Issue Papers
2016 Legislative Session



DEPARTMENT OF LEGISLATIVE SERVICES 2015

Issue Papers

2016 Legislative Session

Presentation to the

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF THE EXECUTIVE DIRECTOR
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Executive Director

December 2015

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 November 23, 2015.

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.

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

Sincerely,

Warren G. Deschenaux
Executive Director

WGD/mpd

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Economic and Revenue Outlook

Federal budget reductions and the 2013 government shutdown had a significant impact on the Maryland economy over the last two years. Available data for 2015 shows substantial improvement although the State continues to underperform the national economy. General fund revenues in fiscal 2015 exceeded expectations, and the estimate for fiscal 2016 was revised up.

Economic Outlook

The recession that began in December 2007 officially ended in June 2009. Since bottoming out in February 2010, U.S. employment has increased by 12.7 million jobs, or 8.9%. The U.S. economy finally reached the milestone of recovering the jobs lost during the recession in April 2014, over six years (75 months) after the recession began. Private-sector jobs are up 13.2 million since the trough (11.3%), but government jobs remain down 2.0%, or about 447,000 jobs. Personal income increased 4.3% in the first eight months of 2015, while growth in wages was also 4.3%.

The recession in Maryland was the worst economic contraction the State had experienced since the recession of the early 1990s but was less severe than for the nation as a whole. Coincident with the recession, the Base Realignment and Closure process increased federal employment in the State by 21,400 jobs between 2007 and 2012. Recovery from the recession, however, was derailed as the federal budget reductions of recent years along with the government shutdown in fall 2013 had a significant impact on the Maryland economy. Inflation-adjusted gross State product per capita fell in 2012 and 2013 for the first time since 2009, and growth was just 0.2% in 2014. Employment increased by less than 1.0% in 2013, and wage income growth slowed from 3.1% in 2012 to just 0.8% in 2013. Federal civilian employment in Maryland fell 1.2% in 2013, while wages fell 2.6% as some agencies imposed furloughs. Federal civilian wages also declined in 2012. This was not unique to Maryland as nationally federal civilian wages fell 1.1% in 2012 and 2.3% in 2013.

The Maryland economy rebounded to some degree in 2014. Total wages grew 3.4%, while federal wages increased 3.3%, even though federal employment in the State continued to fall. Nonfederal wages were up 3.5% in 2014 after having increased by just 1.3% in 2013. Total employment, however, grew just 0.9% in 2014, no better than the growth in 2013. The data available for 2015 shows significant improvement over the performance in 2014. Employment in the first nine months of 2015 was up 1.8%, while national employment was up 2.2%. In the first half of 2015, Maryland's personal income increased 4.1%, and wage income was up 3.5%. Alternate measures of the labor market, however, suggest the monthly employment data is overstating growth and may be revised down.

In September 2015, the Board of Revenue Estimates (BRE) issued a revised economic forecast for Maryland, its first since December 2014 (**Exhibit 1**). BRE revised the economic outlook largely in line with recent performance. Employment growth for 2015 was revised slightly from 1.1% to 1.3%. The projection for personal income growth was increased in 2015 due to a small increase in the estimate for wage income, a more substantial increase in the estimate for transfer payments, and a reduced estimate for contributions for social insurance. Long-term employment growth decelerates as the working age population is projected to increase slowly and eventually decline as the baby boom cohort continues to move into retirement.

Exhibit 1
Maryland Economic Outlook
Year-over-year Percentage Change

	Employment		Personal Income	
Calendar Year	**Dec. 2014**	**Sep. 2015**	**Dec. 2014**	**Sep. 2015**
2012	1.2%	1.2%	3.6%	3.3%
2013	0.9%	0.9%	1.1%	-0.2%
2014	0.7%	0.9%	3.3%	3.8%
2015E	1.1%	1.3%	3.8%	4.3%
2016E	1.3%	1.3%	4.1%	4.7%
2017E	1.0%	1.0%	4.7%	5.1%
2018E	0.5%	0.8%	4.2%	4.5%

Note: The figures for 2014 under the Dec. 2014 columns are estimates.

Source: Board of Revenue Estimates

Revenue Outlook

Fiscal 2015 general fund revenues were above the estimate by $214.1 million. General fund revenues totaled $15.9 billion in fiscal 2015, an increase of 5.4% over fiscal 2014. Excluding the distribution of transfer tax revenue to the general fund, which increased from $89.0 million in fiscal 2014 to $144.0 million in fiscal 2015, growth was 5.1%.

The overattainment of revenues was due almost entirely to the personal income tax. General fund personal income tax revenues were over the estimate by $178.0 million and grew 7.4% over fiscal 2014. The overattainment was largely in final payments with returns, which were up 13.2% over fiscal 2014 and exceeded the estimate by $170.0 million, which includes both the State and local income tax. All other components of the income tax exceeded the estimate, while refunds were below target. Withholding grew 3.9% over fiscal 2014. The corporate income tax exceeded the fiscal 2015 estimate by $9.7 million and grew 2.1% over fiscal 2014. Corporate revenues in fiscal 2014 included a large payment related to a court case. Adjusted for that one-time payment, growth in corporate revenues in fiscal 2015 was 6.3%. The sales tax, exceeding the estimate by $15.9 million, was up 5.0% over fiscal 2014. Fiscal 2015 revenues reflect remittances from Amazon.com, which began collecting the sales tax on its sales in the State in October 2014.

Fiscal 2016 general fund revenue collections through September were up 1.3% from last year. Personal income tax revenues were down 0.6% in the first quarter of fiscal 2016 as quarterly estimated payments fell 22.0%, and refunds were up almost 37.0%. Withholding was up 4.9% over the prior year in the first three months of fiscal 2016. General fund corporate income tax revenues were up 26.6% due in part to a 33.0% decline in refunds, as the beginning of fiscal 2015 included several large refunds related to the film production activity tax credit. Sales tax revenue growth of 4.8% year-to-date still reflects a boost from Amazon.com as the company was not collecting the sales tax at the beginning of fiscal 2015.

In September 2015, BRE increased their estimate for fiscal 2016 general fund revenues by $81 million (**Exhibit 2**). The personal income tax estimate was revised up by $107 million reflecting the overattainment in fiscal 2015 but also a downward revision to expected capital gains income in tax year 2015 due to declines in the stock market. The sales tax estimate was unchanged due to the expectation that a large refund related to a court case will be paid out in fiscal 2016. In the absence of that refund, sales tax revenue would have been revised up in line with the overattainment in fiscal 2015. Lottery revenues are projected to decline by 3.7% in fiscal 2016 due to a new distribution of $20 million to the Maryland Stadium Authority required by the Baltimore City Public Schools Construction and Revitalization Act of 2013 (Chapter 647). Total general fund revenues are projected to grow 3.0% in fiscal 2016 and 3.8% in fiscal 2017. Excluding the distribution of transfer tax revenue to the general fund, revenues are projected to grow 3.2% in fiscal 2016 and 4.0% in fiscal 2017.

Exhibit 2

Maryland General Fund Revenue Forecast

($ in Millions)

	Fiscal 2016				Fiscal 2017	
	BRE Mar. 2015	BRE Sep. 2015	$ Diff.	% Change 2016/2015	BRE Sep. 2015	% Change 2017/2016
Personal Income Tax	$8,638	$8,745	$107	4.8%	$9,173	4.9%
Sales and Use Tax	4,543	4,543	0	4.4%	4,710	3.7%
Corporate Income Tax	831	823	-8	5.9%	879	6.8%
Lottery	477	488	10	-3.7%	495	1.4%
Other	1,834	1,805	-29	-7.1%	1,765	-2.2%
Total	**$16,323**	**$16,404**	**$81**	**3.0%**	**$17,022**	**3.8%**

Source: Board of Revenue Estimates (BRE)

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Operating Budget

Budget Outlook

In fiscal 2016 the general fund is expected to close the year with a balance totaling $521 million, which is $493 million more than anticipated in July 2015. Revenue overattainment is responsible for $214 million. Other factors that contribute to the large balance are the Governor declining to release $83 million in restricted funds for the Geographic Cost of Education Index and the Prince Georges' County Hospital Center. Medicaid spending is also less than anticipated. Fiscal 2017 is expected to end with a $217 million cash balance and $1 million structural balance. In the out-years, these balances turn negative, and spending outpaces revenues. This is partly attributable to a phased-in reduction of the estate tax and ending the diversion of transfer tax revenues to the general fund. The rate of general fund spending on local education aid and Medicaid is expected to increase.

Background

Fiscal 2015 closed with an unassigned general fund balance of $295.3 million. General fund revenues totaled $15.9 billion, an increase of 5.4% over fiscal 2014. **Exhibit 1** illustrates the changes by revenue component compared to the revised estimate from March 2015 adjusted for action at the 2015 session. Personal income taxes were higher than estimated by $177.7 million based on final payments. The Bureau of Revenue Estimates (BRE) indicates that this is likely related to payments from wealthier taxpayers with nonwage income such as capital gains, business income or loss, and pass-through entity income. These sources can be very volatile. Sales and use taxes increased by $15.9 million, benefitting from nine months of collections from Amazon and its subsidiaries. Slightly higher attainment was also realized from corporate income taxes, the State Lottery, and other revenue sources.

Exhibit 1

Fiscal 2015 Estimated vs. Actual General Fund Revenue Performance

($ in Millions)

	Estimated	Actual	Change
Personal Income Tax	$8,168.4	$8,346.1	$177.7
Sales and Use Tax	4,334.8	4,350.7	15.9
Corporate Income Tax	767.6	777.3	9.7
State Lottery	500.5	506.5	6.0
Other	1,937.1	1,942.0	4.9
Total	**$15,708.4**	**$15,922.6**	**$214.1**

Source: Department of Legislative Services

Fiscal 2016 Activity

Exhibit 2 shows that fiscal 2016 is projected to end with a general fund balance of $521.1 million, which is $493.5 million higher than expected when the budget was enacted at the 2015 session. Approximately one-half of this amount results from the fiscal 2015 closeout, of which $214.1 has been cited as revenue overattainment. Agencies also reverted an additional $53.7 million beyond what was estimated, chiefly because of savings from lower Medicaid enrollment and availability of special fund balances, surplus accruals in the Department of Health and Mental Hygiene, overbudgeted homeowner's tax credits and lease savings from the sale of State-owned video lottery terminals. In September 2015, BRE revised its estimate of fiscal 2016 revenue upward by $86.0 million.

Reversions of $116.0 million are projected, due mostly to $83.1 million in restricted funds for the Geographic Cost of Education Index ($68.1 million) and a grant to the Prince George's County Hospital Center ($15.0 million) that the Governor has declined to release. The remainder is attributable to overbudgeted Medicaid from prior years and the general assumption of $30.0 million in unspecified reversions.

Exhibit 2
Evolution of the Fiscal 2016 General Fund Balance
($ in Millions)

		Fiscal 2016
Estimated Closing Balance (July 2015)		**$27.6**
Revenue		
Fiscal 2015 Closeout	$267.7	
September 2015 BRE Revenue Revision	86.0	
Transfers		
Net Change in Transfers from the Rainy Day Fund and Budgeted Tax Credits	-11.2	
Spending		
Fiscal 2015 Closeout Reversions	116.0	
DLS Estimated Fiscal 2016 Deficiencies	35.0	
Revised Closing Balance (November 2015)		**$521.1**

BRE: Board of Revenue Estimates
DLS: Department of Legislative Services

Source: Department of Legislative Services

Fiscal 2017 to 2021 Forecast

Exhibit 3 provides the Department of Legislative Services (DLS) general fund forecast through fiscal 2021. Relative to the forecast prepared following the 2015 session, the fiscal outlook has improved markedly, due to a combination of improved revenues and favorable spending trends. BRE released its initial estimate of fiscal 2017 revenue in September 2015, reflecting 3.8% growth. Most of the growth is expected from the personal income tax and, to a lesser extent, the sales tax. In the near term spending projections for Medicaid are one of the primary drivers of savings based in large part on a significant caseload decline with individuals being required to re-enroll in the new eligibility system (the Maryland Health Connection) upon redetermination, following the failure of the original health benefit exchange eligibility system. Favorable caseload trends are also observed in the foster care and Temporary Cash Assistance programs. The State has also benefitted from low inflation, which feeds education aid formulas. As a result, a cash and structural balance is expected through fiscal 2018.

From fiscal 2019 to 2021 the structural imbalance between ongoing general fund revenues and spending re-emerges, increasing from -$187 million in fiscal 2019 to nearly a half billion dollar shortfall in fiscal 2021. The diversion of approximately $90 million annually from the transfer tax to the general fund ends in fiscal 2018. Chapter 425 of 2013 (the Budget Reconciliation and Financing Act) enacted a series of transfers beginning in fiscal 2014. Revenue growth is also tempered by Chapter 612 of 2014, which implements a phased reduction in the estate tax through fiscal 2021. With respect to spending, growth in Medicaid caseloads is expected to resume and the State will be required to pay a percentage of costs for the Affordable Care Act expansion, which has been 100% federally funded. Education inflation is also expected to resume growing at higher levels, which results in the need for more general funds for the Foundation and other local aid programs. DLS has also estimated personnel expense growth related to annual 1% general salary increases, annual increments, health insurance, and retirement expense growth. Finally, debt service also increases by nearly $200 million between fiscal 2017 and 2021 based on the amount of debt issued since the Great Recession of 2008.

Conclusion

Since the 2015 session forecast, the State's fiscal picture has improved, buoyed largely by a combination of higher revenues and large decreases in the Medicaid caseload. DLS projects cash and structural balance for the fiscal 2016 to 2018 period. Structural shortfalls between ongoing revenues and spending recur starting in fiscal 2019, growing to nearly a half billion dollars by fiscal 2021. This is due to the end of ongoing transfer tax diversions and expected growth in spending for debt service, local education aid, and Medicaid. In the short term the State has sufficient time to make adjustments to revenues and spending, including potential modifications to statutory mandates and entitlement programs, which largely drive spending.

Exhibit 3
General Fund Projections
Fiscal 2016-2021
($ in Millions)

	Working 2016	Baseline 2017	Estimate 2018	Estimate 2019	Estimate 2020	Estimate 2021	Avg. Annual Change 2017-21
Revenues							
Opening Fund Balance	$320	$522	$217	$0	$0	$0	
Transfers	64	0	0	258	185	33	
One-time Revenues/Legislation	0	0	0	0	0	0	
Subtotal One-time Revenue	***$384***	***$522***	***$217***	***$258***	***$185***	***$33***	***-49.8%***
Ongoing Revenues	$16,385	$17,039	$17,740	$18,336	$19,042	$19,767	
Subtotal Ongoing Revenue	***$16,385***	***$17,039***	***$17,740***	***$18,336***	***$19,042***	***$19,767***	***3.8%***
Total Revenues and Fund Balance	**$16,768**	**$17,560**	**$17,957**	**$18,594**	**$19,227**	**$19,800**	**3.0%**
Ongoing Spending							
Operating Spending	$16,738	$17,481	$18,292	$19,048	$19,892	$20,773	
Education Trust Fund*	-380	-451	-527	-534	-542	-551	
Multi-year Commitments	9	9	9	9	9	9	
Subtotal Ongoing Spending	***$16,368***	***$17,038***	***$17,774***	***$18,523***	***$19,359***	***$20,232***	***4.4%***
One-time Spending							
PAYGO Capital	$21	$20	$21	$21	$21	$21	
Legislation/One-time Adjustments/Swaps	-201	0	0	0	0	0	
Appropriation to Reserve Fund	60	285	207	50	50	83	
Subtotal One-time Spending	***-$121***	***$306***	***$228***	***$71***	***$71***	***$104***	
Total Spending	**$16,247**	**$17,344**	**$18,002**	**$18,594**	**$19,430**	**$20,336**	**4.1%**
Ending Balance	**$522**	**$217**	**-$46**	**$0**	**-$203**	**-$536**	
Rainy Day Fund Balance	$814	$1,070	$1,251	$1,067	$952	$989	
Balance Over 5% of General Fund Revenues	-5	218	364	150	0	1	
As % of General Fund Revenues	4.97%	6.28%	7.05%	5.82%	5.00%	5.00%	
Structural Balance	**$17**	**$1**	**-$34**	**-$187**	**-$317**	**-$465**	

PAYGO: pay-as-you-go

*The Education Trust Fund is supported by revenues from video lottery terminals, table games, and savings from equipment leases.

Source: Department of Legislative Services

Operating Budget

Transportation Trust Fund Overview

The Transportation Trust Fund (TTF) closed fiscal 2015 with a higher than expected fund balance of $269 million. The Department of Legislative Services (DLS) assumes lower total revenue attainment and higher operating expenses than estimated by the Maryland Department of Transportation (MDOT) over the fiscal 2016 to 2021 forecast period. As such, DLS finds it unlikely that the TTF has the capacity to support both the capital program and the proposed increase in highway user revenues for local jurisdictions assumed in the MDOT forecast.

Fiscal 2015 Closeout

The Transportation Trust Fund (TTF) ended fiscal 2015 with a fund balance of $269 million, an amount $169 million higher than the $100 million projected ending balance. The higher fund balance is the net effect of a higher than expected level of revenue attainment ($90 million) and a lower than anticipated level of expenditures ($79 million).

Motor fuel tax revenues were $47 million higher than projected in fiscal 2015, and titling taxes were $10 million higher. Other tax and fee sources closed out a combined $10 million higher than projected. Nontax and fee revenue, including operating revenues, revenues from a legal settlement, and proceeds from the sale of a parcel of land, was $65 million greater than projected. These increases were partially offset by a reduction of $41 million in the amount of bonds sold during the year.

On the expenditure side of the equation, an increase in the cost of operations of $59 million, driven largely by winter maintenance expenditures, was more than offset by a $168 million reduction in capital expenditures. Approximately $92 million of the reduction in capital expenditures resulted from delays in Red and Purple Line spending as those transit projects were being reevaluated.

Fiscal 2016 to 2021 TTF Forecast

The Department of Legislative Services (DLS) prepares an annual TTF forecast detailing the expected trends in revenue attainment, debt issuance, and expenditures.

Revenues

With respect to tax and fee revenues for the fiscal 2016 to 2021 forecast period, DLS and the Maryland Department of Transportation (MDOT) have similar bottom line projections with the DLS projection just $21.8 million higher than the MDOT projection over the entire forecast period.

However, different DLS assumptions about miscellaneous revenues, the need for a revenue reserve, and operational costs result in substantially different conclusions from MDOT about what the TTF can support over the next six years.

The DLS forecast does not include any general fund or general obligation bond (GO) support for Watershed Implementation Plan projects. While statute requires the Governor to include some combination of general fund and GO bond support totaling $285 million in fiscal 2017 through 2019, a similar requirement for fiscal 2016 was eliminated through a provision in Chapter 489 of 2015 (the Budget Reconciliation and Financing Act). The MDOT forecast does not include the $85 million required in statute for fiscal 2017 but does include $100 million in each of fiscal 2018 and 2019. Since the Administration has never accounted for these payments to the TTF in the State *Capital Improvement Program* or the general fund forecast, DLS does not believe these amounts should be assumed in the TTF forecast. This assumption results in $200 million less in miscellaneous revenue to the TTF over the forecast period.

Unlike the MDOT forecast, the DLS forecast includes a revenue reserve equal to approximately 1% of total revenues as a hedge against revenue underattainment. For the first time in 20 years, MDOT excludes this feature, thereby adding $197 million in revenues to the MDOT forecast over the six-year period.

Expenditures

With respect to MDOT operating expenses, the DLS forecast is $685 million higher over the six-year period than the MDOT forecast. The DLS forecast assumes that MDOT operating expenses will grow at the five-year average annual rate (4.7%) experienced by MDOT through fiscal 2015, the most recent year for which actual spending is available. The MDOT forecast assumes an average annual increase of just under 3% and does not include costs associated with cost-of-living increases and salary increments.

Capital Program and Local Transportation Aid

The MDOT forecast assumes that $743 million over the forecast period will be used to increase State transportation aid to local jurisdictions by increasing the annual amount of highway user revenues (HUR) going to those jurisdictions. Increasing the share of HUR going to local jurisdictions would require enactment of legislation, and an attempt to pass such legislation during the 2015 legislative session was not successful.

The lower total revenue and higher operating expense assumptions in the DLS forecast, however, indicate that it is unlikely that the TTF has the capacity to support both the capital program assumed in the MDOT forecast and the proposed increase in HUR for local jurisdictions. In fact, under the DLS assumptions, even without increasing the local share of HUR, an additional $238 million in debt would be needed over the forecast period to support the capital program assumed in the MDOT forecast. Conversely, should increasing local HUR be given priority, the capital program would be $2.2 billion lower over the six-year period than assumed in the MDOT forecast. These options are summarized in **Exhibit 1**.

Exhibit 1
Options for Using Transportation Trust Fund
Fiscal 2016-2021

Priority: Maintain Capital Program

Effects

No increase in local share of highway user revenue
Debt increases $238 million
Debt service increases $25 million
Lowers bond debt service coverage ratio to 2.6

Priority: Increase Local Highway User Revenue

Effects

Reduced revenue lowers ability to issue debt by $1,361 million
Debt service decreases $144 million
Capital program reduced by $2,183 million
Bond debt service coverage ratio drops to minimum 2.5

Source: Department of Legislative Services

Exhibit 2 shows the DLS fiscal 2016 to 2021 TTF forecast.

Exhibit 2
Transportation Trust Fund Forecast
Fiscal 2016-2021
($ in Millions)

	2016	2017	2018	2019	2020	2021	Total 2016-2021
Opening Fund Balance	**$269**	**$125**	**$125**	**$125**	**$150**	**$150**	
Closing Fund Balance	**$125**	**$125**	**$125**	**$150**	**$150**	**$150**	
Net Revenues							
Taxes and Fees	$2,539	$2,657	$2,748	$2,853	$2,937	$3,045	$16,799
Operating and Miscellaneous	526	546	576	584	580	634	3,446
Subtotal	***$3,065***	***$3,203***	***$3,324***	***$3,437***	***$3,517***	***$3,679***	***$20,225***
Bond Proceeds\Premiums	700	849	721	571	449	438	3,728
Total Net Revenues	**$3,910**	**$4,052**	**$4,045**	**$3,983**	**$3,966**	**$4,117**	**$24,072**
Expenditures							
Debt Service	$265	$323	$371	$362	$361	$427	$2,110
Operating Budget	1,860	1,937	2,028	2,124	2,224	2,328	12,501
State Capital	1,785	1,791	1,646	1,497	1,381	1,362	9,461
Total Expenditures	**$3,910**	**$4,052**	**$4,045**	**$3,983**	**$3,966**	**$4,117**	**$24,072**
Debt							
Debt Outstanding	$2,546	$3,188	$3,641	$3,980	$4,216	$4,387	
Debt Coverage – Net Income	3.3	3.4	3.0	2.9	2.7	2.6	
Local Highway User Revenue	**$175**	**$176**	**$179**	**$182**	**$184**	**$187**	**$1,083**
Capital Summary							
State Capital	$1,785	$1,791	$1,646	$1,497	$1,381	$1,362	$9,461
Net Federal Capital (Cash Flow)	895	994	891	706	638	746	$4,870
Total Capital Expenditures	**$2,680**	**$2,785**	**$2,537**	**$2,203**	**$2,019**	**$2,108**	**$14,331**
GARVEE Debt Service	$87	$87	$87	$87	$51	$0	$401

GARVEE: Grant Anticipation Revenue Vehicle

Source: Department of Legislative Services

Operating Budget

Federal Funds Outlook

In fiscal 2016, the State of Maryland anticipates $11.6 billion in federal funds. On October 28, 2015, the President and Congressional leaders announced a budget agreement, the Bipartisan Budget Act of 2015, which would increase discretionary spending caps, suspend the federal debt limit, and extend sequestration on nonexempt mandatory programs.

State Fiscal 2016 Appropriations of Federal Funds

The fiscal 2016 federal fund appropriation totals $11.6 billion. **Exhibit 1** shows the distribution of the federal funds by department/service area. Only $22 million in federal funds from the American Recovery and Reinvestment Act (ARRA) of 2009 remain as ARRA funds expire.

Exhibit 1
Federal Funds in Fiscal 2016 Appropriation
($ in Millions)

Department/Service Area	Fiscal 2016 Appropriation
Judicial and Legal Review	$4.2
Executive and Administrative Control	218.7
Budgetary and Personnel Administration	3.9
General Services	1.3
Transportation	1,023.1
Department of Natural Resources	30.0
Agriculture	4.0
Health and Mental Hygiene	6,830.3
Human Resources	1,862.7
Labor, Licensing, and Regulation	186.6
Public Safety and Correctional Services	29.2
Public Education	1,088.2
Housing and Community Development	262.2
Business and Economic Development	1.5
Environment	79.6
Juvenile Services	7.4
State Police	1.2
Public Debt	11.5
Total Federal Funds	**$11,645.6**

*Numbers may not sum due to rounding. Federal fund total includes $22 million in American Recovery and Reinvestment Act funds.

Source: *Fiscal Digest of the State of Maryland for the Fiscal Year 2016*

Federal Fiscal 2016 Budget

On October 27, 2015, the President and the Congressional leaders announced a budget agreement, the Bipartisan Budget Act (BBA) of 2015, which would increase discretionary spending caps by $50 billion in federal fiscal year (FFY) 2016 and $30 billion in FFY 2017 (equally split between defense and nondefense spending). The BBA of 2013 provided similar sequestration relief for FFY 2014 and 2015.

The BBA of 2015 would increase FFY 2016 nondefense discretionary caps by 5.4% compared to FFY 2015 while FFY 2017 caps basically remain at their FFY 2016 levels. Absent further legislation, FFY 2018 discretionary caps will decline for both defense and nondefense spending back to levels set by the Budget Control Act (BCA) of 2011. The BBA of 2015 also provides additional funding for overseas contingency operations, which is not subject to cap. The BBA of 2015 is not an appropriations bill but provides the budget framework to enable appropriators to begin work on a FFY 2016 appropriations package. Congress hopes to finish action on FFY 2016 appropriations before the most recent Continuing Resolution (CR) expires on December 11, 2015.

Discretionary programs would still be subject to across-the-board sequestration cuts if enacted appropriations exceed these new funding caps; sequestration for nonexempt mandatory programs are extended through FFY 2025. The BBA of 2015 also has provisions to suspend the federal debt limit until March 15, 2017, provide relief from the projected 52% increase in Medicare Part B premiums for dual eligible, extend the solvency of the Social Security Disability Insurance Trust Fund, and offset the additional spending with changes to certain programs and funding. Until appropriations bills are enacted, the spending limit for discretionary programs remains at $1.017 trillion under the current CR, which conforms to the overall FFY 2016 post-sequestration levels specified in the BCA of 2011.

Impact of Long-term Liabilities on the State Budget

The State's two significant long-term liabilities, debt service and pension cost, are increasing at a greater rate than the revenues that support them. In recent years, a number of efforts have been made to reduce the rate of growth.

State Budget Includes Debt Service and Pension Payments That Are Long-term Liabilities

The State budget supports two substantial long-term liabilities: a large bond-financed capital construction program and pension benefits for State employees as well as local community college staff, library staff, and teachers. State capital construction projects are supported by various bonds, including general obligation (GO), transportation, stadium authority, and bay restoration bonds. These bonds are long-term liabilities that require debt service payments for up to 15 years. The pension benefits the State provides are defined benefit plans. These plans require the State to make annual payments that represent the normal cost (the cost of the annual increase in benefits earned by employees) and a share of the unfunded liability. These pension payments are also a long-term liability.

Debt Service Costs

In the past several years, the State has expanded the GO bond program. From fiscal 2000 to 2016, annual GO bond authorizations increased from $460 million to $1.045 billion. Debt service costs have increased from $459 million to $1.121 billion. GO debt outstanding has increased from $3.349 billion to $8.947 billion.

GO bond debt service costs are supported by the Annuity Bond Fund (ABF). The fund's largest revenue sources include State property tax revenues and proceeds from bond sale premiums. Other revenue sources include interest and penalties on property taxes and repayments for local bonds. When the ABF has not generated sufficient revenues to fully support debt service, general funds have subsidized debt service payments. Debt service costs have increased to the point that, unless the State raises property tax rates, general fund subsidies are necessary. General fund appropriations are $140.0 million in fiscal 2015 and $252.4 million in fiscal 2016. This amount is expected to increase to $482.0 million by fiscal 2020.

Pension Costs

State pension costs have also increased in recent years. The primary reason for the increased costs are market losses suffered in fiscal 2008 and 2009 when the pension fund lost 5.4% and 20.0%, respectively. This reduced the funded ratio from 80.4% at the beginning of fiscal 2008 to 65.0% at the end of fiscal 2009. To reduce the unfunded liability, higher appropriations are necessary from the State. The amount that the State appropriates each year is determined by the actuarial funding method. It is State policy for the Governor to propose and the General Assembly to appropriate the amount certified by the State Retirement and Pension System Board.

Pension and Capital Costs Contained in Response to Increasing Liabilities

In response to increasing liabilities, the State has made efforts to slow the cost growth. A number of pension reforms were enacted, and the Administration is proposing to contain capital spending by keeping GO bond authorizations flat through fiscal 2025.

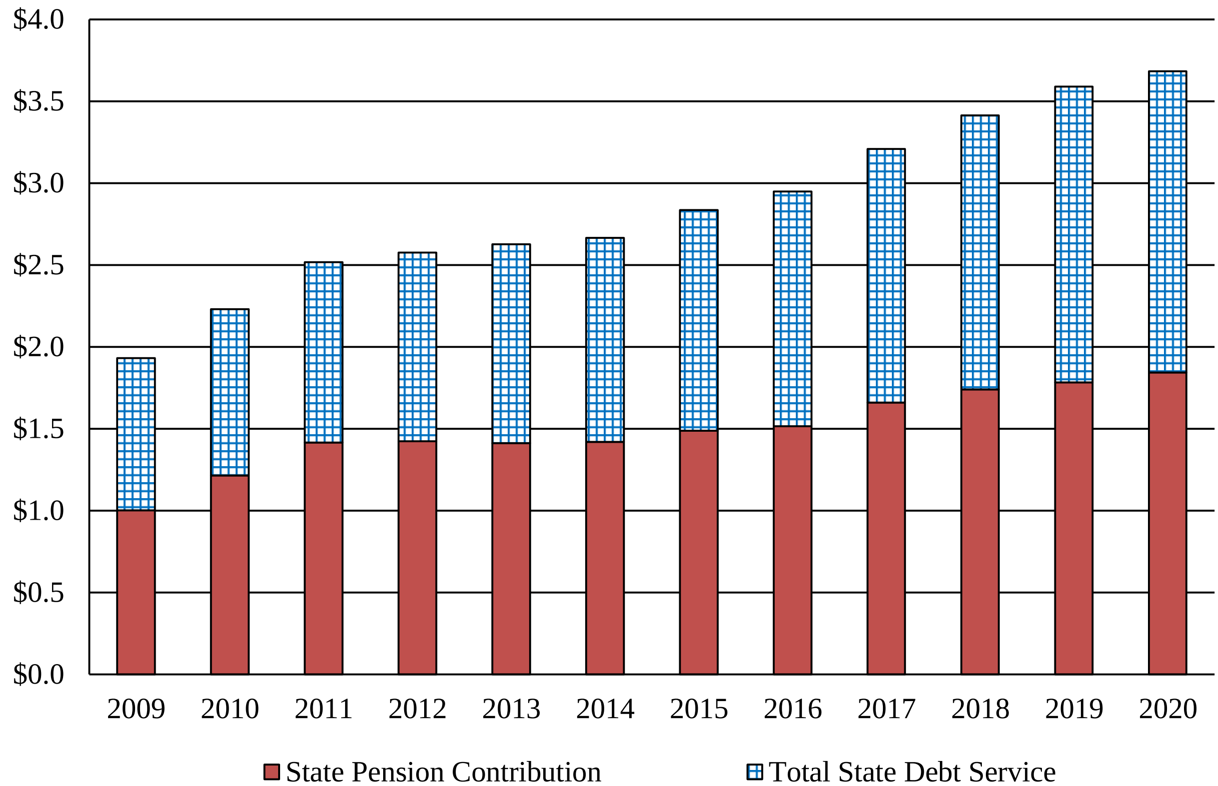
The most significant pension reform was enacted in 2011. The State reduced pension benefits earned beginning in fiscal 2012 and increased employee contributions from 5% to 7% for most employees (judges, for example, were excluded). The State also required local governments to begin sharing costs in fiscal 2013. The actuarial approach was also modified beginning in fiscal 2017 as the State phases out of the corridor method and adopts an actuarial approach. Taken together, these reforms reduce the State's out-year liabilities.

The Capital Debt Affordability Committee is required to review State debt policies and practices to set a debt limit on GO bond debt. The committee is chaired by the State Treasurer and includes the State Comptroller, the Secretary of Budget and Management, the Secretary of Transportation, and a public member appointed by the Governor. To contain debt service costs, the Administration proposed, and the committee recommended on September 30, 2015, limiting annual GO bond authorizations to $995 million through fiscal 2025.

Debt and Pension Cost Outlook

Exhibit 1 shows that total debt service and pension costs are expected to increase from $1.9 billion in fiscal 2009 to $3.7 billion in fiscal 2020. This is an annual increase of 6.0%. Debt service increases at an annual rate of 5.7%, while pension costs increase at 6.4% rate.

Exhibit 1
Combined Debt Service and Pension Costs
Fiscal 2009-2020
($ in Billions)

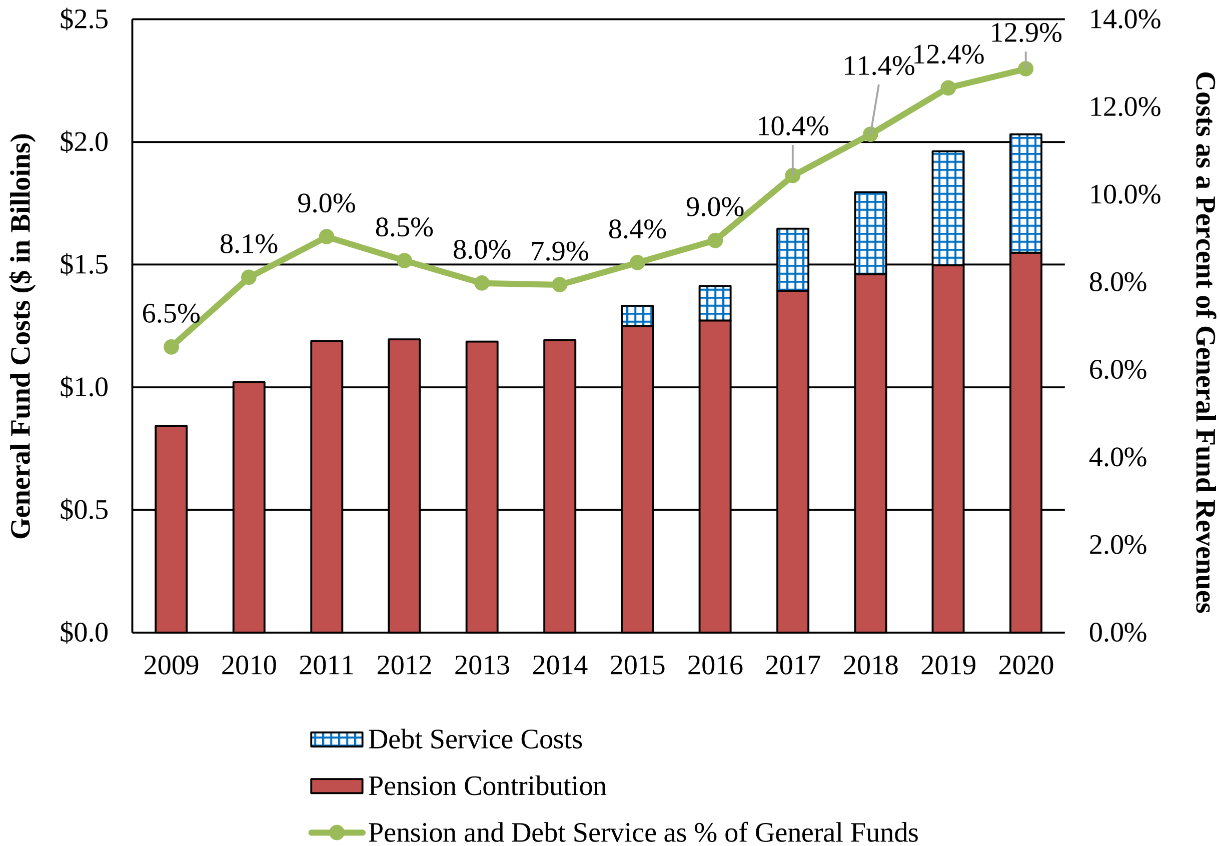


Note: Total State debt service includes transportation, bay restoration, capital leases, and stadium authority debt. State pension contribution excludes local teacher pension cost sharing.

Source: Gabriel Roeder Smith and Company; Cheiron, Inc.; Segal Consulting; State Treasurer's Office; Department of Legislative Services, October 2015

Moreover, these costs require an increasing share of general fund revenues. **Exhibit 2** shows that costs are less than 7% of general funds in fiscal 2009 but increase to more than 10% of general fund revenues by fiscal 2017. Before the State pension reforms, costs were expected to be $407 million higher in fiscal 2016 and $435 million higher in fiscal 2017.

Exhibit 2
General Fund Debt Service and Pension Costs
As a Percentage of General Fund Revenues
Fiscal 2009-2020

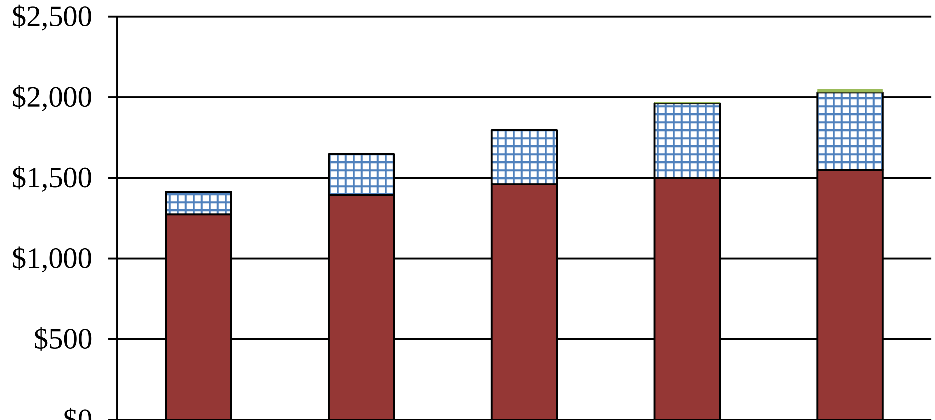


Source: Gabriel Roeder Smith and Company; Cheiron, Inc.; Segal Consulting; State Treasurer's Office; Department of Legislative Services, October 2015

Effect of Reducing State Capital Program on Out-year General Fund Spending

The effect on general fund spending of limiting the GO bond capital program to $995 million is initially modest. **Exhibit 3** shows that the effect in fiscal 2017 is less than $1 million. However, larger savings are realized in the out-years. Fiscal 2020 savings are projected to be $18 million and annual savings should exceed $100 million by fiscal 2025.

Exhibit 3
General Fund Expenditures for Pensions, Administration's Capital Program, and Growing Capital Program
Fiscal 2016-2020
($ in Millions)



	2016	2017	2018	2019	2020
Debt Service Avoided	$0.0	$0.3	$3.0	$8.1	$18.2
Debt Service Costs with Admininstration's Program	140.0	252.4	334.0	464.0	482.0
Pension Contribution	1,272.7	1,393.6	1,461.2	1,498.0	1,548.6

Source: Gabriel Roeder Smith and Company; Cheiron, Inc.; Segal Consulting; State Treasurer's Office; Department of Legislative Services, October 2015

Capital Budget

Debt Affordability

The Capital Debt Affordability Committee recommended a general obligation bond debt limit totaling $995 million for fiscal 2017, which reflects the Administration's policy to restrain debt levels. This level of capital spending keeps debt service payments below 8% of revenues and debt outstanding below 4% of personal income. The Treasurer's Office estimates that total tax-supported outstanding debt will be $13.2 billion at the end of fiscal 2017, while debt service will be $1.7 billion in fiscal 2017.

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 chaired by the State Treasurer and includes the State Comptroller, the Secretary of Transportation, the Secretary of Budget and Management, and a public member. The chairs of the Capital Budget Subcommittees for the Senate Budget and Taxation Committee and the House Appropriations Committee are nonvoting members.

Tax-supported debt consists of tax-exempt and taxable general obligation (GO) debt, transportation debt, Grant Anticipation Revenue Vehicles (GARVEE), 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.

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% of personal income and State debt service to 8% of State revenues.

2014 Recommendations and Authorizations

In its 2014 report, CDAC proposed to limit GO bond authorizations to $1.160 billion in fiscal 2016 and $1.170 billion in fiscal 2017. In December 2014, the Board of Revenue Estimates reduced the State's general fund revenue estimates. Consequently, the debt limit proposed by CDAC was unaffordable. In response, the State Treasurer updated the authorization estimates and determined that $1.095 billion was affordable in fiscal 2016, and $1.105 billion was affordable in fiscal 2017. The General Assembly authorized $1.045 billion in fiscal 2016.

New Administration, New Debt Policy

On September 30, 2015, the committee recommended that fiscal 2017 GO debt authorizations be limited to $995 million and that this level of authorizations be maintained through fiscal 2025. This fiscal 2017 authorization is $110 million less than the amount that was affordable in December 2014. Over the five-year planning period (fiscal 2017 to 2021), this recommendation reduces capital spending by $1.170 billion. This is a substantial reduction to the capital budget program.

The reduction was proposed by the Secretary of Budget and Management and reflects the new Administration's policy to reduce the authorization of State debt. To support this proposal to reduce the capital program, the Secretary of Budget and Management noted that (1) debt service is too high; (2) the State needs to act now to reduce authorizations; and (3) lower out-year debt service expenditures lowers the risk that a revenue write-down will result in breeching the limits. This new policy has a minimal impact in fiscal 2017.[1] The fiscal impact increases in the out-years; in fiscal 2021, the final year of the capital planning period, debt service is $34 million less under the Administration's proposed level of GO bond authorizations.

Affordability Ratios

Exhibit 1 shows the CDAC's State debt affordability analysis. Debt service to revenues peaks in fiscal 2018 at 7.91%, and debt outstanding to personal income peaks in fiscal 2017 at 3.51%.

Exhibit 1
Affordability Ratios
Fiscal 2016-2025

Fiscal Year	Projected Debt Outstanding As a Percent of Personal Income	Projected Debt Service As a Percent of Revenues
2016	3.45%	7.32%
2017	3.51%	7.59%
2018	3.49%	7.91%
2019	3.44%	7.80%
2020	3.37%	7.64%
2021	3.30%	7.61%
2022	3.23%	7.77%
2023	3.11%	7.89%
2024	2.99%	7.75%
2025	2.86%	7.76%

Source: State Treasurer's Office, October 2015

[1] Debt service costs increase slowly after bonds are authorized. The State does not issue bonds until they are needed for a project. Typically, a share of the bonds is issued in each of the five years after the bonds are issued. Also, the State only pays interest costs for the first two years, and principal payments are not made until the third year. Consequently, debt service is reduced by less than $500,000 in fiscal 2017.

Under the new debt authorization policy, total GO debt is projected to be $9.20 billion at the end of fiscal 2017. GO bond debt service payments are projected to total $1.19 billion in fiscal 2017.

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 the Transportation Trust Fund, which is supported by motor vehicle fuel taxes, titling and registration fees, a portion of the corporate income tax, and other Maryland Department of Transportation (MDOT) revenues. State law limits Consolidated Transportation Bonds outstanding to $4.5 billion. CDAC projects that total outstanding transportation debt will reach $2.9 billion in fiscal 2017. Transportation bond debt service is projected to be $321 million in fiscal 2017.

The department also issued GARVEE bonds in fiscal 2008 and 2009. These bonds are supported by federal transportation grants to the State. 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 GARVEE debt service, and the statute specifies that the bonds are considered tax-supported debt. GARVEE debt outstanding is projected to be $207 million at the end of fiscal 2017. 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, followed by another $100 million issuance in fiscal 2014. The Maryland Department of the Environment indicates that $180 million will be issued in the fall of 2015 and $100 million in fiscal 2017. The department estimates that $393 million in bonds will be outstanding at the end of fiscal 2017. Debt service costs are projected to be $22 million in fiscal 2017.

Capital leases for real property and equipment are also considered State debt if the revenues supporting the debt are State tax revenues. Examples of capital leases include the MDOT Headquarters Office Building and the Prince George's County Justice Center. Debt outstanding for leases is expected to be $257 million at the end of fiscal 2017. Capital lease payments are estimated to be $31 million in fiscal 2017.

