▲	▼	▲	▼
Real Property	0	5	1	7	2	5
Local Income	1	0	0	0	1	0
Recordation	2	0	0	0	0	0
Transfer	0	0	0	0	0	0
Admissions/Amusement	0	0	0	0	0	0
Hotel/Motel	1	0	0	0	1	0

Note: ▲ represents a tax increase. ▼ represents a tax decrease.
Source: 2010 Local Government Tax Rate and Salary Action Survey; Department of Legislative Services

Exhibit 2
Local Tax Rates – Fiscal 2010 and 2011

County	Real Property		Local Income		Recordation		Transfer		Admissions/ Amusement		Hotel/Motel	
	FY 2010	FY 2011	CY 2010	CY 2011	FY 2010	FY 2011	FY 2010	FY 2011	FY 2010	FY 2011	FY 2010	FY 2011
Allegany	$0.983	$0.983	3.05%	3.05%	$3.25	$3.25	0.5%	0.5%	7.5%	7.5%	8.0%	8.0%
Anne Arundel	0.876	0.880	2.56%	2.56%	3.50	3.50	1.0%	1.0%	10.0%	10.0%	7.0%	7.0%
Baltimore City	2.268	2.268	3.05%	3.20%	5.00	5.00	1.5%	1.5%	10.0%	10.0%	7.5%	9.5%
Baltimore	1.100	1.100	2.83%	2.83%	2.50	2.50	1.5%	1.5%	10.0%	10.0%	8.0%	8.0%
Calvert	0.892	0.892	2.80%	2.80%	5.00	5.00	0.0%	0.0%	1.0%	1.0%	5.0%	5.0%
Caroline	0.870	0.870	2.63%	2.63%	5.00	5.00	0.5%	0.5%	0.0%	0.0%	5.0%	5.0%
Carroll	1.048	1.048	3.05%	3.05%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Cecil	0.940	0.915	2.80%	2.80%	4.10	4.10	0.0%	0.0%	6.0%	6.0%	3.0%	3.0%
Charles	1.026	1.026	2.90%	2.90%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Dorchester	0.896	0.896	2.62%	2.62%	5.00	5.00	0.75%	0.75%	0.5%	0.5%	5.0%	5.0%
Frederick	1.064	1.064	2.96%	2.96%	6.00	6.00	0.0%	0.0%	5.0%	5.0%	3.0%	3.0%
Garrett	0.990	0.990	2.65%	2.65%	3.50	3.50	1.0%	1.0%	4.5%	4.5%	5.0%	5.0%

	Real Property		Local Income		Recordation		Transfer		Admissions/ Amusement		Hotel/Motel	
County	**FY 2010**	**FY 2011**	**CY 2010**	**CY 2011**	**FY 2010**	**FY 2011**	**FY 2010**	**FY 2011**	**FY 2010**	**FY 2011**	**FY 2010**	**FY 2011**
Harford	1.064	1.042	3.06%	3.06%	3.30	3.30	1.0%	1.0%	5.0%	5.0%	0.0%	0.0%
Howard	1.150	1.150	3.20%	3.20%	2.50	2.50	1.0%	1.0%	7.5%	7.5%	5.0%	5.0%
Kent	0.972	1.022	2.85%	2.85%	3.30	3.30	0.5%	0.5%	4.5%	4.5%	5.0%	5.0%
Montgomery	0.916	0.915	3.20%	3.20%	3.45	3.45	1.0%	1.0%	7.0%	7.0%	7.0%	7.0%
Prince George's	1.319	1.319	3.20%	3.20%	2.50	2.50	1.4%	1.4%	10.0%	10.0%	5.0%	5.0%
Queen Anne's	0.770	0.767	2.85%	2.85%	4.95	4.95	0.5%	0.5%	5.0%	5.0%	5.0%	5.0%
St. Mary's	0.857	0.857	3.00%	3.00%	4.00	4.00	1.0%	1.0%	2.0%	2.0%	5.0%	5.0%
Somerset	0.900	0.884	3.15%	3.15%	3.30	3.30	0.0%	0.0%	4.0%	4.0%	5.0%	5.0%
Talbot	0.432	0.432	2.25%	2.25%	3.30	3.30	1.0%	1.0%	5.0%	5.0%	4.0%	4.0%
Washington	0.948	0.948	2.80%	2.80%	3.80	3.80	0.5%	0.5%	5.0%	5.0%	6.0%	6.0%
Wicomico	0.759	0.759	3.10%	3.10%	3.50	3.50	0.0%	0.0%	6.0%	6.0%	6.0%	6.0%
Worcester	0.700	0.700	1.25%	1.25%	3.30	3.30	0.5%	0.5%	3.0%	3.0%	4.5%	4.5%

Notes: The real property tax rates shown for Charles, Frederick, Howard, Montgomery, and Prince George's counties include special tax rates. Real property tax is per $100 of assessed value. The income tax is a percentage of taxable income. Recordation tax is per $500 of transaction.

Source: 2010 Local Government Tax Rate and Salary Action Survey; Department of Legislative Services

Property Tax

For fiscal 2011, five jurisdictions – Cecil, Harford, Montgomery, Queen Anne’s, and Somerset – decreased their real property tax rates. Anne Arundel and Kent counties increased real property tax rates slightly. Real property tax rates range from $0.432 per $100 of assessed value in Talbot County to $2.268 in Baltimore City.

Local Income Tax

Baltimore City increased its local income tax rate to 3.2% for calendar 2011. Local income tax rates range from 1.25% in Worcester County to 3.2% in Baltimore City and Howard, Montgomery, and Prince George’s counties.

Recordation Tax

No county changed its recordation tax rate for fiscal 2011. The range for recordation tax rates is $2.50 per $500 of transaction in Baltimore, Howard, and Prince George’s counties to $6.00 per $500 of transaction in Frederick County.

Transfer Tax

No county changed its transfer tax rate for fiscal 2011. Local transfer tax rates range from 0.5% in six counties (Allegany, Caroline, Kent, Queen Anne’s, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. Seven counties (Calvert, Carroll, Cecil, Charles, Frederick, Somerset, and Wicomico) do not impose a tax on property transfers.

Admissions and Amusement Tax

No county changed its admissions and amusement tax rate for fiscal 2011. Admissions and amusement tax rates range from 0.5% in Dorchester County to 10.0% in six jurisdictions – Baltimore City and Anne Arundel, Baltimore, Carroll, Charles, and Prince George’s counties. Caroline County is the only jurisdiction that does not impose an admissions and amusement tax.

Hotel and Motel Tax

Baltimore City increased its hotel and motel tax rate to 9.5% for fiscal 2011. Hotel and motel tax rates range from 3.0% in Frederick County to 9.5% in Baltimore City. Harford County is the only jurisdiction that does not impose a hotel and motel tax.

Tax Limitation Measures

Five charter counties (Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico) have amended their charters to limit property tax rates or revenues. In Anne Arundel County, the total annual increase in property tax revenues is limited to the lesser of 4.5% or the increase in the consumer price index. In Montgomery County, the growth in property tax revenues is limited to the increase in the consumer price index; however, this limitation does not apply to new construction. In addition, the limitation may be overridden by a unanimous vote of all nine county council members. In Prince George's County, the general property tax rate is capped at $0.96 per $100 of assessed value. Special taxing districts, such as the Maryland-National Capital Park and Planning Commission, are not included under the tax cap. In Talbot and Wicomico counties, the total annual increase in property tax revenues is limited to the lesser of 2% or the increase in the consumer price index.

County Salary Actions

Fewer Maryland jurisdictions provided salary enhancements to their employees in fiscal 2011 than the previous year, with many jurisdictions implementing furlough and salary reduction plans to constrain personnel costs. In addition, local governments and boards of education eliminated about 300 positions. Several jurisdictions indicated that layoffs or other salary reduction/furlough measures may be forthcoming later in the year.

Only one county government provided employees with a cost-of-living adjustment (COLA) in fiscal 2011, compared to five counties in fiscal 2010; four counties provided step increases in fiscal 2011, compared to eight counties in fiscal 2010. Moreover, 3 boards of education provided COLAs and 9 boards provided step increases for teachers in fiscal 2011 while 10 boards provided COLAs and all 24 boards provided step increases in 2010. Salary actions for two boards of education are still pending. **Exhibit 3** compares local salary actions in fiscal 2010 and 2011, while **Exhibit 4** shows specific local salary actions for fiscal 2011.

Nine jurisdictions adopted employee furloughs, ranging from 2 to 12 days. In addition, one local school system will furlough employees from 1 to 9 days depending on their position. **Exhibit 5** describes the local government furlough and salary reduction plans in fiscal 2011.