The final category of State debt is Stadium Authority debt. Some 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 $106 million at the end of fiscal 2017. Debt service payments are projected to be $25 million in fiscal 2017.

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. Unlike the other authorizations, Academic Revenue Bonds are not considered to be State debt; instead, they are a debt of the institutions. 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 2017, CDAC recommends $22 million for academic facilities on USM campuses. This is $10 million less than planned. The reduction is made to reflect additional authorizations provided in fiscal 2015 to support a new bioengineering building at the University of Maryland, College Park.

Capital Budget

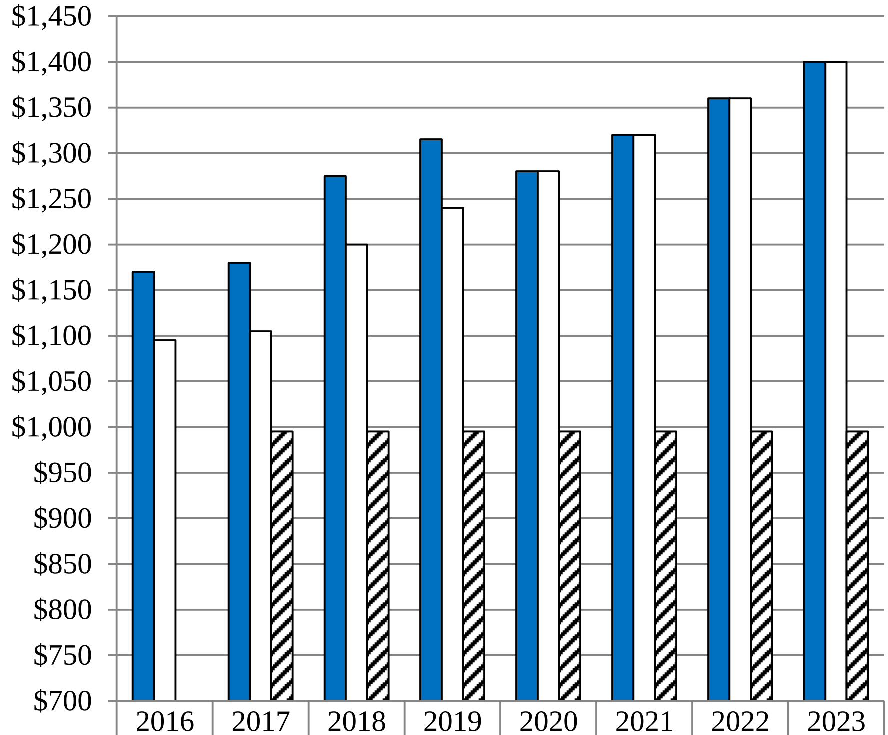
Capital Budget Outlook

On October 1, 2015, the Capital Debt Affordability Committee recommended limiting proposed new general obligation (GO) bond authorization levels to $995 million for the 2016 session. The committee's recommendation also limited authorization levels to $995 million for each year in the planning period, which eliminates the traditional 3% inflationary increase that more recent recommendation provided. Without an inflationary adjustment, future GO bond authorization levels will be reduced by the impact of construction inflation on commodities and labor.

The Capital Debt Affordability Committee (CDAC) voted to reduce the amount of new general obligation (GO) bond authorizations for the 2016 through 2019 sessions. The committee recommended that the State limit new GO bond authorizations to $995 million for the 2016 session and further recommended that the level remain at $995 million through the planning period.

Exhibit 1 illustrates recent CDAC recommended GO bond authorization levels and the level recommended by the 2014 Spending Affordability Committee (SAC). Shortly after the CDAC made its October 2014 recommendation, the Board of Revenue Estimates wrote down State revenues, which made the committee's recommendation unaffordable according to the State's debt affordability criteria. The 2014 SAC recommendation limited new GO bond authorizations to $1.095 billion for the 2015 session, which reflected a debt level determined to be affordable by the State Treasurer following the revenue write down and maintained future authorization levels to what was already currently programmed in the State's 2014 five-year *Capital Improvement Program*. The October 2015 CDAC recommendation is intended to scale back future bond issuances and reduce annual debt service requirements, which are estimated to require increasing levels of general funds to support.

Exhibit 1
Effect of New Policy on General Obligation Bond Authorizations
Fiscal 2016-2023
($ in Millions)



	2016	2017	2018	2019	2020	2021	2022	2023
Dec. 2014 Recommendation	$1,170	$1,180	$1,275	$1,315	$1,280	$1,320	$1,360	$1,400
December 2014 SAC	1,095	1,105	1,200	1,240	1,280	1,320	1,360	1,400
Oct. 2015 Recommendation		995	995	995	995	995	995	995

SAC: Spending Affordability Committee

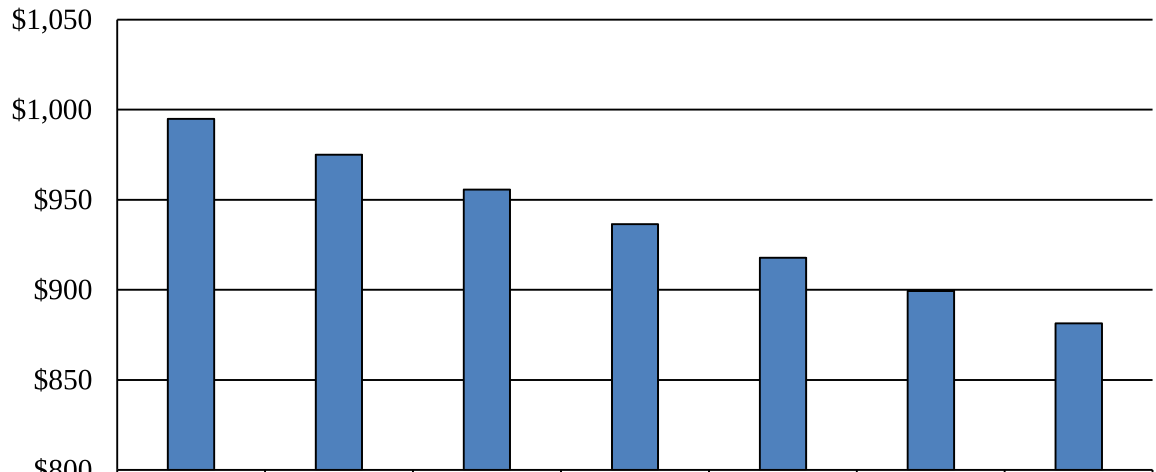
Source: *Capital Debt Affordability Committee Recommendation of GO Bond Authorizations*, October 2015

CDAC Recommended GO Levels Do Not Provide for Annual Inflationary Increase

To account for the impact of inflation in the construction market, CDAC policy has included annual increases of approximately 3.0% over the previous year's level. The 2015 CDAC recommendation does not provide for annual inflationary adjustments and instead keeps planned new GO bond authorization levels at $995 million throughout the planning period. However, since 2006, the average annual increase in the producer price index for components of construction is

2.18%. Without the annual inflationary adjustment the State's spending power will erode relative to the effects of inflation. **Exhibit 2** illustrates the impact that construction inflation estimated at 2.0% annually would have on future authorization levels.

Exhibit 2
Proposed New GO Bond Authorization Levels – Inflation Adjusted
Fiscal 2017-2023
($ in Millions)



	2017	2018	2019	2020	2021	2022	2023
Inflation	$995.0	$975.1	$955.6	$936.5	$917.8	$899.4	$881.4

Source: Department of Legislative Services

To the extent that the State's fiscal outlook improves, consideration should be given to using general funds to support the capital program. Prior to the great recession, general funds made up a larger part of the total capital program but have since been almost completely eliminated. If GO bond levels remain constant in the planning period, the use of general funds would keep the program from contracting due to the impact of construction inflation.

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 2013 continued to be moderate compared to other states. Maryland remains uniquely reliant on tax revenues, however, with a strong dependence on the individual income tax.

State and Local Government Revenues and Spending

As reflected in **Exhibit 1**, the total State and local government revenues and spending in Maryland are not generally high compared to other states. When comparing all states and the District of Columbia using fiscal 2013 data, Maryland ranks eighteenth and nineteenth, respectively, in total state and local government revenues and spending measured on a per-capita basis and forty-sixth in both revenues and spending as a percentage of personal income of residents. However, Maryland relies more on tax revenues and less on nontax revenue sources than most states.

Exhibit 1
Maryland State and Local Government
Revenues and Spending
2012-2013

	Maryland Rank Percent of Total	Maryland Rank Percentage of Personal Income	Maryland Rank Per Capita
Total Revenues	n/a	46	18
Total Spending	n/a	46	19
Revenues			
Taxes	5	19	11
Intergovernmental from Federal Government	31	39	26
Charges and Utilities[1]	45	49	46
Miscellaneous[2]	29	43	29

[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: 2013 Annual Survey State & Local Government Finances, U.S. Census Bureau (September 2015); Population from the U.S. Census Bureau (December 2014); Personal income data from U.S. Bureau of Economic Analysis (September 2015)

State and Local Tax Revenues Compared to Neighboring States

Exhibits 2 and **3** compare Maryland's State and local tax revenues in fiscal 2013 to other states in the region. Maryland ranks nineteenth 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. Maryland's reliance on the income tax is high (third on a percentage of income basis and fourth on a per-capita basis) compared to other states, primarily reflecting the statewide local income tax. Generally, Maryland ranks in the bottom half of all states with respect to property taxes and sales taxes measured on a percentage of income basis. Maryland ranks eighteenth in both property and corporate income taxes and thirty-third 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 2013.

Exhibit 2

Maryland State and Local Tax Revenues

2012-2013 Tax Revenue as a Percentage of Personal Income
Comparison to Selected States

		Property Tax	Personal Income Tax	Corporate Income Tax	Sales & Selective Taxes [1]	License Fees & Other Taxes [2]	All Taxes
Delaware							
	Percent	1.8%	2.9%	0.8%	1.2%	3.6%	10.3%
	Rank	48	14	5	50	3	20
District of Columbia							
	Percent	4.4%	3.7%	1.0%	3.4%	1.4%	13.9%
	Rank	7	4	3	28	9	4
Maryland							
	Percent	**2.9%**	**3.9%**	**0.3%**	**2.6%**	**0.7%**	**10.4%**
	Rank	**27**	**3**	**31**	**43**	**27**	**19**
New Jersey							
	Percent	5.4%	2.5%	0.5%	2.5%	0.6%	11.4%
	Rank	1	23	12	44	36	11
North Carolina							
	Percent	2.4%	3.0%	0.3%	3.3%	0.6%	9.6%
	Rank	40	11	24	31	38	35
Pennsylvania							
	Percent	3.0%	2.6%	0.4%	3.1%	0.9%	10.1%
	Rank	23	22	13	37	14	26
Virginia							
	Percent	2.9%	2.7%	0.2%	2.2%	0.7%	8.7%
	Rank	26	18	43	45	31	44
West Virginia							
	Percent	2.3%	2.8%	0.4%	4.2%	1.5%	11.1%
	Rank	41	17	20	14	6	15
United States Average		**3.2%**	**2.4%**	**0.4%**	**3.5%**	**0.8%**	**10.3%**

[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: 2013 Annual Survey of State & Local Government Finances, U.S. Census Bureau (September 2015); Population from the U.S. Census Bureau (December 2014); Personal income data from U.S. Bureau of Economic Analysis (September 2015)

Exhibit 3
Maryland State and Local Tax Revenues
2012-2013 Tax Revenues Per Capita
Comparison to Selected States

	Property Tax	Personal Income Tax	Corporate Income Tax	Sales & Selective Taxes [1]	License Fees & Other Taxes [2]	All Taxes
Delaware						
Amount	$825	$1,283	$341	$542	$1,621	$4,612
Rank	45	12	6	50	4	20
District of Columbia						
Amount	$3,034	$2,528	$698	$2,328	$932	$9,520
Rank	1	2	2	4	5	1
Maryland						
Amount	**$1,503**	**$2,061**	**$160**	**$1,368**	**$375**	**$5,468**
Rank	**18**	**4**	**18**	**33**	**16**	**11**
New Jersey						
Amount	$2,988	$1,359	$256	$1,387	$317	$6,306
Rank	2	9	9	31	27	6
North Carolina						
Amount	$903	$1,124	$131	$1,242	$209	$3,608
Rank	40	20	29	41	42	38
Pennsylvania						
Amount	$1,376	$1,201	$201	$1,441	$408	$4,627
Rank	22	16	11	29	14	19
Virginia						
Amount	$1,430	$1,318	$93	$1,071	$325	$4,238
Rank	19	10	38	45	23	26
West Virginia						
Amount	$798	$969	$131	$1,462	$539	$3,898
Rank	46	28	28	27	8	29
United States Average	**$1,439**	**$1,069**	**$168**	**$1,569**	**$354**	**$4,599**

[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: 2013 Annual Survey of State & Local Government Finances, U.S. Census Bureau (September 2015); Population from the U.S. Census Bureau (December 2014); Personal income data from U.S. Bureau of Economic Analysis (September 2015)

Revenues and Taxes

Implementation of Casino Gaming

Casinos in Allegany, Anne Arundel, Cecil, and Worcester counties and Baltimore City are currently operating a total of over 8,500 video lottery terminals and 420 table games, with a Prince George's County facility scheduled to open in 2016. Maryland's gaming expansion has negatively impacted gaming revenues in Delaware and West Virginia, while gaming revenues in Pennsylvania have fared better and increased in fiscal 2015.

Implementation of Video Lottery Terminals and Table Games

There are currently five casinos operating in Baltimore City and Allegany, Anne Arundel, Cecil, and Worcester counties, as originally authorized by the voters by constitutional amendment in 2008. **Exhibit 1** shows the number of video lottery terminals (VLT) and table games in operation at each facility as of September 30, 2015.

Exhibit 1
Number of VLTs and Table Games in Operation by Facility

Facility	VLTs	Table Games
Anne Arundel	4,059	202
Baltimore City	2,200	178
Cecil	850	22
Worcester	800	-
Allegany	627	18
Total	**8,536**	**420**

VLT: video lottery terminal

Source: State Lottery and Gaming Control Commission

A sixth facility in Prince George's County was authorized by voter referendum in 2012 and is scheduled to open in late 2016 with 3,600 VLTs and 140 table games.

VLT and Table Game Revenues

Exhibit 2 shows actual and anticipated gross VLT and table game revenues for fiscal 2011 through 2018 (not including one-time initial license fees) by facility. **Exhibit 3** shows the same revenues (not including one-time initial license fees) by fund.

Exhibit 2
Gross Gaming Revenues Generated by Facility
Fiscal 2011-2018
($ in Millions)

	2011	2012	2013	2014	2015	Est. 2016	Est. 2017	Est. 2018
VLTs								
Anne Arundel		$28.5	$431.1	$419.0	$391.8	$383.7	$360.1	$328.4
Baltimore City					131.9	159.7	157.3	152.0
Cecil	82.7	118.1	76.0	72.1	66.1	65.2	64.8	64.2
Worcester	20.4	48.0	50.4	52.0	53.1	54.0	54.3	54.6
Allegany			2.8	35.3	38.0	38.7	38.9	39.0
Prince George's							237.9	490.9
Total VLTs	**$103.1**	**$194.5**	**$560.3**	**$578.4**	**$681.0**	**$701.3**	**$913.3**	**$1,129.2**
Table Games								
Anne Arundel			$41.6	$235.4	$233.8	$225.0	$207.0	$183.4
Baltimore City					104.1	131.6	127.4	120.4
Cecil			6.0	13.6	11.9	11.7	11.4	10.9
Worcester								
Allegany			0.5	5.9	6.6	6.8	6.7	6.7
Prince George's							91.3	209.7
Total Table Games			**$48.0**	**$254.9**	**$356.4**	**$375.1**	**$443.7**	**$531.1**
Total VLT and Table Games	**$103.1**	**$194.5**	**$608.3**	**$833.3**	**$1,037.4**	**$1,076.3**	**$1,357.0**	**$1,660.3**

VLT: video lottery terminal

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

Exhibit 3
Gross Gaming Revenues Generated by Fund
Fiscal 2011-2018
($ in Millions)

	2011	**2012**	**2013**	**2014**	**2015**	**Est. 2016**	**Est. 2017**	**Est. 2018**
VLTs								
Education Trust Fund	$50.1	$94.3	$274.7	$277.1	$316.1	$304.6	$375.5	$447.6
Lottery Operations	2.1	3.9	11.2	11.6	11.9	7.4	9.5	11.7
Purse Dedication Account	7.2	13.6	39.1	38.9	46.0	47.3	56.8	66.4
Racetrack Renewal Account	2.6	4.9	10.8	9.5	7.1	6.6	8.7	10.9
Local Impact Grants	5.7	10.7	30.7	30.8	36.4	37.5	49.2	61.0
Business Investment	1.5	2.9	8.4	8.4	9.9	10.2	13.4	16.6
Licensees	34.0	64.2	185.4	202.1	253.6	287.6	400.2	514.9
Total VLTs	**$103.1**	**$194.5**	**$560.3**	**$578.4**	**$681.0**	**$701.3**	**$913.3**	**$1,129.2**
Table Games								
Education Trust Fund			$9.6	$51.0	$71.3	$75.0	$76.0	$79.7
Local Impact Grants							12.7	26.6
Licensees			38.4	203.9	285.1	300.1	355.0	424.9
Total Table Games			**$48.0**	**$254.9**	**$356.4**	**$375.1**	**$443.7**	**$531.1**
Total VLT and Table Games	**$103.1**	**$194.5**	**$608.3**	**$833.3**	**$1,037.4**	**$1,076.3**	**$1,357.0**	**$1,660.3**
Education Trust Fund	**$50.1**	**$94.3**	**$284.3**	**$328.1**	**$387.4**	**$379.6**	**$451.5**	**$527.3**

VLT: video lottery terminal

Source: Department of Legislative Services

Gaming in Surrounding States

Competition in the gaming industry continued to increase in the Mid-Atlantic region with the opening of Horseshoe Casino in Baltimore City in August 2014. Since fiscal 2012, gaming revenues at Charles Town, Delaware Park, and Dover Downs have each decreased by approximately 30%, while gaming revenues from Philadelphia casinos have only decreased by 5%.

Delaware's fiscal 2015 VLT revenues decreased by 1.7% from the prior year, while table game revenues declined by 3.5%. West Virginia's fiscal 2015 VLT revenues decreased by 5.6%, and table game revenues declined by 7.0%. VLT and table game revenues at the Charles Town casino decreased by 4.2% and 10.0%, respectively, in fiscal 2015. Pennsylvania's overall gaming revenues have fared better than in Delaware and West Virginia, as Pennsylvania's VLT revenues increased by 0.7%, and table game revenues increased by 6.5% in fiscal 2015. Only one of the three Philadelphia area casinos experienced a decrease in VLT and table game revenues in fiscal 2015.

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Revenues and Taxes

Daily Fantasy Sports, Sports Betting, and Online Gaming

Recent trends in gaming legislation at the state level, including in Maryland, involve proposals to authorize online sales of lottery tickets or traditional casino games. New Jersey is also attempting to authorize sports betting at casinos in that state, which could have implications for sports betting in other states. The concept of daily fantasy sports has become very popular in a short period of time and drawn increased scrutiny from regulators in recent months.

Types of Online Gaming and Sports Betting

The latest trends in state legislation involving gaming are moves to authorize online platforms and an expansion to sports betting. Many states, including Maryland, have considered legislation involving online sales of lottery tickets or traditional casino games. In addition, New Jersey has sought to authorize sports betting and many states are studying the issue of daily fantasy sports.

Federal Legislation and Authority of States to Regulate

In 2006, the U.S. Congress adopted the Unlawful Internet Gambling Enforcement Act (UIGEA), which prohibits financial transactions in support of illegal online gaming. The UIGEA contains an exclusion for online gaming conducted solely within the boundaries of a state. This exclusion implies that states have the power to authorize online gaming. The UIGEA also contains an exemption for fantasy sports that meet certain requirements.

In 2009, officials from the New York State Lottery and Illinois Governor's Office sought clarification from the U.S. Department of Justice (DOJ) regarding their proposals to establish Internet-based lottery sales platforms using out-of-state transaction processors and whether their respective in-state Internet lottery programs would violate the Interstate Wire Act of 1961 (Wire Act) and the UIGEA. In a September 2011 memorandum opinion, DOJ determined that the Wire Act only applies to sports-related gambling activities in interstate commerce. DOJ had long maintained that, despite the reference to "sporting event or contest," the Wire Act effectively prohibits any telecommunicated wager placed or received by a person located in the United States. This more recent interpretation means that DOJ will no longer contend that states cannot license intrastate Internet gambling, provide lottery games over the Internet, or compact with each other to provide interstate gaming.

Two federal statutes, the Wire Act and the Professional and Amateur Sports Protection Act (PASPA), have been used to limit sports wagering. PASPA makes wagering on sports illegal under federal law but exempts certain types of sports wagering in four states. Currently, attempts to authorize sports betting in New Jersey and daily fantasy sports games across the country are testing the limitations of these federal laws and other state laws.

Online Lottery and Online Casino Gaming

Forty-three states and the District of Columbia operate lotteries. Recently, states have sought to maximize revenues by expanding access to their lotteries. Georgia, Illinois, and Michigan currently offer online lottery sales of instant tickets or draw games. In 2015, Minnesota ended the practice of online lottery ticket sales. Late in 2015, Kentucky plans to authorize the sale of lottery tickets online. Two states, Virginia and Massachusetts, considered legislation in 2015 authorizing the sale of lottery tickets online. While the Maryland Lottery does not have plans to offer online sales of lottery tickets, the Lottery recently launched the My Lottery Rewards app to allow players to track play and earn points.

Three states have implemented some form of online casino gaming operations. Nevada allows online poker and Delaware and New Jersey have launched full-scale online casino gaming operations. Generally, online casino gaming in each state is limited to residents and visitors physically located in the state. Delaware and Nevada entered into a multi-state Internet gaming agreement that will allow bettors in both states to compete for the same winnings. Each state will receive a percentage of the rake (commission) attributable to players from that state.

According to the National Conference of State Legislatures, California, Illinois, Massachusetts, Mississippi, New York, Pennsylvania, and Washington all considered legislation in 2015 that would have legalized online casino gaming. The Maryland General Assembly has not yet considered legislation that would allow for online casino gaming in the State. In addition, it is unclear if online casino gaming would be considered an "additional form or expansion of commercial gaming" that would require voter approval by referendum under Section 1 of Article XIX of the Maryland Constitution.

Sports Betting

Nevada, Delaware, Montana, and Oregon are the only states authorized to operate or regulate forms of sports betting under the PASPA. In 2012, New Jersey passed a law that allowed the state's casinos to offer sports betting. A number of sports leagues, led by the National Collegiate Athletic Association, sued in federal court to have the state law struck down under the PASPA. The court upheld the constitutionality of the PASPA, thus ruling for the leagues and against New Jersey.

While the state law was struck down, the court left open the possibility that through deregulation New Jersey casinos could allow sports betting. In 2014, New Jersey repealed the state's laws against sports betting, essentially removing all state control over sports wagering at casinos and racetracks. In August 2015, a three-member panel of the U.S. Court of Appeals for the Third Circuit ruled against New Jersey and struck down the state's attempt at deregulation. However in October the same court agreed to rehear the case. A decision in favor of New Jersey could provide a model for other states to follow to allow sports betting at their casinos.

Daily Fantasy Sports

Daily fantasy sports is a new form of gaming in which participants' fantasy teams compete against each other based on professional player or team statistics. Daily fantasy sports operates on a shorter time table than traditional fantasy sports competitions. With daily fantasy sports competitions players usually draft a team for a day or a week. Fantasy sports have not been challenged under PASPA or the Wire Act because generally the activity has not been viewed as a game of chance or gambling. In addition, UIGEA includes an exemption for fantasy sports if (1) the value of prizes is not dependent on the number of players; (2) the outcome is determined by fantasy player skill and knowledge; and (3) the outcome cannot be determined by the score of the game or based solely on one individual player's performance. This exemption does not preempt state law and daily fantasy sports competitions must still comply with each state's particular prohibitions on gambling and private lotteries.

Only two states, Maryland and Montana, expressly address fantasy sports in statute. Chapter 346 of 2012 exempts a specified "fantasy competition" from prohibitions against betting, wagering, and gambling in State law. The bill defines "fantasy competition" as any online fantasy or simulated game or contest such as fantasy sports in which (1) participants own, manage, or coach imaginary teams; (2) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest; and (3) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals. The Comptroller is authorized to adopt regulations to limit fantasy sport competitions. The Montana law authorizes fantasy sports leagues but prohibits online wagering on fantasy sports leagues.

While daily fantasy sport competitions are widely advertised across the country, the competitions have ceased in some states where regulators, court decisions, or attorneys general have raised questions about their legality. Most recently, the Nevada Gaming Control Board concluded that daily fantasy sports meet the definition of a game or gambling because the competitions involve wagering on the collective performance of individuals participating in a sporting event. The board determined that a person must possess a license to operate a sports pool issued by the Nevada Gaming Commission in order to conduct a daily fantasy sports competition.

Recent news coverage identified individuals employed by daily fantasy sports operators that used company data to participate in competitions on rival websites. These news reports have brought additional scrutiny to the industry. It has been widely reported that federal investigators and a grand jury in Florida are investigating whether daily fantasy sports competitions violate federal law. Until there is clear guidance from the federal government, the issue of daily fantasy sports will be left to the states to enforce through state gaming laws.

Revenues and Taxes

Evaluation of the Sustainable Communities Tax Credit

The Tax Credit Evaluation Act requires an evaluation of the sustainable communities tax credit by July 1, 2016, and the Department of Legislative Services (DLS) evaluated the credit during the 2015 interim. DLS found that legislative reforms to the tax credit have succeeded in controlling fiscal costs and also provided a template for subsequent tax credits. While DLS found that the sustainable communities tax credit is generally effective in encouraging the preservation and rehabilitation of historic buildings, DLS does recommend several changes to improve the effectiveness of the tax credit.

Tax Credit Evaluation Act

In response to concerns about the fiscal impact of tax credits on State finances, Chapters 568 and 569 of 2012, the Tax Credit Evaluation Act, established a legislative process for evaluating certain tax credits. The evaluation process is conducted by a legislative evaluation committee that is appointed jointly by the President of the Senate and the Speaker of the House. The Act requires that the evaluation committee review specified tax credits over a four-year period.

To assist the committee in its work, the Department of Legislative Services (DLS) is required to publish a report evaluating each tax credit, which must discuss (1) the purpose for which the tax credit was established; (2) whether the original intent of the tax credit is still appropriate; (3) whether the tax credit is meeting its objectives; (4) whether the goals of the tax credit could be more effectively carried out by other means; and (5) the cost of the tax credit to the State and local governments. DLS recently conducted an evaluation of the sustainable communities tax credit, as the evaluation committee is required to review this credit by July 1, 2016.

Evaluation of the Sustainable Communities Tax Credit

The Sustainable Communities Tax Credit Program encourages the preservation and rehabilitation of residential and commercial historic buildings in order to preserve the historic places associated with the identity and character of cities, towns, and rural areas. Administered by the Maryland Historical Trust with the Maryland Department of Planning, the program is also one of the State's largest economic development programs. Through its current June 30, 2017 termination date, program costs will total an estimated $378.5 million ($475.1 million in current dollars). The commercial program comprises the vast majority of the program's fiscal costs, about 86%, with the remaining 14% from the residential program.

Between 2002 and 2004, the General Assembly made a number of legislative reforms to the tax credit that decreased the fiscal cost of the program and its unpredictability. Commercial program reforms included capping the maximum value of the credit and converting the commercial program into a budgeted tax credit. The commercial credit program was restructured so that credits are awarded through a competitive process, and additional reporting on commercial credit recipients was also required.

Based on an analysis of the legislative reforms, DLS found that these reforms have made the commercial tax credit program a template for subsequent tax credits established by the General Assembly. DLS recommends that the General Assembly maintain the commercial tax credit as a budgeted tax credit subject to an aggregate limitation each year and that the cap on the maximum value of the commercial tax credit of $3 million be maintained. Additionally, DLS recommends that the General Assembly consider implementing similar competitive processes and reporting requirements for other State tax credits.

While DLS found that the credit is generally effective in encouraging the preservation and rehabilitation of historic buildings, the evaluation includes several other recommendations to improve the effectiveness of the credit. Current law generally requires that no more than 60% of credits in a fiscal year can go to projects in a single county or Baltimore City. In addition, the Maryland Historical Trust must evaluate, as part of its project scoring system, whether projects are located in jurisdictions that have been historically underrepresented in the award of commercial rehabilitation tax credits. DLS found that these criteria designed to ensure geographic diversity of projects may not achieve the desired results and can impact the overall quality of projects receiving the credit. Therefore, DLS recommends that the General Assembly (1) consider increasing the current 60% geographic limitation to a higher percentage or completely eliminating the limitation and (2) eliminate the criterion of scoring points on geographic underrepresentation.

DLS found that residential rehabilitation projects are often located in census tracts with higher household incomes and housing values. Thus, DLS recommends that the General Assembly consider prohibiting residential tax credits if the assessed value of the property is greater than 150% of the county's median home price. This could better target credits to residential properties in neighborhoods in need of revitalization. DLS also recommends a number of additional administrative changes to the program, including more timely notification of commercial credit awards.

Revenues and Taxes

Maryland Economic Development and Business Climate Commission

In February 2015, the Maryland Economic Development and Business Climate Commission issued a report containing a number of recommendations to improve the State's economic development structure, with several of those recommendations ultimately enacted into law during the 2015 session. During the 2015 interim, the commission is reviewing the State's business tax structure and anticipates issuing its recommendations in advance of the 2016 session. A report by Moody's Analytics reviewing the State's economy and business climate has been of particular note to the commission's interim work.

Background

In March 2014, the President of the Senate and the Speaker of the House of Delegates established the Maryland Economic Development and Business Climate Commission to review and make recommendations on the State's economic development structure. A report containing a number of findings and recommendations was submitted to the Presiding Officers in February 2015. The principal finding of the commission was that Maryland has not nearly reached its potential in growing business and creating jobs. The recommendations in the report addressed various short- and long-term aspects of this principal finding and related findings. For a detailed discussion of the legislation that was enacted into law based on commission recommendations, see the subpart "Economic Development" within Part H – Business and Economic Issues of the 2015 *90 Day Report*.

At the request of the Presiding Officers, the commission has continued its work during the 2015 interim by comprehensively examining tax issues affecting economic development and the State's business climate. During the interim, the commission has held four public meetings, gathering information on the State's budget and revenue structures, revenue estimating and data collection processes, corporate income tax structure and business tax credits, the administration of business tax incentives, best practices for business taxes, and higher education funding and costs. In addition, the commission received testimony concerning business taxes from tax professionals and members of the business community. Following work sessions in November and December 2015, the commission anticipates issuing a report containing its findings and recommendations in advance of the 2016 session.

Moody's Analytics Report

A report presented to the commission by Moody's Analytics on the performance of Maryland's economy and business climate was particularly noteworthy. The report concluded that the State's significant ties to the public sector have strong positive benefits but that the State has failed to develop a private-sector economy independent of the federal government that is strong enough to aid in diversifying the State's overall economy.

The report examined the State's standing among a peer group of six states and nationally across five major attributes: (1) fiscal policy; (2) costs of living and doing business; (3) infrastructure quality; (4) quality of life; and (5) workforce quality. The report noted that the State has had a higher tax burden than its peer group average each year since the recession by a widening margin and observed that Maryland relies heavily on the individual income tax as a source of revenue. In fact, combining both State and local income tax levies, Maryland's overall individual income tax burden is the highest in its peer group and third highest in the country. This tax burden contributes to the State's well above-average cost of living. In turn, this high cost of living has impeded mid-wage job growth due to increased labor costs. In addition, the overall costs of doing business are higher in the State than nationally due in part to high utility costs, which are particularly burdensome for the manufacturing, transportation, and warehousing industries.

The report also noted the State's deficiencies with respect to transportation and utility infrastructure, observing that the State's investment in infrastructure has declined in recent years by more than half to 1.5% of gross state product (GSP), while its peer group average decreased from 2.6% to 2.0% of GSP during that time period. However, the report stated that increased revenues stemming from the Transportation Infrastructure Investment Act of 2013 (Chapter 429) create an opportunity for the State to update its aging infrastructure, thereby reducing costs and attracting more manufacturing and trade-related businesses, and to improve connections around the Port of Baltimore to increase its competitiveness.

Despite the high costs associated with conducting business in the State, the report found that the State has strong foundations upon which a more robust private-sector economy may be built. Maryland stands out among its peers for its high quality of life and, compared with the national average, the State's quality of life is a valuable asset. In fact, the report notes that many of the firms that the State has the potential to attract are in industries that generally place a high value on quality of life measures. In addition, the State is well above average in terms of educational attainment. The report urged the State to leverage this expertise and its university spending into private sector gains. Moreover, the report encouraged reducing costs for businesses and addressing the perception of business unfriendliness that has developed over time.

Personnel

State Workforce and Payroll

Since fiscal 2004, the total number of budgeted State positions has increased from 77,861 to 80,840. Declines in State agency positions were offset by increases in higher education and judicial positions. From fiscal 2015 to 2016, personnel costs increase by 1.7%. Salary costs decrease by 1.3%, while other benefit costs increase by 8.5%. From fiscal 2004 to 2015, the average employee's salary increased at a rate of 1.9% annually. Higher growth in benefit costs results in benefits' share increasing from 22.6% to 30.0% of total costs.

Fiscal 2016 Budgeted Regular Positions and Compensation

Regular full-time equivalent positions are requested by the Administration and authorized by the General Assembly when the State budget is passed. Section 35 of the fiscal 2016 budget bill limits position growth above that level by allowing the Board of Public Works to authorize no more than 100 additional positions during fiscal 2016, outside of exempted provisions for hardship, manpower, statutes, block grants, new facilities, and/or emergencies. The total does not include higher education institutions. To date, the board has created 7 new positions: 1 in the Department of Health and Mental Hygiene; 5 in the Office of Administrative Hearings; and 1 in the Secretary of State.

Budget spending limits, position caps restricting growth, attrition, and abolitions prompted by budgetary constraints have decreased the nonhigher education Executive Branch workforce from 52,941 positions in fiscal 2004 to 50,640 in the fiscal 2016 legislative appropriation, a reduction of 2,301 positions. These declines were offset by adding 4,570 positions in higher education institutions. **Exhibit 1** shows that the total number of positions decreased by 252 from fiscal 2015 to 2016. Reductions in Executive Branch positions were offset by adding 181 positions in the Judiciary.

The budgeted expenditure for salaries totals $5.4 billion in fiscal 2016, while other compensation adds another $2.5 billion in costs. **Exhibit 2** shows that total salaries have decreased slightly since fiscal 2015. State employees do not receive general salary or merit increases in fiscal 2016. Also, since the workforce has shrunk, it is not surprising that there is a slight decline.

Personnel growth is attributable to increases in other compensation costs. Most significantly, health insurance costs increase by 18%. Fiscal 2014 ended with a substantial fund balance in health accounts. To reduce this fund balance, fiscal 2015 contributions were reduced. This included skipping payments. At the same time, prescription drug costs increased more than projected in fiscal 2015 so that the year ended with a smaller balance than intended. To build the fund balance, fiscal 2016 contributions are increased by $181 million.

Exhibit 1

Regular Full-time Equivalent Positions Changes

Fiscal 2004 Actual to Fiscal 2016 Legislative Appropriation

Department/Service Area	2004 Actual	2015 Working Approp.	2016 Legis. Approp.	2015-2016 Change
Health and Human Services				
Health and Mental Hygiene	7,710	6,394	6,363	-31
Human Resources	7,140	6,532	6,442	-90
Juvenile Services	1,939	2,062	2,055	-7
Subtotal	***16,789***	***14,988***	***14,860***	***-128***
Public Safety				
Public Safety and Correctional Services	11,231	11,126	11,025	-101
Police and Fire Marshal	2,480	2,446	2,438	-8
Subtotal	***13,711***	***13,572***	***13,463***	***-109***
Transportation	**9,096**	**9,179**	**9,086**	**-93**
Other Executive				
Legal (Excluding Judiciary)	1,445	1,503	1,498	-5
Executive and Administrative Control	1,572	1,647	1,631	-16
Financial and Revenue Administration	2,032	2,109	2,117	8
Budget and Management and DoIT	472	456	448	-8
Retirement	181	205	216	11
General Services	728	585	578	-7
Natural Resources	1,454	1,302	1,321	19
Agriculture	436	383	382	-1
Labor, Licensing, and Regulation	1,519	1,641	1,603	-38
MSDE and Other Education	1,892	1,984	1,940	-44
Housing and Community Development	366	339	343	4
Economic Competitiveness and Commerce	299	221	217	-4
Environment	951	955	939	-16
Subtotal	***13,346***	***13,329***	***13,232***	***-97***
Executive Branch Subtotal	***52,941***	***51,067***	***50,640***	***-427***
Higher Education	**20,967**	**25,543**	**25,537**	**-6**
Executive and Higher Education Subtotal	***73,908***	***76,610***	***76,177***	***-433***
Judiciary	**3,224**	**3,733**	**3,914**	**181**
Legislature	**730**	**749**	**749**	**0**
Grand Total	**77,861**	**81,092**	**80,840**	**-252**

DoIT: Department of Information Technology
MSDE: Maryland State Department of Education

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

Exhibit 2
Regular Employee Compensation
Fiscal 2015-2016
($ in Millions)

	2015 Working Appropriation	2016 Legislative Appropriation	2015 to 2016 $ Change	Percent Change
Earnings				
Salary	$5,048.5	$4,977.2	-$71.3	-1.4%
Other Earnings[1]	378.5	379.7	1.2	0.3%
Earnings Subtotal	***$5,426.9***	***$5,356.9***	***-$70.1***	***-1.3%***
Other Compensation				
Health[2]	$986.3	$1,167.4	$181.1	18.4%
Retirement/Pensions[3]	766.6	780.7	14.1	1.8%
Salary-dependent Fringe[4]	381.7	386.9	5.2	1.4%
Agency-related Fringe[5]	203.0	201.1	-1.9	-0.9%
Other Compensation Subtotal	***$2,337.6***	***$2,536.1***	***$198.5***	***8.5%***
Total Compensation	**$7,764.6**	**$7,892.9**	**$128.4**	**1.7%**

[1] Overtime and Shift Differentials
[2] Employee and Retiree Health Insurance
[3] All Pension/Retirement Systems
[4] Social Security and Unemployment Compensation
[5] Other Post Employment Benefits, Deferred Compensation Match, Workers' Compensation, and Tuition Waivers

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

Salary and Benefits History

In its annual personnel report, the Department of Budget and Management provides personnel cost data. **Exhibit 3** shows that fringe benefit costs have been increasing at a higher rate than salary costs. In fiscal 2004, fringe benefits were less than one-quarter of employee costs; by fiscal 2015, fringe benefits were one-third of employee costs. Pension contributions increased most substantially at a rate of almost 14.0% annually. Although health insurance costs increased at a higher rate than salaries, their costs are somewhat understated. As discussed previously, fiscal 2016 contributions increase by 18.0% to replenish the fund balance. Adjusting to reflect this higher contribution increases the annual percent increase from fiscal 2004 to 2015 to 4.9%.

Exhibit 3
Change in Direct Salary and Benefit Costs for the Average Employee
Fiscal 2004 and 2015

	2004	2015	Total Change	Annual Percent Change
Salary	$42,505	$52,221	$9,716	1.9%
Health Insurance Appropriations[1]	6,483	8,862	2,379	2.9%
Pension Contributions	2,067	8,692	6,625	13.9%
Other Fringe Benefits	3,832	4,904	1,072	2.3%
Total	**$54,887**	**$74,679**	**$19,792**	**2.8%**
Fringe Benefit Share of Total Cost	22.6%	30.0%		

[1] Fiscal 2015 numbers are unusually low. To adequately fund fiscal 2016, costs increase by $219 million, which is approximately $2,700 per employee and increases the annual percent increase to 4.9%. For more information, see the issue paper titled, *State Employee and Retiree Health Plan*.

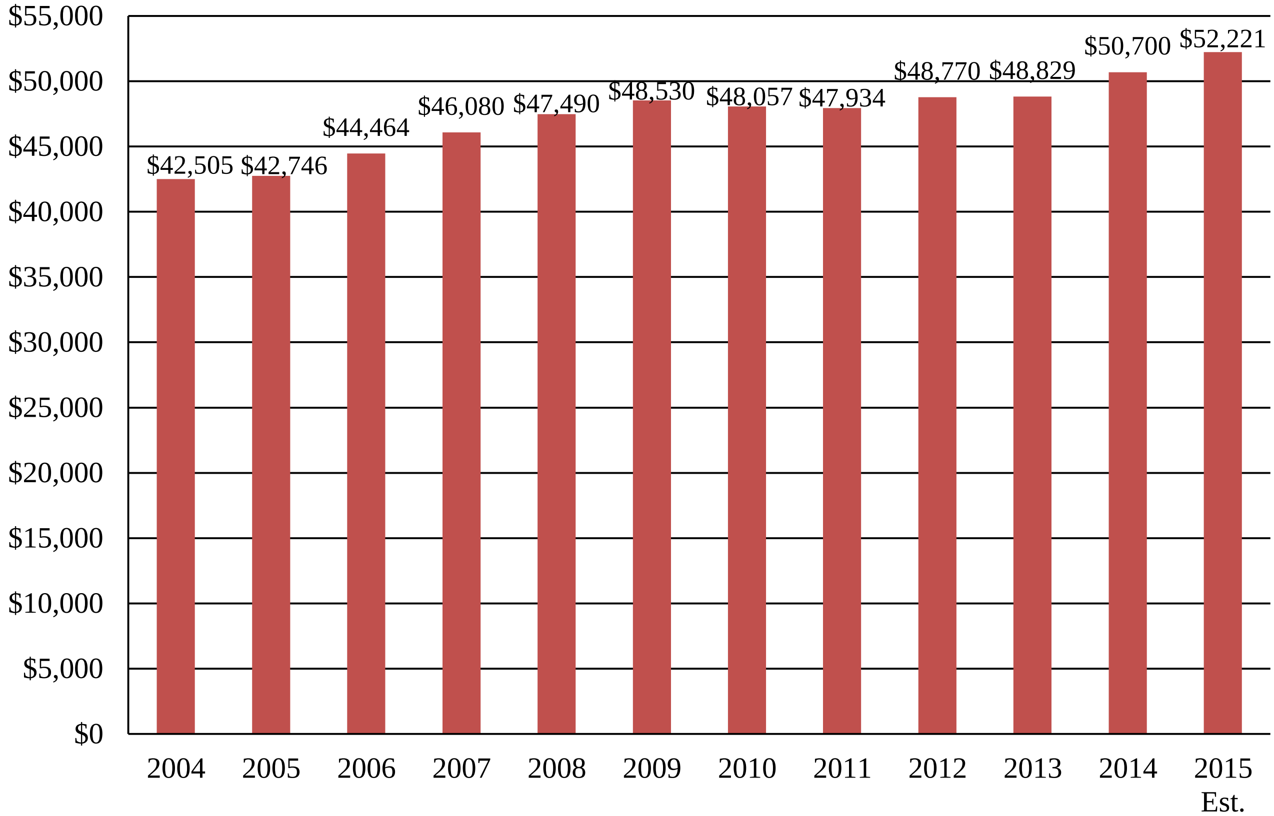
Source: Department of Budget and Management Annual Personnel Reports

The increasing State share of the cost of benefits was mitigated by increasing employees' share of the costs. Retirement contributions in the employees' and teachers' plans increased from 2% of salary in fiscal 2004 to 7% of salary.[1] State health insurance costs were mitigated by actions such as increasing the employee share of premium costs, increasing coinsurance costs, and increasing prescription drug copayments.

Exhibit 4 shows that the average employee salary increased from approximately $42,500 in fiscal 2004 to $52,200 in fiscal 2015. Although the trend was for salaries to increase, this was not always the case. For example, salaries decreased in fiscal 2010 and 2011.

[1] Employee contributions increased to 3% of salary in fiscal 2007, 4% in fiscal 2008, 5% in fiscal 2009, and 7% in fiscal 2012.

Exhibit 4
Average State Employee Salary
Fiscal 2004-2015



Source: Department of Budget and Management Annual Personnel Reports

Periods of slow salary growth correspond with the State withholding increments[2] and not providing for a general salary increase. **Exhibit 5** shows that State employees did not receive any general salary increases or increments in fiscal 2003, 2004, 2010, 2011, and 2012. These were periods of little or no salary growth. Increments and general salary increases were received in fiscal 2005 to 2009, as well as fiscal 2014 and 2015. The strongest sustained salary growth of the period was from fiscal 2005 to 2009, when salaries grew at an annual rate of 3.2%. The period with the weakest growth was from fiscal 2009 to 2013, when salaries grew at an annual rate of 0.2%.