Exhibit 3
Local Government Salary Actions
Fiscal 2010 and 2011

	County Government		Public Schools	
COLA Amount	**FY 2010**	**FY 2011**	**FY 2010**	**FY 2011**
No COLA	19	22	14	19
0.5% to 2.9%	2	1	9	3
3.0% to 3.9%	1	0	1	0
4.0% to 4.9%	0	0	0	0
5.0% to 5.9%	0	0	0	0
6.0% and Greater	0	0	0	0
Dollar Amount	2	0	0	0
Still Pending	0	1	0	2

	State Government		CPI-urban Consumers	
	FY 2010	**FY 2011**	**FY 2010**	**FY 2011** [1]
COLA Amount	0%	0%	0.99%	1.18%
Furloughs[2]	10 days	10 days		
Effective COLA[3]	-2.6%	-2.6%		

COLA: Cost-of-living adjustment
CPI: Consumer Price Index

[1] Forecast of the CPI for 2011 comes from Moody's Economy.com.
[2] Maximum number of furlough and service reduction days based on salary level.
[3] Effective COLA in fiscal 2010 and 2011 ranges from -1.2% to -3.8% depending on the number of furlough days.

Source: Department of Legislative Services

Exhibit 4
Local Government Salary Actions in Fiscal 2011

	County Government Generally		Board of Education Teachers	
County	**COLA**	**Step**	**COLA**	**Step**
Allegany	0.0%	No	1.0%	Yes
Anne Arundel[1]	0.0%	No	0.0%	No
Baltimore City[2]	0.0%	Yes	Pending	Pending
Baltimore	0.0%	Yes	0.0%	Yes
Calvert	0.5%	No	0.5%	Yes
Caroline	0.0%	No	0.0%	No
Carroll	0.0%	No	0.0%	No
Cecil	0.0%	No	1.8%	Yes
Charles	0.0%	No	0.0%	No
Dorchester	0.0%	No	0.0%	No
Frederick	0.0%	No	0.0%	No
Garrett	0.0%	No	0.0%	No
Harford	0.0%	No	0.0%	No
Howard[3]	0.0%	Yes	0.0%	Yes
Kent	0.0%	No	0.0%	No
Montgomery	0.0%	No	0.0%	No
Prince George's[4]	Pending	Pending	0.0%	No
Queen Anne's[5]	0.0%	No	0.0%	Yes
St. Mary's	0.0%	Yes	0.0%	Yes
Somerset	0.0%	No	0.0%	Yes
Talbot	0.0%	No	0.0%	Yes
Washington[6]	0.0%	No	Pending	Pending
Wicomico	0.0%	No	0.0%	No
Worcester	0.0%	No	0.0%	No
Number Granting	**1**	**4**	**3**	**9**

COLA: Cost-of-living adjustment

Comments

[1] Anne Arundel County Public Schools had agreed to give employees 1% COLAs in fiscal 2011 under multiyear collective bargaining agreements. However, the system is currently renegotiating the contracts to eliminate the COLA for fiscal 2011.

[2] The Baltimore City Public School System is still in negotiations with its teachers union on a new contract.

[3] Howard County fire department employees are receiving 6% COLAs in fiscal 2011. No other county employees are receiving COLAs in fiscal 2011.

[4] Prince George's County is still in negotiations with its employee unions.

[5] Queen Anne's County Public School employees will receive one quarter of a planned step increase on April 1, 2011.

[6] Washington County Public Schools had agreed to give teachers and support staff a 3% COLA in fiscal 2011 under multiyear collective bargaining agreements. However, the system was forced to renegotiate this increase and is at impasse with the unions.