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[2] Personnel reform in 1996 (Chapter 347) implemented a pay-for-performance plan for employees. The Department of Budget and Management has developed strategies to reward satisfactory service to the State, based on the results of employee performance appraisals. One such strategy is to allow advancement from one step to the next within a grade, and an employee must be rated as "satisfactory" in the evaluation to move to the next step. These increases are referred to as increments.

Exhibit 5
Permanent Statewide Salary Actions
Fiscal 2003-2016

Fiscal Year	Date of Increase (Decrease)	General Salary Increase (Decrease)	Increments
2003	July 1, 2002	None	None
2004	July 1, 2003	None	None
2005	July 1, 2004	$752	On time
2006	July 1, 2005	1.5%	On time
2007	July 1, 2006	2.0% with $900 Floor and $1,400 Ceiling	
2008	July 1, 2007	2.0%	On time
2009[1]	July 1, 2008	2.0%	On time
2010[2]	July 1, 2009	None	None
2011[2]	July 1, 2010	None	None
2012[3]	July 1, 2011	None	None
2013	January 1, 2013	2.0%	None
2014	January 1, 2014	3.0%	April 1, 2014
2015	January 1, 2015	2.0%	On time
2016	July 1, 2015	None	None

[1] 2- to 5-day furlough
[2] 3- to 10-day furlough
[3] One-time $750 bonus

Source: Department of Budget and Management

Personnel

State Employee and Retiree Health Plan

A new employee and retiree health care plan became effective on January 1, 2015. The plan includes many of the same benefits as previous plans. To improve health outcomes, the new plan includes a wellness program that requires employees, retirees, and covered spouses to complete a State-administered health risk assessment and discuss it with their physician. Individuals with chronic conditions may be identified to participate in a disease management plan. Recent plan cost increases are attributable to a rise in prescription drug costs. The State may be subject to the "Cadillac Tax" in calendar 2018 if costs increase more than projected. Over 1,500 contractual employees are now receiving a State subsidy for health insurance, as required by the Affordable Care Act.

New Wellness Program

The State has traditionally offered a generous array of health benefits, including medical, behavior, prescription drug, dental, vision, life insurance, accidental death and dismemberment, and long-term care insurance. Due to concern about rising costs and the prevalence of chronic illness among State employees and dependents, the State began to institute measures to manage wellness in the program. Chapter 208 of 2013 required the Department of Budget and Management (DBM) to include a wellness program with the health benefits program. In response, DBM developed a six-year wellness program that phases in delivery system reforms, cost-sharing incentives for employees to engage in wellness activities, and health education.

Under the new program, the base plan design remains consistent; employees have a choice among three types of health plans[1]: (1) Preferred Provider Organization (PPO) which utilizes a national network and provides both in- and out-of-network benefits; (2) Exclusive Provider Organization (EPO) which utilizes a national network and provides in-network benefits only; and (3) Integrated Health Model (IHM) which utilizes a regional network.

Completing wellness requirements each year results in waived Primary Care Physician (PCP) copays. Failure to complete requirements results in an annual premium or surcharge. Wellness requirements for employees and covered spouses are phased in from calendar 2015 through calendar 2020, as shown in **Exhibit 1**.

[1] The State no longer offers Point of Service (POS) plans, with the exception of State Law Enforcement Officers Labor Alliance Members.

Exhibit 1
Wellness Requirements

Calendar Year	Participants Not Eligible for Disease Management Program	Participants Eligible for Disease Management Program
2015	Designate a PCP and complete annual health risk assessment. **Surcharge:** None	Designate a PCP and complete annual health risk assessment. **Surcharge:** None
2016	Same as 2015 requirements; complete recommended age/gender specific biometric screenings and Nutrition Education or Weight Management program. **Surcharge:** $50 per year	Same as 2015 requirements; complete recommended age/gender specific biometric screenings and actively participate in the disease management (D/M) program and follow recommended treatment. **Surcharge:** $250 per year
2017	Same as 2016 requirements, but no required Nutrition Education or Weight Management program. **Surcharge:** $75 per year	Same as 2016 requirements. **Surcharge:** $375 per year
2018	Same as 2016 requirements. **Surcharge:** TBD	Same as 2016 requirements; complete physical exam showing blood pressure and cholesterol in normal ranges; document test results in online Personal Health Assessment (PHA); and complete a Nutrition Education, Weight Management, Smoking Cessation, or Stress Management program. **Surcharge:** TBD
2019	Same as 2016 requirements; complete a physical exam showing blood pressure and cholesterol in normal ranges, discuss with PCP, and complete a Nutrition Education or Stress Management program. **Surcharge:** TBD	Same as 2018 requirements. **Surcharge:** TBD
2020	Same as 2019 requirements, but no required Nutrition Education or Stress Management program. **Surcharge:** TBD	Same as 2018 requirements. **Surcharge:** TBD

TBD: to be determined

Source: Department of Budget and Management

As of September 1, 2015, over 25,000 individuals had completed the requirements of the wellness plan, or approximately 27.8% of eligible members. PCP visits increased by 875.8 services per 1,000 members, or 323.0%, almost entirely due to wellness requirements. Generally, wellness programs that use incentives to increase participation, such as the State wellness plan, have a median participation of 40.0% of members according to the Rand Corporation's April 2015 report on workplace wellness programs.

Prescription Drugs Driving Health Insurance Costs

Despite an increase in the use of generic medications, prescription drugs have been driving health care costs. Pharmaceutical manufacturers have steadily increased the cost of medications in recent years, citing research and development funding needs. High price tags of specialty medications also contribute to the State's rising costs as more participants use these medications. For instance, treatment for Hepatitis C can cost $100,000 per patient. Medications for treatment of chronic illnesses, such as diabetes and high cholesterol, also top the charts as cost drivers for the State. From fiscal 2012 to 2015, prescription costs for the State increased by $105.6 million, or a 29.5% increase. DBM expects cost trends to continue in the out-years but is assuming escalating medical and prescription costs will slow due to the implementation of the wellness plan.

Changes Under the Affordable Care Act

Contractual Employees

The Affordable Care Act (ACA) requires large employers to provide affordable health insurance to employees that work at least 30 hours per week or 130 hours per month. Failure to comply with the requirement may subject the employer to a penalty. To comply with the ACA, the State began to offer its contractual employees the alternative subsidy of 75% of the premium for medical and prescription drug coverage effective January 1, 2015. Maryland had been offering all employees health care benefits prior to the ACA but only permanent employees received a subsidy. Permanent part-time employees working at least 50% (generally 20 hours per week), were offered subsidized benefits; employees working less than 20 hours per week, were offered unsubsidized benefits. In fiscal 2015, 1,538 contractual employees were enrolled and receiving the alternate subsidy; the total cost of the State subsidy for contractual employees amounted to $4.1 million, which accounts for half the fiscal year.

Cadillac Tax

Starting in calendar 2018, the ACA implements a 40.0% excise tax on the portion of total health insurance premiums that exceed $27,500 for a family and $10,200 for an individual, also known as the "Cadillac tax." Based on initial estimates, DBM believes that the State could see a $1.4 million excise tax in calendar 2018 if medical plans stay at or exceed 5.5% growth; from fiscal 2013 through 2015, medical plan payments grew by 5.3%.

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State Retirement and Pension System Investment Performance and Contribution Rates

The pension fund's fiscal 2015 return on investments was 2.68%, which is below the assumed rate of return. The system's asset valuation policy smooths gains and losses over five years. The plan's funded status increased to 68.6%, compared to 67.7% at the end of fiscal 2014. To improve the system's funded status, the legislature adopted pension reform in the 2011 session and passed legislation in the 2015 session to eliminate the corridor funding method beginning in fiscal 2017. Supplemental contributions of $75 million will continue until the system is 85.0% funded, and a pension sweeper provision will direct a portion of unspent State general fund balances to the system.

Investments Exceed Benchmarks but Fail to Meet Assumed Rate of Return

The State Retirement and Pension System's (SRPS) investment return for the fiscal year that ended on June 30, 2015, was 2.68%, failing to meet the assumed rate of return of 7.60%.[1] The performance was driven primarily by the system's public equity holdings, which made up 37.63% of the portfolio and returned 3.65% for the fiscal year. U.S. public equity holding returns were 94 basis points under the benchmark.

Despite failing to meet its assumed rate of investment return, the system as a whole did outperform its policy benchmark by 181 basis points. U.S. public equity and absolute return were the only two asset classes to perform below their benchmarks. Global equity and private equity, with returns of 4.82% and 13.17%, both exceeded their benchmarks by 411 and 554 basis points, respectively. While international equity, which made up 11.05% of the fund, returned -0.29%, the asset class was 497 basis points above its benchmark. The pension fund's real estate and private equity holdings also contributed strong performance, returning 12.12% and 13.17%, respectively, with both exceeding their return benchmarks.

[1] All returns are net of fees. In 2012, beginning with the 2013 valuation, the Board of Trustees decided to reduce the 7.75% assumed rate of return by 0.05% each year until it is 7.55%. The assumed rate of return for fiscal 2015 was 7.60%, but for the purposes of the 2015 system valuation, the Board of Trustees decided to move the assumption to 7.55%.

The System's Financial Condition Driven by Investment Returns and Policy Changes

From fiscal 2014 to 2015, SRPS's funded status (the ratio of projected actuarial assets to projected actuarial liabilities) improved from 67.7% at the end of fiscal 2014 to 68.6% at the end of fiscal 2015 (these figures exclude funding for local governments that participate in the State plan). Total State liabilities increased from $58.0 billion to $61.4 billion, with the unfunded liability increasing from $18.8 billion to $19.3 billion.

Total system return for fiscal 2011 through 2015 is 9.36%, which is 84 basis points above the plan return benchmark for that period. Assuming market conditions allow for investments to meet or exceed the 7.55% assumed rate of return moving forward, several combined factors mean that the system is poised to show continued improvement in its funding status, including:

- the great recession investment losses being fully recognized in the system valuation;
- unrecognized investment gains due to be recognized in this and subsequent year's valuations;
- the increasing number of new members entering the system under the reformed benefit structure enacted in 2011, which constrains the growth in system liabilities;
- the elimination of the corridor funding method; and
- continued supplemental contributions above the actuarially determined contribution.

Funding Reforms Bring Contributions Closer to Full Funding Rates System Contribution Rates Nearing Actuarial Determined Contribution Rates

Exhibit 1 shows that the employer contribution rate for teachers will increase from 16.49% in fiscal 2016 to 16.55% in fiscal 2017, and the contribution rate for State employees will increase from 17.04% in fiscal 2016 to 18.93% in fiscal 2017. The aggregate State contribution rate, including contributions for public safety employees and judges, increases from 17.58% in fiscal 2016 to 18.32% in fiscal 2017. Based on projected payroll growth and other factors, the SRPS actuary estimates that total employer pension contributions will increase by $115.5 million, from $1.775 billion in fiscal 2016 to $1.891 billion in fiscal 2017.[2] The funding rates and contribution amounts are inclusive of the required supplemental contributions required by Chapter 489 of 2015 (discussed below). The rates for fiscal 2016 were determined in accordance

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[2] Contribution rates and system contributions are based on the fiscal 2015 system valuation presented to the SRPS Board of Trustees by the system actuary, Gabriel, Roeder, Smith, & Co. The values stated for fiscal 2017 may be affected by legislative action during the 2016 legislative session.

with the corridor funding method for the Teachers' and Employees' Systems. The fiscal 2017 contribution rate will be the true actuarially determined contribution rate. The actuarially determined contribution rate for fiscal 2017 without the supplemental contribution is the same as the fiscal 2016 corridor rate plus the supplemental contribution.

Exhibit 1
State Pension Contributions
Fiscal 2016 and 2017

	2016		**2017**	
Plan	**Rate**	**$ in Millions**	**Rate**	**$ in Millions**
Teachers	16.49%	$1,075.8	16.55%	$1,105.2
Employees	17.04%	569.3	18.93%	643.1
State Police	80.08%	72.2	82.50%	78.8
Judges	40.70%	18.1	46.56%	21.8
Law Enforcement Officers	40.95%	40.1	40.72%	42.1
Aggregate	**17.58%**	**$1,775.4**	**18.32%**	**$1,890.9**

Note: Except for the Teachers' Combined System (TCS), contribution rates and dollar amounts reflect State funds only, excluding municipal contributions. For TCS, they reflect the combined total of State and local contributions. Figures also reflect the supplemental contributions established by Chapter 489 of 2015.

Source: Gabriel, Roeder, Smith & Co.

Employer contribution rates were subject to multiple influences this year, some exerting upward pressure and others downward pressure. Investment returns over the five-year smoothing period continue to exert downward pressure on contribution rates. Changes to the demographic assumptions from the most recent experience study are exerting upward pressure on the contribution rates, due to increased life expectancy. Chapter 489 eliminates the corridor funding method, which has restricted the growth of contribution rates for the Teachers' Combined System and the Employees' Combined System, the two largest plans within SRPS. By eliminating the corridor method, Chapter 489 ensures that the budgeted contribution rate will be the actuarially determined rate necessary to fully fund the system.

In addition to eliminating the corridor method and returning the system to full actuarially determined funding, Chapter 489 also continues providing for a supplemental contribution of $75.0 million each year until the system is 85% funded. Additionally, Chapter 489 included a sweeper provision, which will direct a portion of unspent general funds to the system as additional supplemental payments in fiscal 2017 through 2020. Since fiscal 2015 ended with a $295.5 million unappropriated fund balance, the administration is required to include an additional $50.0 million appropriation for State pension funds. This is the maximum required by Chapter 489.

The Department of Legislative Services is unaware of other state systems that provide for full funding of the actuarially determined contribution, pay the actuarially determined contribution in full, and additionally provide for regular supplemental payment above the actuarially determined contribution.

Local School Board Contributions to the Teachers' Pension System

Chapter 1 of the first special session of 2012 requires local school boards to make contributions for members of the Teachers' Retirement and Pension systems (TRS/TPS). The contribution amounts are the amounts associated with the normal cost for local employees in TRS/TPS. The normal cost is the portion of the yearly contribution rate, which reflects the amounts needed to fund liabilities that will be accrued in the upcoming year. For fiscal 2013 through 2016, the dollar amounts required to be paid by each local school board were set in statute. For fiscal 2016, local school boards paid $254.8 million of the $334.0 million normal cost. For fiscal 2017, local school boards will pay the full normal cost for their employees in TRS/TPS of $279.8 million. The total State contribution to the Teachers' Combined System will be $825.4 million, which consists of $24.7 million of the normal cost,[3] $749.9 million for unfunded liabilities, and $50.8 million in supplemental contributions.

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[3] The State continues to be responsible for paying the normal cost for certain TRS/TPS covered employees, such as library employees and employees of an educational institution supported by and operated by the State.

Personnel

Update on Other Post Employment Benefits

The State offers subsidized health care benefits for retired State employees. These benefits are referred to as Other Post Employment Benefits. As of the end of fiscal 2015, the total actuarial liability was $9.6 billion and assets totaled $275 million. This is a funded ratio of 2.9%. The funded ratio is low because the State has not made an appropriation to reduce the unfunded liability since fiscal 2009. The annual required contribution is $635 million, of which $385 million is the amortization to reduce the unfunded liability.

Financial Obligation for Retiree Health Care Benefits Grows

A combination of legislative changes, positive claims experience, and updated actuarial assumptions helped reduce the State's overall unfunded liability for Other Post Employment Benefits (OPEB) by almost 50% from fiscal 2010 levels, but the State's financial obligation for those benefits has continued to grow since fiscal 2013 due to repeated underfunding. OPEB refers to other post employment benefits besides pensions; in Maryland's case, it refers to the subsidized health benefits currently provided to retired State employees.

Chapter 397 of 2011 altered eligibility for those retiree health benefits for State employees hired after June 30, 2011, and eliminated prescription drug coverage for all Medicare-eligible retirees beginning in fiscal 2020. As shown in **Exhibit 1**, these changes dramatically reduced the State's unfunded liability for those benefits from $15.9 billion in fiscal 2010 to $9.5 billion in fiscal 2011; the unfunded liability dropped again to $8.1 billion in fiscal 2013 due to positive claims experience and updated actuarial assumptions. An increase in unfunded liabilities in fiscal 2015 can be attributed to multiple factors, including negative claims experience, enrollment patterns in the different plan options, and recognition of the excise tax that will likely be assessed under the federal Patient Protection and Affordable Care Act, beginning in 2018.

Exhibit 1
State Retiree Health Liabilities and Required Contributions
Fiscal 2010-2015
($ in Millions)

	2010	2011	2012	2013	2014	2015
OPEB Actuarial Liability	$16,099	$9,732	$9,825	$8,344	$8,964	$9,644
Actuarial Value of Assets	183	196	209	223	250	275
Unfunded OPEB Liability	**$15,915**	**$9,536**	**$9,617**	**$8,121**	**$8,714**	**$9,368**
Normal Cost	$583	$323	$274	$229	$224	$249
Amortization Payment	642	381	382	347	350	385
Annual Required Contribution	**$1,225**	**$704**	**$656**	**$576**	**$574**	**$635**

OPEB: Other Post Employment Benefits

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

Source: The Segal Group. Inc.

State Underfunds Its OPEB Costs

Exhibit 1 also shows that the annual required contribution (ARC) necessary to pay off the State's liabilities over 25 years has increased to $635 million in fiscal 2015. However, this figure now understates Maryland's financial obligation to pay for the benefits that it provides because it has never fully funded the ARC in previous years. From an accounting standpoint, the cumulative underfunding of the ARC results in interest charges on the unpaid balance. Under Governmental Accounting Standards Board (GASB) accounting standards, the State's net OPEB obligation (NOO) that is reported on its financial statements reflects the cumulative effect of underfunded ARCs and interest charges on the unfunded balances. **Exhibit 2** shows the calculation of the State's NOO since fiscal 2010.

Exhibit 2
Maryland's Net OPEB Obligation
Fiscal 2010-2015
($ in Thousands)

	2010	2011	2012	2013	2014	2015
Beginning NOO	**$1,478,130**	**$2,332,502**	**$3,198,691**	**$3,531,520**	**$3,786,997**	**$3,964,678**
Adjusted ARC	$1,127,220	$1,134,735	$581,198	$498,465	$419,525	$419,479
Interest on NOO	63,560	100,298	137,544	150,090	160,948	188,322
Annual OPEB Cost	**$1,190,780**	**$1,235,033**	**$718,742**	**$648,555**	**$580,473**	**$607,800**
PAYGO costs	$336,408	$368,844	$385,913	$393,078	$402,794	$449,750
Pre-funding	0	0	0	0	0	0
Annual Payments	**$336,408**	**$368,844**	**$385,913**	**$393,078**	**$402,794**	**$449,750**
End-of-year NOO	**$2,332,502**	**$3,198,691**	**$3,531,520**	**$3,786,997**	**$3,964,676**	**$4,122,728**

ARC: annual required contribution
NOO: net Other Post Employment Benefits obligation
OPEB: Other Post Employment Benefits

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

Source: The Segal Group, Inc.

As Exhibit 2 shows, the NOO continues to grow because the State's annual payments have been less than the respective ARCs, resulting in cumulative unfunded costs and annual interest charges on those amounts. Since fiscal 2010, the State's only payments toward the OPEB cost have been claims cost reimbursements (*i.e.*, pay-as-you-go (PAYGO) costs). Although the gap between claims costs and the ARC has narrowed substantially since fiscal 2010, the State has never fully paid the ARC in any fiscal year; so each year, the interest charges and the NOO continue to grow. In fiscal 2015, claims costs of $449.7 million fell $158.1 million short of the OPEB cost for the year, and that figure will continue to grow as interest charges on underfunded ARCs continue to accumulate.

As of September 30, 2015, the Post-Retirement Health Benefits Trust Fund, which was established to hold assets paid by the State against future OPEB liabilities, holds $256 million, or 2.9%, of assets needed to pay future OPEB liabilities on an actuarial basis. These funds reflect the amount contributed in excess of PAYGO costs in fiscal 2008 and 2009, plus accumulated investment returns. Few states have taken steps to address their OPEB liabilities, and rating agencies have not downgraded any state's credit rating solely on the basis of those liabilities. However, continued inaction to address long-term OPEB liabilities may have negative budgetary as well as credit rating repercussions as baby boomers retire and claim their health benefits.

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Personnel

Pension Disability Benefits

Like most States, Maryland provides disability benefits to members of retirement systems who can no longer carry out their jobs. Concerns have been raised that Maryland's benefits may be too generous. During the 2015 interim, the Department of Legislative Service and State Retirement Agency reviewed the disability process and benefit rewards to determine how Maryland compares with other states. One finding was that the percent of retirees who are disabled (11.7%) is higher than any other State in the nation. The filing period for benefits is longer than almost all other States, while vesting is generally consistent with other states. These findings were presented to the Joint Committee on Pensions, who may recommend legislation for the 2016 legislative session.

Disability Benefits for State Employees, Teachers, and Law Enforcement

Like most state pension systems, the Maryland State Retirement and Pension System (MSRPS) offers disability benefits to members who are no longer able to carry out their jobs. The benefits differ depending on whether the disability stems from an injury or illness that occurred on the job and whether the person affected is a law enforcement officer employed by the State. The fiscal 2015 budget's *Joint Chairmen's Report* requested that the State Retirement Agency (SRA) and the Department of Legislative Services (DLS) review the disability process and benefit awards in Maryland and examine how Maryland's benefits compare with other states. The subsequent joint study identified numerous issues for consideration by the General Assembly.

Eligibility for Ordinary versus Accidental Disability

A member of MSRPS is eligible for ordinary disability if:

- the member is mentally or physically incapacitated for the further performance of the normal duties of the member's position;
- the incapacity is likely to be permanent;
- the member has five years of eligibility service; and
- the member applies no later than four years after paid employment ends (or five years for Teachers' Retirement System members).

By contrast, a member is eligible for accidental disability if:

- the member is totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the member;
- the member is mentally or physically incapacitated for the further performance of the normal duties of the member's position;
- the incapacity is likely to be permanent; and
- for members of the teachers' and employees' systems, the member applies within five years of the date of the accident.

Unique Provisions for Law Enforcement

Members of the State Police Retirement System (SPRS) and Law Enforcement Officers Pension System (LEOPS) have unique provisions governing their eligibility for accidental disability benefits. Specifically, they are eligible for accidental disability if they are totally and permanently incapacitated for duty arising out of or in the course of the actual performance of duty without willful negligence by the member (*i.e.*, not necessarily at a definite time and place). Also, there is no time limit for SPRS or LEOPS members to file for accidental disability. The SPRS accidental disability is called a "special disability retirement allowance" in statute.

Benefits Paid Under Ordinary and Accidental Disability

For teachers and employees, an ordinary disability benefit consists of the normal retirement benefit that would otherwise be paid to the individual at the time of disability, except that their creditable service is projected forward as if they had reached their normal retirement age. For example, a member under the Reformed Contributory Pension Benefit who is age 30, has earned 5 years of eligibility credit, and who is eligible for an ordinary disability benefit would be given an additional 35 years of creditable service as if the member had reached the normal retirement age of 65. However, SPRS members eligible for an ordinary disability benefit receive 35% of their average final compensation (AFC) at the time they become disabled.

Accidental/special disability benefits are the same for teachers, employees, and law enforcement officers. An accidental/special disability benefit is the *lesser* of a member's AFC at the time of disability, or the sum of two-thirds of the member's AFC plus an annuity of their accumulated member contributions; in most cases, members receive the latter benefit.

Disability Benefits May Be Too Generous

A review of recent trends in disability awards found that both the eligibility criteria and the benefits provided may be too generous. In each of the last five years, at least 90.0% of disability claims were awarded. This could be an indication that the disability claims process works as it is intended, in that people who are in fact disabled receive the benefits they need to support them when they are no longer able to work. Indeed, a thorough review of the process used by SRA to adjudicate disability applications found that it is extremely rigorous and complies with all statutory requirements. However, the review also found that the percentage of total MSRPS retirees who are disabled (11.7%) is higher than that of any other state in the country, and that only four other states have more than 10.0% of their retirees receiving disability benefits.

Issues Regarding Disability Process and Benefits

The review of disability benefits provided by MSRPS found numerous issues regarding the process for awarding disability benefits and the benefits paid to disabled retirees. Among these are:

- **Time Period for Filing for Benefits:** Maryland's four- and five-year time limits for applying for ordinary and accidental disability benefits, respectively, exceed that of almost all other states, often by significant margins.

- **Vesting for Ordinary Benefits:** Maryland's 5-year vesting requirement for ordinary disability benefits exceeds the 10-year vesting requirement for normal retirement benefits under the Reformed Contributory Pension Benefit. Although a majority of states require 5 or fewer years to vest for ordinary benefits, more than one-third require more than 5 years.

- **Use of Projected Service Credit:** Only five other states besides Maryland project service credit to normal retirement age for ordinary disability benefits.

These and other issues identified by the joint DLS/SRA review of disability benefits are being considered for possible legislative action by the Joint Committee on Pensions.

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Education

State Education Aid and Maintenance of Effort

State education aid is projected to increase 3% in fiscal 2017, which includes full funding of the Geographic Cost of Education Index (GCEI). Legislation passed in 2015 makes GCEI a mandatory funding formula if it is *not* fully funded in fiscal 2016; to date, the Governor has not released funds set aside by the General Assembly to fully fund GCEI, thus making it mandatory beginning in fiscal 2017. Fiscal 2017 marks the first year that local school systems will pay the *actual* normal cost of retirement for teachers and other school employees in the State teachers' systems. During the four-year phase-in period, school systems paid the estimated normal cost as set in statute.

State Aid to Education Projected to Increase by $182 Million

Public schools are expected to receive an estimated $6.3 billion in fiscal 2017, representing a $181.7 million (3.0%) increase over the prior fiscal year. The increase is comprised of aid that flows directly to local school boards, which is projected to grow by $189.4 million (3.5%) offset by a $7.7 million (1.1%) decrease in retirement aid. The increase in direct aid is driven by a slight expected rise in the per pupil foundation amount and projected enrollment increases, full funding of the Geographic Cost of Education Index (GCEI), and the continued phase-in of Net Taxable Income (NTI) education grants.

Foundation and Most Other Direct Aid Programs Will Increase Slightly

The foundation program is the major State aid program for public schools, accounting for nearly half of State education aid. For each school system, a formula determines the State and local shares of a minimum per pupil funding level, or "foundation." The foundation program is projected to total $3 billion in fiscal 2017, an increase of $30.1 million (1.0%) over fiscal 2016, as shown in **Exhibit 1**. The increase is attributable to enrollment growth of an estimated 0.96% (8,063 full-time equivalent students) and a 0.2% increase in the per pupil foundation amount. The 0.2% increase in the per pupil foundation amount in fiscal 2017 is equivalent to the estimated change in the Implicit Price Deflator for State and Local Government Purchases.

Other than the foundation program, the compensatory education and limited English proficiency formulas are projected to have the largest dollar increases among the direct aid programs in fiscal 2017. A portion of the increase in each program is due to projected enrollment growth in students eligible for free and reduced-price meals and English language learners, respectively, and the rest of the increases can be attributed to the slight increase in the per pupil foundation amount.

Exhibit 1

Estimated State Aid for Education

Fiscal 2016 and 2017

($ in Thousands)

Program	**2016**	**Estimated 2017**	**$ Change**	**% Change**
Foundation Program	$2,947,083	$2,977,218	$30,136	1.0%
Geographic Cost Adjustment	68,100	137,982	69,882	102.6%
Foundation – Special Grants	86	0	-86	-100%
Supplemental Grant	46,620	46,620	0	0.0%
Net Taxable Income Grants	23,821	37,375	13,554	56.9%
Compensatory Education Program	1,305,133	1,357,083	51,950	4.0%
Special Education Formula	275,997	278,920	2,922	1.1%
Nonpublic Placements	122,618	126,016	3,398	2.8%
Limited English Proficiency	217,180	236,798	19,618	9.0%
Guaranteed Tax Base	53,762	54,893	1,131	2.1%
Student Transportation	266,247	271,467	5,220	2.0%
Aging Schools	6,109	6,109	0	0.0%
Other	80,040	71,734	-8,307	-10.4%
Direct Aid Subtotal	***$5,412,797***	***$5,602,214***	***$189,417***	***3.5%***
Teachers' Retirement	$729,277	$721,584	-$7,694	-1.1%
Total	**$6,142,075**	**$6,323,798**	**$181,723**	**3.0%**

Source: Department of Legislative Services

Geographic Cost of Education Index Grants

GCEI is a discretionary formula established in 2005 that accounts for differences in the costs of educational resources among local school systems and provides additional funding to school systems where educational resource costs are above the State average. The Governor's proposed fiscal 2016 State budget included 50% funding for the GCEI formula. The fiscal 2016 budget adopted by the General Assembly provided for 100% funding of GCEI ($136.2 million); however, restoration of half the GCEI funding was at the discretion of the Governor. Chapter 477 of 2015 makes funding of the program mandatory rather than discretionary, contingent upon full funding *not* being provided in the fiscal 2016 operating budget; to date, the Governor has not released funds set aside by the General Assembly ($68.1 million) to fund GCEI at 100% in fiscal 2016, thus making full funding mandatory beginning in fiscal 2017. Prior to fiscal 2016, GCEI was partially funded in fiscal 2009 and was fully funded in fiscal 2010 to 2015. The formula applies a cost index to the foundation amount calculated for a school system; each eligible school system receives additional funds equal to the product of the foundation amount and the cost index. Thirteen local school systems are eligible for the GCEI funds in fiscal 2017. Full funding in fiscal 2017 results in $138.0 million in grants, an increase of $69.9 million.

Net Taxable Income Education Grants

Approximately 75% of State aid to public schools is distributed inversely to local wealth, whereby the less affluent school systems receive relatively more State aid. NTI is one component of calculating local wealth for purposes of State aid for education. Chapter 4 of 2013 provides additional education grants in counties whose formula aid is higher using November NTI as compared to September NTI. Chapter 4 established a phase-in of the grant amounts to counties receiving them beginning in fiscal 2014 at 20%, reaching 40% in fiscal 2015, and increasing incrementally toward full funding in fiscal 2018. However, Chapter 489 of 2015 delayed the scheduled phase-in of the grants by one year, altering the phase-in percentage to 40% in fiscal 2016, 60% in fiscal 2017, and 80% in fiscal 2018, with funding fully phased in by fiscal 2019. NTI education grants totaled $8.3 million in fiscal 2014, $26.9 million in fiscal 2015, $23.8 million in fiscal 2016, and increase to an estimated $37.4 million in fiscal 2017. In both fiscal 2014 and 2015, 18 local school systems received NTI education grants; 19 school systems received these grants in fiscal 2016; and current estimates indicate that 20 school systems will receive these grants in fiscal 2017.

State Retirement Costs Decrease Slightly While Local Contributions Increase

State retirement costs for public school teachers and other professional personnel will total an estimated $721.6 million in fiscal 2017, representing a $7.7 million (1.1%) decrease. This decrease is attributed to an increase in the salary base for teachers being more than offset by a decrease in the State contribution rate and an increase in local government contributions. In addition to the State's share of teacher pension costs, local governments will contribute approximately $293.7 million in fiscal 2017: $279.8 million for the local share of pension contributions as well as $14.0 million toward State Retirement Agency administrative costs.

Chapter 1 of the first special session of 2012, the Budget Reconciliation and Financing Act (BRFA), phased in over four years (fiscal 2012 to 2016) the requirement that local employers pay the employer "normal cost" for active members of the State Teachers' Pension or Retirement Systems. Chapter 1 also initiated annual teacher retirement supplemental grants totaling $27.7 million to lower-wealth counties (including Baltimore City) to help offset the impact of sharing teachers' retirement costs with the counties, beginning in fiscal 2013. Counties were required to increase their appropriations to the local school boards to fund these teacher retirement costs during the four-year phase-in. Fiscal 2017 is the first year in which the actual normal cost will be used to determine local contributions; estimated normal cost was set in statute for each county during the fiscal 2012-2016 period. These contributions increase by an estimated 9.8% in fiscal 2017, as compared to an increase from fiscal 2015 to 2016 of 15.0%. While the required fiscal 2017 contribution is higher than fiscal 2016, it is about 9.0% lower than the estimate for fiscal 2017 at the same time last year; current estimates project that normal costs will decrease modestly over the next three years. Chapter 1 also repealed the requirement that school systems reimburse the State for the full retirement costs of federally funded positions beginning in fiscal 2015 to help offset the impact of pension cost sharing.

Maintenance of Effort

The maintenance of effort (MOE) law requires each county government (including Baltimore City) to provide as much per pupil funding for the local school board as was provided in the prior fiscal year. As of October 2015, the State Board of Education has certified that the school appropriations of 23 counties have met the fiscal 2015 MOE requirement; the appropriation for Frederick County is pending further action regarding the inclusion of unrealized revenue from the intended sale of certain property in determining the county's highest local appropriation, a calculation that is critical in determining the MOE requirement for the county. In total, 14 counties exceeded MOE by an average of 1.4% more than the required appropriation. In response to Montgomery County's appeal of the State Superintendent's finding that the county underfunded the school board by $1.5 million (or by 0.1% of the $1.5 billion appropriation) based on advice from the Maryland State Department of Education, the State Board of Education declined to order the county to appropriate the $1.5 million for fiscal 2016. However, the county may choose to appropriate the additional $1.5 million in fiscal 2016, and the State Board of Education has directed the county to include the $1.5 million within its fiscal 2016 highest local appropriation calculation when determining its fiscal 2017 MOE base amount.

Chapter 6 of 2012 made several changes to the MOE law and waiver processes. Under the law, beginning in fiscal 2015, a county that has an education effort below the five-year statewide average education effort must increase its MOE payment to the local school board in years when its local wealth base is increasing. The required increase is the lesser of the increase in a county's per pupil wealth, the average statewide increase in per pupil local wealth, or 2.5%. This provision ensures an increase in the amount a county provides to the local school board concomitant with an increase in county wealth.

Preliminary estimates suggest that statewide per pupil local wealth will increase slightly from fiscal 2016 to 2017. Therefore, if this finding holds when actual wealth and enrollment figures pertaining to fiscal 2017 aid are available in January 2016, an estimated seven jurisdictions will be required to increase their MOE appropriations (by less than 2% in each case) in fiscal 2017 under this provision. The provision did not affect any counties in fiscal 2015 or 2016 due to declines in statewide per pupil local wealth from fiscal 2014 to 2015 and again from fiscal 2015 to 2016.

Fiscal 2017 is the first year that the required local contribution for retirement costs will be incorporated into the per pupil MOE amount. During the phase-in period, counties were required to fund the retirement cost in addition to the per pupil MOE amount. Beginning in fiscal 2017, the highest local appropriation will include the pension contribution for purposes of calculating the per pupil MOE amount.

Education

Adequacy of Education Funding Study

The adequacy of education funding for public schools study is on track to be completed by the required December 1, 2016 deadline. The study includes several additional required reports with due dates staggered across the nearly two and one-half year study, including five reports submitted in September 2015. Next steps include receipt of a delayed report on prekindergarten expansion in December 2015, as well as a report to the General Assembly on potentially changing how economically disadvantaged students are counted in the compensatory aid formula. An update of the fiscal impact of the Geographic Cost of Education Index is due in June 2016.

Work on Adequacy Study Continues

The Bridge to Excellence in Public Schools Act (Chapter 288 of 2002), which established new primary State education aid formulas based on adequacy cost studies and other education finance analyses, required the State to contract with a consultant to conduct a follow-up study of the adequacy of education funding in the State approximately 10 years after its enactment. The concept of adequacy is based on determining the level of resources that is adequate for all public school students to have the opportunity to achieve academic proficiency standards. After legislation in 2011 and 2012 delayed the beginning of the study and required additional reports to be included in the study, work on the adequacy study began in June 2014, when a contract was awarded to Augenblick, Palaich, and Associates (APA) and its team of researchers that includes Picus Odden and Associates and the Maryland Equity Project. The final report must be submitted to the Governor and General Assembly by December 1, 2016.

The primary study on adequacy of education funding is on target to be completed by October 31, 2016, using three different methodologies: evidence-based; professional judgment; and successful schools. In monthly interim progress reports, APA reported that the development of the initial evidence-based conceptual model was completed in spring 2015, and in June 2015 four evidence-based panels were convened across the State to review the conceptual model from a Maryland perspective. The first six professional judgment panels were convened in October 2015, with three additional panels to be convened by January 2016. The successful schools analysis is also progressing, with expenditure data to be collected over the winter.

APA has submitted several reports related to the adequacy study since 2014. Most recently, four final reports and one preliminary report were submitted on September 30, 2015. A comprehensive report on prekindergarten in the State was also due by September 30, 2015; however, as of November 1, 2015, the final report was not complete. The final report with recommendations is expected to be submitted in December 2015. Public presentations on the completed reports were given to the Adequacy Study Stakeholder Advisory Group in July and October 2015. All of the completed reports and APA's presentations to the Adequacy Study

Stakeholder Advisory Group can be found at http://marylandpublicschools.org/adequacystudy/. The key findings and recommendations of the recent reports are summarized below.

Preliminary Report

Chapter 430 of 2004 established a formula for the Geographic Cost of Education Index (GCEI), but unlike the rest of the major State education aid programs, the formula was not mandated. GCEI was not funded until fiscal 2009 and was fully funded only in fiscal 2010 through 2015; the Governor has funded it at 50% in fiscal 2016. The goal of GCEI is to recognize regional differences in the cost of educational resources and to compensate school systems where resources cost more due to factors beyond their control. Under State law, GCEI must be updated every three years. The 2012 update was delayed to incorporate it into the adequacy study. In addition to updating GCEI in the final report, the preliminary report examined the current methodology used in Maryland and other methods that could be used to account for geographic differences in cost.

The study recommends that Maryland use a Comparable Wage Index rather than the existing index. A more reliable data source, less complexity, and more accuracy led the study team to recommend the Comparable Wage Index. The Comparable Wage Index measures the variation in wages of workers similar to teachers and includes wages paid, worker preferences, and local amenities (*e.g.*, desirability of a particular area). The Comparable Wage Index would exclude student characteristic variables and energy costs from the calculation (which are included in the current State methodology) and focus solely on wages, which make up the majority of school systems' costs, and isolates the impact of geographic location. The study authors note that student characteristics are accounted for in other parts of State education funding. Using a Comparable Wage Index also takes out the subjectivity in deciding what variables to use, providing a more accurate index. However, the U.S. Census data used to construct a Comparable Wage Index would not provide a separate index for each of the 24 school systems, which the State's current index provides. Several school systems that are grouped together by the U.S. Census Bureau would have the same index.

Additionally the study recommended embedding the index into the foundation funding formula so that it is less vulnerable to budgetary reduction. However, given that Chapter 477 of 2015 makes the GCEI a mandate if it is not fully funded in fiscal 2016, this point becomes less meaningful. The next step for this study is to calculate the fiscal impact of an updated GCEI based on a methodology selected by the Maryland State Department of Education (MSDE) in consultation with the Department of Budget and Management (DBM) and Department of Legislative Services (DLS). The final report is due by June 30, 2016.

Final Report

Economically Disadvantaged Students Proxy

Since fiscal 2004, the State compensatory aid formula for students with educational needs resulting from educationally or economically disadvantaged environments has been calculated using the number of students eligible for free and reduced-price meals (FRPM). The main purpose of this report was to evaluate FRPM eligibility as a proxy for identifying economically disadvantaged students, including consideration of alternative measures in light of the new federal Community Eligibility Provision (CEP) program, which allows schools and school systems to provide free meals to *every* student if they meet certain eligibility criteria. Schools and school systems that participate in CEP are not required to collect FRPM eligibility information, which could have significant implications for calculating compensatory aid. Prior to the 2015-2016 school year, only a few schools in Maryland participated in CEP, but MSDE reports that 277 Maryland schools are participating in CEP this year, including the Baltimore City Public School system.

The study team reviewed various indicators of low-income status such as FRPM-based hybrid models, free meal counts, direct certification, and Title I counts. They concluded that although each indicator reviewed in the study provides a reasonable proxy for economic need or low-income status, FRPM eligibility or the use of direct certification are the best proxies for identifying economically disadvantaged students in Maryland. Using FRPM eligibility maintains the status quo for calculating compensatory aid but would require school systems participating in CEP to collect FRPM eligibility information.

Using direct certification as an indicator of low-income status would represent a major change in the State's compensatory education formula. Direct certification uses a lower income threshold to identify low-income students, resulting in a lower count than the FRPM count. This would direct greater aid to local school systems and schools that serve a higher proportion of more severely economically disadvantaged students. The study team suggested that a switch to direct certification would have to occur over time. The study team also suggested expanding the number of social services used to identify economically disadvantaged students to capture more students because direct certification verifies FRPM eligibility by computer matching data records for various social programs with local school system enrollment lists.

Chapter 291 of 2015, which established a short-term alternative FRPM count for school systems participating in CEP in fiscal 2017 and 2018, requires MSDE, DBM, and DLS to review the study and make recommendations on an alternative FRPM proxy and any changes to the compensatory aid formula to the General Assembly by December 1, 2015.

Increasing and Declining Enrollment

The study assessed the impact of enrollment changes on district finances and included an analysis of enrollment trends and their relationship to local school system characteristics and operational and transportation costs. The study examined Maryland school district responses to enrollment changes from 2005 to 2014 and found that generally most school districts appear to manage their school facilities and adjust instructional and noninstructional staffing to respond to enrollment changes. In addition, the study examined how fixed and variable costs are impacted differently by enrollment changes and described options and limitations districts face when experiencing enrollment changes.

The research team found that as of December 2014, 16 states, including Maryland, have no provisions in their funding formulas to accommodate declining enrollment. The states that do address the funding consequences of school enrollment declines take a number of different approaches and, for Maryland, the study team recommended changing the student count used in the foundation formula calculations to a multi-year rolling average of the full-time equivalent enrollment count currently used. The rolling average, which would average a district's full-time equivalent enrollment count over two to four years, would temporarily reduce the funding impact of declining enrollment. Using the higher of the two numbers prevents districts experiencing enrollment growth from being penalized.

The study team found that Maryland's transportation costs vary widely in school districts based on certain geographic factors, including population density and school location. Maryland's funding formula does not incorporate some of the features that other states commonly use to promote efficiency, such as decreasing transportation funding when total enrollment declines. The study team recommended that Maryland modernize its transportation funding formula in an effort to equalize the allocation process. The study team noted that some local decisions greatly affect transportation costs, such as threshold walking distances and maximum ride times, and recommended that factors that depend on local school system decisions should not be as important to the transportation funding formula as factors that are beyond local control. Implementing a more sophisticated funding formula will require timely submission of extensive data on transportation cost factors, and the model may result in a significant redistribution of funding; therefore, the study recommended a transition period.

School Finance Equity and Local Wealth Measures

The study analyzed fiscal neutrality and equity of school funding in Maryland and addressed a series of issues pertaining to the measurement of wealth or fiscal capacity of Maryland school districts. The study looked at measures of the fiscal neutrality of the system (*i.e.*, the degree to which revenues and expenditures are related to local measures of fiscal capacity and measures of the equality or equity of per pupil revenues and expenditures across school districts in the State). The analysis showed a relationship between wealth and funding in Maryland, but that the relationship has decreased over time. Thus, the system has become more fiscally neutral since 2002 when the Bridge to Excellence in Public Schools Act was enacted.

In looking at local wealth, the study considered combining property values and net taxable income (NTI) to determine local fiscal capacity. Maryland's three-year reappraisal process for assessing property wealth was found to be reasonable. The study recommended that, similar to 10 other states, a portion of the assessed value effectively lost through tax increment financing should be subtracted from the calculation of local wealth so districts' equalization funding is more closely related to what is actually raised through property taxes. The study team also suggested that the State move incrementally from measuring NTI in both September and November, with districts receiving the larger amount of aid generated by the two measures, to only using the November measure. Finally the study recommended that the State consider replacing its current approach of adding income and property components to determine local wealth, with an adjustment of property value as multiplied by the ratio of a district's NTI to the State average NTI. However, no state in the country uses the recommended method.

School Size Study

The study examined certain aspects of school size, such as the impact on student achievement, operating costs, and school construction funding programs. The study found that the cost per student is highest at the extremes (*i.e.*, the smallest and largest schools) and recommended enrollment limits for new schools based on the points at which schools in Maryland start becoming both less cost efficient and less productive: 700 students in elementary schools; 900 students in middle schools; and 1,700 students in high schools.