Exhibit 5
Local Government Furlough and Salary Reduction Plans in Fiscal 2011

County	Furlough/ Reduction	Layoffs	
Allegany	No	No	
Anne Arundel	Yes	No	Most county employees will receive up to 12 furlough days, with the number of furlough days depending on the position. Only police officers are exempt from furloughs.
Baltimore City	Yes	Yes	City employees will receive from 3 to 11 furlough days based on salary. The city also laid off 66 employees, although some of these employees may have subsequently been rehired by other city departments that had vacancies. Board of Education is still negotiating with teacher's union.
Baltimore	No	No	
Calvert	No	No	
Caroline	No	No	
Carroll	No	Yes	School system eliminated 18 teacher positions and 18 nonteacher positions.
Cecil	No	No	
Charles	No	No	
Dorchester	Yes	No	All county employees will receive 8 furlough days.
Frederick	No	No	
Garrett	No	No	
Harford	No	No	
Howard	Yes	No	All county employees will receive 4 furlough days except for public safety, court system, sheriff's office, and blue collar employees.
Kent	Yes	No	All county employees will receive a 1.92% reduction in pay in the form of 5 service reduction days.
Montgomery	Yes	Yes	County employees will receive from 3 to 8 furlough days. The school system initially laid off 16 people, including 12 teachers, but 5 were subsequently recalled to service.
Prince George's	Yes	Yes	Year-round school system employees will receive 9 furlough days, and 10 and 11 month employees will receive 4 furlough days. The number of contract days was reduced by 28 to 69 days for 402.5 contractual school system positions. The school system laid off 183 employees, including 144 in school-based positions. The county government is still in negotiations with its employee unions.
Queen Anne's	Yes	Yes	County employees will receive from 5 to 10 furlough days depending on salary. The county also laid off 6 contractual parks and recreation employees.

County	Furlough/ Reduction	Layoffs	
St. Mary's	No	No	
Somerset	No	No	School system indicated that layoffs are possible later in the fiscal year.
Talbot	No	No	
Washington	No	Pending	School system at impasse with teachers and support staff, layoffs are possible.
Wicomico	Yes	Yes	County employees will receive from 5 to 10 furlough days depending on salary. The county also laid off 18 employees.
Worcester	No	No	

Source: Department of Legislative Services; Maryland Association of Counties

Local Government

Joint Legislative Workgroup to Study State, County, and Municipal Fiscal Relationships

Appointed in 2009, the Joint Legislative Workgroup to Study State, County, and Municipal Fiscal Relationships is charged with examining numerous issues related to State and local revenues and expenditures. The workgroup made recommendations on several issues in December 2009 and plans to meet again in December 2010 to be updated on the implementation of those recommendations.

Formation and Charge of the Workgroup

In light of the deteriorating national economy and its effect on Maryland, on July 20, 2009, the Presiding Officers appointed the Joint Legislative Workgroup to Study State, County, and Municipal Fiscal Relationships as an *ad hoc* study group. The workgroup was charged with examining numerous issues, including:

- distribution of governmental responsibilities among units of government, including State assumption or delegation of responsibilities;
- distribution of State funding and assistance provided to units of local government;
- comparison of the major categories of State aid to local governments and the manner in which these items are funded in other states;
- analysis of the revenue structure, expenditures, and fiscal capacity of the State, county, and municipal governments;
- analysis of the comparative benefits of certain types of municipal forms versus special taxing districts; and
- analysis of the impact of spending, tax, and revenue limitations of the current financing systems of State and local governments.

The workgroup held six meetings during the 2009 interim to discuss and evaluate these issues. The workgroup heard from several groups, including the Department of Legislative Services, Maryland Association of Counties, Maryland Municipal League, Maryland Association of Boards of Education, and Public School Superintendents Association of Maryland.

Workgroup Recommendations

In December 2009, the workgroup made recommendations primarily focused on cost saving efforts of the local governments and school systems and on gathering feedback from local governments on any obstacles in State law that prevent additional cost savings. Specifically, the workgroup made the following seven recommendations:

- encourage local governments to review current cooperative procurement agreements and comment on any barriers preventing local governments from taking full advantage of purchasing consortiums;
- encourage local governments to continue pursuing cost efficiencies;
- require local school systems to continue reporting to the General Assembly on efforts to achieve budget efficiencies;
- request local governments to provide a list of obsolete or ineffective laws that, if repealed or revised, would result in cost savings;
- encourage the Board of Public Works to provide as much notice as possible about potential mid-year budget reductions to local governments to allow time for local adjustments;
- modify the education maintenance of effort waiver process by altering the application deadlines and codifying in State law eight factors that the State Board of Education must use in determining whether or not to grant a county's waiver request; and
- continue studying the fiscal relationships between State, county, and municipal governments.

Further Efforts to Study Fiscal Relationships between the State and Local Governments

The workgroup will meet again in December 2010 to be updated on the progress of local governments and local school systems in implementing the workgroup's recommendations. Workgroup meeting agendas and materials are available on the following website: http://mlis.state.md.us/other/Municipal_Fiscal_Relationships/index.htm.

For further information contact: Erika S. Schissler Phone: (410) 946/(301) 970-5530

Local Government

Commission to Study the Impact of Immigrants in Maryland

Appointed this year, the Commission to Study the Impact of Immigrants in Maryland is charged with examining the underlying economic and fiscal issues surrounding immigration and whether the immigrant community in Maryland is similar to the typical demographic profile of immigrants nationally.

Immigration policy is increasingly becoming a topic of interest for many people in Maryland and throughout the nation. With comprehensive immigration reform stalled at the federal level, State and local officials are being asked to address various issues relating to immigration and, in particular, the perceived effects of unauthorized immigration. To gain a broader understanding of the economic and fiscal issues surrounding immigration, the General Assembly passed legislation in 2008 establishing the Commission to Study the Impact of Immigrants in Maryland. The commission began its deliberations this year by examining the demographic and socioeconomic profile of the State's immigrant community. The commission was also presented with information concerning the economics of immigration, federal and State immigration enforcement programs, local law enforcement policies, and compliance efforts with the federal REAL ID requirement. Throughout its deliberations, the commission has compiled a compendium of research reports and publications relating to immigrants at the national and State level. This information, along with public presentations, will guide commission members in presenting findings to the Governor and General Assembly. The commission intends to release an interim status report in January 2011 and a final report by January 2012. The following is a brief summary of the demographic and socioeconomic profile of the immigrant community presented to the commission.

Extent of Immigration to Maryland

Maryland remains an attractive State for immigrants, due in part to its proximity to the nation's capital and the relative strong business climate in comparison to other states. International immigration added nearly 200,000 people to the State's population between 2000 and 2009 (**Exhibit 1**). This was the thirteenth largest gain from immigration among all states during that period. From 2000 to 2009, Maryland accounted for 2% of the total national population gain from international immigration.

Exhibit 1
International Immigration to Maryland
April 2000 to July 2009

County	International Migration	Percent of Total	County Ranking
Allegany	117	0.1%	21
Anne Arundel	4,978	2.6%	6
Baltimore City	11,254	5.9%	4
Baltimore	16,928	8.9%	3
Calvert	432	0.2%	17
Caroline	663	0.3%	12
Carroll	839	0.4%	10
Cecil	509	0.3%	14
Charles	447	0.2%	15
Dorchester	77	0.0%	23
Frederick	2,757	1.4%	7
Garrett	54	0.0%	24
Harford	1,691	0.9%	8
Howard	9,680	5.1%	5
Kent	86	0.0%	22
Montgomery	89,435	46.8%	1
Prince George’s	46,919	24.5%	2
Queen Anne’s	433	0.2%	16
St. Mary’s	302	0.2%	20
Somerset	308	0.2%	19
Talbot	367	0.2%	18
Washington	814	0.4%	11
Wicomico	1,589	0.8%	9
Worcester	583	0.3%	13
Maryland	**191,262**	**100.0%**	

Source: U.S. Census Bureau

Immigration to Maryland is concentrated in the suburban Washington region, which includes Frederick, Montgomery, and Prince George’s counties. Approximately 73% of immigrants arriving in Maryland since 2000 decided to locate in these counties. Montgomery County is the most popular locality for immigrants to Maryland, with 47% of all recent immigrants deciding to live in the county. Between 2000 and 2009, Montgomery County added 89,400 people through international immigration, and Prince George’s County added 46,900. Montgomery and Prince George’s counties gained more than twice as many people through international immigration than the rest of the State combined. Other jurisdictions with considerable population gains from immigration during these years include Baltimore County, Baltimore City, and Howard County.

The number of immigrants arriving in the United States and Maryland has been decreasing in the last three years, reflecting both the economic downturn as well as increased enforcement along the U.S.-Mexican border. Immigration to the United States in 2009 declined by 15% from 2006 levels, while immigration to Maryland declined by 16%. Even with this recent decline in the number of new immigrants, international immigration remains an important factor affecting the overall population growth in Maryland and select counties. International immigration accounted for 48% of Maryland's total population growth between 2000 and 2009. During that period, Maryland gained a total of 402,900 residents, of whom 191,300 came to the State through immigration.