The study also recommended that the State develop a small schools incentive grant program that would provide financial incentives and support for replacing the State's largest, low-performing schools or for renovating existing large school buildings. Eligibility criteria laid out by the research team offered two benchmarks: (1) schools that have fewer than 70% of the students achieving proficiency or higher on State assessments and (2) schools that exceed the following numbers of students: 550 students for elementary schools; 750 students for middle schools; and 1,000 students for high schools. Based on the criteria presented, 9 high schools, 12 middle schools, and 24 elementary schools could qualify for the small school incentive grant with a potential fiscal impact of up to $2.5 billion.

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Education

Public School Construction

Legislation enacted in 2013 established a partnership between the State and Baltimore City to address the condition of the city's public school facilities. While more time has been expended on the front end than anticipated, several projects are now on track to break ground in early 2016, and the Maryland Stadium Authority is ready to issue the first revenue bonds. Meanwhile, discussions continue regarding different approaches to school construction and the costs associated with alternative school construction delivery and traditional public school construction methods.

State-Baltimore City Partnership

Baltimore City Public Schools (BCPS) has the oldest school buildings in the State. A 2012 assessment of the condition of BCPS facilities by a consultant hired by the Baltimore City Board of School Commissioners (board) estimated a cost of $2.4 billion to address the educational adequacy, condition, and life-cycle needs of the facilities. In response to this critical need for public school facility improvements in Baltimore City, Chapter 647 of 2013 (Baltimore City Public Schools Construction and Revitalization Act) established a new partnership among the State, Baltimore City, and BCPS to fund up to $1.1 billion in public school facility improvements through revenue bonds to be issued by the Maryland Stadium Authority (MSA).

The revenue bonds will be backed by $20 million each from the State, Baltimore City, and BCPS annually until bonds are no longer outstanding. MSA will manage all of the bond proceeds and many of the projects. Based on market projections when Chapter 647 was enacted, $60 million could support debt service on up to $1.1 billion in bonds. While the original estimate was $1.1 billion, with the first set of bonds to be issued in fall 2014, the first bond sale will be completed in winter 2015 for the principal amount of $320 million, and the latest estimate is that about $960 million in bonds can be issued. Before any bonds could be issued, the law required the four parties – MSA, the Interagency Committee on School Construction (IAC), Baltimore City, and BCPS – to enter into a memorandum of understanding (MOU), which was approved by the Board of Public Works (BPW) on October 16, 2013.

Updated Scope of Work and Timeline

The original estimate was that 50 schools could be completed with the $1.1 billion initiative, with approximately 16 new schools and the remainder renovations. During the course of developing the MOU, that estimate was revised to 35 schools based on more refined project scopes and costs. The current estimate is that 23 to 28 schools will be replaced or renovated. The lower estimate, in part, reflects more realistic cost estimates based on feasibility studies, the first of which were completed in spring 2014. These initial feasibility studies were based on educational specifications and project scopes that proved to be cost prohibitive in part due to questionable assumptions. The specific projects that will be included in the initiative are likely to include more elementary and middle schools and fewer high schools, and fewer new schools and more strategic modernizations. Only two renovations are currently on track to break ground in early 2016 under the supervision of MSA. The current schedule has taken longer than anticipated up front, with the first schools now expected to open in summer 2017, but the initiative is still scheduled to be completed on time with the last schools opening by summer 2020.

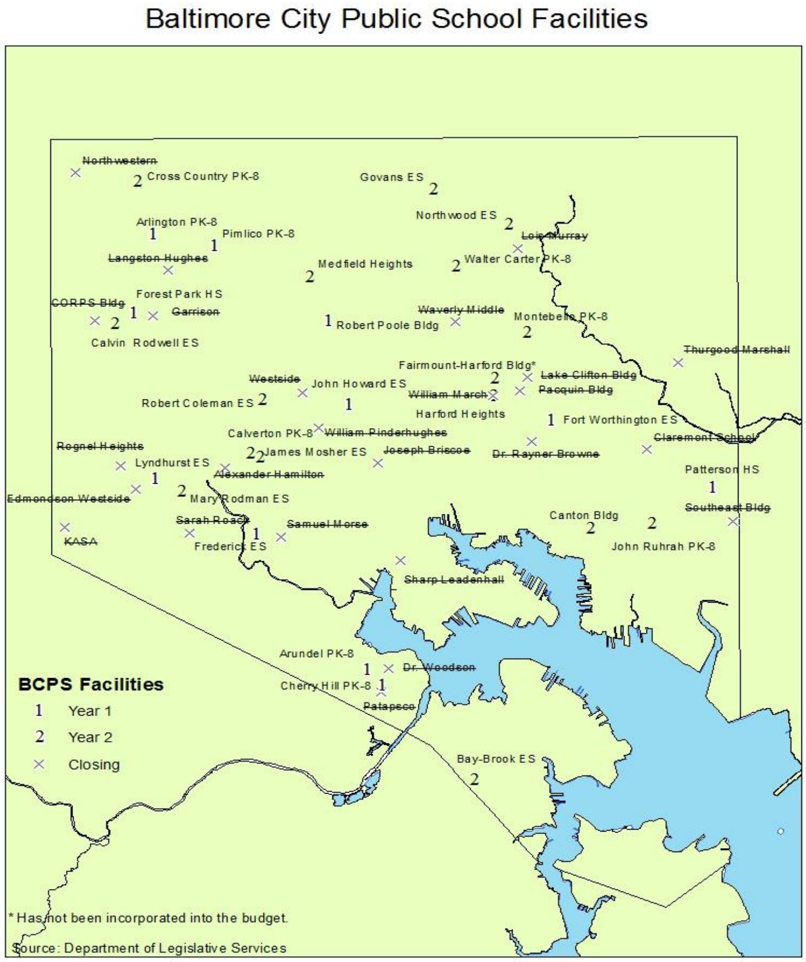
School Utilization, Maintenance, and Closures

As required by the law, in December 2013, the board set a systemwide utilization goal of 86% by fiscal 2020, with an intermediate goal of 80% by fiscal 2016. The Maryland Department of Planning (MDP) has reviewed the BCPS Comprehensive Educational Facilities Master Plan for 2016 and found that the system will meet its utilization targets for school year 2015-16 (80%) and school year 2019-20 (86%); however, this is without accounting for swing space, *i.e.*, the school buildings that are set aside to house students on a temporary basis during construction of their home school. From the perspective of counting only the State-rated capacity of each school, this is valid; yet from the perspective of the real effect of capacity on the operating budget (in expenditures on maintenance, operations, and utilities), this overlooks the huge burden that is associated with the swing space. If swing space is included in the calculation, MDP states that the 80% utilization rate will not be met until school year 2019-20 and will not meet the 86% utilization target until school year 2023-24.

The law also required BCPS to submit a Comprehensive Maintenance Plan (CMP) to the IAC for approval before any projects could move forward. Under the MOU, projects cannot begin construction until the IAC determines that BCPS has made progress toward the maintenance metrics. In the CMP, BCPS has agreed to increase the school maintenance budget from \$14.3 million in fiscal 2014 to \$39.8 million in fiscal 2023, which results in approximately an additional \$3.0 million per year for nine years. While BCPS has appropriated the required funds in fiscal 2015 and 2016, it used fund balance to close an operating budget deficit in fiscal 2015 and faces a structural deficit, so its ability to uphold the commitment is in question. In July 2015, BCPS submitted a report to the budget committees stating the budget gap for fiscal 2016 was \$94.9 million. An update is due in December 2015. The school maintenance commitment is in addition to BCPS' share of the school construction initiative's annual costs, which is \$20.0 million in fiscal 2017 and thereafter. (In an effort to assist BCPS with its budget deficit, the State relieved BCPS of a \$20.0 million payment in fiscal 2016.)

Exhibit 1 is a map showing the schools that are currently scheduled for replacement or renovation in Years 1 and 2 of the board's 10-year plan, as well as 26 schools that will be closed due to their condition or under-enrollment, which are contained in Exhibit 6 of the MOU. In the latest version of Exhibit 6, there are nine programs that should be closed by the end of 2015. Amendments to the 10-year plan are made once a year in the fall and require board approval. Exhibit 1 reflects the 10-year plan as of December 2014. The board is considering additional changes to the plan that will be approved in January 2016. MSA, BCPS, Baltimore City, and IAC requested an extension to submit the required annual report on the program from October 2015 to January 2016, in order to better reflect the impact of board changes to the plan.

Exhibit 1
Map of Schools in Year 1, Year 2, and Closings



Source: Department of Legislative Services

Alternative Financing Study

During the 2014 legislative session there was discussion about creative alternatives for school construction funding while maintaining a balanced budget. Governor Martin J. O'Malley signed an executive order in May 2014 requiring IAC, in collaboration with the Department of Budget and Management and the Department of Legislative Services, to conduct a study and make recommendations on creative means, financing or otherwise, alternative revenue streams, and the use of lease payments to increase funding for public school construction. The report was due September 2015, but IAC asked for an extension until September 2016, since it has two concurrent studies on paths to energy savings, one including the potential of a grant submitted by the Maryland Energy Administration to the United States Department of Energy.

Alternative School Construction Delivery

During the 2015 legislative interim, there have been discussions regarding different approaches to school construction and the costs associated with alternative delivery compared to traditional public school construction methods. Both IAC and MSA have been asked to report on potential cost savings associated with alternative methods that have been used by public contract and charter schools to build to commercial standards at a lower construction cost than traditional public schools. Monarch Academy facilities in Laurel in Anne Arundel County and Baltimore City were visited to determine the differences between traditional public school buildings and public charter and contract school buildings, which do not have to follow all of the same State rules or school system practices if they are not receiving public capital funds. Monarch Academy (Monarch) is a nonprofit organization that operates public charter and contract schools in Maryland.

The IAC report was submitted to BPW on October 28, 2015. It states that building technology and educational specifications are the two main differences between the Monarch facility in Anne Arundel County and a comparable public elementary school. For similar enrollments, the school size for an Anne Arundel County public school would be 94,150 gross square feet, while the Monarch building is 63,327 gross square feet. The width of hallways, number of small group areas, lack of reading space in the library, and multipurpose use of the gymnasium and cafeteria are some points of difference between the Monarch model and a traditional public school. Some of the reasons why Monarch can make different facility decisions relates to its business model. At the Monarch Global Academy in Laurel, Monarch operates under a contract with the school system that specifies the educational program and an enrollment cap, which means that, unlike a traditional public school, it has no overcrowding issues to address. Monarch is also responsible for maintenance and capital updates. The IAC report recommends further study of alternative building technologies.

The MSA report will focus on an analysis of the initial capital costs and the maintenance and long-term operation of two Monarch facilities, the one in Laurel and also a renovated charter school in Baltimore City, compared to traditional public school construction projects, which tend to have higher initial capital costs and lower life-cycle and maintenance costs. The MSA report is expected to be completed in December 2015.

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Education

Assessing and Attaining College and Career Readiness

The enactment of the College and Career Readiness and College Completion Act of 2013 (CCRCCA) was intended to better prepare Maryland students for college and careers. At the primary and secondary education level, the Act included provisions for assessing college and career readiness and providing support to students who do not meet the mark. However, challenges associated with the setting of college and career ready cut scores for the Partnership for Assessment of Readiness for College and Careers (PARCC), as well as disappointing results on PARCC, have frustrated implementation of some of CCRCCA. A further challenge with PARCC implementation is a growing sentiment that students are being overtested.

The College and Career Readiness and College Completion Act of 2013

In 2013, the General Assembly passed the College and Career Readiness and College Completion Act (CCRCCA), an omnibus bill intended to implement the policies, best practices, and strategies determined to best align the P-20 continuum of education in the State (prekindergarten, primary, secondary, and postsecondary education; college completion; and career attainment). CCRCCA encourages greater collaboration between elementary and secondary education and higher education systems. At the primary and secondary education level, CCRCCA requires (1) assessment of college and career readiness of all students no later than the eleventh grade and (2) implementation of transition courses or other instructional opportunities in the twelfth grade for students determined not to be college and career ready.

Partnership for Assessment of Readiness for College and Careers

The Maryland College- and Career-ready Standards (MCCRS) were implemented in Maryland schools during the 2013-2014 school year. As a result of the new curriculum, Maryland also required a new assessment system. In 2010, Maryland joined the Partnership for Assessment of Readiness for College and Careers (PARCC), a consortium of seven states (as of November 2015) working to develop a common set of assessments in English language arts and mathematics aligned to the Common Core State Standards and, in turn, to MCCRS. PARCC measures student progress and tracks status on a trajectory toward college and career readiness. The PARCC assessments must be administered fully online by the 2017-2018 school year. During the 2014-2015 administration of PARCC, more than 575,000 students completed a PARCC assessment, of which 81% took the assessment online in 23 out of 24 local school systems. Passing the PARCC assessment in English 10 and Algebra I will not be a graduation requirement until the 2016-2017 year in order to allow students, teachers, parents, schools, and others to adapt to the new curriculum and the new assessment. Local school systems will continue to offer alternative pathways to graduation for those students who fail to pass a PARCC assessment.

Using PARCC to Assess College and Career Readiness

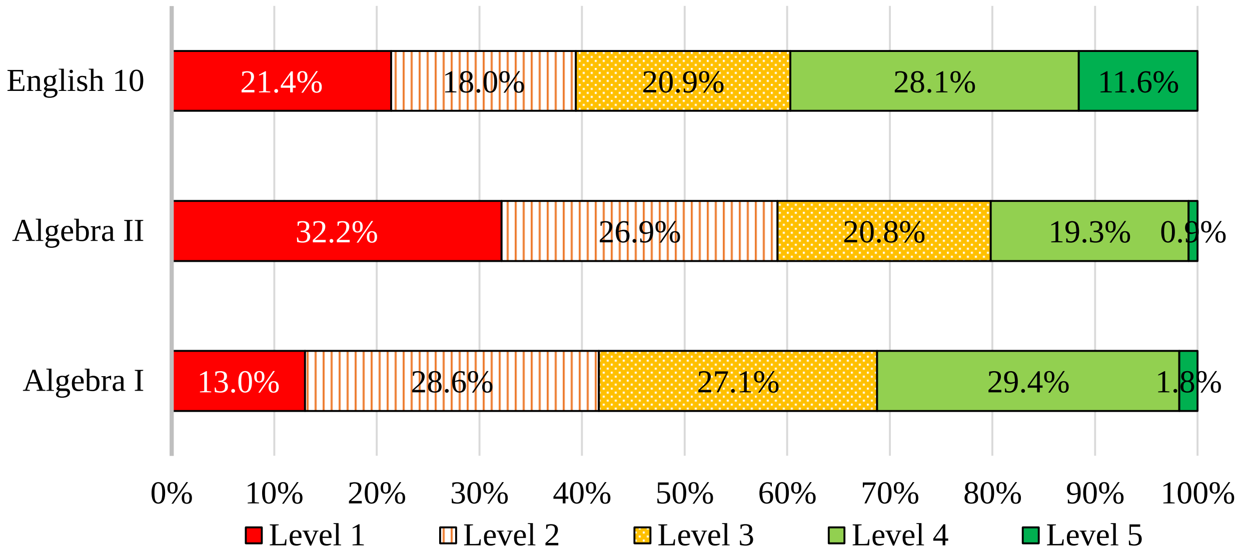
Beginning with the 2015-2016 academic year, CCRCCA requires all students to be assessed using acceptable college placement cut scores no later than the eleventh grade to determine whether they are ready for college-level credit-bearing coursework in English language arts, literacy, and mathematics. If a student is determined not to be college and career ready by the end of eleventh grade, beginning in the 2016-2017 academic year, the Maryland State Department of Education (MSDE), in collaboration with local school systems and public community colleges, is required to develop and implement transition courses or other instructional opportunities to be delivered to those students during the twelfth grade.

The PARCC assessment in English language arts and mathematics will likely be used by the majority of local school systems in determining college and career readiness, including for purposes of determining placement in transition courses or other instructional opportunities. However, CCRCCA does not require the use of PARCC for this purpose, and a few local school systems, including Montgomery County, will use other assessments such as the SAT, ACT, ACCUPLACER, or Advanced Placement (AP) examinations to make these determinations. MSDE continues to work with local school systems and community colleges to identify cross-cut scores for assessments other than PARCC that may be used; however, that could not begin until PARCC college placement cut scores were set.

Although expected to be released during the summer of 2015, MSDE did not release the PARCC college placement cut scores until October 27, 2015. Of the five possible PARCC performance levels, a numerical score within level four or level five indicates college and career readiness. A level three score indicates a student is approaching expectations for college and career readiness. During the 2014-2015 administration of the PARCC assessments, 31.2% of students who took the Algebra I assessment were deemed to be college or career ready, with a high of 56.6% in Worcester County and a low of 1.7% in Somerset County. On the Algebra II assessment, 20.2% of students were deemed to be college or career ready, with a high of 37.6% in Carroll County and a low of 2.7% in Dorchester County (although Worcester County did not report Algebra II scores). On the English 10 assessment, 39.7% of students were deemed to be college or career ready, with a high of 58.5% in Worcester County and a low of 17.4% in Allegany County. **Exhibit 1** shows the statewide results at each level on the Algebra I, Algebra II, and English 10 assessments.

The PARCC results indicate a larger number of students who are not college and career ready than many had anticipated. However, these results are consistent with the remediation rates at community colleges, and the first year that an assessment is administered often yields lower scores (as was true of the first administration of the High School Assessments). Further, students who took the PARCC assessments were aware that the results would not impact their grades or graduation, and in some parts of the State, full implementation of MCCRS continues to present challenges.

Exhibit 1
2014-2015 High School PARCC Assessment Results



Note: Level 4 and Level 5 denote career and college ready.

Source: Maryland State Department of Education

Implementation of Transition Courses

During the 2013-2014 academic year, MSDE convened a workgroup to determine how to pilot transition courses during the 2015-2016 academic year and implement transition courses by the 2016-2017 academic year (as required by CCRCCA). The workgroup submitted a report to the Governor and the General Assembly in spring of 2014 recommending that a framework be developed for transition courses in both English language arts and mathematics. Local school systems could use this information to determine the best curriculum and delivery methods for their students. The workgroup also recommended that there be a variety of delivery models for transition courses and other instruction opportunities for students who have not yet achieved college and career readiness by the end of eleventh grade.

Beginning in summer 2014, two discipline-specific committees composed of representatives from secondary education and community colleges began developing the frameworks of the content necessary for students to be college and career ready that could be used for transition courses and other instructional opportunities. In the committees' November 2014 reports, in addition to presenting content frameworks, the committees recommended there be multiple pathways for students and schools to meet the statutory requirements, including use of instructional modules to directly address a student's identified gaps, taking developmental courses offered by community colleges, or enrollment in the next credit-bearing high school mathematics or English language arts class.

A consequence of the delay in the release of the college and career ready cut scores is that local school systems have experienced a delay in determining how many students will require transition courses in the 2016-2017 academic year. This delay may impact a local school system's ability to implement transition courses for all of the students who have not achieved a level four or level five on PARCC. Also, similar to the challenges associated with determining an assessment tool as discussed above, a reassessment tool required under CCRCCA that measures the success of a transition course has yet to be identified.

Commission to Review Maryland's Use of Assessments and Testing

Concerns have been raised by parents and teachers about the amount of testing students in the State are currently undergoing. The subject of overtesting was addressed during the 2015 legislative session with the establishment of the Commission to Review Maryland's Use of Assessments and Testing in Public Schools. The General Assembly tasked MSDE with surveying, assessing, and reporting to the General Assembly on how much time is spent in each grade and in each local school system on administering local, State, and federally mandated assessments. The General Assembly also required the commission to make recommendations, on or before July 1, 2016, on how local school systems and the State can improve the process by which assessments are administered. In August 2015, MSDE completed its required report on mandated assessments. The report is available to the public on the MSDE website. The first meeting of the commission was scheduled to be held on November 17, 2015.

Also of note, in May 2015, the PARCC consortium voted to consolidate the PARCC assessment's two testing windows into one, which will cut the total testing time by about 90 minutes beginning with the 2015-2016 school year.

Education

Alternatives to the Traditional Public School Model

With the growth and proliferation of charter schools over the last decade, and the recent increased interest in facilitating scholarship tax credits for private schools, Maryland must respond to the demand for alternatives to the traditional public school model. While some students still excel and succeed at traditional public schools, other students are better served by community schools, contract schools, virtual or online programming, or early/middle college high school programs designed to meet their individual needs.

Alternative Public School Models

Traditional public schools educate students from prekindergarten through twelfth grade based on geographic boundary lines. However, alternative models sometimes aim to serve special populations of students, such as English language learners or children with special needs, or to provide educational programs based on a specific curriculum.

Charter Schools

The Maryland Public Charter School Program was enacted in 2003 to enable public school staff, parents, and nonsectarian nonprofit entities to apply to establish a public charter school. These schools typically have more autonomy over their mission, program, and type of students served than traditional public schools. The number of public charter schools in the State has grown from 15 public charter schools serving 3,363 students during the 2005-2006 school year to 50 public charter schools serving 20,500 students during the 2015-2016 school year. Although nine different counties have had at least 1 public charter school at some point since the establishment of the program, the vast majority have always been located in Baltimore City. For the 2015-2016 school year, charter schools are located in Baltimore City (34); Prince George's County (10); Frederick County (3); Anne Arundel County (2); and St. Mary's County (1).

Under State law, public charter schools receive public funds on a per pupil basis commensurate with the amount of funds disbursed to other public schools in the local school system in which the public charter school operates. In 2007, the Maryland Court of Appeals upheld the State Board of Education's funding model for public charter schools (*Baltimore City Board of School Commissioners v. City Neighbors Charter School, et al.* and *Board of Education of Prince George's County v. Lincoln Public Charter School, Inc.*, 400 Md. 324, 929 A. 2d 113). This model requires each public charter school to receive, per student, funding equal to the total annual school system operating budget divided by the total number of students in the school system, less 2% for central office administrative functions. Federal funds are only required to be disbursed to the extent that the students qualify for the federal funds. Facilities funding is not provided to public charter schools; however, if the public charter school is located in a building owned by the county board of education, the public charter school is eligible to receive State funding if the project is included in the local 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.

In September 2015, Baltimore City Public Schools proposed a new funding formula for its public charter schools. Soon thereafter, a group of public charter school operators in Baltimore City filed a lawsuit against the school system alleging that the district's funding formula violates State law. Mayor Stephanie Rawlings-Blake asked former Mayor Kurt L. Schmoke to facilitate conversations between the school system and the public charter school operators. Although the school system withdrew its new funding formula, the public charter school operators agreed only to a stay of the lawsuit for 60 days, rather than a dismissal of the lawsuit, with prejudice, as the school system had requested. In mid-October, Mayor Schmoke withdrew from the process and stated that he "believes that the parties would probably benefit more from court-ordered mediation." Since the initial filing, five more public charter school operators have joined the lawsuit.

In addition to other policy changes made to the Maryland Public Charter School Program, Chapter 311 of 2015 requires the Maryland State Department of Education (MSDE), in consultation with the Department of Legislative Services, to contract for a study to calculate the average operating expenditures by each local school system for students enrolled in a traditional public school. This calculation will serve as the baseline for determining commensurate funding for all public schools. A final report detailing the findings of the study is due to the Governor and the General Assembly by October 1, 2016.

Community Schools

A community school is a public school that has an integrated focus on academics, health and social services, youth and community development, and community engagement, which is intended to improve student learning and create stronger families and healthier communities. As of September 2015, Baltimore City has 52 community schools that serve over 22,000 students. During the 2015-2016 school year, Baltimore City Public Schools received approximately $12 million to allocate to the community schools program. The majority of the funds came from the Baltimore City Mayor's Office, the Governor's Office for Children, the Baltimore City Health Department, and the Baltimore City Department of Social Services.

Wolfe Street Academy, a neighborhood community school that is also a public charter school, serves students and families in Upper Fells Point. At the beginning of the 2015-2016 school year, Wolfe Street Academy had 227 enrolled students, of which 96% lived in poverty and 80% spoke Spanish in the home. Since Wolfe Street Academy's inception in 2005, the school has moved from the seventy-seventh highest performing school in Baltimore City to the second highest performing school in Baltimore City.

Contract Schools

A contract school is a public school that is operated pursuant to a contract executed by a local board of education. The curriculum of a contract school in the State is required to meet State standards and align with the Maryland College- and Career-ready Standards. A county superintendent has the flexibility to determine the source of funding for a contract school within the local school system budget.

For the 2015-2016 school year, there are four contract schools in Baltimore City and one in Anne Arundel County, serving approximately 1,390 students. The admission process for these schools includes a lottery limited to certain attendance areas and a qualitative application process that includes an interview and a writing assessment. One of these schools, the Lois T. Murray Elementary/Middle School, serves families with students who have severe to moderate disabilities. The Kennedy Krieger Institute, through a partnership with the Baltimore City Public Schools, provides special education and related services to students so that they may develop functional life skills to the best of their ability and learn appropriate academic skills. A child with a disability is placed at the school through his or her individualized education program.

Virtual/Online Schools

Virtual learning is any instructional practice that effectively uses Internet-related technology to strengthen the learning experience of students and teachers. Under State law, MSDE is required to provide virtual learning opportunities that include a distance-learning program, expanded educational choices not otherwise available to students through online courses, and expanded professional development opportunities for teachers through online courses. Accordingly, MSDE established the Maryland Virtual Learning Opportunities Program (MVLOP).

As of August 25, 2015, the MVLOP offered 78 online courses for high school credit taken by 5,206 students in collaboration with the local school systems through the Maryland Virtual School (MVS). A high school student may only take a MVS course with the permission of the local school system and the high school principal. The student may earn credit only for MSDE-approved online courses. Maryland does not have a complete online high school diploma program.

Early/Middle College High Schools

Early/middle college high school programs allow students to earn a high school diploma and an associate's degree as part of a comprehensive program. As of November 2015, Maryland has three early/middle college high school programs: the Academy of Health Sciences at Prince George's Community College, STEM Technical Middle College at Hagerstown Community College in Washington County, and Bard High School Early College Baltimore in Baltimore City. In addition to these programs, there are several other programs that allow students to earn a high school diploma concomitant with gaining postsecondary education credits, including: College Cybersecurity and Early College STEM in Howard County; Montgomery College Middle College $(MC)^2$@Northwood in Montgomery County; and a program through the Community College of Baltimore County.

The Academy of Health Sciences serves approximately 400 students from Prince George's County with a demonstrated interest in health sciences. Approximately 50% of the students are either first-generation college students or students of low socio-economic status. In May 2015, the first cohort of students graduated from the Academy of Health Sciences. Of the initial 100 students admitted in the 2011 ninth grade class, 92 students began the 2014-2015 school year and 100% of the 92 graduated and progressed to four-year colleges.

Early/middle college high school programs in Maryland are funded by the local school system in which they are located. For example, the Academy of Health Sciences in Prince George's County uses the per pupil funding it receives from the local school system to support the high school curriculum program in the same way as a traditional public school would. Prince George's Community College then "bills" Prince George's County Public Schools for the postsecondary classes the students take. Because Bard High School Early College Baltimore is classified as a contract school, Bard receives public funds on a per pupil basis commensurate with the amount of funds disbursed to other public schools in Baltimore City.

Miscellaneous

Local school systems have the flexibility to employ various innovative schooling models if the local school system believes it will be beneficial to the county and its students. The Prince George's International High School and the International High School at Langley Park, both of which opened in August 2015, are designed to meet the needs of immigrant students with limited English language skills. The Prince George's County school system received $3 million from a Carnegie Corporation grant to implement specific programming for the schools.

Education Tax Credits

Education tax credits, also known as scholarship tax credit programs, are another form of school choice that allows business entities and individuals to receive a state income tax credit for donations made to certain nonprofit organizations that grant scholarships to students who attend private schools. According to the National Conference of State Legislatures, 14 states have established an education tax credit program as of November 2015. These programs have not been without controversy and have been the subject of lawsuits.

In *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011), a group of Arizona taxpayers challenged a state tax credit program on the grounds that the program violated the Establishment Clause of the First Amendment. The U.S. Supreme Court held that the taxpayers lacked standing to challenge the program because tax credits are not the same as government spending. The U.S. Supreme Court further held that because donations to scholarship organizations are voluntary, a taxpayer cannot be forced to donate to a tax credit program "in violation of conscience"; thus, a taxpayer will not be able to prove direct injury by the tax credit. A number of other states have used *Winn* to validate education tax credit programs. *See Duncan v. New Hampshire*, 166 N.H. 630 (2014) and *Rogers v. Boyd*, 2015 WL 867926 (2015). Interestingly, these cases were not decided on the merits of the claims but for lack of standing. Regardless, lawsuits against the tax credit programs have been unsuccessful. Legislation has been introduced in Maryland in the last several sessions proposing to establish an education tax credit in this State. However, these bills have not passed.

Education

Impacts of Federal Education Reauthorizations on Maryland

Federal education reauthorization bills have languished in the U.S. Congress for years, but the past year has seen major progress with the Child Care and Development block grant reauthorized in 2014. Passage of an Elementary and Secondary Education Act (ESEA) reauthorization bill during this Congress is possible, since each house has passed a bill, but until that happens, the State Board of Education must continue to submit ESEA waiver requests to the Legislative Policy Committee for review and to the U.S. Department of Education for approval. A Higher Education Act reauthorization bill is unlikely before the 2016 presidential election. The implications for Maryland from the final and proposed reauthorizations are widespread and, in some cases, have a significant fiscal impact.

Reauthorization of the Child Care and Development Block Grant

The Child Care and Development Block Grant (CCDBG) Act of 2014 reauthorizes the block grant for the first time since 1996 and represents a reenvisioning of the Child Care and Development Fund (CCDF) program. When initially implemented in 1990, the CCDF's priorities and goals were to support low-wage, working families with access to child care. The 2014 CCDBG reauthorization made changes that include the goals of the original block grant by defining health and safety requirements for child care providers, outlining family friendly eligibility policies, and providing parents and the general public with transparent information about the child care services available to them.

In Maryland, the Maryland State Department of Education (MSDE) is the lead agency for the administration of the CCDF through its Child Care Subsidy Program, providing financial assistance with child care costs to eligible working families through the Child Care Subsidy Center. Families can also receive help locating a licensed child care provider. The majority of requirements set by the CCDBG are already being met in Maryland. However, there are a number of new or strengthened requirements under the CCDBG that will require modification of regulations, policy, and/or funding levels.

Most significantly, the CCDBG establishes a 12-month eligibility redetermination period for CCDF families, regardless of changes in income or temporary changes in participation in work, training, or education activities. Current Maryland policy is to issue child care vouchers for up to 12 months based on the work activity of the parent. This generally translates into issuing vouchers for 30 days, 6 months, or 12 months. Most long-term vouchers are issued to those clients who have part- or full-time employment but with low wages that meet eligibility guidelines. This is done to adjust the length of the voucher with the assigned activity of the client, and to allow subsidy support to end in case the client is not complying with the assigned activities. Therefore, the new

CCDBG requirement of issuing only 12-month vouchers for all clients will have a significant fiscal impact on the program.

The Congressional Budget Office (CBO) estimated that redetermining a family's eligibility for child care subsidies would require additional appropriations of around $175.0 million annually nationwide. However, based on a methodology developed by Towson University's Regional Economic Studies Institute, MSDE predicts that the actual costs of implementing the new requirements in Maryland will exceed CBO's estimate, requiring an additional $24.4 million for fiscal 2017 and $43.3 million in fiscal 2018. As the program is funded at 41% through general funds, this would result in $10.0 million in additional State funding in fiscal 2017 and $18.0 million in fiscal 2018 and thereafter. MSDE will need to continue its work to make modifications to regulations and policy to align State policy to the reauthorized CCDBG and will need to make provisions for funding the 12-month vouchers for all families.

Reauthorization of the Elementary and Secondary Education Act

The Elementary and Secondary Education Act (ESEA), which was most recently authorized in 2001 as the No Child Left Behind Act, focuses on accountability, improving standards, and eliminating achievement gaps. In July 2015, the U.S. Senate and the U.S. House of Representatives each passed legislation (S. 1177, Every Child Achieves Act and H.R. 5, Student Success Act) that would reauthorize and significantly amend the ESEA. In their current forms, both reauthorizations would reduce the role of the federal government in public education and grant states more flexibility in setting education policy. In addition, both bills would allow states to request ESEA waivers. Accordingly, MSDE and the 24 local school systems would continue to have the flexibility to further improve public schools in the State.

Accountability and Testing Requirements

Both the Senate and the House reauthorizations would repeal the existing accountability system, known as Adequate Yearly Progress. Each state would be required to establish an accountability system that ensures that every student graduates high school college- or career-ready. In addition, each state would establish an accountability system aligned to standards established by the state education agency (SEA). Although both bills would require states to implement "challenging academic standards," they prohibit federal intervention in state selection of standards. Maryland would continue to utilize the Maryland College- and Career-Ready Standards. Both bills require an SEA to develop a state education plan, in consultation with specified individuals, for approval by the U.S. Secretary of Education.

Both bills would continue requiring annual assessments, including math and reading in grades 3 through 8 and once in high school, in addition to science grade-span testing. Both bills would maintain the 95% participation requirement; however, they both would require parental notification of any state and local policies relating to parents opting their children out of testing. Maryland would still be required to report disaggregated data for subgroups of students in order to continue to identify achievement gaps. Under both proposals, Maryland would continue to identify low-performing schools, but would have flexibility to choose appropriate interventions for each school. The bills would continue to provide funds for school improvement.

Teacher and Principal Evaluations

Both reauthorizations would eliminate the U.S. Department of Education's (USDE) flexibility waiver requirement for the establishment of teacher and principal evaluation and support systems. However, a state may choose to implement an evaluation and support system. Accordingly, MSDE could continue to use the existing three academic year timeline from the 2015-2016 through the 2017-2018 school years for the development, refinement, and implementation of the teacher and principal evaluation system, including the student growth component. Both bills would still allow Title II funding to be used for teacher and principal evaluations.

Changes to Titles I and II Funding

Maryland receives approximately $200 million annually under Title I of the ESEA, which provides funds to support economically disadvantaged students. The House bill would not change the formula for state allocations, but the Senate bill would use a new formula that would apply to state allocations over $17.0 billion. Under this provision, Maryland would receive a smaller share (about 20% less) of the allocation over $17.0 billion. However, the federal appropriation for Title I has been around $14.5 billion for the past six years and is unlikely to exceed $17.0 billion in the near future, so the provision would likely not have an impact on Maryland if it remains in the final reauthorization.

Under Title II of the ESEA, Maryland currently receives approximately $33 million each year under a federal formula that allocates Title II funds to support teacher preparation and effectiveness, 35% of which is based on each state's relative share of school-aged population, and 65% on each state's relative share of school-aged children living in poverty. Compared to other states in the nation, Maryland has a relatively lower population of school-aged children living in poverty. The House bill would alter the distribution to 50/50, with the result that only 50% of the funding would be allocated to a state based on the state's relative share of school-aged children living in poverty. Accordingly, Maryland would receive an increase in Title II funding under the House bill. The Senate bill would alter the formula to 20/80, meaning 80% of the funding would be allocated based on a state's relative share of school-aged children living in poverty. The Senate bill would result in a $7 million loss to Maryland phased in over seven years.

Maintenance of Effort

The House reauthorization eliminates federal maintenance of effort (MOE) requirements; however, the Senate reauthorization continues these requirements at 90% of the amount from the previous year. The Senate bill would authorize a one-year grace period for states and local education agencies (LEA) and delete penalties if policies are implemented to make an LEA more efficient. Maryland has not had difficulty meeting the federal MOE requirement in the past, so any changes to MOE are unlikely to impact the State.

Reconciliation of Differences and Elementary and Secondary Education Act Waivers

To date, a conference committee to reconcile the differences between the Senate bill and the House bill has not been appointed. Until the U.S. Congress reaches an agreement on the reauthorization of the ESEA, and a bill is signed into law by the President, MSDE will be required to continue to submit to USDE renewal requests for ESEA flexibility waivers, unless USDE directs otherwise. Chapter 630 of 2014 requires MSDE to submit proposed waiver requests to the Legislative Policy Committee (LPC) for review and comment at least 30 days prior to submitting the waiver application to USDE. The most recent Maryland request for renewal of flexibility through the end of the 2017-2018 school year was approved by USDE, subject to specified conditions. These conditions include requirements that Maryland provide to USDE (1) no later than January 31, 2016, an amended request that includes information relating to the Reward School identification methodology and (2) no later than June 1, 2016, an amended request that includes the statewide approach for the calculation of student growth based on State assessments in teacher and principal evaluation and support systems.

MSDE will prepare ESEA amendments on school accountability based on the year one data from the Partnership for Assessment of College and Career Readiness assesements for discussion by the State Board of Education in December 2015 and review by LPC. The amendments must be submitted to USDE by January 31, 2016, for review and approval, unless the ESEA reauthorization bill is enacted prior to that date. An amended ESEA waiver request addressing teacher and pricipal evaluation and support systems must be discussed by the State Board of Education and submitted to LPC by spring 2016 for subsequent submission to USDE by June 1, 2016, unless the ESEA reauthorization is enacted before then.

Reauthorization of the Higher Education Act

The Higher Education Act (HEA) governs federal programs related to higher education, most notably the federal financial aid programs, including the entire student loan program. First enacted in 1965, the HEA has been reauthorized eight separate times. It was last reauthorized in 2008 after five years of temporary extensions. The current HEA was set to expire at the end of 2013, but it was automatically extended through 2015. Despite hearings in committees in both houses of Congress on topics that may be addressed in a reauthorization bill, it is unlikely that the HEA will be reauthorized prior to the 2016 presidential election.

Since the initial 1965 legislation, each reauthorization has expanded programs intended to improve college access. In the 2013-2014 school year, under programs created by the HEA, the federal government provided $431 million in grant aid to students in Maryland. The largest federal grant program is the Pell Grant program ($400 million), followed by the Supplemental Education Opportunity Grant program ($13 million).

The entire federal student loan program is governed by the HEA. During the 2013-2014 school year, $1.3 billion in federal student loans were made to students in Maryland, of which $11 million were Perkins loans. The Perkins loan program is a subsidized loan program for students with exceptional financial need. Since Congress did not reauthorize the Perkins loan program prior to September 30, 2015, the authority for colleges to make federal Perkins loans to new students ended on that date, and the program is set to expire in 2020, although no final guidance has been given by USDE. There is a proposal to replace it with an unsubsidized loan program in the next HEA reauthorization.

In addition to updating the student loan programs, the reauthorizing legislation will likely address college affordability, the role of accreditation, improving consumer information, and federal regulations. Congressional committees have also held hearings on combating campus sexual assaults, strengthening America's higher education system, and improving college access and completion for low-income and first-generation students.

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Higher Education

College Degree Attainment Initiatives

Comprehensive legislation enacted in 2013, the College and Career Readiness and College Completion Act, aims to better prepare Maryland students for college and careers and, at the postsecondary level, to improve college completion and degree attainment. While significant progress has been made toward the goal that at least 55% of individuals in the State age 25 to 64 will hold a degree by the year 2025, there is still more work to be done.

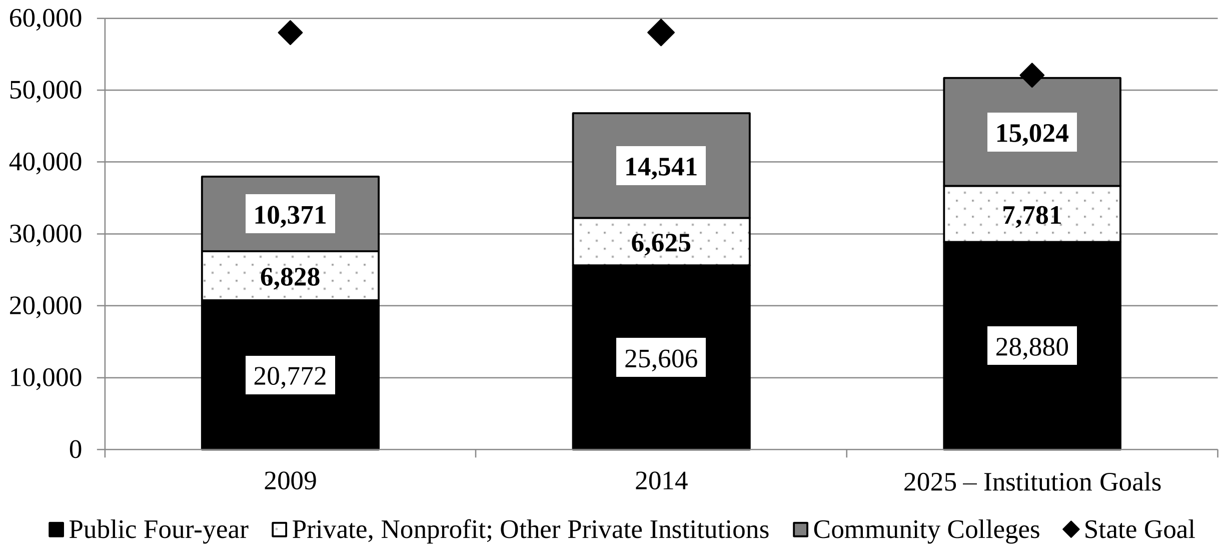
The College and Career Readiness and College Completion Act of 2013 (CCRCCA) was designed to implement policies to better prepare Maryland high school students for college and careers and to promote college completion and degree attainment in the State. At the postsecondary education level, the CCRCCA established State policies to increase the availability and accessibility of college-level courses to high school students (dual enrollment); facilitate credit transfer between community colleges and four-year institutions of higher education; and encourage students who nearly completed their degree to return to institutions of higher education to complete their degree.

Degree Completion in Maryland

In 2009, Maryland established a completion goal that at least 55% of the State's resident's age 25 to 64 will hold at least an associate's degree by 2025. The CCRCCA codifies this goal. This would be a 10.6 percentage point increase from 2009, when 44.4% of individuals 25 to 64 years old held an associate's degree or higher. In order for Maryland to achieve the 55% goal, institutions will need to award approximately 51,100 degrees annually before 2025. **Exhibit 1** shows the targets and progress made toward this goal. Note that the target is smaller in 2025 than in 2009 or 2014 due to an anticipated number of individuals already possessing degrees who move into Maryland.

In developing an effective statewide framework for higher education funding, the Commission to Develop the Maryland Model for Funding Higher Education recommended that funding be based on the funding level of peer institutions in 10 states that Maryland competes with for business and jobs as determined by the Maryland Department of Business and Economic Development, now known as the Department of Commerce. The competitor states include California, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, and Washington. In terms of degree completion, while Maryland ranks eighth in the nation with 46% of 25 to 64 year olds having at least an associate's degree in 2013, four of the competitor states (Massachusetts, Minnesota, New Jersey, and Virginia) had a higher rate.

Exhibit 1
Progress toward Maryland's 55% Completion Goal
Annual Degrees Awarded



Note: Four-year institutions include associate's degrees awarded to active military by the University of Maryland University College.

Source: Maryland Higher Education Commission, Data Book 2010 and 2015

Dual Enrollment

The CCRCCA established tuition arrangements between county boards of education and public institutions of higher education for students who are dually enrolled in high school and an institution of higher education. The vast majority of students who are dually enrolled attend community colleges. In accordance with the CCRCCA and the Memorandum of Understanding executed between each local school system and the local community college, an institution may not charge tuition to a dually enrolled student; instead, each local school system must pay the institution a percentage of tuition, based on the number of courses the student takes, and the local school system may charge a fee to the student to cover the cost. However, a local school system may not charge a fee to students who are eligible to receive free and reduced-price meals (FRPM), and a student's ability to pay must be taken into account when setting fees. Further, the Maryland Higher Education Commission (MHEC) reports that many institutions have discounted tuition for dually enrolled students beyond the statutory requirements and many have sought private and community funding to pay for books and associated course fees for FRPM students. **Exhibit 2** shows the dual enrollment figures at community colleges in the State for the 2013-2014 academic year and the 2014-2015 academic year. With few exceptions, the majority of institutions have seen an increase in enrollment.

Exhibit 2
Dually Enrolled Students at Community Colleges in the State
2013-2014 and 2014-2015 Academic Years

College	Fall 2013	Spring 2014	Fall 2014	Spring 2015	% Change Fall 2013-14	% Change Spring 2014-15
Allegany College of Maryland	47	52	125	134	166%	158%
Anne Arundel Community College	595	377	586	425	-2%	13%
Baltimore City Community College	0	26	1	33	n/a	27%
Carroll Community College	114	140	108	143	-5%	2%
Cecil College	123	102	133	160	8%	57%
Chesapeake College	227	188	268	217	18%	15%
College of Southern Maryland	168	473	202	607	20%	28%
Community College of Baltimore County	685	607	742	654	8%	8%
Frederick Community College	564	601	854	535	51%	-11%
Garrett College	32	34	33	28	3%	-18%
Hagerstown Community College	658	516	618	588	-6%	14%
Harford Community College	157	153	60	68	-62%	-56%
Howard Community College	82	75	99	90	21%	20%
Montgomery College	391	405	475	442	21%	9%
Prince George's Community College	323	334	674	699	109%	109%
Wor-Wic Community College	142	126	183	190	29%	51%
Total	**4,308**	**4,209**	**5,161**	**5,013**	**20%**	**19%**

Source: Maryland Association of Community Colleges

In order to fully realize the intent of dual enrollment under the CCRCCA, MHEC reports that several challenges could be addressed: (1) coordination of a statewide dual enrollment outreach campaign that would make all students and parents aware of dual enrollment opportunities; (2) determining whether college credit should be equivalent to high school advanced placement courses; (3) determining whether college courses taught on a high school campus should be accepted at other institutions for postsecondary credit; and (4) determining whether noncredit certification courses that are part of a Career and Technical Education (CTE) curriculum should be included in a dual enrollment program.

Transfers

Statewide Transfer Agreement

The CCRCCA codified the goal that students earn an associate's degree before leaving community college or transferring to a public senior higher education institution. The portion of transfer students comprising fall enrollment at the four-year institutions grew from 37.5% in 2008 to 41.8% in 2013. To help improve the success of these transfer students, the CCRCCA requires MHEC, in collaboration with public institutions of higher education, to develop a statewide transfer agreement in which at least 60 credits a student earns in general education, elective, and major courses must be transferrable for credit toward a bachelor's degree at any public four-year institution. This will help create better articulation between community colleges and the four-year institutions, leading to a better alignment of required credits for a degree, and resulting in more students completing in a timely fashion, thereby decreasing the cost of a degree.

While current regulations allow students to transfer general education courses across all public two- and four-year institutions without the need for course-by-course review, elective course or courses related to a major are not included, with a few exceptions (*i.e.*, the Associate of Arts in Teaching degree and the Associate of Science in Engineering degree). Consequently, MHEC is working with various constituent groups on developing a statewide transfer agreement by July 1, 2016, that will maximize the number of community college credits that can be transferred and applied toward the completion of a bachelor's degree.

Reverse Transfer Agreements

Reverse transfer is available to a student in good academic standing who completes at least 15 credits at a community college, then transfers to a Maryland four-year institution prior to attaining a degree. Students may then transfer additional credits earned at the four-year institution back to the community college where the student was previously enrolled to earn an associate's degree. Maryland's reverse transfer program began in 2012, while being piloted as the Associate Degree Award for Pre-Degree Transfer Students and focused on community colleges. The program was expanded in 2013 with support through the national Credit When It's Due initiative to include four-year institutions, recognizing the role these institutions play in reaching out to post-transfer students, encouraging program participation, and articulating student credits and programs back to the community colleges. MHEC is currently developing a statewide agreement that will include changes to State regulations. Since the initial pilot in 2012 through May 2015, over 800 reverse transfer degrees have been awarded.

Financial Incentives for Transfers

To further encourage community college students to obtain a degree before transferring, the CCRCCA requires MHEC and each public institution to create incentives for transfer students. Chapter 339 of 2014 established the 2+2 Transfer Scholarship for those students who complete a degree before transferring to a four-year institution. The scholarship provides an annual award of

$2,000 for students enrolled in a STEM major or nursing program, and $1,000 for other majors. After a delayed start, $200,000 will be made available for these scholarships, which MHEC started awarding in fall 2015.

Near Completers

As required under the CCRCCA, MHEC, in collaboration with institutions of higher education, developed a statewide communication campaign to identify near completers. These are students who earned at least 45 credits at a community college or 90 credits at a four-year institution but then did not graduate with a degree. MHEC offered these students incentives to re-enroll and earn a degree. Through the One Step Away grant program, MHEC, in collaboration with the Motor Vehicle Administration, worked with institutions to help identify and contact near completers. MHEC provides sub-grants to institutions for initiatives targeting these students and to help them graduate. Since fiscal 2013, grantees (15 two- and four-year institutions) identified 5,489 near completers, re-enrolled 452 of these individuals, and awarded 223 associate's and bachelor's degrees.

Higher Education

College Affordability and Financial Aid

State funding for the largest need-based student aid program has not kept pace with in-state tuition increases, despite their modest growth in recent years, or increasing financial need since the Great Recession. This has resulted in over 20,000 students on the waitlist for State need-based financial aid in fiscal 2016. The Maryland Higher Education Commission's Financial Aid Advisory Council is recommending several changes to State need-based student aid programs to improve student completion rates and improve access to the programs.

Despite Modest Tuition Growth, Student Need for Financial Aid Remains High

Maryland had the fourth smallest tuition increase in the nation from fiscal 2010 to 2015, according to a 2014 college board report. Because of this, Maryland now ranks as the twenty-seventh most expensive state for public four-year institutions, compared to seventh in the nation in fiscal 2005 (these rankings do not yet reflect the mid-year tuition increases at some institutions in spring 2015). Despite this progress, which is due, in part, to Maryland's in-state tuition freeze from fiscal 2007 to 2010 and tuition buy-downs to 3% increases from fiscal 2011 until fiscal 2015, financial aid still has a significant impact on the affordability of higher education for many Maryland students.

While Maryland ranks sixteenth nationally for need-based grant dollars per undergraduate student, awarding about $491, this is below the national average of $533, which is pulled upward by states such as New Jersey, which awards $1,227, and Pennsylvania, which awards $840 per undergraduate. Those states are ranked second and sixth, respectively.

Funding for the State's largest need-based financial aid program, Educational Excellence Awards (EEA), grew rapidly in fiscal 2006 and 2007 due to a policy shift away from merit- and career-based aid toward need-based aid. However, since then, EEA appropriation increases have not kept pace even with the modest tuition increases in Maryland. As shown in **Exhibit 1**, from fiscal 2011 to 2016, EEA increased by about $4.0 million or about 1.1% annually on average, well below the 3.0% annual tuition increases at most public four-year institutions. EEA was level funded at approximately $75.0 million annually from fiscal 2007 until a $6.5 million increase was appropriated in fiscal 2013. The availability of $14.0 million in unspent financial aid awards provided a one-time jump in special funds in fiscal 2014, but since fiscal 2015, EEA aid has been level funded at $80.0 million.

Exhibit 1
Educational Excellence Awards
Fiscal 2011-2016

	2011	2012	2013	2014	2015	2016
EEA Appropriations	$75,933,546	$75,124,624	$82,896,170	$90,963,593	$80,008,868	$80,009,603
EA – Total Applicants (On-time FAFSAs)	117,447	134,305	139,983	134,669	131,696	131,265
Final EFC Awarded (EA Only)	5,516	1,500	3,750	10,709	2,610	2,000*
Waitlist as of End of Year (EA Only)	14,103	28,928	16,397	10,180	22,072	21,440*
Amount to Fund Initial Waitlist (EA Only)	$39,767,903	$63,912,409	$75,504,020	$57,090,906	$59,102,790	$45,965,461

*Fiscal 2016 figures are as of October 9, 2015.

EA: Educational Assistance grant
EEA: Educational Excellence Awards
EFC: expected family contribution
FAFSA: Free Application for Federal Student Aid

Note: Fiscal 2014 figures include $14.0 million in special funds, compared to only $4.2 million in special funds in fiscal 2015 and $0.0 million in fiscal 2016.

Source: Maryland Higher Education Commission, Office of Student Financial Assistance

EEA funding is first given to all students eligible for a Guaranteed Access grant of up to $17,500 and the remainder goes to students eligible for Educational Assistance (EA) grants of up to $3,000. Total State support for all need-based student financial assistance offered by the Maryland Higher Education Commission (MHEC) is about $84.4 million in fiscal 2016, or 4.5% of public higher education spending in fiscal 2016.

Exhibit 1 also shows trends in EA applications and awards from fiscal 2011 to 2016. Overall, student need, as reflected by applications, grew by over 22,000 students from fiscal 2011 to 2013, and then declined by almost 9,000 students by fiscal 2016. This may reflect enrollment changes due to an improving economy. Since 2011, the number of EA applicants applying demonstrated greater financial need. This can be measured by the expected family contribution (EFC) of students receiving State awards. In general, a lower EFC means a student has greater financial need, and MHEC makes EEA awards beginning with the students who qualify with the lowest EFC. Between fiscal 2011 and 2016, the final "EFC awarded" level fell to only $1,500 in fiscal 2012, then grew to over $10,000 in fiscal 2014 due to the availability of previously unspent financial aid funds. To date, MHEC has awarded fiscal 2016 EA grants to students with EFCs up to $2,000.

As a result of growing demand and level general fund appropriations, the final EA waitlist doubled between fiscal 2011 and 2012. The waitlist declined in fiscal 2014 due to the additional funding available, but then doubled again in fiscal 2015. In fiscal 2016, a new EFC cap of $17,500, as recommended by MHEC's Financial Aid Advisory Committee (FAAC) was implemented to remove students who would not have a reasonable expectation of receiving an award. However, the amount of funding still necessary to cover all waitlisted students in the current fiscal year, $46.95 million, is equivalent to over 57% of the EEA program's total budget. The waitlist includes all Maryland residents who file a Free Application for Federal Student Aid (FAFSA) by the March 1 deadline and have any financial need, regardless of how high their EFC. Some students on the waitlist do receive aid from declined awards. In fiscal 2015, about 5,500 were moved off the waitlist, while in fiscal 2014, MHEC was able to make awards to an additional 16,500 students. Declined awards from the initial awarding or waitlist awarding cycle make up the majority of unspent financial aid funding that is carried forward to the next year.

Changes to State Financial Aid Programs Recommended

In response to a 2014 *Joint Chairmen's Report* (JCR) request, FAAC issued an initial report in December 2014 recommending several significant changes to State financial aid programs; FAAC will submit another report in December 2015. In the first report, two recommendations stand out that could greatly increase on-time completion and general accessibility of student aid. First, the definition of a full-time student could move from 12 to 15 credits to encourage students to take the number of credits necessary each semester to graduate on-time for either an associate's or bachelor's degree. Some states, such as Hawaii and Minnesota, have already moved in this direction and have seen improved student outcomes. FAAC may recommend scaling awards so that students taking 12 credits would receive the same award currently, and 15-credit students would be awarded more funding so that no students are disadvantaged by the change.

Second, FAAC recommended moving the FAFSA deadline for State awards to sometime later than March 1, the current due date, to provide students more time to decide whether to pursue higher education during the senior year of high school. However, during summer 2015, the federal government announced that the use of tax return data from the prior prior-year will be allowed for filling out the FAFSA. This will enable students and families to fill out the FAFSA significantly earlier, in October rather than January, which will speed up the financial aid awarding cycle. This should give students more information before regular admissions decisions must be made, generally in April for selective institutions and later for other institutions, but may also significantly increase the number of students applying for State awards. For this reason, FAAC, in responding to a 2015 JCR request, may decide to wait and see how using prior prior-year data affects State financial aid applications before recommending further changes.

Higher Education

Growth of Higher Education Personnel

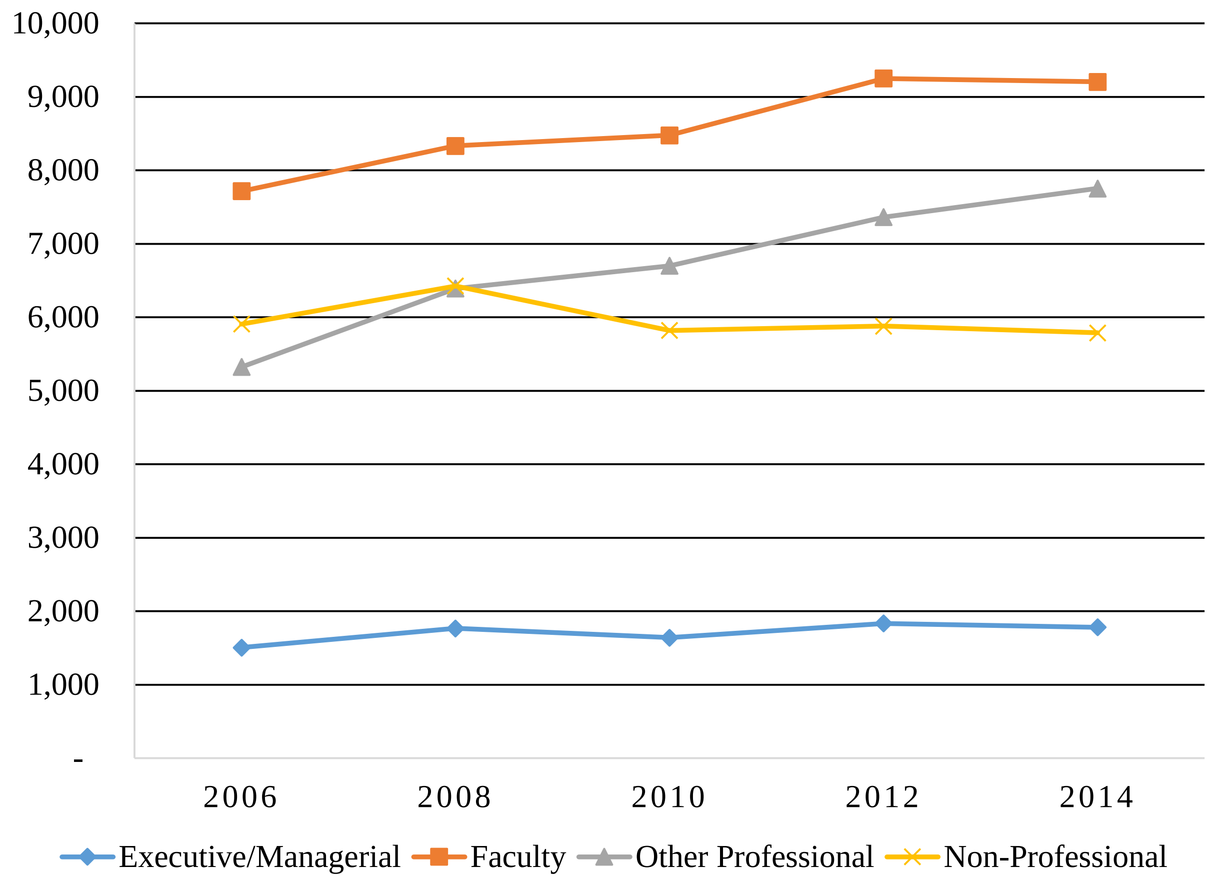
Despite concerns over the growth in the number of higher education personnel, the increase in faculty positions largely reflects a growing student body, in that student-to-faculty ratios have remained relatively constant. However, the growth rate in other professional staff positions outpaces that of faculty.

Personnel Largely Mirrors Student Enrollment Growth

The growth of personnel costs in higher education has drawn attention in recent years given rising tuition and growing student debt burdens after graduation. While there are many components to growth in higher education costs, it is a very labor-intensive endeavor. Nearly 60% of the University System of Maryland's (USM) fiscal 2014 budget, $2.8 billion, went toward salaries, wages, and fringe benefits. The remainder is made up of operating costs ($1.8 billion, or 38.5%) and other components (2.5%). The traditional public university employee is often thought of as a college professor, someone often possessing a doctoral degree and with, or pursuing, tenure. Compared to Maryland's median household income of $73,538, full-time, tenure-track professors are generally well compensated. According to the Maryland Higher Education Commission (MHEC), in fall 2013, the average salary of a professor at a community college was about $82,000 and at a public four-year institution, $124,000. From fall 2003 to fall 2013, average salaries for full professors and the salaries for all types of instructors together grew in both sectors by about 20%. This is a lower rate of growth than for the household median income in Maryland, which increased by 25% during the same time period. Faculty salaries themselves vary greatly, often depending on academic disciplines, and are much lower for those who are not on the tenure track, such as visiting lecturers and adjunct professors.

Exhibit 1 shows the composition of higher education personnel by type using Equal Employment Opportunity codes for managers, faculty, other professional staff (*e.g.*, office workers), and nonprofessional staff (*e.g.*, maintenance workers). From fiscal 2006 to 2014, faculty composed about 37% of full-time equivalent (FTE) positions, the largest category, but never a majority within higher education. National data from the College Board indicates that faculty generally make up between 35% to 40% of positions at public-sector institutions, very similar to the Maryland data. While faculty grew about 19% over this time period, "other professional" positions grew 45%, or more than twice as fast as faculty. Meanwhile, "executive/managerial" grew about 18%, while the "nonprofessional" positions actually declined 2%.

Exhibit 1
Employee Types at Higher Education Institutions in Maryland
Fiscal 2006-2014

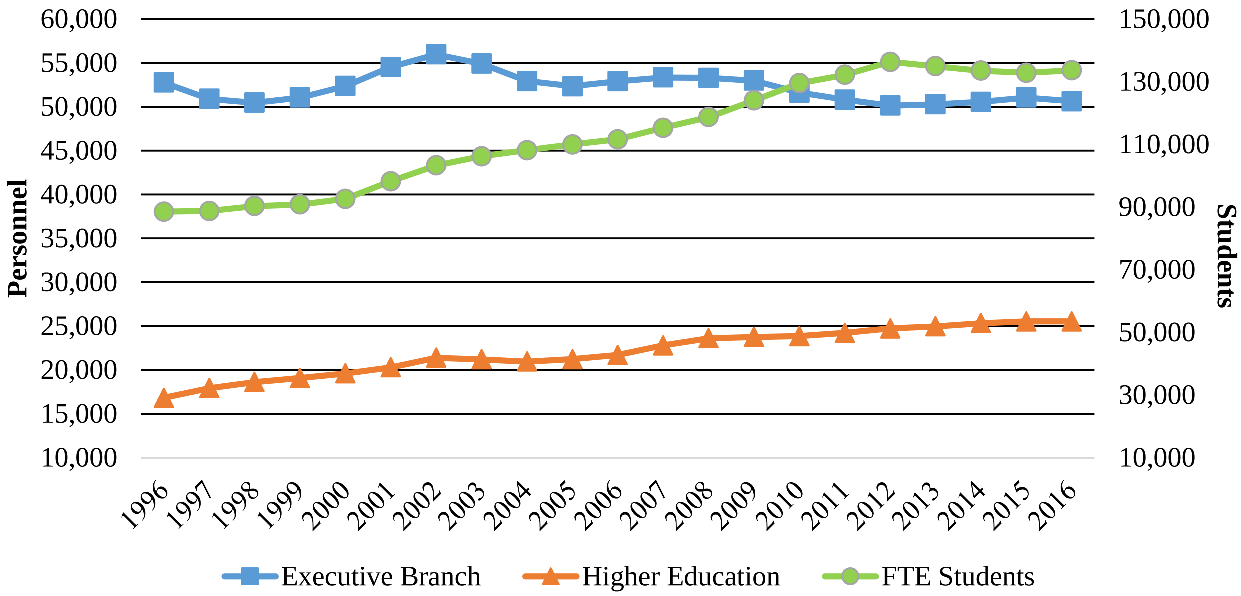


Note: Job categories were created using Equal Employment Opportunity codes. All data is for filled positions only and are self-reported and unaudited.

Source: Higher education institutions; Department of Legislative Services

It is worth comparing growth in higher education positions to changes in Maryland's Executive Branch positions. As shown in **Exhibit 2**, from fiscal 1998 to 2002, the number of State Executive Branch employees grew to a peak of 55,980, but over the entire time period of fiscal 1996 to 2016, the number of employees declined by about 2,100 positions, or 4%. Conversely, over the same time period, total noncontractual higher education positions have grown by about 8,700, or 52%. At the same time, FTE student enrollment grew by about 45,100, or 51%, indicating that the growth in higher education personnel closely matched student enrollment growth during this time period. While student growth did level out from fiscal 2011 to 2016, MHEC's most recent projections indicate FTE students at State institutions will grow a further 11.5% from fiscal 2016 to 2025.

Exhibit 2
Change in FTE Positions and FTE Student Enrollment
1996-2016



FTE: Full-time equivalent

Note: Higher Education includes all noncontractual positions at public four-year institutions and Baltimore City Community College. Executive Branch includes all other State employees not in the Legislative or Judicial branches of government. Data includes vacant positions.

Source: Department of Budget and Management; Maryland Higher Education Commission

While State employment is driven by the overall health of the State budget and need for State services, universities can use tuition revenue from student enrollment to hire more faculty during enrollment booms or use other non-State funds such as endowments or research grants. Unlike the Executive Branch agencies shown in Exhibit 2, Maryland's higher education institutions have been granted personnel autonomy to establish policies and procedures independent of the Department of Budget and Management (DBM). USM received this authority from Chapter 246 of 1988; St. Mary's College of Maryland (Chapter 209 of 1992), Morgan State University (Chapter 485 of 1994), and Baltimore City Community College (Chapter 220 of 1990) have their own personnel systems also independent of DBM. While these institutions participate in some State programs such as health benefits, retirement, and the Employee Assistance Program, most personnel policies and hiring procedures are separate. Some level of personnel autonomy exists for state-funded higher education institutions in all states.

Is Administrative Growth a Problem?

While the student-faculty ratio has remained around 14 students per instructor for the past 20 years, Exhibit 1 shows that nonfaculty, nonmanager professional positions have been increasing rapidly since at least fiscal 2006. This raises the question of why the growth in these types of positions is an anomaly. One explanation is that universities today provide more services to students that did not exist in decades past, especially in information technology and academic support services and also in regulatory compliance (such as for federal financial aid). It remains to be seen whether this growth will level out with time, such that there is an actual decline in noninstructors relative to students as institutions find human resource efficiencies.

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Health and Health Insurance

Implementation of Federal Health Care Reform

Implementation of federal health care reform continues in Maryland. In 2015, State health insurance law was altered to further conform with federal law and regulations, the Maryland Health Benefit Exchange began the third open enrollment period, reinsurance programs to stabilize rates in the individual market continued, and issues of network adequacy and essential community providers were studied. The U.S. Supreme Court also ruled on a case regarding federal tax credit subsidies.

Introduction

The federal Patient Protection and Affordable Care Act (ACA) requires most Americans to have minimum essential health care coverage or face a tax penalty. In 2016, individuals who do not have health insurance must pay the higher of $695.00 per person ($347.50 per child and up to a maximum of $2,085.00 per family) or 2.5% of their annual household income.

Since the ACA became law in 2010, Maryland has been actively working to implement related reforms in the State, including establishing the Maryland Health Benefit Exchange (MHBE), expanding Medicaid eligibility, and implementing a State Reinsurance Program. According to the Gallup-Healthways Well-Being Index released in February 2015, the rate of the uninsured in Maryland dropped from 12.9% in 2013, to 7.8% in 2014. In September 2015, 121,624 Marylanders were enrolled in a qualified health plan (QHP) through MHBE, and 220,428 Marylanders were enrolled in Medicaid under the ACA expansion. For more information on Medicaid, see the *Medicaid Population and Financing Trends* issue paper.

2015 Legislation and Related Developments

Small Employers

Chapter 363 of 2015 altered State health insurance law to conform to the ACA and corresponding federal regulations. Of note, Chapter 363 changed the definition of small employer to mean that, during the preceding calendar year, a business employed an average of not more than 50 employees for plan years that begin before January 1, 2016, and 100 employees for plan years that begin on or after January 1, 2016, or another number of employees or date as provided under federal law. Under the ACA, health plans offered to small employers must meet certain standards relating to benefit coverage, actuarial value, and premium rates, and only small employers may use the Small Business Health Options Program (SHOP).

In October 2015, federal legislation (P.L. 114-60) changed the definition of small employer to not more than 50 employees. As Maryland law follows the federal definition, for plan years beginning on or after January 1, 2016, small employers will be those that during the previous calendar year employed an average of not more than 50 employees. MHBE's SHOP Exchange, initially delayed due to information technology (IT) problems, is now operational through selected third-party administrators. As of October 14, 2015, 108 groups had enrolled, covering 622 employees. SHOP enrollment may see less growth in 2016 than anticipated due to the change in definition of small employer.

Selection of Benchmark Plan for 2017

The ACA requires health plans offered to individuals and small employers to include a comprehensive set of essential health benefits. States are authorized to select a benchmark plan for 2017 that includes the essential health benefits package. Chapter 363 required the Maryland Insurance Commissioner, in consultation with MHBE, to select the State benchmark plan for 2017. In June 2015, the CareFirst BlueChoice HMO HRA/HSA $1500 plan, the largest plan in the largest product by enrollment in the small group market in the first quarter of 2014, was selected as the 2017 benchmark plan.

Maryland Health Benefit Exchange

Fallout Following Initial Information Technology Problems

Following significant IT problems during the initial Maryland Health Connection (MHC) rollout in October 2013, MHBE retrofitted the Connecticut exchange IT platform as a replacement system for MHC's second open enrollment period in 2014 at an MHBE-estimated cost of approximately $45 million. Fallout from the IT problems continued through 2015, including an investigation by the U.S. Department of Health and Human Services' Office of Inspector General (OIG), a financial settlement with the primary contractor on the initial IT system, and an audit report issued by the Office of Legislative Audits (OLA).

In March 2015, OIG issued a report that concluded that the Department of Health and Mental Hygiene (which processes grant allocation and reimbursements on behalf of MHBE) did not allocate $28.4 million in costs to its establishment grants and Medicaid funds in accordance with federal requirements and its cost allocation plan. The audit recommended that MHBE refund the funds to the Centers for Medicare and Medicaid Services (CMS) and seek CMS approval to claim a portion of the funds through Medicaid, as well as immediately revise its cost allocation methodology and establish adequate controls to ensure proper allocation of costs. If CMS requires these funds to be returned or allows the claims to be resubmitted through Medicaid at a lesser reimbursement rate, additional State funds will be needed to cover these past costs.

In July 2015, Noridian Healthcare Solutions, LLC agreed to pay the State $20 million upfront and an additional $25 million in annual installments of $5 million over five years to avoid legal action over its performance. The payments represent a recovery of 61% of the total amount paid to the company for the failed website development and launch in 2013. The settlement is subject to federal approval. The State is considering legal actions against other vendors involved with the development of the original IT platform.

In October 2015, OLA released a fiscal compliance audit of MHBE, citing numerous findings regarding procurement policies, documentation of vendor billing, verification of grant expenditures, submission of requests for federal fund reimbursements resulting in lost interest income, inventory control, adherence to the Open Meetings Act, and security and control issues relating to the IT system. Concurrent with the fiscal compliance audit, OLA is also conducting a performance audit of MHBE to identify and analyze factors that caused and contributed to the troubled launch of MHC and associated IT platforms.

2015 Enrollment and 2016 Carrier Participation and Rates

Despite initial problems, as of September 30, 2015, 121,624 Marylanders have enrolled in QHPs through MHC. MHC's third open enrollment period runs from November 1, 2015, through January 31, 2016. In calendar 2016, 41 of the 53 unique health plans offered in 2015 will be available to consumers. For a 30-year-old individual in rate region one, rates for a silver level plan will range from $216.15 to $229.82 per month (compared with $203.00 to $240.00 in 2014, and $201.05 to $219.55 in 2015).

Network Adequacy and Essential Community Providers

During the 2015 interim, MHBE's Standing Advisory Committee established a Network Adequacy and Essential Community Providers (ECP) Workgroup to develop policy options for provider network standards for QHPs. The workgroup reached consensus on six policy options, including that MHBE should work with stakeholders to analyze network adequacy using claims and encounter data; assess the number, capacity, and types of active providers; improve the accuracy of provider directories; and educate consumers on how to find a provider and obtain relief when they cannot find a provider. The workgroup developed nine additional policy options on which they were unable to reach consensus, including broadening the definition of ECPs to include local health departments, certain behavioral health providers, and school-based health centers; increasing collection of consumer satisfaction data; expanding the types of providers included in provider directories; and various options regarding quantitative standards. The MHBE board will consider these recommendations as it develops QHP certification standards for 2017.

The National Association of Insurance Commissioners is currently in the process of revising its Managed Care Network Adequacy Model Act. As network adequacy continues to be of interest, legislation may be likely during the 2016 legislative session.

Federal Transitional and State Reinsurance Programs

The ACA established a federal transitional reinsurance program for benefit years 2014 through 2016 to transfer funds to individual market insurance plans with higher cost enrollees and stabilize premiums among insurers. For 2016, the federal reinsurance payment will cover 50% of claims costs for enrollees whose claims exceed an attachment point of $90,000, up to a cap of $250,000. Both the MHBE and the Maryland Health Insurance Plan (MHIP) boards have approved providing supplemental coinsurance through the State Reinsurance Program to ensure that carriers are made whole for a total of 80% of claims between the federal attachment point and cap, up to a maximum State expenditure of $21.3 million.

Continuing Legal Challenges

The case of *King v. Burwell* posed an important legal challenge regarding whether federal tax credit subsidies are available to individuals buying insurance through the federal exchange or only to those buying through a state exchange. On June 25, 2015, in *King v. Burwell*, 576 U.S.____ (2015), the U.S. Supreme Court ruled that federal tax credits are available regardless of whether insurance is bought through a state or the federal exchange. As Maryland operates a state exchange, the outcome of this case would not have impacted the State. However, the possibility of Maryland residents losing eligibility for federal tax credit subsidies is no longer a concern should Maryland ever need or want to transition to the federal exchange.

Other cases continue to work through the legal system. Among them is *Little Sisters of the Poor Home for the Aged v. Burwell*, which the Supreme Court has been asked to consider during its October 2015 term. The case challenges the federal contraceptive coverage requirement as it relates to nonprofit religious employers.

Maryland Health Insurance Plan

MHIP served as the State's insurer of last resort for medically uninsurable individuals beginning in 2003. Under the ACA, this population can buy private health insurance due to elimination of preexisting condition limitations. Therefore, MHIP ceased coverage on December 31, 2014. The MHIP fund, which was used to subsidize premiums for MHIP coverage, generates revenue from an assessment on hospitals. Chapter 159 of 2013 authorized the MHIP board to transfer money not needed for MHIP to the State Reinsurance Program to mitigate the impact of high-risk individuals on rates. The Budget Reconciliation and Financing Act of 2015 prohibits the MHIP assessment for fiscal 2016 only; however, at the end of fiscal 2016, the MHIP fund balance is projected to be $32.5 million. Legislation to fully repeal MHIP is anticipated during the 2016 session.

Health and Health Insurance

Health Program Integrity and Recovery Activities

During the 2015 session, the Department of Health and Mental Hygiene sought to expand its authority to audit providers and seek recovery for false, fraudulent, or improper claims. Due to concerns from providers, this legislation failed, and a workgroup was convened to resolve differences and develop legislation for the 2016 session. A final report is due by December 1, 2015.

House Bill 1101 of 2015

In 2015, the Department of Health and Mental Hygiene (DHMH) submitted departmental legislation (House Bill 1101) to expand the means by which the department may audit providers and seek recovery for false, fraudulent, or improper claims. HB 1101 would have authorized DHMH or the DHMH inspector general to issue subpoenas, use extrapolation in audits, impose civil money penalties, and require Medicaid providers to provide a surety bond or other security.

Department of Health and Mental Hygiene Justification for HB 1101

According to DHMH, use of extrapolation (an auditing method of estimating by means of sampling or projection) would permit the department to identify and recoup larger recoveries and save both time and investigation and litigation costs. Extrapolation is used by the federal government and at least 11 other states in Medicaid provider audits. Civil money penalties were intended to provide an alternative penalty to recoupment of a claim in a situation in which a good or service has been provided, but the provider has committed some violation of statute or regulation governing the good or service. Surety bonds were intended to provide a source of funds from which to recover money owed to the State of Maryland or federal government when a provider lacks sufficient funds.

Federal Regulations

Federal regulations require suppliers of durable medical equipment, prosthetics, orthotics, and supplies to obtain surety bond coverage as a condition of participation in Medicare. Federal regulations also require home health agencies to have surety bond coverage to participate in both Medicare and Medicaid. The regulations applying to home health agencies have not been implemented, however, and the U.S. Department of Health and Human Services (HHS) is considering changes to the regulations in response to additional options made available under the federal Patient Protection and Affordable Care Act. The Office of Inspector General of HHS found that Medicare could have recovered at least $39 million in overpayments to home health agencies between 2007 and 2011, if the regulations had been implemented.

Provider Concerns Regarding HB 1101

Despite the arguments presented by DHMH and a favorable fiscal impact on the State, health care providers (including hospitals, nursing homes, physicians, dentists, community mental health programs, and developmental disability providers) uniformly opposed the bill. Providers objected to the ambiguous language, and the subsequent uncertainty of how such language would be implemented, and raised concerns that the bill would impose additional costs on them, which could be detrimental to the clients the providers serve. HB 1101 was heard by the House Health and Government Operations Committee, but no further legislative action was taken.

Health Program Integrity and Recovery Activities Workgroup

During the 2015 interim, DHMH established a workgroup, led by the acting inspector general but comprised primarily of health care providers, to resolve differences and develop legislation for the 2016 legislative session. The workgroup completed its work in November, achieving general consensus on legislation that would:

- authorize the inspector general or a designated assistant inspector general to issue a subpoena in connection with an investigation;
- authorize DHMH or the inspector general to use extrapolation during an audit to recover an overpayment, but only when (1) the federal government has initiated an audit for overpayment and (2) the monetary recovery amount identified for recovery by the federal government is based on the federal government's use of extrapolation; and
- authorize DHMH or the inspector general to impose a civil money remedy against a health care provider, in lieu of full repayment of a claim.

While health care providers represented on the workgroup worked in cooperation with DHMH on the subpoena, extrapolation, and civil money penalty provisions, they firmly opposed a provision to require a surety bond, and the legislation emerging from the workgroup did not include a surety bond provision. A surety bond may be required in separate legislation.

DHMH plans to submit a report on the efforts of the workgroup and the DHMH recommendations to the chair of the House Health and Government Operations Committee by December 1, 2015.

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Health and Health Insurance

Death with Dignity

Death with dignity, the practice of allowing doctors to write lethal prescriptions for dying patients to self-administer, received renewed national attention in 2014. During the 2015 session, Maryland considered legislation that would have authorized death with dignity. Instead of passing the legislation, a joint legislative workgroup was convened with the goal of fostering more informed deliberation during the 2016 legislative session.

Maryland Prohibition of Assisted Suicide

In 1999, Maryland became the thirty-eighth state to outlaw physician-assisted suicide with the enactment of Chapter 700. The law establishes that any individual who knowingly assists another person's suicide or suicide attempt is guilty of a felony and subject to a fine of up to $10,000, imprisonment for up to 1 year, or both. The law was passed as part of a national response to the actions of Dr. Jack Kevorkian, who assisted in the suicide of a Michigan man suffering from amyotrophic lateral sclerosis.

Death with Dignity in Other States

Oregon was the first state to legalize physician aid in dying, when its Death with Dignity Act was adopted through ballot measure in 1994. Currently, 4 states, California, Oregon, Vermont, and Washington, have laws that allow a doctor to write lethal prescriptions for dying patients to self-administer, with California passing legislation in September 2015 that will go into effect in 2016. Two states, Montana and New Mexico, permit the practice based on court decisions. Five states, Nevada, North Carolina, Utah, West Virginia, and Wyoming, have no specific bans or case law prohibiting the practice, but its legality remains unclear. The remaining 39 states and the District of Columbia prohibit the practice through statute or case law. Twenty-five states and the District of Columbia will have considered death with dignity legislation, largely based on the Oregon statute, by the end of their 2015 legislative sessions. These states include the surrounding states of Delaware, New Jersey, New York, Pennsylvania, and North Carolina.[1]

The catalyst for greater national attention to this issue, and likely the reason so many states are considering death with dignity legislation, was the story of Ms. Brittany L. Maynard, a California woman who moved to Oregon to utilize that state's death with dignity law. In the months following her diagnosis with terminal brain cancer, Ms. Maynard became the public face of death with dignity, and partnered with the national advocacy group Compassion and Choices to raise awareness of the issue and to make death with dignity available in all states.

[1] Source: Death with Dignity National Center

2015 Legislative Action

Senate Bill 676/House Bill 1021 of 2015, the Richard E. Israel and Roger "Pip" Moyer Death with Dignity Act, would have exempted from civil or criminal liability State-licensed physicians who dispensed or prescribed a lethal dose of medication following a series of requests by a qualified patient in compliance with specified procedures and safeguards. Actions taken in accordance with the bills would not have constituted suicide, assisted suicide, mercy killing, or homicide, and the underlying terminal illness would have been listed as the cause of death. The bills specifically did not authorize a physician to end a patient's life by lethal injection, mercy killing, or active euthanasia, and did not limit liability for civil damages resulting from any other negligent conduct or intentional misconduct by any person. Both bills received a hearing, but no further action was taken.

Public Reaction in Maryland

Public reaction in the State to the death with dignity legislation was substantial and divided. Many hours of testimony revealed a wide variety of reasons individuals and groups supported or opposed the bills. Support generally stemmed from (1) a belief in the importance of providing terminally ill individuals with greater choice regarding how their lives would end; (2) a belief that death with dignity represents a logical extension of the principle of individual autonomy in making medical decisions; and (3) the virtue of enabling terminally ill individuals to end unnecessary suffering. Supporters pointed to the low utilization of aid in dying medication in Oregon (from 1998 to 2014, 1,327 prescriptions were provided, of which 859 were used) as evidence that the law was not being abused.

Opposition was primarily based on (1) a religious belief that only God may determine when an individual dies; (2) the danger that an individual may choose to end his or her own life based on a faulty diagnosis or out of shock and depression, and that safeguards contained in the bills were insufficient to protect against these dangers; and (3) the fear that the bills would lead to terminally ill individuals or individuals with disabilities being pressured into taking their own lives by others. Opponents pointed to evidence that many individuals who requested death with dignity medication in states that allow it cited not wanting to be a burden to their families or others.

Joint Legislative Workgroup on Death with Dignity

In 2015, a legislative workgroup was convened to study issues related to the 2015 legislation with the goal of fostering a more informed debate in 2016. Three meetings were scheduled between September and December to allow senators and delegates to (1) receive additional comments regarding Maryland's legislation from interested parties in the State; (2) learn about the implementation and use of similar death with dignity laws in other states; and (3) discuss the components of death with dignity legislation and areas of agreement and disagreement.

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Health and Health Insurance

Implementation of the All-payer Model Contract

In January 2014, Maryland replaced its historic Medicare waiver that governs hospital rate setting with the new Maryland all-payer model contract. Performance data for the first 18 months indicates that implementation is proceeding well, and Maryland is on pace to meet or exceed the requirements.

Background

Effective January 1, 2014, Maryland entered into a contract with the federal government to replace the State's 36 year-old Medicare waiver with the new Maryland all-payer model contract. Under the waiver, Maryland's success was based solely on the cumulative rate of growth in Medicare inpatient per admission costs. Under the model contract, however, the State not only will limit inpatient, outpatient, and Medicare per beneficiary hospital growth but also shift hospital revenues to a population-based system and reduce both hospital readmissions and potentially preventable complications. The model contract will be deemed successful if Maryland can meet cost and quality targets without inappropriately shifting costs to nonhospital settings and if there is a measurable improvement in quality of care.

Implementation of the All-payer Model Contract

The Health Services Cost Review Commission (HSCRC) has taken action to implement the model contract and ensure that its requirements are met. Major actions include the following:

- **Stakeholder Engagement:** HSCRC has convened multiple groups to advise the commission on various aspects of the model contract, including consumer engagement and outreach, physician alignment and engagement, and care coordination.

- **Alternative Methods of Rate Determination:** Hospitals have been transitioned to Global Budget Revenue (GBR) or Total Patient Revenue (TPR) agreements. Under GBR and TPR agreements, each hospital's total annual revenue is known at the beginning of each fiscal year. Annual revenue is determined from a historical base period that is adjusted to account for inflation updates, infrastructure requirements, volume increases, performance in quality- or efficiency-based programs, changes in payer mix, and changes in levels of approved uncompensated care.

- **Uncompensated Care:** The uncompensated care provision in hospital rates was reduced from 6.14% for fiscal 2015 to 5.25% for fiscal 2016. The reduction reflects the ongoing impact of Maryland's January 2014 Medicaid expansion on levels of uncompensated care.

- **Annual Update Factor:** HSCRC approved a fiscal 2016 update factor of 2.4% for GBR hospitals, with an additional 0.4% provided for care coordination and population health infrastructure investments, and 1.6% for other regulated hospital revenues.

- **Cost Saving Innovations:** HSCRC continues to focus on promoting incentives such as integrated care networks, pay for performance, and gain sharing programs.

Performance on Requirements of the All-payer Model Contract

In October 2015, HSCRC released an update on Maryland's performance during the first 18 months of implementation of the all-payer model contract (January 1, 2014, through June 30, 2015). To date, implementation appears to be progressing well, and Maryland is on pace to meet or exceed the requirements of the model contract. **Exhibit 1** displays the requirements the State must meet under the model contract and the status of the State's performance.

Next Steps for the Model Contract

Based on available data, Maryland's performance under the all-payer model contract continues to be strong. HSCRC should continue to improve readmission rates and work with CMMI to evaluate Maryland's performance on all-payer model contract metrics. The Budget Reconciliation and Financing Act of 2015 requires a reduction in the Medicaid deficit assessment of $25 million per year over each prior year's assessment beginning in fiscal 2017. These reductions will make it easier for the State to stay under the cost ceilings of the model contract in future years.

On November 12, 2015, *The New England Journal of Medicine* published an article authored by CMMI and HSCRC, which outlined Maryland's performance under the model contract through calendar 2014. The article also discussed the future expansion of the model contract to reduce costs and improve quality over the full spectrum of care, not just hospital services, by 2019.

Exhibit 1
Maryland's Performance on the Requirements of the All-payer Model Contract as of October 1, 2015

Requirement	Initial Performance/Status
Total Hospital Cost Growth: Limit annual growth in all-payer hospital per capita revenue for Maryland residents to 3.58% growth.	Per capita revenue for Maryland residents grew by 1.47% from calendar 2013 to 2014. Calendar 2015 growth through June 30 was up 2.28% over the same period in calendar 2014.
Medicare Total Hospital Cost Growth: Limit Medicare per beneficiary hospital cost growth to produce $330.0 million in cumulative Medicare savings over five years beginning with an estimated $49.5 million in savings in 2015.	HSCRC and CMMI report that, in calendar 2014, Medicare's per capita hospital costs grew by 1.07% nationally, and decreased by 1.08% in Maryland, equivalent to a savings of $116 million.
Population-based Revenue: Shift hospital reimbursement from a per case to a population-based system, with at least 80.0% of hospital revenues shifted to global budgeting over five years.	All hospitals are under either GBR or TPR agreements. Ninety-five percent of hospital revenue has been shifted to global budgets; the remaining 5.0% is excluded out-of-state revenue for five hospitals.
Reduction of Hospital Readmissions: Reduce the Medicare readmission rate to below the national average over five years.	Between calendar 2013 and 2014, the gap between the Maryland and the national all-cause readmission rate among Medicare patients decreased from 1.2% to 1.0%.
Reduction of Hospital-acquired Conditions: Achieve a cumulative reduction of potentially preventable complications of 30.0% over five years.	In June 2015, the all-payer risk-adjusted PPC rate was 0.83 per 1,000 compared with 1.29 per 1,000 in June 2013, a 35.66% reduction. HSCRC will continue to set annual improvement targets for hospitals to further reduce PPC.

CMMI: Center for Medicare and Medicaid Innovation
GBR: global budget revenue
HSCRC: Health Services Cost Review Commission
PPC: potentially preventable complications
TPR: Total Patient Revenue

Source: Health Services Cost Review Commission; Department of Legislative Services

Health and Health Insurance

Medicaid Population and Expenditure Trends

Declining Medicaid enrollment is driving an anticipated combined fiscal 2015 and 2016 general fund surplus of $184.8 million. Fiscal 2017 expenditure growth is expected to be $561.6 million (6.5%) over the fiscal 2016 working appropriation but only $376.4 million (4.2%) over projected fiscal 2016 expenditures.

Overview

Maryland's Medical Assistance Programs (Medicaid, Maryland Children's Health Program (MCHP), Employed Individuals with Disabilities, *etc*.) 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% to 100% for Medicaid (depending on the eligibility category) and 65% for MCHP. For purposes of this issue paper, expenditures are limited to the major provider reimbursement budgets and exclude behavioral health.

Fiscal 2015 Projected Surplus

It is anticipated that Medicaid/MCHP will underspend its fiscal 2015 accrual by $32.9 million, resulting in a corresponding general fund surplus. The driving factors for this surplus are:

- an increase in available special funds;
- elimination of categorization errors within the disabled adult eligibility population (in 2014 and 2015, individuals were incorrectly assigned to this eligibility category on initial enrollment, resulting in overpayments that have since been retracted); and
- a sharp drop in enrollment since March 2015.