Nationality of Maryland's Foreign-born Population

Immigrants come to Maryland from all regions of the world, and compared to other states, the foreign-born population in Maryland is more ethnically diverse. Maryland has a relatively high percentage of foreign-born residents from Africa and Asia compared to other states and a relatively low percentage of foreign-born residents from Latin America. The percentage of Maryland's foreign-born population from Asia ranks thirteenth among the states. However, the State's percentage of foreign-born residents from Latin America ranks thirty-fourth among the states, and its percentage of foreign-born residents from Mexico ranks forty-fifth. For example, 37% of the State's foreign-born population came from Latin America compared to 53% nationally. Asians represent 33% of the State's foreign-born population compared to 27% nationally; whereas, Africans account for 16% of the State's foreign-born population compared to 4% nationally. Europeans account for 13% of the foreign-born population in both Maryland and the United States.

El Salvador, located in Central America, is the leading country of origin for Maryland's immigrant community, with Salvadorans accounting for 10% of the foreign-born population. Over 1 million foreign-born Salvadorans reside in the United States with over 68,000 residing in Maryland. India, Korea, China, and Mexico represent other leading countries of origin for Maryland's foreign-born population.

Socioeconomic Profile of Maryland's Immigrants

Maryland's economy is heavily dependent on immigrant labor. Foreign-born workers comprise approximately 16% of the State's civilian labor force. The strong work ethic of Maryland's immigrant community is demonstrated by high labor participation rates and low unemployment rates. Over 70% of foreign-born individuals age 16 and older are currently employed compared to 64% of native-born individuals. In addition, unemployment rates for foreign-born workers who are U.S. citizens are lower than for native-born workers. The State's foreign-born population is employed in both the high-income advanced technology sector as well as construction- and service-related occupations that tend to have lower annual salaries. On average, the annual income of native-born workers is typically higher than foreign-born workers;

however, foreign-born workers who are naturalized citizens have a higher annual income than native-born workers.

Maryland's foreign-born population is also relatively well educated compared to the native population. Individuals with at least a bachelor's degree account for 42% of the State's foreign-born population, compared to 34% of the native population. The educational attainment of the foreign-born in Maryland varies greatly based on their world region of birth. The foreign-born population from Asia has the highest educational attainment, with 61% having at least a bachelor's degree. The foreign-born population from Latin America has the lowest educational attainment, with only 18% having at least a bachelor's degree. Among the foreign-born from Latin America, individuals from Mexico and Central America have the lowest levels of educational attainment, with over 50% having less than a high school education. Consequently, immigrants from Mexico and Central America tend to be mostly employed in the construction and service-related industries, resulting in lower income levels than the average foreign-born worker.

Local Government

2011 Legislative Agenda – Maryland Municipal League

The legislative agenda for the Maryland Municipal League includes protecting State funding to local governments.

Municipal Fiscal Health and Stability

Over the past several years, Maryland municipalities have been subject to reduced funding resulting from decreases in their share of highway user revenues that were instead used to balance the State operating budget. With minor changes, the General Assembly anticipates extending these cuts for the foreseeable future. Additionally, State funding for the police aid formula has also been diverted to the State general fund, which reduced funding to municipalities that provide police protection services.

Most municipal governments in Maryland rely on property taxes as their primary general fund revenue source as shown in **Exhibit 1**. Because of the loss of revenue from State aid, the Maryland Municipal League indicates that more cities and towns this year have raised their property tax rates than at any other time in the past 42 years. This is in addition to other strategies that municipal governments have employed to cut expenditures in an effort to match revenue reductions.

The Maryland Municipal League intends to support legislation that will fully restore municipal highway user revenues and police aid as soon as possible. Further, the league will work with leadership in the General Assembly to identify and advocate for alternative revenue raising mechanisms for municipal governments in an effort to reduce the overreliance on property taxes as the primary general fund revenue source for many municipalities.