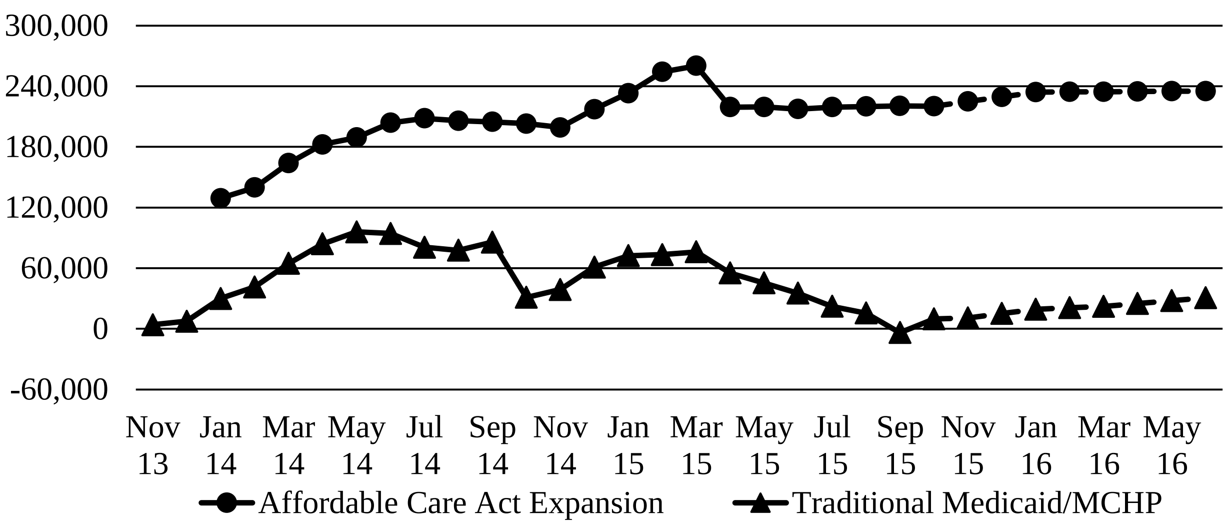
From March through October 2015, over 106,000 individuals left Medicaid/MCHP, an 8.1% decline. This drop coincides with the end of a three-month eligibility redetermination delay for individuals initially enrolled through the original Maryland Health Benefit Exchange (MHBE) eligibility system (HIX) who had to reenroll in the new MHBE system (Maryland Health Connection), and the requirement that most individuals enrolled through the Department of Human Resources (DHR) eligibility system transfer to Maryland Health Connection at redetermination.

Fiscal 2016 Budget is Overfunded but Enrollment Trends are Uncertain

The fiscal 2016 projected working appropriation of just under $8.9 billion ($2.3 billion in general funds) appears more than sufficient to meet projected need. The fiscal 2016 baseline assumes a combined Medicaid/MCHP surplus of $151.9 million in general funds. Of this amount, $36.1 million is based on an assumption of higher than budgeted special fund revenues. The other two major drivers are, as noted above, overbudgeting for the disabled adult population and lower than budgeted enrollment. The Department of Legislative Services (DLS) estimates an average monthly Medicaid/MCHP enrollment of 1.225 million in fiscal 2016, compared to a budgeted enrollment of 1.329 million.

There is a significant degree of uncertainty about Medicaid enrollment trends. As shown in **Exhibit 1**, all of the cumulative growth in Medicaid is in the new federal Patient Protection and Affordable Care Act (ACA) expansion eligibility category. That population saw significant growth at initial eligibility in January 2014, with another sharp increase coinciding with the 2014 open enrollment period. However, following the expiration of a three-month eligibility redetermination extension at the beginning of 2015, and combined with the movement of enrollees from HIX to Maryland Health Connection, ACA enrollment dropped sharply before stabilizing.

Exhibit 1
Cumulative Monthly Additional Enrollment in Medicaid/MCHP
November 2013-June 2016 (November 2015-June 2016 projected)



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

There has been even more fluctuation in enrollment in the traditional Medicaid/MCHP population. Beginning in late 2013, enrollment rose during the first ACA open enrollment period and a 12-month eligibility redetermination extension. In October 2014, enrollment dropped sharply as redeterminations commenced before increasing again during the second open enrollment period. The steep decline beginning in March relates to the requirement for most of this population to reenroll in Maryland Health Connection from the DHR eligibility system at the time of redetermination. DLS anticipates that the requirement to move individuals to Maryland Health Connection will significantly dampen any growth associated with the 2015 open enrollment period. The redetermination process should be complete by March 2016.

Fiscal 2017 Forecast

In fiscal 2017, expenditures for the Medical Assistance Programs are estimated to be just under $9.3 billion, a $561.6 million (6.5%) increase over the fiscal 2016 working appropriation. More pertinently, given the projected fiscal 2016 budget surplus, fiscal 2017 baseline expenditures are only $376.4 million (4.2%) above projected fiscal 2016 expenditures. As shown in **Exhibit 2**, most of the increase between fiscal 2016 projected expenditures and the fiscal 2017 baseline is in general funds ($261.9 million, 11.3%). Although general fund expenditures are anticipated to be lower than budgeted in fiscal 2016, total expenditures are anticipated to be higher, largely in federal funds. Much of this increase is driven by a mid-year calendar 2015 managed care organization (MCO) rate increase that significantly increased rates for the ACA expansion population which is currently 100% funded with federal funds.

Exhibit 2
Medicaid Expenditures
Fiscal 2015-2017
($ in Millions)

	2015 Appropriation	2015 Estimate	2016 Budgeted	2016 Projected	2017 Baseline
General Funds	$2,452.3	$2,333.6	$2,477.0	$2,325.2	$2,587.1
Special Funds	960.6	1,003.5	943.6	979.7	924.8
Federal Funds	4,484.0	5,144.8	5,231.8	5,532.7	5,702.1
Reimbursable Funds	65.6	63.7	59.9	59.9	59.9
Total	**$7,962.4**	**$8,545.6**	**$8,712.3**	**$8,897.4**	**$9,273.9**

Note: Numbers may not sum to total due to rounding; 2016 Budgeted includes adjustments for 2% reductions taken in Medicaid.

Source: Department of Legislative Services

The key assumption in the fiscal 2017 baseline is modest enrollment growth of 2.1% off of the markedly lower enrollment projected for fiscal 2016, with average monthly enrollment reaching 1.25 million (see **Exhibit 3** for details). This represents what would be normal enrollment growth during a time of relatively low unemployment and modest economic growth. Other significant costs assumed in the fiscal 2017 baseline include the annualization of the calendar 2016 MCO rate increase of 5.9%; provider rate increases for most services; the State's assumption of a share of the costs associated with the ACA expansion eligibility population beginning in January 2017; and a decline of $54.9 million, or 5.6%, in available special funds (primarily lower cigarette restitution funds and hospital assessments).

Exhibit 3
Enrollment and Service Year Expenditures*
Fiscal 2015-2017

	2015 Projected	2016 Estimate	2017 Estimate	2016-2017 % Change
Enrollment by Category				
Medicaid	923,487	861,795	878,314	1.92%
MCHP	122,955	135,251	139,308	3.00%
ACA Medicaid Expansion	218,597	228,434	233,003	2.00%
Total	**1,265,039**	**1,225,480**	**1,250,625**	**2.05%**
Cost Per Enrollee				
Medicaid	$7,398	$7,768	$7,985	2.78%
MCHP	1,982	2,065	2,128	3.06%
ACA Medicaid Expansion	6,957	8,173	8,179	0.07%
Total Expenditures ($ in Millions)	**$8,546**	**$8,897**	**$9,274**	**4.23%**

ACA: Federal Patient Protection and Affordable Care Act
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. Cost estimates are based on provider reimbursements and expenditures in programs MQ0103, MQ01016, and MQ0107 only. Expenditures noted in the chart are based on estimates of spending and may differ from reported actuals and the fiscal 2016 legislative and working appropriations.

Source: Department of Legislative Services

Although the fiscal 2017 Medicaid baseline covers all the costs anticipated for the program, what remains uncertain is the fiscal 2016 base upon which those costs will grow and enrollment trends. To the extent that enrollment is lower than budgeted, there will be pressure to revisit MCO rates, with MCOs arguing that lower enrollment has impacted their case mix; specifically, that the MCO population as a whole is now relatively less healthy and not a reflection of the case mix used when rates were determined. Even with this uncertainty, it is clear that there is a significant general fund surplus in the fiscal 2016 budget and that the growth in the general fund budget in fiscal 2017 over the fiscal 2016 appropriation will be much lower than that anticipated during the 2015 legislative session.

Health and Health Insurance

Concussions

Concussions and the related health risks have received increased attention in the State and nationally, as significant numbers of student athletes are sustaining head injuries. Legislation passed in the State in 2011 established new protocols for dealing with student athletes suspected of having a concussion and created new education and awareness requirements. Additional task forces established in the State have issued recommendations to mitigate concussions in student athletes and will continue to examine the issue.

Background

Concussions are a type of traumatic brain injury caused by a blow or jolt to the head that can range from mild to severe and can disrupt the way the brain functions. The federal Centers for Disease Control and Prevention report that an estimated 300,000 sports- and recreation-related head injuries of mild to moderate severity occur in the United States each year, most of which can be classified as concussions. Concussions can occur in any sport, although they are most prevalent in sports where collisions are common. Individuals who have had at least one concussion are at an increased risk for another concussion, and a second concussion that occurs before the brain recovers from the first can result in brain swelling, permanent brain damage, and even death. According to the National Conference of State Legislatures (NCSL), in 2011 more than 55,000 high school football players and 29,000 young soccer players sustained concussions during practice or competition.

In April 2015, a federal judge approved a class action lawsuit settlement between the National Football League (NFL) and thousands of former players. The agreement, which will span the next 65 years, provides for up to $5 million in financial compensation per retired player for serious medical conditions associated with repeated head trauma and may cost the NFL $900 million or more. In December 2015, the film *Concussion*, which directly addresses the NFL controversy, will focus on the forensic pathologist and neuropathologist, Dr. Bennet Omalu, who discovered chronic traumatic encephalopathy in the brains of two NFL players. The film addresses the life-long debilitating conditions suffered by some former players as a result of repeated head trauma, and the efforts of the NFL to deny any link between their conditions and game play.

Concussion Law and Policy in Maryland

Chapters 548 and 549 of 2011 required the Maryland State Department of Education (MSDE) to develop concussion-related policies and implement a concussion awareness program. The program is required to promote awareness of (1) the nature and risk of a concussion or head injury; (2) the criteria for removal from and return to play; (3) the risks of not reporting injury and continuing to play; and (4) appropriate academic accommodations for students diagnosed with concussions or head injuries. In addition, the local board of education must provide concussion and head injury information to a student and the student's parent or guardian before a student enrolled in the public school system may participate in an authorized interscholastic athletic activity. Similar information requirements are mandated for a youth sports program that uses a public school facility.

In July 2012, MSDE established the Traumatic Brain Injury/Sports-Related Concussion Task Force to study the prevention and treatment of traumatic brain injuries and concussions in youth public school athletic programs. The task force issued several recommendations in January 2013, including recommendations for training, notification procedures, and educational opportunities regarding concussions in youth sports. The Maryland Traumatic Brain Injury Advisory Board currently monitors the task force. In August 2013, based on the task force's recommendations, MSDE categorized interscholastic sports into four types: (1) collision; (2) contact; (3) limited contact; and (4) noncontact. MSDE issued specific recommendations to mitigate concussions in collision and contact sports, such as limiting the frequency of "live hitting" drills in football.

As required by Chapter 653 of 2014, MSDE convened a task force to review recent medical research on the nature and risks of several types of sports injuries incurred by high school female athletes, including concussions. The task force must compare the rate of these injuries to those incurred by male high school athletes and review statutes and regulations from other states on programs designed to prevent a higher rate for females. The task force must also establish protocols and standards for clearing a female athlete to return to play following an injury, including treatment plans, and make other specified recommendations. The task force is required to report to the Governor and the General Assembly by December 1, 2015.

Proposed Legislation in Maryland

House Bill 1175 of 2015 and House Bill 426 of 2014 (both bills failed) would have required MSDE to develop and implement a concussion impact sensor pilot program, in collaboration with the Department of Health and Mental Hygiene, local boards of education, and other experts and stakeholders. Each local board of education would have been required to choose one high school football team to participate in the program and provide each member of that team with a concussion impact sensor. For each football season, a high school chosen to participate in the program would then keep specified records related to the sensors and concussions to be reported to MSDE. MSDE would then be required to provide recommendations relating to the future use of concussion impact sensors by students who participate in public high school interscholastic sports.

Legislative Approaches in Other States

In 2009, Washington became the first state to require that a youth athlete who is suspected of sustaining a concussion or head injury be prohibited from returning to play until the athlete is evaluated by a licensed health care provider, and the provider provides written clearance for the athlete to return to play. According to NCSL, all 50 states and the District of Columbia have enacted legislation that addresses youth sports-related concussions. Additionally, 20 states, including Maryland, require coaches to be trained in youth sports concussion recognition and awareness.

Health and Health Insurance

Medical Cannabis Commission and Marijuana Legalization in Other States

In 2015, Maryland significantly altered its medical cannabis law to allow qualifying patients to obtain medical cannabis exclusively from certifying physicians. In September 2015, the Natalie M. LaPrade Medical Cannabis Commission published final regulations implementing the program. The commission expects medical cannabis to be available to patients by the end of 2016. Legalization of marijuana has led to renewed attention to the potential public health effects. States have taken varied approaches to designating tax revenues from the sale of marijuana, often designating funds for public health and requiring health-related activities.

Natalie M. LaPrade Medical Cannabis Commission

Chapter 403 of 2013 authorized the investigational use of marijuana for medical purposes through research programs operated by academic medical centers in the State and established the Natalie M. LaPrade Medical Marijuana Commission. Due to lack of interest among academic medical centers to participate and pressure from patient advocates to make medical marijuana available beyond only those patients participating in a research study, Chapters 240 and 256 of 2014 expanded the medical marijuana program to allow qualifying patients to obtain medical marijuana from persons other than academic medical centers. Chapter 251 of 2015 changed the name of the commission to the Natalie M. LaPrade Medical Cannabis Commission and eliminated academic medical centers from the program.

Specifically, Chapter 251 allows a qualifying patient who has been provided with a written certification from a certifying physician in accordance with a *bona fide* physician-patient relationship to obtain medical cannabis. The Act also establishes requirements for the licensure and regulation of processors, processor agents, and independent testing laboratories. The commission must develop policies, procedures, guidelines, and regulations to implement programs to make medical cannabis available to qualifying patients in a safe and effective manner. Regulations were promulgated in September 2015.

Statute dictates that cannabis may only be obtained from a grower or dispensary licensed by the commission and that the commission may license no more than 15 growers. The commission is authorized to set fees to cover the costs of operating the commission. These fees were established by the September 2015 regulations. The regulations also establish a limit of two dispensary licenses per senatorial district, or up to 94 statewide. No such restriction on the number of dispensaries exists in statute. There is no established limit on the number of processor licenses in either statute or regulation. The commission opened applications for grower, processor, and dispensary licenses in September 2015. The applications, along with frequently asked question pamphlets, are available online at http://mmcc.maryland.gov/default.aspx.

The enactment of Chapters 240, 256, and 251 not only expanded the commission's duties but increased public interest in the commission, particularly among patient advocates and individuals interested in becoming growers or establishing dispensaries. The location of commission meetings had to be moved to a larger venue in order to accommodate the public. The 16-member commission includes members of the public; health care practitioners; a scientist; representatives of law enforcement, the legal community, and agriculture; a representative of the Office of the Comptroller; and the Secretary of Health and Mental Hygiene.

Counties retain the authority to limit the location of medical cannabis facilities through zoning restrictions. Approaches to addressing the location of such facilities have been mixed. Baltimore County was the first to approve zoning rules governing medical cannabis facilities in September 2015. Local newspapers report that there is fairly broad acceptance of future medical cannabis facilities in Western Maryland and on the Eastern Shore. In October 2015, Washington County commissioners approved a plan for a proposed medical cannabis growing and processing center in Hagerstown. The Anne Arundel County Executive initially proposed a ban on the growth, production, and sale of medical cannabis in the county. However, the Anne Arundel County Council agreed to "strictly regulate where the growing, processing, and dispensing of cannabis would take place in the county." The county council will offer this agreement as an amendment to the county executive's initial proposal.

Marijuana Legalization in Other States

As Maryland moves forward with implementing the State's medical cannabis law, Colorado, Washington, Oregon, Alaska, and the District of Columbia are implementing laws legalizing marijuana (the District of Columbia's law authorizes possession of a limited amount of marijuana but does not allow retail sales). The Marijuana Policy Project has identified 11 additional states (including Maryland), which plan to pursue legalization of marijuana in 2016, either through ballot measure or legislation.

Legalization of marijuana and the associated increase in availability has led to renewed attention to the potential public health effects. States have taken varied approaches to designating tax revenues from the sale of marijuana, often designating funds for public health efforts and requiring health-related activities.

Public Health Effects of Legal Edibles

Colorado legalized medical marijuana in 2000 and nonmedical marijuana in 2014. Colorado experienced initial health risks related to the sale of edibles, which comprise 45% of the legal cannabis market in the state. Edibles presented a risk of overconsumption as appropriate serving size was often unclear and users were often inexperienced users of marijuana. Early issues emerged when a college student died from falling from a balcony after eating a marijuana-infused cookie. In addition, hospitals experienced an increase in emergency room admissions among children who had accidently ingested marijuana and a rise in the number of poison control calls related to marijuana consumption. In response, Colorado adopted regulations requiring edibles to be packaged in a way that enables a reasonable person to intuitively determine how much of the product constitutes a single serving and requiring specific warning statements on edibles such as "[t]he intoxicating effects of this product may be delayed by two or more hours."

State Approaches to Designating Marijuana Tax Revenues

Colorado collects a 15% wholesale excise tax and a 10% sales tax on marijuana. The first $40 million collected by the excise tax must go to new school construction, with remaining money mandated for, among other things, public health monitoring. Colorado's Department of Health must monitor the health effects of the law every two years beginning in 2015. Colorado has also launched the public education campaign "Don't Be a Lab Rat" that targets teens and stresses the harmful effects of the use of marijuana by adolescents, particularly on intelligence quotient and mental health.

Washington's Initiative 502 requires tax revenues to be made in specified quarterly payments of up to $1.25 million for administration, $185,000 to study youth marijuana use, $50,000 for mandated reports, and $5,000 to create and maintain online educational materials. After these initial payments, remaining funds are divided as follows – 50% to a state health plan trust account, 15% for reducing youth substance abuse, 10% for a public health program, less than 10% to study the effects of marijuana use and to provide health and dental care, and the remainder to the state's general fund. In June 2015, the Washington State Department of Health launched a statewide media campaign encouraging parents to talk to their children about the risks of marijuana. The Washington State Institute for Public Policy (WSIPP) must evaluate policies and impacts related to health, security, and the economy beginning in 2015. In September 2015, WSIPP released an evaluation plan and preliminary report on the implementation of Initiative 502. The next required report in September 2017 will include an analysis of outcomes.

In 2014, Oregon's Measure 91 established the Oregon Marijuana Account in which 20% of taxes received through the legalization of marijuana are transferred to the state's mental health, alcoholism, and drug services account and 5% are transferred to the Oregon Health Authority for the establishment, operation, and maintenance of alcohol and drug abuse prevention, early intervention, and treatment services.

Alaska approved legalization of marijuana by ballot measure in 2014. A wholesale excise tax of $50 per ounce will be collected, but the measure does not specifically allocate the revenue.

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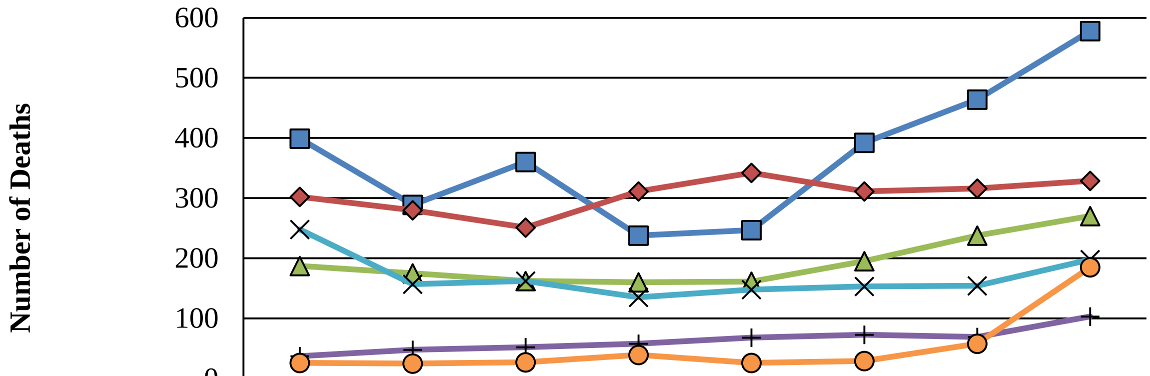
Opioid Overdose Issues

Opioids, including heroin and prescription medications, are involved in the majority of overdose deaths in Maryland. To combat this public health threat, the State has, among other actions, established an Inter-Agency Heroin and Opioid Coordinating Council, the Heroin and Opioid Emergency Task Force, and the Joint Committee on Behavioral Health and Opioid Use Disorders. Baltimore City has also taken action to address heroin and opioid use in the city.

Opioids Comprise Majority of Overdose Deaths in Maryland

Opioid use and overdose is a public health epidemic. As seen in **Exhibit 1**, heroin and prescription opioids have contributed to the vast majority of the State's overdose deaths. The rate of overdose deaths from opioids continues to rise at a staggering rate. In 2010, there were 238 heroin-related deaths, which increased by 143% to 578 in 2014.

Exhibit 1
Drug- and Alcohol-related Intoxication Deaths by Selected Substances
2007-2014



	2007	2008	2009	2010	2011	2012	2013	2014
Heroin	399	289	360	238	247	392	464	578
Prescription Opioids	302	280	251	311	342	311	316	329
Alcohol	187	175	162	160	161	195	238	270
Benzodiazepines	37	48	52	58	68	73	69	103
Cocaine	248	157	162	135	148	153	154	198
Fentanyl	26	25	27	39	26	29	58	185

Source: Department of Health and Mental Hygiene

Inter-Agency Heroin and Opioid Coordinating Council

In response to the State's heroin and opioid epidemic, the Governor issued an executive order in February 2015 establishing the Governor's Inter-Agency Heroin and Opioid Coordinating Council. The council, which is chaired by the Secretary of Health and Mental Hygiene, consists of representatives of the departments of State Police, Public Safety and Correctional Services, Juvenile Services, and Education and the Maryland Institute for Emergency Medical Services Systems. The council's duties include developing recommendations for policy, regulations, or legislation to facilitate improved sharing of public health and public safety information among State agencies. The council must update the Governor biannually on each agency's efforts to address heroin and opioid education, treatment, interdiction, overdose, and recovery. On behalf of the council, the Department of Health and Mental Hygiene (DHMH) must submit an annual report to the Governor and the public in the form of the Inter-Agency Heroin and Opioid Coordination Plan. The council met on four occasions in 2015.

Heroin and Opioid Emergency Task Force

In February 2015, the Governor also established, by executive order, the Heroin and Opioid Emergency Task Force, which consists of the Lieutenant Governor; an appointee of the President of the Senate, the Speaker of the House, and the Attorney General; and seven members of the public. The task force must assist the Governor in establishing a coordinated statewide and multijurisdictional effort to prevent, treat, and significantly reduce heroin and opioid abuse and advise the Governor and the Director of Homeland Security on immediate steps to improve coordination between federal, State, and local law enforcement regarding the trafficking and distribution of heroin and opioids in the State. The task force held six regional summits throughout the State to hear input from concerned Marylanders who have been impacted by the heroin epidemic. Based on information provided at the summits, the task force established five workgroups: Access to Treatment and Overdose Prevention; Quality of Care and Workforce Development; Intergovernmental Law Enforcement Coordination; Drug Courts and Reentry; and Education, Public Awareness, and Prevention.

In August 2015, the task force submitted an interim report, which contained 10 recommendations for immediate implementation including earlier and broader incorporation of heroin and opioid prevention into the health curriculum, implementation of emergency department opioid prescribing guidelines, training for the Maryland State Police on the Good Samaritan Law, and establishing a faith-based addiction treatment database. The report also detailed how $2 million in additional treatment and prevention funding, earmarked by the legislature and released by the Governor for fiscal 2016, will be spent, including naloxone training and distribution to local health departments and local detention centers; overdose survivor outreach programs in hospital emergency departments; prescriber education; recovery housing and detoxification services for women with children; and increased bed capacity at the A.F. Whitsitt Center, a State-operated residential treatment facility on the Eastern Shore. The task force will submit a final report by December 1, 2015.

Joint Committee on Behavioral Health and Opioid Use Disorders

Chapter 464 of 2015 established the Joint Committee on Behavioral Health and Opioid Use Disorders, comprising five senators and five delegates, to oversee the State's Prescription Drug Monitoring Program and State and local programs to treat and reduce opioid use disorders. The joint committee must review the final report of the Heroin and Opioid Emergency Task Force and review and monitor the activities of the Governor's Inter-Agency Heroin and Opioid Coordinating Council. The joint committee must also monitor the effectiveness of the State Overdose Prevention Plan; local overdose prevention plans and fatality review teams; strategic planning practices to reduce prescription drug abuse; and efforts to enhance overdose response laws, regulations, and training.

The joint committee has received briefings on the DHMH overdose prevention strategy; the Screening, Brief Intervention and Referral to Treatment Program; the funding of behavioral health services; opioid use disorders and treatments; the activities of the Justice Reinvestment Council; the Baltimore Mayor's Heroin and Treatment Task Force; and the Heroin and Opioid Emergency Task Force.

Department of Health and Mental Hygiene Overdose Prevention Strategy

In addition to the entities established by the Governor and General Assembly, DHMH has established an overdose prevention strategy with the goals of improving epidemiology and strategic planning (through overdose surveillance and data dissemination, local overdose fatality review teams, and an opioid misuse prevention program), providing naloxone training and distribution, reducing prescription opioid misuse and inappropriate prescribing, and targeting outreach to high-risk individuals for treatment and recovery support services.

Overdose Response Program

Chapter 299 of 2013 established the Overdose Response Program in DHMH to authorize certain individuals, through the issuance of a certificate, to administer naloxone to an individual experiencing opioid overdose when medical services are not immediately available. DHMH authorizes private and public entities to train and certify individuals to administer naloxone. As of June 2015, over 8,700 individuals were trained (34% of whom are law enforcement). In addition, over 8,000 doses of naloxone were dispensed and 145 administrations were reported. Chapter 356 of 2015 expanded the program to authorize standing orders for naloxone and provided additional legal protections for prescribers and administrators of naloxone.

Prescription Drug Monitoring Program

The Prescription Drug Monitoring Program (PDMP), established by Chapter 166 of 2011, aims to reduce prescription drug misuse and diversion by creating a secure database of all Schedule II through V controlled dangerous substances prescribed and dispensed in the State. PDMP can make data on prescription opioids available to health care providers, pharmacists, patients, health occupations licensing boards, specific DHMH administrations, law enforcement, and PDMPs in other states. PDMP is integrated with Chesapeake Regional Information System for our Patients (CRISP), the State-designated health information exchange.

According to DHMH, as of August 27, 2015, PDMP has 13,240 registered users and is averaging 21,000 patient queries per week. PDMP is interoperable with PDMPs in Virginia and West Virginia. In October 2015, PDMP began analyzing data to identify patients getting controlled substances from multiple providers and alerting providers. In December 2015, the PDMP Advisory Board will include recommendations in its annual report regarding mandatory registration and use of PDMP by health care providers. Draft recommendations call for phasing in mandatory registration and use after taking steps to streamline user registration, educate providers, support provider workflow integration, and improve system capacity and data quality.

Local Overdose Fatality Review Teams

Local overdose fatality review teams are multi-agency/multi-disciplinary teams assembled at the jurisdictional level to conduct confidential reviews of overdose deaths. The goals of the teams are to prevent future deaths by identifying missed opportunities for prevention; build working relationships between local stakeholders; and recommend policies, programs, and laws to prevent overdose. DHMH provides data and technical assistance to the 15 teams. Teams have found that decedents have had significant contact with government systems (especially the criminal justice system in Baltimore City), alcohol is often involved, older drug users are at high risk due to many co-occurring chronic health issues, care coordination in somatic health and addiction treatment needs improvement, and there is often an occurrence of trauma just before death. According to DHMH, these findings have resulted in improvement to the referral system, training of agency staff to use naloxone, more direct outreach to families to provide overdose prevention and treatment services, and changes to intake questionnaires to probe previous overdose history.

Additional Overdose Prevention Efforts

DHMH is also undertaking additional efforts to reduce opioid use and overdose. The department is establishing an opioid misuse prevention program in which funds are provided to 22 jurisdictions to strengthen and enhance their local overdose prevention plans and implement evidence-based opioid misuse prevention strategies. DHMH is educating health occupations licensing boards, health systems, and health professional societies about evidence-based opioid prescribing guidelines; the disease of addiction; appropriate screening, assessment, and treatment referral protocols; use of CRISP and PDMP; prescribing buprenorphine; and patient overdose education and naloxone prescribing. An overdose survivors' outreach program has been established in Baltimore City and Anne Arundel County to provide support for high-risk individuals through peer recovery specialists after an overdose survivor is discharged from an emergency department. DHMH is also conducting a statewide overdose awareness campaign – "Be a Hero: Save a Life" launched in the summer of 2014.

Governor's Office of Crime Control and Prevention

The Governor's Office of Crime Control and Prevention has provided $550,000 in federal grants for reentry programs using Vivitrol and wrap around services to aid individuals with addictions reentering society from local jails. Vivitrol is an opioid antagonist that binds to the opioid receptors in the brain, produces no opioid effects, and does not allow other opioids to enter. Since Vivitrol causes withdrawal if opiates are in an individual's system when taking the medication, individuals must have gone through detoxification prior to starting the medication.

Baltimore Mayor's Heroin Treatment and Prevention Task Force

In 2014, 192 individuals died from heroin overdose deaths in Baltimore City. In October 2014, the Baltimore City Mayor convened the Heroin Treatment and Prevention Task Force to study the problem of heroin addiction and propose solutions for improving access to effective treatment and neighborhood compatibility. In July 2015, the task force issued a report with 10 recommendations to guide the work of the Baltimore City Health Department and Behavioral Health System Baltimore. The Baltimore City Health Department also launched DontDie.org, an online public education campaign designed to educate citizens that addiction is a chronic disease and encourage individuals in need to seek treatment.

Baltimore City also implemented a citywide heroin overdose plan to distribute naloxone in the most at-risk communities. As of October 1, 2015, the Baltimore City Health Commissioner issued a standing order to provide naloxone without a prescription to every city resident who has received naloxone training (approximately 4,000 individuals). The city is coordinating efforts with treatment providers and law enforcement to prevent targeted drug sales to vulnerable individuals undergoing addiction treatment and to increase support for drug treatment courts and other diversion programs. In addition, the city is implementing "good neighbor agreements" to help improve community relations between treatment providers and surrounding communities. The city is also seeking federal, State, and private funding to provide treatment on demand, increase access to treatment for incarcerated individuals, and provide treatment and case management services to individuals with substance use disorders on release from prison.

Social Programs

Public Assistance Caseload Trends

The Temporary Cash Assistance caseload continued to decline in fiscal 2015 for the third year in a row and is projected to continue to decline in fiscal 2016 and 2017, while the average monthly grant amount remains essentially the same. General fund support for the program is also projected to decline. After leveling out in fiscal 2014, the number of Marylanders receiving Supplemental Nutrition Assistance Program benefits began to decline on a year-over-year basis in fiscal 2015.

Background

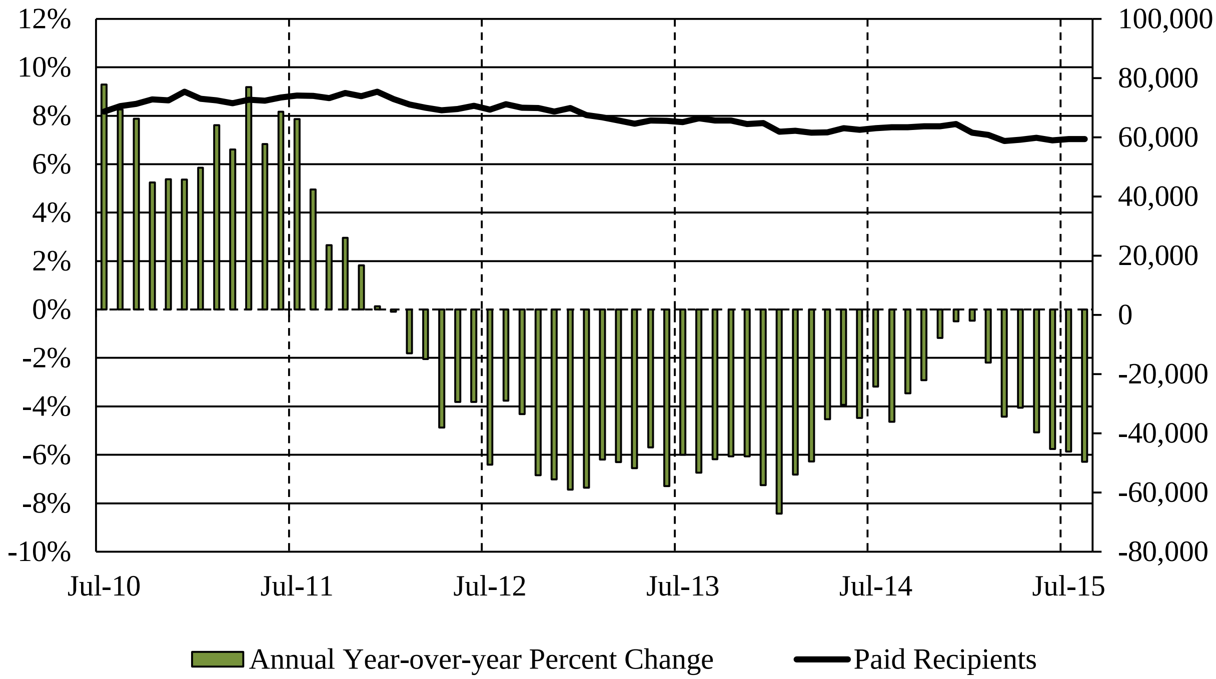
The 2007 to 2009 economic recession led to dramatic increases in caseloads for public assistance programs, notably the Temporary Cash Assistance (TCA) program and the Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps. TCA provides monthly cash grants to needy children and their parents or caretaker relatives and is funded with general funds, federal Temporary Assistance for Needy Families block grant dollars, and certain child support collections. SNAP helps low-income people buy the food that they need for good health. Benefits under SNAP are provided entirely with federal funds.

Temporary Cash Assistance Caseload and Funding Trends

As shown in **Exhibit 1**, the recent peak in the TCA caseload occurred in December 2011 (75,442 recipients). However, the caseload declined on a year-over-year basis in all months from January 2012 through August 2015, despite some monthly fluctuations. In August 2015, the number of TCA recipients was 59,369, a 21.3% decrease from the December 2011 peak and 6.3% lower than August 2014.

As shown in **Exhibit 2**, the Department of Legislative Services (DLS) projects the TCA caseload to continue to decline in fiscal 2016 and 2017. In Maryland, the TCA grant plus the SNAP grant equals 61% of the Maryland Minimum Living Level. As neither the Maryland Minimum Living Level nor the SNAP grant will change in fiscal 2016, the TCA grant is expected to remain at approximately the same level. A continued reduction in the TCA caseload results in a lower estimate of spending in the program overall, which translates into lower general fund needs. However, DLS projects a small shortfall in TCA in fiscal 2016 (approximately $1.5 million) due to slightly higher than anticipated caseloads.

Exhibit 1
Temporary Cash Assistance Caseload
July 2010 through August 2015



Source: Department of Human Resources, Department of Legislative Services

Exhibit 2
Temporary Cash Assistance Enrollment and Funding Trends
Fiscal 2015-2017

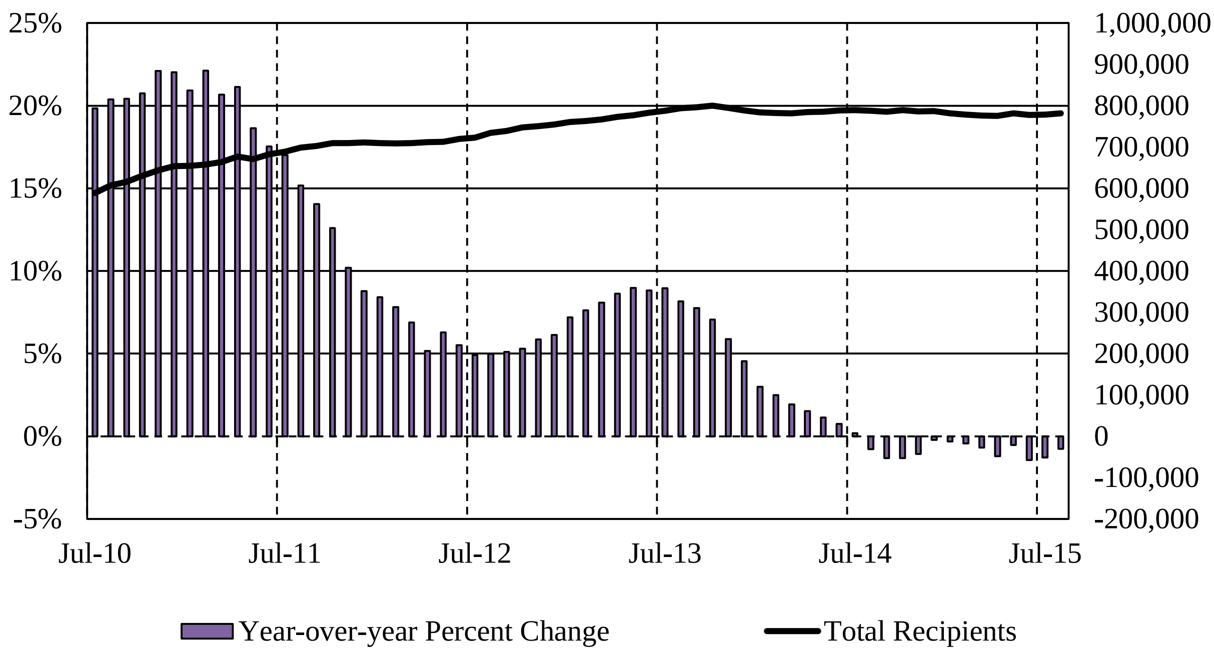
	2015 Actual	2016 Estimate	2017 Estimate
Average Monthly Enrollment	61,739	57,636	53,945
Average Monthly Grant	$191.17	$191.17	$192.61
Budgeted Funds in Millions			
General Funds	$27.0	$20.8	$13.2
Total Funds	**$141.6**	**$132.2**	**$124.7**

Source: Department of Human Resources, Department of Legislative Services

Supplemental Nutrition Assistance Program Caseload Trends

Due to a combination of the economy and outreach efforts, the number of SNAP recipients substantially increased through 2013. However, as shown in **Exhibit 3**, the caseload started to decline following the peak in October 2013 of 800,222 recipients. The number of recipients began to decline on a year-over-year basis in fiscal 2015. In August 2015, the number of recipients was 2.3% lower at 778,671 than the October 2013 peak. The SNAP benefit as noted earlier is 100% federally funded, although the administrative costs are shared between the State and federal government. In fiscal 2015, SNAP benefit expenditures were $1.15 billion, a decrease of $3.9 million from fiscal 2014.

Exhibit 3
Supplemental Nutrition Assistance Program Caseload
July 2009 through September 2015



Source: Department of Human Resources, Department of Legislative Services

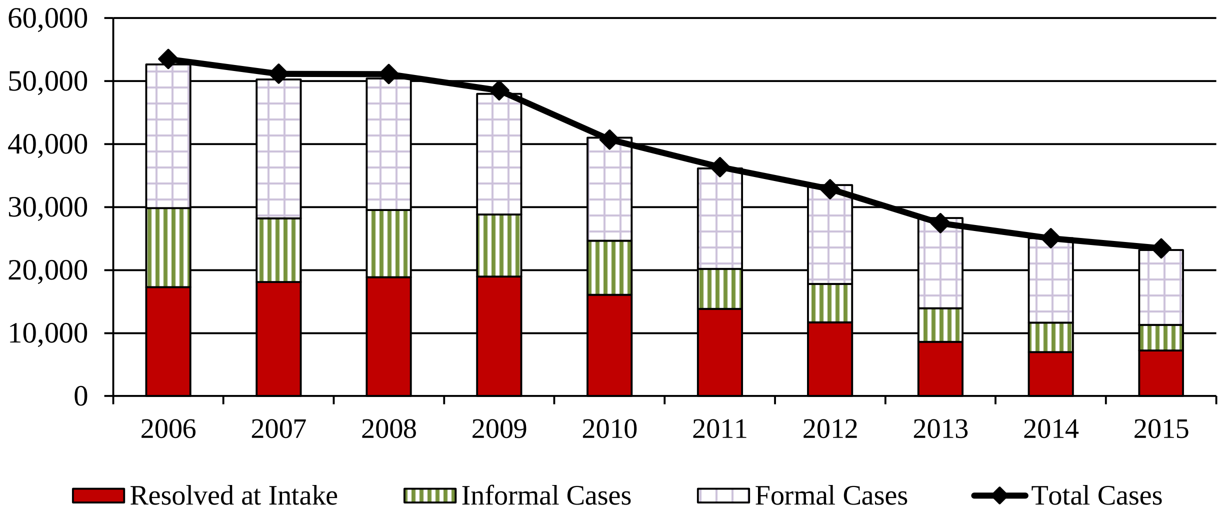
Department of Juvenile Services Population Trends and Facility Issues

The number of complaints received by the Department of Juvenile Services (DJS) has consistently declined over the past decade and is now less than 25,000 per year. Out-of-home commitments experienced a substantial decrease in fiscal 2015, with preliminary fiscal 2016 data indicating a continued decline. This decline has allowed DJS to absorb the loss of $2.8 million in federal funding beginning in fiscal 2016.

General 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 Complaints and Complaint Dispositions
Fiscal 2006-2015



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

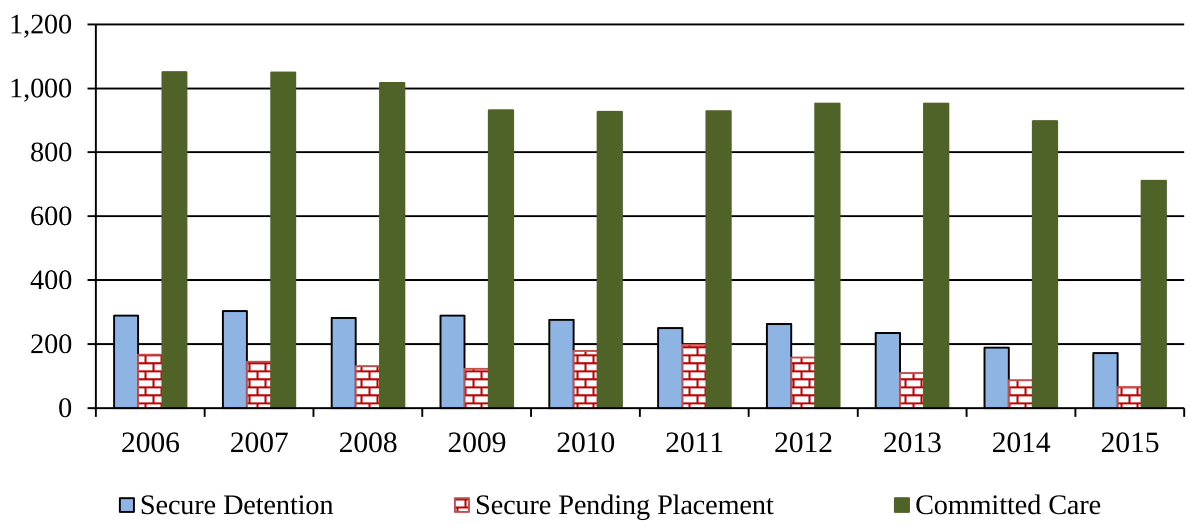
- The total number of complaints received by DJS has consistently declined over the past decade. The 23,446 complaints in fiscal 2015 reflects a 56% decrease from the peak of 51,507 cases in fiscal 2006, a 6% decline from fiscal 2014, and the first time in more than 10 years that total complaints were less than 25,000.

- Approximately 48% of the cases received in fiscal 2015 did not require court intervention. The number of cases resolved at intake experienced a slight increase (3%), rising to slightly more than 7,200 cases. This was the only case type to experience growth in fiscal 2015. The number of cases that require some form of intervention but not court intervention (the informal caseload) continued to decline, falling by 13% from the prior fiscal year.

- The formal caseload, cases where court intervention is required, account for slightly more than half of complaints received. The 11% decline experienced in fiscal 2015 reduced total formal cases to 11,919, nearly half the formal complaints received a decade ago.

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

Exhibit 2
Selected Average Daily Population Trends
Fiscal 2006-2015



Source: Department of Juvenile Services; Department of Legislative Services

- The total population of youth held in secure detention facilities continued to decline in fiscal 2015, falling by 14% from fiscal 2014. On average, there were nearly 40 fewer youth held in a DJS detention facility in fiscal 2015 than in fiscal 2014. This is the result of the general reduction in referrals received by the department, enhanced efforts to reduce out-of-home placements, and a significant reduction in the pending placement population.

- The average population of youth held in a secure detention facility while awaiting placement in a committed program has declined dramatically since fiscal 2011. This is largely the result of legislation creating a continuum of care to reduce the number of returns to detention due to ejection from a committed program. The average pending placement population in fiscal 2015 was 66 youth, a 24% decline from fiscal 2014, and a nearly 70% decline from the most recent peak of 198 youth pending placement in fiscal 2011.

- The average predisposition population declined to 172 in fiscal 2015. The declining population has resulted in available bed space, which has allowed DJS to assume responsibility for a significant portion of the youth charged as adult detention population. Chapter 442 of 2015 requires youth awaiting action from the adult court to be held in a juvenile detention facility, except under certain circumstances. In fiscal 2015, an average of 49 predisposition youth were awaiting action from the adult courts, accounting for more than one quarter of the entire predisposition detention population. Previously, these youth would have been held at adult county detention centers. Chapter 442 is expected to further increase the average daily population; however, the downward population trends in recent years have created adequate capacity to accommodate this new population.

- The average daily population of youth in committed residential placement decreased by more than 20% in fiscal 2015, finally mirroring the significant downward trend experienced by the detention population. An average of 711 youth were committed to out-of-home treatment compared to 1,050 youth committed a decade ago. The average daily population of youth in out-of-state residential placement was 96, 11% of the committed population.

Funding

Approximately $59.7 million was provided in the fiscal 2016 budget for residential per diems, including $52.9 million in general funds, $1.8 million in special funds, and $5.0 million in federal funds. In a September 2015 report to the budget committees, the Department of Budget and Management indicated that DJS has absorbed its share of the Governor's action to reduce ongoing agency operating expenditures by 2% within its residential per diems budget. This equates to a $5.9 million general fund reduction.

In addition, the Department of Health and Mental Hygiene notified DJS in March 2015 of a new Medicaid regulation that would prohibit DJS from claiming residential rehabilitation funds for DJS youth in therapeutic group homes and treatment foster care. This change is necessitated by a 2008 federal audit that required the State to revamp its residential rehabilitation program. To date, DJS has not made sufficient progress to improve the rate-setting process. The resulting impact from the change in regulation is the loss of $2.8 million in federal funding in fiscal 2016 and future years.

As seen in Exhibit 2, out-of-home commitments experienced a substantial decrease in fiscal 2015, with preliminary fiscal 2016 data indicating a continued decline. Because of the unanticipated drop in committed placements, DJS is able to absorb both the loss of federal revenue and the general fund reduction within its existing fiscal 2016 resources. To the extent that the department experiences growth in its residential population in fiscal 2016 or 2017, however, additional resources may be needed.

Social Programs

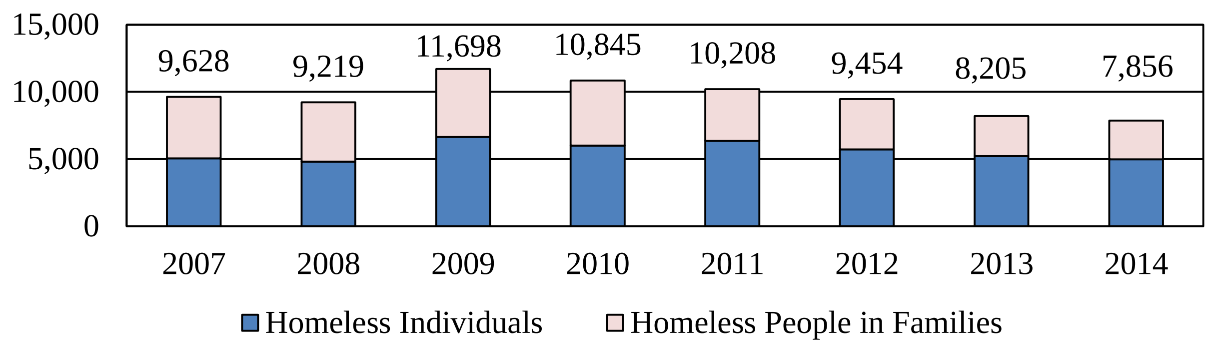
Homelessness in Maryland

The homeless population in Maryland, which increased during the recession, has been declining in recent years. However, issues remain including gaps at the local level in the number of available beds, a lack of affordable housing, and the somewhat limited scope of State funding spread across three agencies, which may impact coordination.

Overview of Maryland's Homeless Population

According to U.S. Department of Housing and Urban Development (HUD) data, in 2014, the total homeless population in Maryland was 7,856. As shown in **Exhibit 1**, while the total homeless population increased to a high of 11,698 in 2009, the number of homeless has declined in every other year since 2007. The majority of Maryland's homeless population are individuals (63%) rather than people in families (37%).

Exhibit 1
Homeless Population in Maryland
2007-2014



Source: U.S. Department of Housing and Urban Development

In 2014, 15% and 17% of the homeless population fell into the severely mentally ill and chronic substance abuse categories, respectively. The number of homeless veterans has declined to 654 in 2014, while the number of homeless unaccompanied youth and children increased to 411.

The local planning bodies that coordinate homelessness services in a geographic area are Continuums of Care (CoC). In 2014, the largest share of Maryland's homeless population was in the Baltimore City CoC (32.7%) followed by the Charles, Calvert, and St. Mary's county CoC (14.5%). While the majority of the homeless are individuals, in some areas (Cumberland/Allegany

County CoC, Harford County CoC, and Prince George's County/Maryland CoC), the majority are families. Nearly half of Maryland's homeless veterans (46.6%) reside in the Baltimore City CoC.

Exhibit 2 shows the total homeless population by CoC, including the number of total shelter beds, the number of shelter beds available for families with children, and the ratio of such beds to the homeless population. The number of total year-round beds available for homeless people has remained relatively consistent since 2009. In 2014, a total of 5,950 beds were available statewide, primarily transitional housing (3,027) and emergency shelter (2,818). Unfortunately, statewide, only 76% of the homeless population could be served through available year-round beds in 2014.

Exhibit 2
Homeless Population and Shelter Beds by Continuum of Care
Calendar 2014

Continuum of Care	Total Homeless	Total Shelter Beds	Ratio of Total Shelter Beds to Total Homeless	Homeless People in Families	Total Shelter Beds for Families with Children	Ratio of Shelter Beds for Families with Children to Homeless People in Families
Cumberland/Allegany County	120	131	109%	72	91	126%
Baltimore City	2,567	2,424	94%	590	735	125%
Harford County	223	154	69%	143	98	69%
Annapolis/Anne Arundel County	384	243	63%	159	171	108%
Howard County	170	114	67%	72	87	121%
Baltimore County	569	430	76%	182	270	148%
Carroll County	124	112	90%	40	66	165%
Cecil County	195	171	88%	53	64	121%
Charles, Calvert, St. Mary's Counties	1,141	409	36%	569	281	49%
Frederick City and County	246	198	80%	105	140	133%
Garrett County	13	30	231%	6	11	183%
Mid-Shore Regional	111	52	47%	31	31	100%
Hagerstown/Washington County	107	226	211%	43	69	160%
Wicomico/Somerset/Worcester County	336	206	61%	85	80	94%
Prince George's County/Maryland	659	450	68%	438	335	76%
Montgomery County	891	600	67%	288	287	100%
Total	**7,856**	**5,950**	**76%**	**2,876**	**2,816**	**98%**

Source: U.S. Department of Housing and Urban Development

State Programs to Aid the Homeless

The Department of Housing and Community Development (DHCD) operates several programs, including the Emergency Solutions Grant program, the Rental Allowance Program, Families First, Community Services Block Grants, and the Shelter and Transitional Housing Facilities Grant program. DHCD also has programs to increase affordable housing, a major cause of homelessness. In Maryland, HUD estimates that there is a shortage of approximately 190,700 affordable rental housing units for families earning less than 50% of the area median income.

The Department of Human Resources offers a number of programs that support low-income households or provide services for the currently homeless including direct eviction assistance or services to households that are currently homeless, providing funds to shelters to support operations, as well as programs that assist households with meeting needs that may then allow the household to maintain housing, such as the Temporary Cash Assistance Program.

The Department of Health and Mental Hygiene has four programs in the Behavioral Health Administration serving populations that are homeless or at risk of homelessness. These programs are each targeted to individuals with mental illness or co-occurring substance use disorders.

Recent Legislation to Address Homelessness in Maryland

Chapters 544 and 545 of 2013 established the Task Force to Study Housing and Supportive Services for Unaccompanied Homeless Youth to compile information and identify the unique needs of unaccompanied homeless youth. The task force report to the General Assembly noted a lack of reliable data on homeless youth in Maryland, prompting Chapter 425 of 2014, which established a Maryland Unaccompanied Homeless Youth and Young Adult Demonstration Project.

Chapter 341 of 2014 created the Interagency Council on Homelessness to study issues relating to homelessness; review and make recommendations on State statutes, regulations, program services, and budgetary priorities; and provide an annual report to the General Assembly. Chapter 460 of 2015 required the interagency council to determine best practices and models for providing emergency shelter and shelter diversion. Chapter 427 of 2014 established the Joint Committee on Ending Homelessness to study issues related to homelessness, including housing, income, health care, education, government supports, and veterans experiencing homelessness.

Additional detail on homelessness in Maryland and the State programs to address homelessness and affordable housing is available in the September 2015 Department of Legislative Services report *Overview of Homelessness and Homeless Services in Maryland*.

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Social Programs

Refugee Assistance in Maryland

Refugees are persons granted protective status while abroad. Typically, they have been forced to flee their homeland and are unable to return. In federal fiscal 2015, about 1,800 refugees resettled in Maryland; an estimated 2,100 refugees are expected in federal fiscal 2016. This issue paper describes refugees recently resettled in Maryland and the services available to refugees through the Maryland Office for Refugees and Asylees and local school systems.

Background

Federal law defines a refugee as a person who (1) is outside the United States; (2) is of special humanitarian concern; (3) demonstrates persecution of fear or persecution due to race, religion, nationality, political opinion, or membership in a particular social group; (4) is not firmly resettled in another country; and (5) is admissible to the United States. Nationally, the U.S. Department of State works to determine the location of refugee resettlement through reception and placement programs. The Department of Human Resources' Maryland Office for Refugees and Asylees (MORA) administers federally funded services for individuals resettling in Maryland, while school-aged refugees are educated in local public school systems throughout Maryland.

Refugees Resettled in Maryland

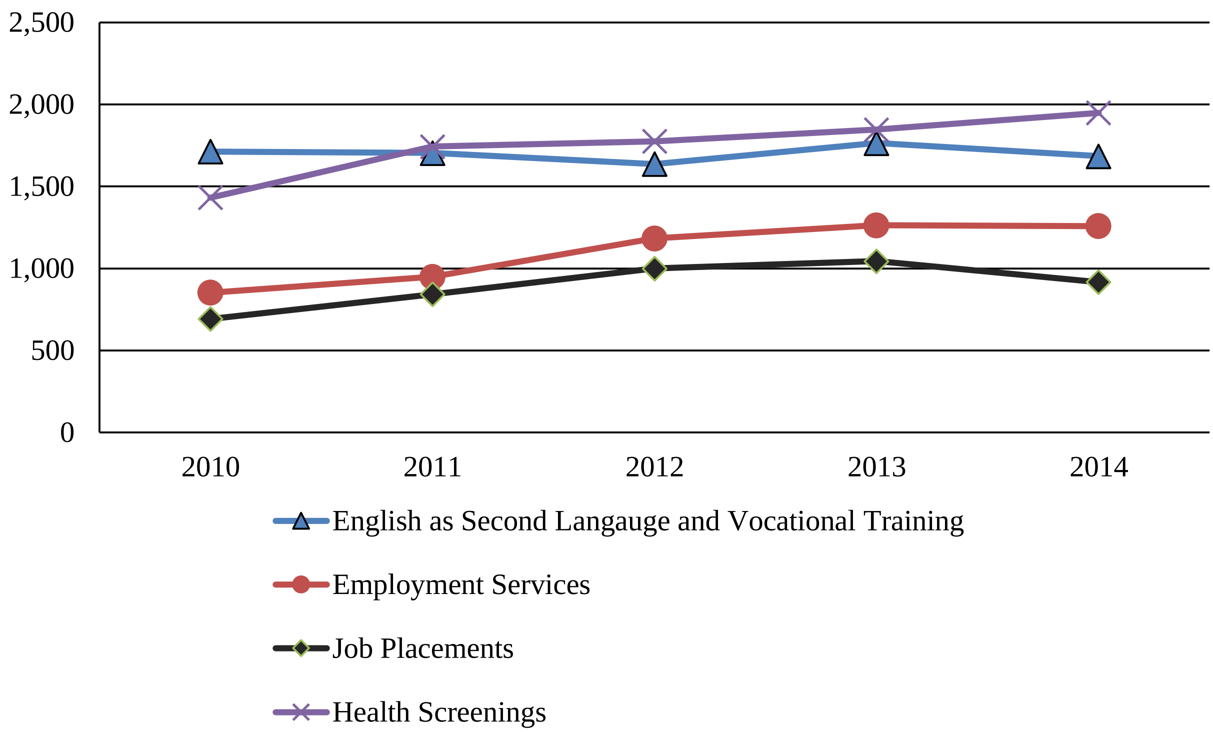
From federal fiscal 2010 through 2014, Maryland received 6,716 refugees (2% of refugees resettled nationally), or about 1,300 annually, most of whom arrived from Asia (approximately 76%). During this period, Baltimore City (43%) and Montgomery County (34%) received the largest share of refugees. Other jurisdictions receiving refugees included Prince George's County (9%), Howard County (4%), and Baltimore County (4%), while all other jurisdictions received 5% of refugees resettled in Maryland. In federal fiscal 2015, 1,803 refugees were resettled in Maryland.

Services Provided by the Maryland Office for Refugees and Asylees

MORA administers federal programs offered by the U.S. Department of Health and Human Services' Office of Refugee Resettlement. MORA prepares to receive refugees by meeting with funded partners, county and city officials, and other stakeholders bimonthly regarding the needs of incoming refugees. MORA also provides technical assistance to the Department of Health and Mental Hygiene (DHMH) and local colleges to ensure these organizations have necessary tools to serve the refugee population, including training in cultural competency and language access. In fiscal 2016, MORA has seven positions and a budget of $14.4 million in federal funds.

Services provided through MORA include (1) English language instruction and vocational training; (2) employment services; (3) health screenings; and (4) cash assistance. Health screenings are conducted by DHMH within the first 90 days after entry into the United States. Additional services are provided through public private partnership organizations (Baltimore Resettlement Center and the Suburban Washington Resettlement Center). Services are generally time limited, with most services available for 5 years; however, cash assistance is available only for the first 8 months. **Exhibit 1** provides information on the number of refugees receiving certain services from federal fiscal 2010 through 2014.

Exhibit 1
Services Provided by the Maryland Office for Refugees and Asylees
Federal Fiscal 2010-2014

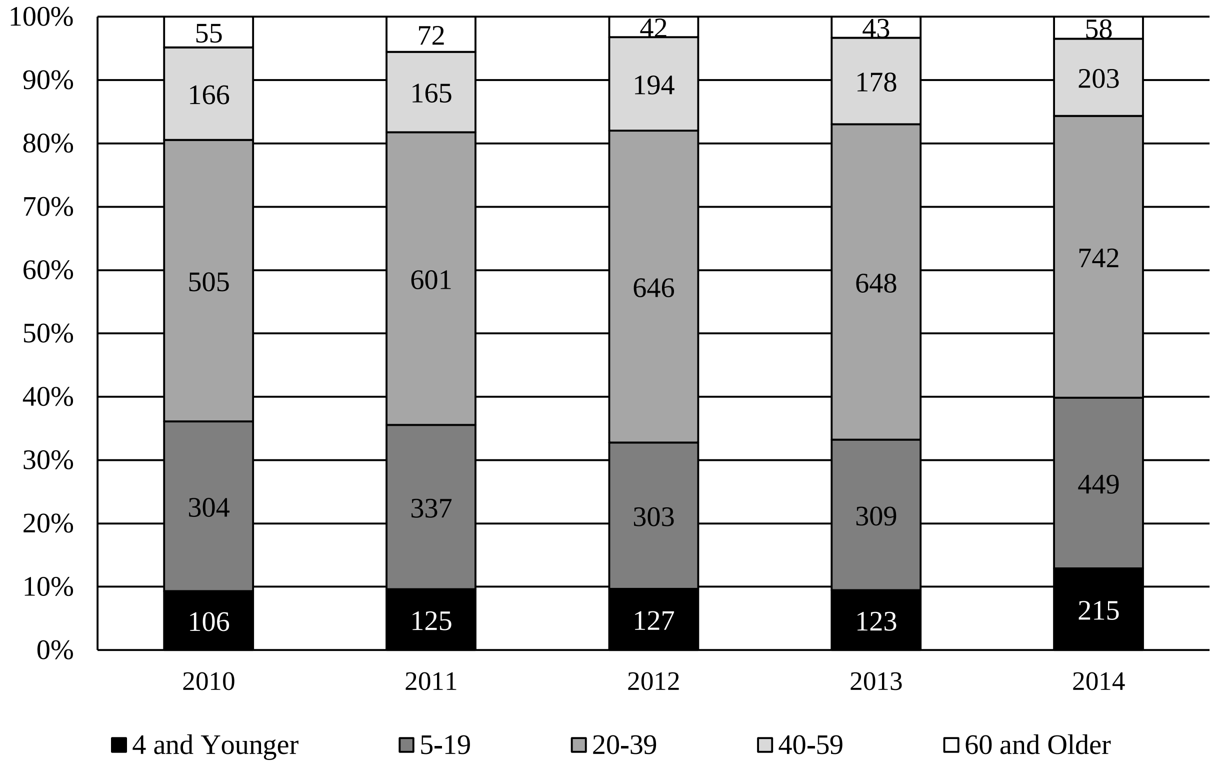


Source: Maryland Office for Refugees and Asylees, Department of Human Resources

Education of Refugee Students

As shown in **Exhibit 2**, while the majority of refugees resettled in Maryland from federal fiscal 2010 through 2014 were ages 20 to 39, more than one-quarter (25.3%) were school aged (age 5 to 19), with an additional 10.4% younger than age 5. Under State law, all individuals, including refugees, between the ages of 5 and 20 may attend public primary or secondary schools free of charge. Federal law requires local school systems to provide English learner students with equal access to high-quality education, and local school systems may not discriminate in enrolling students based on national origin, citizenship, or immigration status. Many local school systems partner with community programs to provide comprehensive services to immigrant students such as after school tutoring, counseling, and parental support.

Exhibit 2
Refugees Resettled in Maryland by Age
Federal Fiscal 2010-2014



Source: Maryland Office for Refugees and Asylees, Department of Human Resources

Financial support for public schools in Maryland is a shared State and local responsibility, with the federal government providing support for specific programs. All students are included in the State education funding formulas. The formulas provide additional per pupil funding for the costs associated with providing services to three at-risk student populations: special education students, students from economically disadvantaged backgrounds, and students with limited English proficiency. In fiscal 2016, the federal government provided Maryland local school systems with $9.3 million to supplement development of required English proficiency programs and $98,520 to provide immigrant services in jurisdictions with an increase in the number of immigrants over the prior year.

Future Refugees in Maryland

The U.S. Department of State anticipates increasing the number of refugees admitted to the United States in the coming year due to the ongoing refugee crisis in Syria, some portion of which could be resettled in Maryland. At the time of writing, MORA had anticipated that Maryland would receive 2,100 refugees during federal fiscal 2016, 1,058 refugees who have a tie to the United States (family already resettled) and 1,035 refugees who have no tie to the United States. No specific figures about the number of refugees anticipated from Syria are available. However, Maryland has received 33 Syrian refugees through August 31, 2015. It should be further noted that following the terrorist attack on Paris on November 13, 2015, concerns were raised by numerous governors, including Governor Hogan, about resettlement of Syrian refugees specifically.

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Transportation

Overview of Draft *Consolidated Transportation Program*

The Maryland Department of Transportation's 2016 draft *Consolidated Transportation Program* (CTP) lists all capital projects funded in the current fiscal year and those planned for the next five years. The 2016 CTP reflects a major shift in priorities from those of the previous Administration and those embraced by the General Assembly through the enactment of the Transportation Infrastructure Investment Act of 2013. This shift in priorities results in (1) less capital spending; (2) less mass transit capital spending; (3) more aid to localities; and (4) more spending on highway projects. Spending over the six years totals $15.5 billion, a $346 million decrease from the fiscal 2015 CTP.

Background

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 Maryland Department of Transportation (MDOT), its modal administrations, 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 (MDTA) are also included in the CTP but are excluded from this analysis.

The draft CTP released September 1, 2015, reflects a major shift in priorities from those of the previous Administration and those embraced by the General Assembly through enactment of the Transportation Infrastructure Investment Act of 2013 (Chapter 429). The shift in priorities can be summarized as follows: less capital spending; much more aid to localities; less spending for mass transit; and much more spending for highways. The following highlights the major shifts embodied in the draft CTP.

Less Capital Spending

Six-year programmed spending in the draft CTP is $346.2 million less (-2.2%) than the amount programmed in the previous CTP. The decrease comprises reductions in all fund categories and reflects decreased special fund availability for capital due to programmed increases in aid to locals through Highway User Revenues (HUR) and decreased federal and other funds associated with cancelation of the Baltimore Red Line. **Exhibit 1** compares six-year spending contained in the 2015 CTP to the draft 2016 CTP by fund source.

Exhibit 1
Comparison of Six-year Capital Spending by Fund Source
Fiscal 2015-2021
($ in Millions)

	2015-2020 CTP	Draft 2016-2021 CTP	Change	%Change
Special Funds	$9,533.2	$9,482.2	-$51.0	-0.5%
Federal Funds	4,964.4	4,870.0	-94.4	-1.9%
Other Funds*	1,345.3	1,144.5	-200.8	-14.9%
Total Funds	**$15,842.9**	**$15,496.7**	**-$346.2**	**-2.2%**

CTP: *Consolidated Transportation Program*

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

Note: Numbers may not sum due to rounding.

Source: Maryland Department of Transportation 2015 final CTP, 2016 draft CTP

More Aid to Localities

The draft Transportation Trust Fund (TTF) forecast includes estimated revenues and expenditures for the same six-year period included in the draft CTP. It is released with the draft CTP and provides the planned allocations for debt service, operations of MDOT, local aid (HUR), and the capital program. The draft TTF forecast allocates $743 million between fiscal 2017 and 2021 to increase the local government share of HUR each year by 2.5 percentage points (except for fiscal 2017 in which it increases by 2.9 percentage points) as part of a plan to increase the local share of HUR to 30.0% by fiscal 2024. Increases in transportation aid to local governments reduces funding for capital projects in the CTP by an equal amount. The phased increase in HUR will require legislation to be passed at the 2016 session. Similar legislation was proposed by the Administration at the 2015 session, but it did not pass.

Less Mass Transit Capital

Six-year transit capital funding is reduced by over one quarter in the draft CTP. Over the fiscal 2016 to 2021 six-year period, programmed capital spending for MDTA declines by $1.4 billion (27.1%) from the previous six-year plan. Cancelation of the Baltimore Red Line ($1.4 billion) and a reduction to the Purple Line ($89.4 million) constitutes the largest reductions to programmed six-year transit capital spending which total $1.7 billion. These reductions are partially offset by $322.0 million in increased programmed spending, resulting in a net reduction to programmed spending of $1.4 billion. Many of the decreases, other than to the Red and Purple Lines, and many of the increases are routine changes, with projects removed as they are completed and others added as part of the normal CTP development process. The reductions to the Red and Purple Lines, however, represent a major policy shift away from transit funding toward highway and bridge funding.

Much More Highway Capital

Programmed spending on highway projects in the draft CTP increases by $1.1 billion (15.2%) over the previous six-year plan. The draft CTP adds 25 projects totaling $342.6 million in six-year programmed spending to the State Highway Administration (SHA) construction program. Of these, 22 are bridge projects with six-year spending totaling $162.4 million. In addition, 11 projects with six-year spending totaling $721.7 million are moved from the development and evaluation program to the construction program. In total, $1.1 billion in six-year spending for road and bridge projects is added to the draft CTP. **Exhibit 2** compares MDOT's total capital spending by mode between the fiscal 2015-2020 CTP and the fiscal 2016-2021 draft CTP.

Exhibit 2
Comparison of Six-year Capital Spending by Mode
Fiscal 2015-2021
($ in Millions)

	2015-2020 CTP	Draft 2016-2021 CTP	Change	Percent Change
Administration	$280.6	$267.9	-$12.7	-4.53%
WMATA	1,578.9	1,581.4	2.5	0.16%
State Highways	7,188.8	8,279.1	1,090.3	15.17%
Port	971.3	949.0	-22.3	-2.30%
Motor Vehicle	125.3	127.3	2.0	1.60%
Mass Transit	5,047.0	3,680.2	-1,366.8	-27.08%
Airport	651.0	611.8	-39.2	-6.02%
Total	**$15,842.9**	**$15,496.7**	**-$346.2**	**-2.19%**

CTP: *Consolidated Transportation Program*
WMATA: Washington Metropolitan Area Transit Authority

Source: Maryland Department of Transportation 2015 final CTP, 2016 draft CTP

Watershed Implementation Plan Funding Not Included

A statutory provision added by Chapter 429 of 2013 requires the Governor to provide funding in either the operating or capital budget through fiscal 2019 to assist SHA in complying with the Watershed Implementation Plan (WIP) funding requirements. The WIP projects retrofit existing highways to reduce stormwater runoff, thereby reducing nutrients and sediment loadings to local waters and the Chesapeake Bay. The draft CTP includes six-year programmed spending of $586 million for the WIP projects. The draft TTF forecast, however, does not anticipate the $85 million support from the operating or capital budget for fiscal 2017. It does assume $100 million in WIP funding support in both fiscal 2018 and 2019. The Administration will need legislation to relieve it of the requirement to provide the $85 million in WIP funding support in fiscal 2017.

Transportation

Transportation Projects and Private-sector Economic Growth

Maryland's ability to fund its transportation capital program falls short of identified needs. In addition, current statutory requirements do not ensure that the transportation projects funded by the State will generate the greatest return on investment in terms of easing congestion or stimulating economic growth. A priority setting process that uses a cost-benefit analysis may help the State select transportation projects that yield the greatest benefit possible.

Introduction

The amount of funding that would be needed for all desired transportation projects that meet the eligibility requirements set forth in statute is far in excess of available funding. The *Consolidated Transportation Program* (CTP) aligns transportation capital spending with the estimated resources that will be available over the six-year forecast period. The Maryland Department of Transportation, and ultimately the Governor, has wide latitude in deciding which projects to include in the CTP and which to defer. A change in Administrations can lead to very different funding decisions as has been demonstrated with the shift away from mass transit and toward road and highway funding announced by the current Administration.

While current statutory requirements related to adding projects to the CTP require that each project supports local government land use plans and goals, and addresses State transportation goals as identified in the State's long-range transportation planning document – the Maryland Transportation Plan – they do not ensure that the funded projects will generate the greatest return on investment in terms of easing congestion and stimulating economic growth. What is lacking in the CTP development process is a scoring system that would help identify the projects which should receive the highest funding priority.

Balancing Transportation-related Economic Challenges

While most transportation capital projects can be said to support economic activity, some projects have tremendous potential in this respect while others are much more limited. Two examples help illustrate this point. First, the Port of Baltimore, one of Maryland's largest economic engines, is hampered by the inability to double stack shipping containers on railcars because the antiquated Howard Street tunnel is not big enough. The inability to double stack containers impedes Maryland's ability to compete for shipping business. Second, continued development of the Great Seneca Science Corridor, a major high-tech employment center planned in Montgomery County, is dependent upon progress in construction of the Corridor Cities Transitway, which is designed to ensure adequate transit access and help alleviate and prevent unacceptable levels of road congestion in the I-270 corridor.

Maryland's economy would be greatly improved by replacing the Howard Street Tunnel and by constructing the Corridor Cities Transitway. The cost for each of these projects is large. However, if all projects were evaluated and ranked based on a cost-benefit basis for inclusion in the CTP, these two projects would likely be highly ranked.

Priority Setting Processes – Other States

North Carolina, Virginia, and Washington have all enacted laws establishing project priority setting processes to more effectively guide transportation investment decisions and increase transparency in how projects are selected for funding. A key component of these processes is the use of a cost-benefit analysis approach to determine which investments will yield the greatest economic and other desired outcomes.

Conclusion

Despite the transportation revenue increases passed in 2013, Maryland's ability to fund its transportation capital program falls well short of identified needs. This makes it important that the projects which are funded yield the greatest benefit possible. Developing a data-driven, cost-benefit approach to project selection would help ensure that outcome.

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Business Regulation

Unemployment Insurance

With the continued relatively favorable employment picture in the State and lower claim activity, the balance of the Unemployment Insurance Trust Fund is at a level that allows Maryland employers to pay from the lowest cost table in calendar 2016, a decrease from calendar 2015 tax rates. Maryland's unemployment rate improved to 5.1% from 6.3% a year ago. The Joint Committee on Unemployment Insurance Oversight plans to discuss the status of unemployment insurance in Maryland at an upcoming meeting.

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.

The UI Trust Fund and Outlook for Employer Taxes in Calendar 2016

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. In Table A, employers pay a minimum of 0.3% (on the first $8,500 of annual wages of each employee) and a maximum of 7.5% ($25.50 to $637.50 per employee). The highest tax table (Table F) is used when the balance of the UI trust fund is not in excess of 3% of the total taxable wages. In Table F, employers pay a minimum of 2.2% and a maximum of 13.5% ($187 to $1,147.50 per employee).

The federal unemployment tax under the Federal Unemployment Tax Act (FUTA) is assessed on the first $7,000 of annual wages of each employee. The standard FUTA tax rate for employers is 6.0%, but the rate is subject to an offset credit of up to 5.4% for employers who pay their state unemployment taxes on time. Employers in states that have received but not repaid loans from the federal government (called "credit reduction states") receive a lower offset credit and pay higher FUTA taxes. Employers in Maryland (Maryland does not have an outstanding loan) receive the full 5.4% offset credit and pay a FUTA tax of 0.6%, which means that the maximum FUTA tax per employee per year is $42.00. States are required to have their state taxable wage base at a level that is at least the same or higher than the federal taxable wage base. States are also required to be in compliance with other federal requirements. To the extent that the federal government increases the federal taxable wage base above $8,500, as has been discussed at the federal level, the General Assembly would have to increase the State taxable wage base and would likely have to make corresponding statutory adjustments to the tax tables.

The balance of the State's UI trust fund has fluctuated over the years, growing in good economic times to over $1 billion in each of calendar 2006 and 2007, 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. Despite an infusion of $126.8 million of federal modernization incentive funds in May 2010, with the repayment of the borrowed funds by December 2010, the balance of the UI trust fund remained at a level that required Maryland employers to pay from the highest tax table from 2010 through 2012. Due to the more favorable employment picture in the State and lower claims activity (resulting in a significantly increased balance of the UI trust fund), employers paid from Table C in calendar 2013, Table A in calendar 2014, and Table B in calendar 2015. The September 30, 2015 balance in the UI trust fund was approximately $984.0 million, meaning that employers will return to paying from Table A in calendar 2016.

It is worth noting that many other states were also required to borrow funds from the federal government to ensure solvency of their trust funds; at its peak, the outstanding balance reached as high as $41 billion across 29 states. Although Maryland was able to repay its loan within a single fiscal year, many states required several years for repayment, and four states still owe a combined $6.8 billion on loans received in 2008 or 2009.

The State's unemployment rate rose from 3.4% at year-end 2007 to 7.6% at year-end 2009, from which it has declined each year. As of September 2015, Maryland's unemployment rate was 5.1%. Initial claims grew from about 222,000 in calendar 2007 (18,500 monthly average) to a high of over 416,000 in calendar 2009 (35,000 monthly average). Initial claims began to fall in calendar 2010. By fiscal 2015 (calendar year data not yet available), initial claims fell to about 219,000, for an approximately 18,250 monthly average.

Exhibit 1 shows the recent history of Maryland's seasonally adjusted unemployment rate, the UI trust fund balance used to calculate the tax rate table (the prior year's September 30 balance), the tax rate table in effect, and the annual benefit payouts.

Exhibit 1
Maryland's Unemployment Rate, UI Trust Fund Balance, and Annual Benefit Payouts
Calendar 2006-2016

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)
2006	3.8	$883.1	B	$383.5
2007	3.4	1,032.5	A	433.3
2008	5.8	1,057.8	A	785.2
2009	7.6	895.4	B	1,068.8
2010	7.4	301.7	F	900.7
2011	6.9	273.4	F	795.7
2012	6.8	460.2	F	778.5
2013	6.1	794.5	C	736.2
2014	5.5	934.9	A	623.2
2015	5.1	904.6	B	336.8
2016	N/A	996.2[4]	A	N/A

[1]Data is from DOL: Unemployment rate as of December of each year, 2015 is as of August 2015.
[2]Data is from DLLR: Calendar 2010 includes $133.8 million in borrowed funds (February 2010) and $126.8 million in federal modernization funds (May 2010); borrowed funds were repaid in full by December 2010.
[3]Data is from DOL: 2015 payout amount is through July 31.
[4]Preliminary cash balance. Final reconciliation is not completed as of October 8, 2015.

Note: The historic high unemployment rate for Maryland was 8.3% in August 1982, and the historical low was 3.3%, which has occurred several times.

Source: U.S. Department of Labor (DOL); Department of Labor, Licensing, and Regulation (DLLR)

Federally Funded Benefits Have Expired

Eligible claimants may receive up to 26 weeks of regular UI benefits from the State UI trust fund. However, in 2008, in response to the recession, federal law established emergency unemployment compensation benefits (EUC) for 47 weeks for UI claimants who have exhausted regular UI benefits for a total of 73 weeks of regular and EUC. Under the federal Middle Class Tax Relief and Job Creation Act of 2012, as of June 2012, EUC was comprised of four tiers: Tier 1 – 14 weeks; Tier 2 – 14 weeks if the State unemployment rate was at least 6%; Tier 3 – 9 weeks if State unemployment rate was at least 7%; and Tier 4 – 10 weeks if the

State unemployment rate was at least 9%. However, due to an improvement in the labor market and Congress' inability to reach consensus, the federal benefits expired on January 1, 2014.

Joint Committee on Unemployment Insurance Oversight

The Joint Committee on Unemployment Insurance Oversight monitors laws and policies that affect the State UI system, including administrative and federal funding issues, and studies other potential legislative changes to UI benefits. The joint committee plans to hold an interim meeting in November 2015 to discuss the status of the UI trust fund and any anticipated legislation.

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Business Regulation

Renewable Energy and Public Service Commission Initiatives

Now in their tenth year, the Renewable Energy Portfolio Standard requirements continue to spark discussion on altering the levels and contents of those requirements. The Public Service Commission (PSC) recently approved EmPower programs to be implemented beyond 2015. Preparations for the final report by the Maryland Clean Energy Center on establishing a green bank are underway. Maryland has a Clean Generation Set-Aside Account that may be used by newly constructed qualifying efficient power plants. PSC has been involved in a number of significant regulatory activities.

Renewable Energy Portfolio Standard

Maryland's Renewable Energy Portfolio Standard (RPS) requires that renewable sources generate specified percentages of Maryland's electricity supply each year, increasing to 20% by 2022, including 2% from solar energy. Maryland's RPS operates on a two-tiered system with corresponding renewable energy credits (RECs) for each tier. Tier 1 includes preferred sources, with carve-outs for solar energy and offshore wind energy. Tier 2, which phases out after 2018, includes certain hydroelectric sources. For the 2013 compliance year, (the most recent for which data are available) electricity suppliers retired approximately 6.5 million RECs at a cost of $56.8 million. Of that amount, the Tier 1 Nonsolar cost was $32.7 million, the Tier 1 Solar cost was $21.4 million, and the Tier 2 cost was $2.8 million. In 2016, RPS requirements are 12.7% for Tier 1 renewable sources, including at least 0.7% from solar energy, and 2.5% from Tier 2 renewable sources. Electric companies (utilities) and other electricity suppliers must submit RECs equal to the percentage specified in statute each year or pay an alternative compliance payment (ACP) equivalent to their shortfall. The Maryland Energy Administration (MEA) must use ACPs to support new renewable energy sources.

In past years, legislation was introduced to alter the RPS percentage requirements and to make other changes relating to RPS, including (1) increasing the solar carve-out; (2) incorporating thermal energy; and (3) removing black liquor, an industrial byproduct, as a Tier 1 resource.

EmPower Maryland

In 2008, the General Assembly passed the EmPower Maryland Energy Efficiency Act, Chapter 131, which set target reductions of 15% in per-capita electricity consumption and peak demand, respectively, by 2015 from a 2007 baseline. As of mid-2015, the utilities had achieved 85% of the energy consumption goal and 84% of the peak demand goal. In January 2013, as required under the Act, MEA and the Public Service Commission (PSC) jointly submitted a report to the General Assembly in which MEA recommended that Maryland continue to set EmPower goals beyond 2015 and laid out a planning framework and path forward to provide the information necessary to set these goals. PSC Order No. 86785, issued in December 2014, approved the utilities' proposals to continue the core EmPower programs into the next program cycle (2015-2017). In that order, PSC also approved several new programs, pilots, and enhancements to the suite of EmPower Maryland portfolios, including the approval, with certain modifications, of natural gas energy efficiency and conservation programs for Washington Gas Light Company.

Green Bank Study

A "green bank" is a financial organization that uses strategic public-private partnerships to overcome market barriers and increase the amount of private capital available to finance clean energy projects. Chapter 365 of 2014 required the Maryland Clean Energy Center (MCEC), in collaboration with MEA, to conduct a study and make recommendations related to green banks and clean bank financing initiatives, including aspects of implementation and funding. The agencies were required to submit an interim report by December 1, 2014, and a final report by December 1, 2015, on their findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee.

The interim report focused primarily on the role of green banks in financing renewable energy and energy efficiency and on the potential need for a green bank in Maryland. Several key conclusions of the report include: (1) Maryland has significant unmet energy efficiency and renewable energy investment needs; (2) Maryland's existing financing efforts lack coordination and scale; and (3) financing gaps exist within various Maryland markets.

Preparations for the final report are underway. As required by Chapter 365, the final report should contain several recommendations from MCEC and MEA, including (1) the scope of a proposed green bank or clean bank financing initiative, including target industries and financing capabilities; (2) possible sources of capital for a green bank or clean bank financing initiative; and (3) the best method for establishing a green bank or clean bank financing initiative in the State.

Power Plant Development Funds

In 2007, Maryland joined the Regional Greenhouse Gas Initiative (RGGI), a cap-and-trade program established in conjunction with eight other Northeastern and Mid-Atlantic states. Each state limits carbon dioxide emissions from electric power plants, issues carbon dioxide allowances, and establishes participation in carbon dioxide allowance auctions. A single carbon dioxide allowance represents a limited authorization to emit one ton of carbon dioxide. Total allowances in the Maryland program are 19.8 million in 2015, which decreases over time to 17.8 million by 2020.

Generally, power plants must purchase carbon dioxide allowances equal to their carbon dioxide emissions. However, Maryland has a "Clean Generation Set-Aside Account," through which the Maryland Department of the Environment can award (not sell) up to 1.9 million allowances each year to qualified power plants. To qualify, a power plant must (1) use gaseous fossil fuel as the primary fuel; (2) have applied the best available control technology or lowest achievable emissions rate, as applicable; and (3) not have been constructed pursuant to a PSC order or by agreement with the State. These allowances may not be resold by the recipient. These awarded allowances reduce the number of allowances available for purchase by other power plants and as such represent a forgone revenue stream for the State.

Other Public Service Commission Activities

PSC has been involved in a number of other regulatory activities, including (1) developing regulations for transportation network services; (2) enhancing electric reliability standards through regulation; (3) increasing consumer protections for electric and natural gas supply through regulation; (4) reviewing the proposed Exelon/Pepco Holdings Inc. merger; and (5) completing a review/study of telecommunications regulation required by Chapter 250 of 2015.

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Business Regulation

Transportation Network Services

Legislation regulating transportation network services was enacted during the 2015 session with a broad stakeholder consensus. Legislation is likely in 2016 to clarify certain aspects of the law. The Public Service Commission is developing regulations and studying laws that apply to sedan, limousine, and taxicab services. The issue of an employer-employee relationship that arose in another state may surface this session.

Uber Technologies, Inc., and other similar companies, such as Lyft and Sidecar, have upended the for-hire transportation business model over the past several years. These companies provide smart phone applications that use a smart phone's Global Positioning System to connect people who desire transportation services with nearby providers of transportation services in the company's network. Vehicle options offered across the current providers range from personal cars to taxis to sport utility vehicles. From its 2009 start in San Francisco, California, Uber had expanded to more than 200 cities worldwide by the end of 2014, and Lyft followed a similar expansion pattern in the United States. Uber and Lyft both began operating in Maryland in 2013.

2015 Legislation to Establish Regulatory Framework for Transportation Network Companies; Clarifying Legislation Likely in 2016

For the second consecutive year, the General Assembly considered legislation to address the regulation of transportation network services. Chapter 204 of 2015 establishes a regulatory framework for "transportation network services" that encompasses "transportation network companies" and "transportation network operators." Highlights of the legislation include:

- A license application and approval process for transportation network operators is established, which includes criminal history records checks.
- Minimum motor vehicle insurance requirements are established, which require policies to cover the transportation network operator while the individual is providing transportation network services, including liability, uninsured motorist, and personal injury protection coverages.
- Local governments that licensed or regulated taxicab services on or before January 1, 2015, either directly or through the Public Service Commission (PSC), may impose an assessment on trips that originate within the county or municipality – generally up to 25 cents per trip, subject to certain requirements. Under specified circumstances, other local governments may also impose an assessment on trips that originate within the county or municipality.
- PSC and the Maryland Insurance Administration (MIA) must each complete a study and report to the General Assembly on aspects related to transportation network services.

Although Chapter 204 passed with a broad stakeholder consensus, legislation is likely in 2016 to clarify certain aspects of the law, particularly related to the per-trip assessments authorized for certain local governments.

Regulations and Studies Still Pending

PSC must adopt regulations (1) for the electronic processing of license applications and (2) to ensure that transportation network companies and operators are making reasonable efforts to make transportation network services accessible to all people, including individuals with disabilities. As of October 2015, the regulations have not been finalized.

The Comptroller may adopt regulations to carry out Chapter 204's provisions relating to the per-trip assessments authorized for certain local governments, including requirements and procedures regarding the administration, collection, and enforcement of the assessments. As of October 2015, no regulations have been proposed.

PSC must study the laws and regulations that apply to sedan, limousine, and taxicab services for purposes of modernizing and streamlining the application processes and other requirements and allowing these services to better compete in the marketplace. By December 1, 2015, PSC must submit an interim report, and by July 1, 2016, PSC must submit a final report with any findings and recommendations, including legislative and regulatory actions, to the Senate Finance Committee and the House Economic Matters Committee.

MIA must conduct a study on (1) the availability of the insurance requirements specified in Chapter 204 for the transportation network industry offered by insurers admitted in the State; (2) the methods to increase the availability of the coverages by admitted carriers; and (3) the affordability of the coverages. By November 1, 2016, MIA must report its findings and recommendations, including legislative and regulatory actions, to the Senate Finance Committee and the House Economic Matters Committee.

Uber Drivers' Independent Contractor Status Challenged in California

A recent development in the ongoing evolution of the transportation services sector is the nature and extent of the employer-employee relationship between transportation network companies and transportation network operators. In California, three Uber drivers filed a case in mid-2015 in U.S. District Court claiming they are employees of Uber, as opposed to independent contractors, and thus are eligible for various statutory protections for employees. The final ruling in the case is likely to set precedent for other proceedings in other states, both for Uber and for other similar services.

Business Regulation

Employee Wages and Benefits

Employee wages and benefits continue to be discussed at all levels of government. Pay equity, overtime, paid sick leave, and fair scheduling were topics of discussion during the 2015 session. Interest in these topics persists.