Exhibit 1
Sources of Revenue – Municipal Corporations
Selected Fiscal Years
($ in Millions)

	FY 1999		FY 2009	
	Amount	**% of Total**	**Amount**	**% of Total**
Property Taxes	$211.7	31.9%	$460.7	36.4%
Income Taxes	52.3	7.9%	94.6	7.5%
Other Local Taxes	13.1	2.0%	16.3	1.3%
Service Charges	219.2	33.0%	384.4	30.3%
Other	65.0	9.8%	124.6	9.8%
State Aid	56.8	8.6%	97.6	7.7%
Federal Grants	18.8	2.8%	24.0	1.9%
County Grants	27.4	4.1%	64.4	5.1%
Subtotal	**$664.3**	**100.0%**	**$1,266.5**	**100.0%**
Debt Proceeds	24.5		98.3	
Total	**$688.8**		**$1,364.8**	

Source: Department of Legislative Services

Local Government

2011 Legislative Agenda – Maryland Association of Counties

The legislative agenda of the Maryland Association of Counties again includes protecting State funding to local governments and continuing the State's commitment to public school construction funding. The agenda also supports revising current State law to implement a clearer and fairer process for evaluating county fiscal hardship when determining a county's "maintenance of effort" for local education funding.

Each year, the Maryland Association of Counties (MACo) selects several issues as its legislative initiatives for the upcoming session. This year, in light of ongoing economic challenges, all three of MACo's legislative priorities are carry-overs from the prior year. However, because 2010 is an election year for most State and local officials, the initiatives below were adopted tentatively in September 2010 and will not be finalized until January 2011, after MACo's new legislative committee meets and formally approves (or possibly amends) these issues.

County Budget Security

State aid continues to be the largest revenue source for most county governments, representing 29.4% of total county revenues. Over the last four years, State funding for local governments has increased by $693.0 million or 12.0%; however, State funding to counties and municipalities has declined by $582.9 million or 61.1%. Most of the increases in State aid were targeted to public schools, which received an additional $1.2 billion in State funding over the four-year period. These cuts, along with the weak economy, have forced counties to take drastic steps such as drawing down their rainy day and reserve funds; laying off hundreds of employees; eliminating positions; implementing furloughs and pay reductions; delaying projects; and cutting back on services. Counties are also receiving warnings from bond rating agencies and face new long-term challenges due to the maintenence deferrals and depleted reserve funds. Difficult economic times for the counties are expected to continue, particularly as federal stimulus funds come to an end and property assessments decline. Moreover, a looming shift in pension funding responsibilities could further overwhelm the counties' budgets.

While MACo understands the challenges facing the State, MACo continues to urge the General Assembly to refrain from further reductions in local funding and from shifting costs to the counties.

School Construction and Renovation Funding

Despite increased State support for school construction and renovation efforts in recent years, the need for State funding remains high. Moreover, the impact of State funding takes on greater significance because every State dollar invested in school projects leverages roughly two county dollars of local funding. **Exhibit 1** shows State funding for public school construction for fiscal 2007 through 2011.

Exhibit 1
State Funding for Public School Construction

FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
$322,672,000	$401,828,000	$346,983,000	$266,653,000	$263,724,000

Source: Public School Construction Program; Department of Legislative Services

MACo urges the General Assembly to continue its commitment by keeping school construction and renovation funding a high priority while also supporting a funding level consistent with the State's own adopted multiyear goals. In addition, since the current goal expires in fiscal 2013, MACo requests the State to move toward a new multiyear funding strategy and to pursue efficiencies and flexibility in the school construction process in order to maximize the use of State and local capital funds.

School Budget Accountability – Maintenance of Effort Waiver Reform

By law, the State and local governments are required to share the cost of providing an education to all elementary and secondary public school students in the State. In order for a county to receive increases in State education funding each fiscal year, the county government must fund its public school system at a level that is at least at the same per pupil level as the previous fiscal year. This is known as "maintenance of effort" (MOE). A county may obtain a full or partial waiver of MOE in a particular fiscal year if the State Board of Education finds that the county's fiscal condition significantly impedes the county's ability to fund MOE.

For fiscal 2010, three counties (Montgomery, Prince George's, and Wicomico) sought but were denied MOE waivers from the board. In light of the significant ongoing fiscal constraints on the counties, MACo supported reform of the MOE waiver law during the 2010 session in anticipation of future waiver requests. Although the General Assembly made some revisions to the waiver law in 2010, MACo maintains the changes were simply one-time remedies. While the board has approved waiver requests for fiscal 2011 for two counties (Montgomery and Wicomico), MACo remains concerned about the current waiver system. (For further information, see Fiscal 2011 Maintenance of Effort Waiver Requests in the Education section of this *Issue Papers – 2011 Legislative Session*.)

MACo supports replacing the present MOE waiver law with a clearer and fairer process for evaluating county fiscal hardship in the context of a waiver request while also preserving county budget autonomy.