Employment standards, practices, and benefits remain at the forefront of policy debates on the federal, State, and local levels. Workers' rights advocates continue to push for legislative changes to improve and equalize wages, expand eligibility for overtime wages, require employers to provide paid sick leave, and encourage flexibility and certainty in scheduling, among other issues. During the 2015 session, the Maryland General Assembly considered legislation on pay equity, overtime, paid sick leave, and fair scheduling.

Pay Equity

Several State laws and a complicated patchwork of federal laws prohibit discrimination in compensation between individuals on the basis of sex and other characteristics. Under a general State anti-discrimination statute, an employer with at least 15 employees is generally prohibited from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. Regardless of employer size, under the State's Equal Pay for Equal Work law regulated by the Division of Labor and Industry in the Department of Labor, Licensing, and Regulation (DLLR), an employer may not discriminate between employees in any occupation by paying a wage to employees of one sex at a rate less than the rate paid to employees of the opposite sex if both employees work in the same establishment and perform work of comparable character or work on the same operation, in the same business, or of the same type. Discrimination on the basis of gender identity is not addressed explicitly in the Equal Pay for Equal Work law.

Senate Bill 424 and House Bill 1051 of 2015 would have expanded the State's Equal Pay for Equal Work law in several respects. Among other changes, the legislation would have prohibited wage discrimination based on gender identity, broadened and defined the standard for comparing employees that work at the "same establishment" to determine whether unlawful discrimination exists, altered the exceptions available to an employer who attempted to show that a variation in wages was not based on unlawful discrimination, and prohibited an employer from "providing less favorable employment opportunities" based on sex or gender identity.

Pay equity legislation has been introduced in Congress – the Paycheck Fairness Act – and in state legislatures across the country. Although the federal legislation has not advanced, 11 states have pay equity laws that contain wage disclosure provisions similar to the one proposed in Maryland during the 2015 session: California, Colorado, Connecticut, Illinois, Louisiana, Maine, Michigan, Minnesota, New Hampshire, New Jersey, and Vermont.

Overtime

Federal Changes to Overtime Rule Exemptions

In spring 2014, President Obama directed the Secretary of Labor to address overtime protections with the intent of making sure that "millions of workers are paid a fair wage for a hard day's work" and simplifying rules for employees and employers. Most "salaried" or "white collar" employees are exempted from federal overtime laws requiring that overtime be paid when an employee works over 40 hours per week. These "executive, administrative, and professional" employees may only be paid for overtime if their salary is below the threshold established by the U.S. Department of Labor (DOL) through regulations under the federal Fair Labor Standards Act (FLSA). The basis for the President's action is that the current salary threshold ($455 per week) is below the poverty level for a family of four.

DOL is authorized to set various standards or tests which employees must meet to qualify for overtime exemptions. The tests consist of job duties, and employee salaries may not be less than the $455 per week threshold for all salaried employees. For an employee to be exempt from FLSA overtime requirements, the employee's income must exceed the threshold and the employee must meet every listed test guideline for the employment category. An additional employment category crosses the executive, administrative, or professional employee categories. Highly compensated employees whose total annual compensation exceeds $100,000 annually are specifically exempted under FLSA; these employees are also exempted if they perform the already enumerated duties of exempt executive, administrative, or professional employees.

In July 2015, DOL announced its new overtime rules with the intent of extending the FLSA overtime protections to an additional five million workers in the first year of implementation. For 2016, the current $455 per week ($23,600 per year) threshold increases to the fortieth percentile of weekly earnings for full-time salaried workers to $970 per week ($50,440 per year). In addition, the $100,000 annual threshold for highly compensated employees increases to the ninetieth percentile of weekly earnings for full-time salaried workers to $122,148. DOL has also proposed an annual adjustment for the two thresholds. Based on public comment, DOL is considering annually adjusting the thresholds by either keeping the levels at the fortieth and ninetieth percentiles or basing them on changes in inflation. DOL proposed the new overtime rules in the Federal Register on July 6, 2015. As of October 2015, the rules have not been finalized.

Potential Effects of DOL's Actions

Exhibit 1 presents selected demographic data for the various "white collar" professions highlighted in DOL's fact sheet. If DOL's new overtime rules become final, the effect on employers and employees could be significant particularly for employees and employers at the lower end of the pay scale.

Exhibit 1
Selected Professions' Median Pay and Number of Jobs
Calendar 2012

Profession	Median Annual Pay	Median Hourly Pay	Number of Jobs
Claims Adjusters, Appraisers, Examiners, and Investigators	$59,850	$28.78	311,100
Financial Service Industry Employees	71,720	34.48	354,600
Nurses	65,470	31.48	2,711,500
Medical Equipment Repairers	44,570	21.43	42,300

Source: U.S. Bureau of Labor Statistics, Occupational Outlook Handbook

State and local governments are also covered by FLSA, although state legislatures and their staffs are not; therefore, a change in the threshold could affect State and local government expenditures. For illustrative purposes only, **Exhibit 2** shows the average salary by service classification for employees in the State Personnel Management System (SPMS), which comprises the largest number of State employees.

The State Personnel and Pensions Article specifies the terms for overtime for SPMS employees, consistent with FLSA. State employees, unless they fall under the FLSA exemptions, are entitled to overtime if they work more than 40 hours per week. With the current $455 per week threshold most, if not all, professional, management, and executive service employees are exempted from the requirements. Given the nature of their work, most skilled service employees are likely already covered by the requirements. In addition, an employee who is a special appointment is likely exempted. A $50,440 per year threshold could impact professional service employees who are at the lower end of their respective pay scales. It is likely that, based on average salaries, some professional employees, because of the range of pay, and all skilled service employees would be eligible for overtime.

Exhibit 2
Average Salary by Service Classification for SPMS State Employees

Classification	Average Salary	Number of Employees
Executive Service	$131,818	187
Management Service	95,319	1,874
Designated Political Special Appointments	82,081	330
Professional Service	66,486	2,734
Special Appointments	68,205	3,539
Skilled Service	49,812	39,037
Vacant, Unfilled, Undesignated Positions	40,641	349
Temporary Positions	26,931	112

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

Paid Sick Leave

Neither federal law nor State law broadly requires all private-sector employers to provide employees with paid or unpaid sick leave.

Legislation has been introduced in Maryland during the last few sessions to establish a paid sick leave requirement for specified employers. The 2015 version of the legislation would have required an employer to provide at least 56 hours (7 days) of paid or unpaid "sick and safe leave" at an accrual rate of 1 hour of leave for every 30 hours of work. Employers with 10 or more employees would have been required to provide paid leave, while employers with fewer than 10 employees would have been required to provide unpaid leave. Both types of leave were accrued in the same manner and each employee would have been entitled to take earned sick leave for themselves or for a family member's illness. The mandate would have applied to every employer, including State and local governments.

Although some jurisdictions have enacted ordinances that require employers to provide paid sick leave, California, Connecticut, Massachusetts, and Oregon are the only states to do so. In June 2015, the Montgomery County Council passed legislation that authorizes employees who work for employers that have 5 or more employees effective October 1, 2016, to earn 1 hour of paid sick and safe time for every 30 hours worked, up to 56 hours annually. Employees of employers that have fewer than 5 employees will accrue up to 32 paid hours and 24 unpaid hours annually (for a full-time worker, 4 days of paid leave and 3 days of unpaid leave). Additionally, on October 14, 2015, the Planning, Zoning, and Economic Development Subcommittee of the Prince George's County Council tabled legislation similar to the Montgomery County measure and instead passed a resolution urging the Prince George's County Delegation to advocate for statewide paid sick leave legislation.

Fair Scheduling

The "just-in-time" method of scheduling shift workers has become a standard practice for many employers. As a result, workers are subjected to last-minute scheduling changes, unexpected or unwanted lengthened or shortened shifts, and days of being "on-call." These policies require workers to remain flexible and ready to meet an employer's last minute request. The cost to the worker, however, is that budgeting, scheduling, and honoring personal commitments remains difficult. The federal Schedules That Work Act and legislation introduced in many states and local jurisdictions seek to provide employees with more certainty and notice about scheduling changes.

During the 2015 session, two bills were introduced to address employee scheduling: the Fair Scheduling Act (Senate Bill 688/House Bill 969) and the Overwork Prohibition Act (House Bill 1027). Under the Fair Scheduling Act, an employer would have been required to provide each employee with an initial work schedule at least 21 days before the first day the employee was scheduled to work, notify an employee of any subsequent changes made to the employee's initial work schedule, and within 24 hours after making a change to an employee's work schedule, provide the employee with a revised work schedule. An employer would have also been required to post the work schedule of all employees' shifts at the work site within 21 days of the start of each work week. Under the Overwork Prohibition Act, among other requirements, an employer would have been required to pay an employee an overtime wage of at least 1.5 times the employee's usual hourly wage for hours worked (1) in excess of 8 consecutive hours; (2) if the employee agreed to work 7 consecutive days, during the seventh consecutive day; (3) less than 11 hours after the end of the immediately preceding shift; or (4) within the 11-hour period immediately following the end of a shift that spanned 2 days. Overtime wages required under the Maryland Wage and Hour Law would have been in addition to any overtime wage required to be paid under the bill.

Although scheduling legislation has been introduced in many jurisdictions, Vermont is the only state to have scheduling protections in place.

Business Regulation

Debt Settlement Services

Legislation enacted in 2011 established the Maryland Debt Settlement Services Act to regulate debt settlement services providers. Legislation in 2014 delayed the Act's termination until June 30, 2016. Consumer complaints have decreased significantly as a result of this legislation. The Commissioner of Financial Regulation and the Consumer Protection Division of the Office of the Attorney General are required to report recommendations and findings by December 1, 2015, relating to the extension of the Act's provisions, a transition from a registration requirement to a licensure requirement, and the imposition of a cap on fees.

In light of increasing debt obligations, consumers are frequently turning to debt settlement services for relief. According to the Federal Trade Commission, debt settlement services are usually provided by for-profit companies; these companies offer to negotiate with creditors to allow a consumer to pay a "settlement" to resolve the consumer's debt (a lump sum that is less than the total outstanding debt). The companies usually require consumers to transfer a certain amount, per month, into a bank account until enough accrues to reach a settlement with creditors; the companies often encourage or instruct consumers to stop making monthly payments to creditors during this process. These programs carry some risks for consumers, since creditors are under no obligation to agree to a settlement. In addition, if consumers stop making direct payments to their creditors, they may be assessed late fees and other monetary penalties and may face legal action from their creditors.

The Office of the Commissioner of Financial Regulation advises that there are 20 debt settlement services providers registered with the office, although the office is not certain all of these providers are currently conducting activities in the State.

Maryland Debt Settlement Services Act

Prior to 2011, the debt settlement services industry was unregulated in the State. In a 2010 report, the commissioner's office and the Consumer Protection Division of the Office of the Attorney General identified some troubling practices within the debt settlement services industry, including the failure to provide services despite the collection of monthly fees and misleading statements to consumers about typical program outcomes and consumer obligations to creditors. Pursuant to the report's recommendations for addressing these and other concerns, Chapters 280 and 281 of 2011 established the Maryland Debt Settlement Services Act (with a termination date of June 30, 2015). Chapters 276 and 277 of 2014 delayed the Act's termination date to June 30, 2016.

Under Title 12, Subtitle 10 of the Financial Institutions Article, debt settlement services are defined as any service or program represented, directly or by implication, to renegotiate, settle, reduce, or in any way alter the terms of payment or other terms of a debt between a consumer and one or more unsecured creditors or debt collectors, including a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor or debt collector. Debt settlement services do not include debt management services (defined as the periodic receipt of funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts, and distinctly regulated under the Maryland Debt Management Services Act).

The Act institutes several requirements and restrictions for debt settlement services providers, including (1) mandatory registration with the commissioner's office; (2) specific requirements for debt settlement services agreements; and (3) a prohibition on the collection of fees before a debt settlement services agreement has been executed, services have been rendered, and the consumer has made at least one payment in accordance with the agreement.

A debt settlement services provider's registration expires on December 31 of each odd-numbered year unless renewed for an additional two-year term by December 1 of the year of expiration. Under the 2014 legislation, a registration or renewal of a registration with an expiration date of December 1, 2015, is automatically extended and expires on June 1, 2016. Additionally, registered debt settlement services providers are required to report to the commissioner's office, on or before March 15 of each year, on the debt settlement services business conducted during the preceding calendar year, including specified information on consumers who received debt settlement services from the registrant, fees collected, and a profit and loss statement. The 2014 legislation extended this reporting requirement to March 15, 2015.

Specified persons and institutions are exempt from the Act's requirements, including "an attorney at law who is admitted to the Maryland Bar while the attorney at law is providing professional legal services in an attorney-client relationship." Violation of the Act is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Effect of the Act and Pending Action

The division advises that since the Act went into effect on October 1, 2011, consumer complaints about the debt settlement services industry have decreased significantly, from 71 complaints in calendar 2011 to 10 complaints in calendar 2015 (as of September 2015). Specifically, the division advises that the Act's advance fee ban has caused the industry to change its business model and has resulted in a sharp decline in certain practices such as charging large upfront fees and failing to deliver services in return. However, the division also advises that it has encountered issues with the Act's exemption for attorneys. Some attorneys claim they are exempt but do not actually meet the exemption definition, and others advertise that an attorney will settle a consumer's debt even though an attorney is not actually involved in the services. The division also found that some debt settlement services companies are operating without proper registration.

The 2011 legislation required the commissioner's office, in consultation with the division, to report to the Senate Finance Committee and the House Economic Matters Committee on findings and recommendations for changes to the Act. The 2014 legislation extended the deadline for this report to December 1, 2015. The report must include: (1) whether to transition from a registration requirement to a licensure requirement; and (2) whether the imposition of a cap on debt settlement services fees would be beneficial to consumers and fair to the debt settlement services industry. Additionally, the commissioner's office advises that the office will be assessing the value of the annual information report currently required from registered debt settlement services providers; the office intends to address this requirement in the December 2015 report.

Other States

According to a 2012 report from the New York City Bar Association, 14 states require debt settlement services providers to be licensed. In addition, 30 states have instituted some variation of a fee cap for debt settlement services; the type, specific percentages, and methods of calculation for these fee caps vary. Some states impose a cap on the fee a company may charge to enroll a consumer in a debt settlement services plan; other states also impose a cap on monthly fees. Several states limit the total fee a company may collect after settling a consumer's debt; common methods of fee calculation include basing the fee on a percentage of the total debt enrolled in the program or on a percentage of the debtor's ultimate savings (*e.g.*, the difference between the amount of the total debt and the amount the debtor paid to settle the debt). Seven states have adopted variations of the Uniform Debt-Management Services Act (UDMSA), which is a set of uniform rules proposed by the National Conference of Commissioners on Uniform State Laws. The UDMSA includes a registration requirement for debt settlement services providers and caps enrollment fees, monthly fees, and total service fees at specified amounts.

Business Regulation

Private-sector Retirement Security

Nationwide, and in Maryland, there is a significant lack of retirement savings. In Maryland, over one million workers have no employer provided retirement plan, and many who do have access to a retirement plan do not have adequate savings. In September 2015, the Commission on Maryland Retirement Savings and Security was appointed to build on the work of the Governor's Task Force to Ensure Retirement Security for All Marylanders and to explore options to address the lack of savings.

Governor's Task Force to Ensure Retirement Security for All Marylanders

During the 2013 legislative session, Senate Bill 1051 would have established a retirement savings plan for private-sector employees whose employers did not offer one. The Senate Budget and Taxation Committee amended Senate Bill 1051 to establish a task force to study the issue of private-sector retirement savings. The bill as amended was passed by the Senate and received a hearing in the House, but no further action was taken. The following year, Senate Bill 921 and House Bill 1251 were introduced and would have also established retirement savings programs for private-sector employees. The bills again did not pass.

In response to the concerns over the lack of retirement savings in Maryland, Governor O'Malley appointed the Task Force to Ensure Retirement Security for All Marylanders by Executive Order 01.01.2014.07 on May 12, 2014. The task force had multiple meetings from August 2014 through January 2015 which included public testimony from Marylanders, outside experts, and the U.S. Department of Labor.

The task force issued its final report in February 2015. The task force found that approximately one million Marylanders working in private business do not have access to an employer-sponsored retirement plan but have virtually no retirement savings. The task force also found that (1) individuals are more likely to save for retirement if their employer offers them access to a retirement savings plan and (2) employees of small businesses are less likely than their counterparts in large companies to have access to retirement savings plans. The taskforce concluded that the best way to improve retirement security is to ensure that everyone who works has access to a retirement plan, and the best way to provide that access is to make sure that employers offer retirement plans to their employees. The consensus of the task force was that a program should be developed to improve the retirement security of Marylanders. However, the task force's authorization expired before it could reach consensus on the design and structure of such a program.

Commission on Maryland Retirement Savings and Security

On September 15, 2015, the President of the Senate and Speaker of the House of Delegates of the Maryland General Assembly announced the appointment of the Commission on Maryland Retirement Savings and Security. The commission is charged with building on the work of the Governor's task force and examining options to address the significant lack of retirement savings in Maryland. Specifically, the commission is charged with consideration of "actions the State should take toward ensuring financial security for Maryland citizens in retirement, including the development of a retirement savings program." The commission is comprised of both legislators and private citizens with expertise in retirement and labor issues and business management.

The commission must report its findings to the Senate President and House Speaker by December 2015. It held its first meeting on October 13, 2015, during which it was briefed on (1) the work of the Governor's task force; (2) prior (unsuccessful) legislation introduced in Maryland to address retirement security; and (3) efforts in other states to establish similar programs. Specifically California, Oregon, Illinois, and Washington have all enacted legislation that authorizes either the establishment of private-sector retirement programs or the development of a program model that requires subsequent legislative approval for implementation. None of these states have launched their programs, but Illinois and Washington anticipate enrolling businesses within one to two years.

U.S. Department of Labor Guidance

In response to increased activity on retirement security at the state level, President Obama instructed the U.S. Department of Labor (DOL) to issue guidance that clarifies the application of the federal Employee Retirement Income Security Act (ERISA) to state efforts to develop retirement security programs. ERISA includes a preemption clause, whereby its provisions preempt most state regulation of private retirement plans. DOL has indicated that draft guidance should be made available for public comment by the end of the calendar year. Key DOL staff involved in the development of the guidance have stated that it will address two possible approaches: (1) auto enrollment Individual Retirement Accounts, which do not allow employers to contribute to employee accounts and thus are not currently subject to ERISA; and (2) multi-employer 401(k) plans, which do allow employer matching contributions and are currently subject to ERISA.

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Public Safety

State Correctional System

The Department of Public Safety and Correctional Services is in the process of a departmental reorganization. The department also recently closed a Baltimore City men's detention facility, necessitating the relocation of inmates to other State facilities, and is working toward construction of the Dorsey Run Correctional Facility and the Baltimore City youth and women's detention centers.

Background

The Department of Public Safety and Correctional Services (DPSCS) is a principal department of State government, the primary functions of which include the operation of 21 State correctional and Baltimore City pretrial facilities, as well as the supervision of offenders in the community who are on parole or probation. With over 11,000 employees and a fiscal 2016 budget in excess of $1.3 billion, DPSCS accounts for 13.6% of the total State workforce and 7.1% of general fund expenditures.

Departmental Reorganization

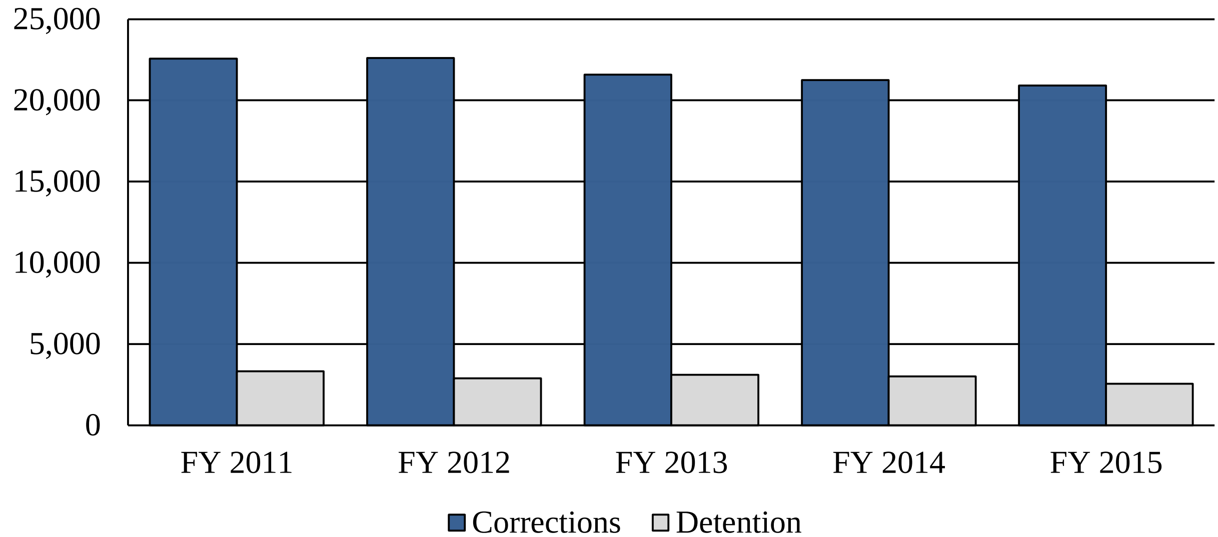
After being structured by region since 2013, DPSCS is in the process of a departmental reorganization back to the statutorily defined operational structure. The Division of Correction, Division of Parole and Probation, and Division of Pretrial Detention will act as separate agencies. As part of the reorganization, DPSCS is also centralizing certain functions, such as finance and human resources. All other agencies – the Maryland Parole Commission, Inmate Grievance Office, Criminal Injuries Compensation Board, Police and Correctional Training Commissions, and the Maryland Commission on Correctional Standards – will remain the same.

The budget for fiscal 2017 will be presented to reflect the reorganized structure. No statutory amendments will be required to implement the reorganization since statutory amendments were never introduced for the prior 2013 departmental reorganization.

Population Trends

Exhibit 1 shows the average daily population (ADP) of individuals in DPSCS custody (sentenced and detained) between fiscal 2011 and 2015. The population of offenders housed under DPSCS jurisdiction peaked at 25,904 offenders in fiscal 2011. The population has since declined by nearly 8% to an ADP of 23,483 in fiscal 2015. Preliminary fiscal 2016 data indicates a continued slow decrease in the population.

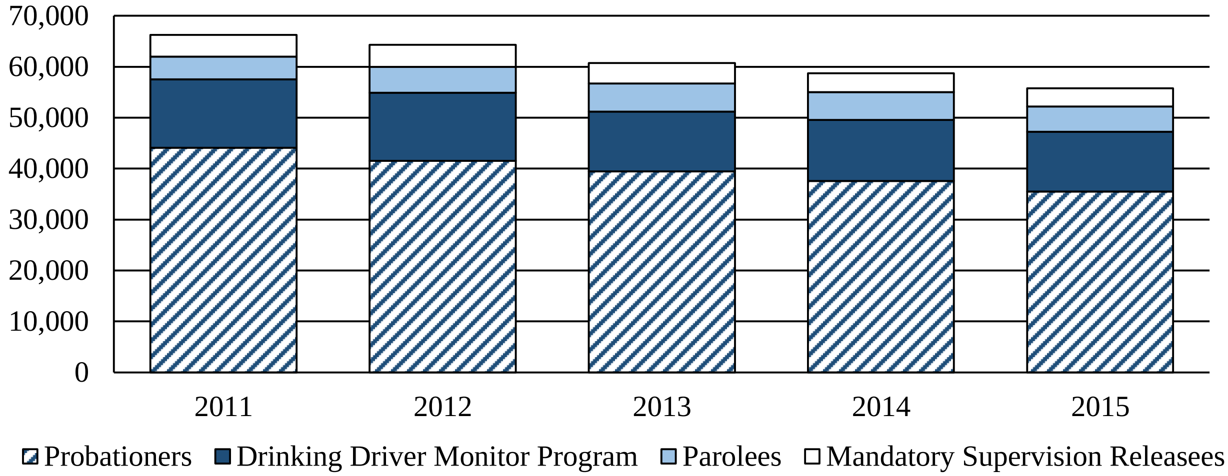
Exhibit 1
Department of Public Safety and Correctional Services
Average Daily Population
Fiscal 2011-2015



Source: Department of Public Safety and Correctional Services ADP reports

As seen in **Exhibit 2**, between fiscal 2011 and 2015, the total number of offenders under community supervision with active cases decreased by nearly 10,500, or 15.8%. Parolees were the only case type to increase during this period, reflective of the department's efforts to increase parole rates in order to reduce the size of the incarcerated offender population. The 11.4% increase in offenders on parole was offset by reductions in all other case types. The most significant decrease occurred among probationers, which experienced a 19.5% reduction over the five-year period, followed by mandatory supervision releasees with a 16.2% reduction over the same period.

Exhibit 2
Community Supervision Cases
Offenders with Active Cases at end of Fiscal Year
Fiscal 2011-2015



Source: Department of Public and Correctional Services Managing for Results Data

Closure of the Baltimore City Men's Detention Center

On July 20, 2015, the Governor announced the immediate depopulation and closure of the Baltimore City Men's Detention Center (MDC), citing the facility's history of corruption, aging infrastructure and high maintenance costs, and safety concerns for inmates and correctional officers. The closure did not affect the operation of other buildings in the Baltimore Pretrial Complex (BPC), formerly the Baltimore City Detention Center. The declining State correctional and detention populations allowed the department to accommodate inmates from MDC within existing State facilities. Between August and September 2015, DPSCS transferred 764 pretrial and 111 sentenced inmates out of MDC. DPSCS transferred an additional 1,018 sentenced inmates and parole violators among other State correctional facilities in order to keep all Baltimore City pretrial inmates in the Baltimore City Correctional Complex and to maintain comparable programming for transferred inmates.

Nearly 300 pretrial inmates from MDC were initially transferred to dormitory-style housing at the Metropolitan Transition Center D-Block, but were again relocated at the beginning of September 2015 following assaults on inmates and correctional officers. Baltimore City pretrial inmates are now housed primarily in cell-style housing in the Maryland Reception Diagnostic and Classification Center, the BPC Annex and Jail Industries buildings, and the basement of the Baltimore City Women's Detention Center.

The closure of MDC did not result in the loss of any personnel. Correctional officers and staff previously assigned to MDC are being reassigned to fill vacancies at other State facilities within the Baltimore region. The medical unit and other inmate services from MDC will also be relocated. Plans regarding future use of the MDC building have not yet been established.

Capital Construction

Consistent with the declining inmate population, the 2013 DPSCS Facilities Master Plan focuses on improving services and support space, as well as replacing aging and inefficient facilities. This is also reflected in the Governor's five-year *Capital Improvement Program* (CIP), which includes capital projects to replace facilities for all Baltimore City pretrial populations. Following reductions in the facility design capacity, construction began in June 2015 on the new Youth Detention Center, which will accommodate pretrial youth who are detained while awaiting charges in adult court. The 60-bed facility is estimated to cost $38 million in total and become operational in fiscal 2017. Construction of a new, 512-bed Baltimore City Women's Detention Center, at a total estimated cost of $181 million, is included in the CIP with design beginning in fiscal 2017. The final year of the CIP, fiscal 2020, includes design for a 2,304-bed replacement for the Baltimore City men's detention facilities. It is unknown at this time whether the closure of the MDC will affect the capital plan for replacing the Baltimore City detention facilities.

Outside of Baltimore City, the CIP includes construction of Phase II of the Dorsey Run Correctional Facility in Jessup. Construction of the first 560-bed compound was completed in November 2013, and the facility was occupied by inmates previously housed at the now closed Jessup Pre-Release Unit. Construction of the second 560-bed compound, which began in July 2014, is estimated to be complete by January 2016. The total estimated cost for both phases of the project is $54.2 million, $20.0 million of which was federal funding. It has not yet been determined what inmate population will be housed in the second Dorsey Run compound once it becomes operational. However, the General Assembly added fiscal 2016 budget bill language restricting funds for operation of the second compound, pending receipt of a facility plan.

Public Safety

Law Enforcement in the State

The role of law enforcement officers in communities has captured public attention across the nation. In Maryland, a legislative workgroup and a study commission have examined ways to strengthen the trust and mutual respect between law enforcement and the communities that they serve. A number of proposals are under consideration and the final recommendations are expected by the end of the year.

Background

Nationwide

A number of incidents involving alleged excessive use of force by police captured public attention across the country in 2014 and into 2015. In July 2014, Eric Garner died in Staten Island, New York, after he was put in a chokehold by an officer. A month later in Ferguson, Missouri, 18 year old Michael Brown was fatally shot by Officer Darren Wilson. In November 2014, Tamir Rice was shot by police in Cleveland, Ohio. He was 12 years old and holding what turned out to be a replica gun. On April 4, 2015, Walter Scott was shot by a police officer after a routine traffic stop in North Charleston, South Carolina. The policeman, Michael T. Slager, was charged with murder based on a cellphone video of the incident. No charges were filed in the earlier cases. These and other events sparked outrage, ignited protests, and prompted calls for meaningful reforms to the way that police operate.

During 2014 and 2015, the U.S. Department of Justice (DOJ) released findings on the police departments in Albuquerque, New Mexico; Cleveland, Ohio; and Ferguson, Missouri. DOJ's findings for Albuquerque and Cleveland included use of excessive force in violation of the Fourth Amendment to the U.S. Constitution. DOJ found that law enforcement practices in Ferguson are shaped by the city's focus on revenue rather than public safety needs, and reflect "clear racial disparities" and "discriminatory intent."

Maryland

In 2014, an investigative report by *The Baltimore Sun* found that since 2011, Baltimore had paid out approximately $5.7 million in judgments or settlements in more than 100 lawsuits brought by citizens alleging excessive use of force and other police misconduct. The city's budget office also raised concerns over the city's spending of $10.4 million from 2008 through 2011 to defend the Baltimore Police Department against misconduct lawsuits.

In October 2014, Baltimore City's Mayor and Police Commissioner outlined a plan entitled "Preventing Harm" to reduce excessive use of force by police. The 41-page report contained several recommendations, including (1) working with the department's Professional Standards and

Accountability Bureau to oversee improvements in training, policies, and internal issues; (2) computerized tracking of excessive force lawsuits and monitoring injuries from arrests, citizen complaints, and use of force reports; and (3) studying the use of body cameras by officers in the field to monitor and record interactions between the police and the public.

In November 2014, the Baltimore City Council overwhelmingly voted to require all city police officers to wear body cameras. However, Mayor Stephanie Rawlings-Blake vetoed the bill on the grounds that the council does not have the authority to impose that requirement and that more study and funding was needed. (Baltimore City did begin a pilot program in October 2015 in which 55 officers were equipped with body cameras.)

2015 Session

The General Assembly passed a number of bills during the 2015 legislative session intended to bring about reforms in this area, including:

- **Chapter 130 (**Senate Bill 882) alters provisions applicable to the Baltimore City Civilian Review Board. The Act increases the number of law enforcement units subject to review by the board and expands the definition of the terms “abusive language” and “harassment.” The Act also increases the membership of the board and requires that a minimum of four board meetings annually be held in locations rotated throughout different police districts in Baltimore City.

- **Chapter 133** (House Bill 771) requires the Police Commissioner of Baltimore City, by January 1 of each year, to report information concerning the Baltimore Police Department to the Mayor and City Council of Baltimore and the members of the Baltimore City Delegation to the General Assembly, including information regarding the demographics of police officers within the department, recruiting events, use of force, civilian complaints, officer suspensions, and community involvement. The report must be made available to the public on the department’s website.

- **Chapter 134** (House Bill 954) requires each local law enforcement agency, by March 1, 2016, and by March 1 of each subsequent year, to provide the Governor’s Office of Crime Control and Prevention with specified information for the previous calendar year about each “officer-involved death” and “death in the line of duty” that involved a law enforcement officer employed by the agency.

Freddie Gray

On April 12, 2015, one day before the close of the 2015 legislative session, Freddie Carlos Gray, Jr., a 25-year-old African American man, was arrested by the Baltimore Police Department for possessing what the police alleged was an illegal switchblade. While being transported in a police van, Mr. Gray fell into a coma and was taken to the hospital. Mr. Gray died as a result of injuries to his spinal cord on April 19, 2015.

Eyewitnesses contended that the police officers involved used unnecessary force against Mr. Gray while arresting him. Police Commissioner Anthony W. Batts reported that, contrary to department policy, the officers did not secure Mr. Gray inside the van while transporting him to the police station. The autopsy found that Mr. Gray had sustained the injuries while in transport.

Mr. Gray's death resulted in a series of protests and widespread civil unrest. On April 25, 2015, a major protest in downtown Baltimore turned violent, resulting in numerous arrests and injuries to police officers. After Mr. Gray's funeral on April 27, the violence continued, including looting and burning of local businesses and a CVS drug store, prompting the declaration of a state of emergency by Governor Lawrence Hogan, the deployment of the Maryland National Guard to Baltimore, and the establishment of a curfew. Protests in response to Mr. Gray's death also took place in other cities across the nation.

On May 1, 2015, Baltimore City State's Attorney Marilyn Mosby announced the filing of charges against the six police officers who were involved in Mr. Gray's arrest and transport. The officer driving the van was charged with second-degree depraved-heart murder, and others were charged with crimes ranging from manslaughter to illegal arrest. On May 21, a grand jury indicted the officers on most of the original charges filed by Ms. Mosby with the exception of the charges of illegal imprisonment and false arrest, and added charges of reckless endangerment against all the officers involved.

On May 8, 2015, U.S. Attorney General Loretta Lynch announced that DOJ would conduct a review of the practices of the Baltimore Police Department due to a "serious erosion of public trust" in relation to the circumstances of Mr. Gray's death. The review began immediately and focuses on allegations that Baltimore police officers use excessive force, including deadly force; conduct unlawful searches, seizures, and arrests; and engage in discriminatory policing. The investigation is expected to take more than a year to complete and could lead to a consent decree and years of oversight by the federal government.

Public Safety and Policing Workgroup

In May 2015, the President of the Senate and the Speaker of the House created the joint legislative Public Safety and Policing Workgroup, composed of 10 senators and 10 delegates. The focus of the workgroup is on police training resources, recruiting and hiring practices, consideration of a statewide oversight panel for certain kinds of investigations, review of the Law Enforcement Officers' Bill of Rights (LEOBR) and its application by different law enforcement agencies across Maryland, and community engagement policies.

The workgroup scheduled a total of seven public meetings during the 2015 interim to hear from advocacy organizations, community organizations, law enforcement, and the public and to formulate recommendations for the 2016 legislative session. The workgroup has held public meetings to hear from citizens and advocates regarding law enforcement issues across the State. Meetings have included presentations on topics such as police training and certification, the recruitment and training of law enforcement officers, LEOBR, data collection pertaining to law enforcement, best practices in law enforcement, and community policing.

Recommendations by the workgroup are expected to include enhanced training for officers, additional oversight with regard to police-involved incidents, modifications to hiring and recruitment policies, mental health safeguards, increased transparency regarding law enforcement policies and officer discipline, increased civilian engagement, and implementation of community relations programs.

Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement

Chapters 128 and 129 of 2015 established the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers. The commission, which was composed of legislators and various stakeholders, held two public meetings in August and September 2015. Through examination of model policies and discussion, the commission compiled a list of best practices for body-worn cameras (BWCs) and submitted a report to the Maryland Police Training Commission (MPTC) and the General Assembly on September 16, 2015.

The commission's report addresses (1) procedures for testing and operating equipment, including when BWCs must be activated and when use is prohibited; (2) notification responsibilities of law enforcement officers to individuals being recorded; (3) confidentiality and ownership of data; (4) procedures and requirements for data storage; (5) review of recordings by parties in interest; and (6) establishment of retention periods, release of recordings as required by the Maryland Public Information Act (MPIA), and development of written policies for BWC usage consistent with State law and regulations issued by MPTC.

In addition, the commission recommended that the General Assembly consider amending MPIA to incorporate provisions specifically governing the release of audio/video recordings captured by BWCs, including recordings depicting victims of violent crimes and domestic abuse.

Chapters 128 and 129 require MPTC to adopt regulations by December 31, 2015, for BWC use by all law enforcement agencies in the State. The Acts also require MPTC, by January 1, 2016, to develop and publish online a policy for the issuance and use of body-worn cameras by law enforcement officers that addresses specified issues and procedures.

Public Safety

Law Enforcement Officers' Bill of Rights

The Law Enforcement Officers' Bill of Rights (LEOBR) provides due process rights for law enforcement officers during internal administrative actions. Critics contend that LEOBR creates a process stacked in the officer's favor and against residents who lodge complaints and prevents transparency.

Background

The Law Enforcement Officers' Bill of Rights (LEOBR) (Title 3, Subtitle 1 of the Public Safety Article) is a State law enacted in 1974 to guarantee to law enforcement officers procedural safeguards in connection with an investigation that could lead to disciplinary action. The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal must be conducted in accordance with LEOBR. LEOBR covers two major components of the disciplinary process: (1) the conduct of an internal investigation of a complaint that may lead to a recommendation of disciplinary action against a police officer and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. Maryland's LEOBR offers a set of protections to officers during internal investigations, such as limitations on the time, place, and duration of an interrogation. The statutes also protect the officer's right to obtain certain information and to have an attorney present.

When a complaint against a police officer is sustained by an internal investigation, unless the officer has been convicted of a felony, LEOBR entitles the officer to an administrative hearing before a board of sworn officers selected by the chief (for minor offenses, the board may be a single officer). Police agencies and officers may enter into collective bargaining agreements that allow an alternate method of forming the hearing board. LEOBR also contains requirements for the conduct of the hearing. A decision by a hearing board regarding an officer's culpability is binding. For cases in which the finding is guilt, the hearing board makes a punishment recommendation, which the chief may accept or reject, unless the agency and officers have a collective bargaining agreement that makes the hearing board's punishment recommendation binding on the chief. If the chief decides to impose a more severe punishment than the one recommended by the hearing board, the chief must document the reasons for that decision. Law enforcement leaders may not suspend an officer without pay unless that officer is charged with a felony.

Criticism

Critics contend that LEOBR prevents transparency and that it precludes meaningful community oversight of the law enforcement disciplinary process, which erodes community trust.

Critics of LEOBR most frequently mention two specific provisions of the law as being most in need of consideration and revision. The first provision requires that a complaint alleging excessive force be filed within 90 days of the incident in order for disciplinary action to be undertaken by a law enforcement agency. Critics point out that a victim who is in the hospital, in jail, or otherwise unaware of or unable to pursue his or her rights within the 90-day timeframe would be prevented from filing an excessive force complaint. However, in *Baltimore City Police v. Andrew*, 318 Md. 3 (1989), the Court of Appeals held that the 90-day provision provides a timeframe in which a law enforcement agency must investigate a complaint, but "does not prevent the [law enforcement] agency from deciding, in its discretion, to investigate the circumstance and to take further action if that seems warranted," after the 90-day period has expired. The General Assembly has not passed legislation invalidating the *Andrew* decision.

The second provision that is most criticized requires the interrogation of an officer under investigation to be suspended for up to 10 days if the officer requests counsel. Critics contend that, given that law enforcement officers often have nearly immediate access to union counsel, this delay only impedes an investigation and delays the ability of a law enforcement agency to communicate effectively with the public. Some critics have also indicated that the delay may allow officers an opportunity to collude with colleagues or access case files that will help them craft a false story for use during an interrogation. Law enforcement agencies have contended that the provision has not had the effect of impeding an investigation or hampering community relations. Further, LEOBR only provides procedural protections in administrative disciplinary proceedings related to employment. In a criminal interrogation setting, an officer could invoke his or her rights under the Fifth Amendment and would not have to speak to an investigator or provide an account.

Legislation

During the 2015 legislative session, several bills related to LEOBR were introduced. House Bill 384 would have added conviction of a law enforcement officer for a misdemeanor punishable by one year of imprisonment or more to the circumstances under which an officer is not entitled to a hearing under LEOBR. House Bill 731 would have required each law enforcement agency to adopt a written policy and procedure to govern disciplinary actions that may be taken against a law enforcement officer in that agency. House Bill 819 would have required a law enforcement officer to submit to a blood alcohol test and blood, breath, or urine tests for controlled dangerous substances if the officer was involved in an incident in which the officer discharged a firearm, discharged an electronic control device, or caused a motor vehicle accident. House Bill 968 and its cross file, Senate Bill 566, would have made numerous changes to LEOBR, including changing the hearing process to a review of already imposed discipline, eliminating the requirement that an interrogation be conducted by a sworn law enforcement officer or the Attorney General, eliminating the requirement that a complaint against an officer be filed within 90 days, eliminating the requirement that an interrogation be suspended for 10 days if the officer requests counsel, implementing confidentiality of certain files, extending the time during which administrative charges against an officer may be filed, authorizing citizens to serve on a hearing board, and expanding the circumstances under which an officer may be suspended without pay to when the officer is charged with a crime (rather than a felony). House Bill 731 received an unfavorable report and the others did not receive a vote in committee.

Public Safety

Criminal Justice Policy Reform

Addressing the costs, purposes, and results of State sentencing and correctional practices has become a national concern. Legislation enacted in 2015 created the Maryland Justice Reinvestment Coordinating Council to craft a framework of sentencing and corrections policies with the goal of safely reducing the number of inmates in State prisons, controlling State spending on prisons, and reinvesting those savings into more effective strategies to increase public safety and reduce recidivism.

Background

In January 2010, the Council of State Governments (CSG) Justice Center, in partnership with the Pew Center on the States (Pew), the Federal Bureau of Justice Assistance, and the Public Welfare Foundation, hosted a national summit on justice reinvestment. According to CSG, "[j]ustice reinvestment is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that decrease crime and reduce recidivism." Eight states (Alabama, Hawaii, Idaho, Kansas, Nebraska, Pennsylvania, Rhode Island, and West Virginia) currently receive technical justice reinvestment assistance from CSG. Thirteen states have received assistance in the past. Recently, the governors of Alabama and Nebraska signed legislation to reform their states' criminal justice and corrections systems. Additional states have implemented justice reinvestment strategies.

Justice Reinvestment Coordinating Council

Chapter 42 of 2015, an emergency measure, established the Justice Reinvestment Coordinating Council (JRCC) in the Governor's Office of Crime Control and Prevention (GOCCP). The Act established the membership of JRCC and required the chair of the council to be the executive director of GOCCP, which is the agency tasked with staffing the council.

JRCC is required to (1) convene an advisory stakeholder group including organizations with expertise in certain criminal justice issues; (2) conduct roundtable discussions to seek public input; (3) using a data-driven approach, develop a statewide framework of sentencing and corrections policies to further reduce the State's incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism; and (4) request technical assistance from the CSG Justice Center and the Public Safety Performance Project of Pew to develop the policy framework.

JRCC held its first meeting on June 22, 2015. According to the chairman, the State's prison population has decreased by 10% over the past 10 years, and the recidivism rate is approximately 40%. At the meeting, Pew staff presented information on the justice reinvestment process, including information on the national landscape and state efforts. Pew typically works on justice reinvestment issues with two states per year. This year Pew is working with Maryland and Alaska. Pew's process in Maryland consists of five steps: (1) analysis of what drives Maryland's prison population; (2) system assessment; (3) research and lessons from other states; (4) policy development; and (5) final findings and recommendations.

JRCC held its second meeting on July 29, 2015. At the meeting, Pew staff presented information on 10 years of data from the Department of Public Safety and Correctional Services (DPSCS). The presentation focused on prison drivers in Maryland, specifically admissions and time served, which are the factors Pew identified as driving all growth and decline in prison populations. Pew's presentation included data on (1) the decrease in the violent crime and property crime rates; (2) decreases in prison admissions; (3) the percentage of prison admissions attributable to individuals who were previously on supervision; (4) the number of prison admissions by jurisdiction; (5) newly sentenced prisoners and probation revocations by jurisdiction; (6) trends in the sentence length for newly sentenced prisoners; and (7) trends in the average time served and the percentage of time served in prison.

At the third meeting of JRCC, held on August 18, 2015, Pew presented data on drivers of community corrections in Maryland, based on data from DPSCS and the Division of Parole and Probation. The presentation included trends and information on the active population in community corrections, discharges from community corrections, and time served on community supervision.

Pew's presentation at the fourth full council meeting, held on September 11, 2015, included an assessment of Maryland's criminal justice system and pretrial data findings. According to Pew, (1) 58% of prison admissions are for nonviolent crimes, with possession with intent to distribute controlled dangerous substances (CDS) and assault in the second degree being the two most frequent offenses at admission in fiscal 2014; (2) during fiscal 2014, admissions in Baltimore City decreased by 43% (3,206) while admissions in other jurisdictions increased by 4% (5,704); (3) the percentage of offenders receiving prison terms increased for all offense types except CDS and across criminal history categories between fiscal 2005 and 2014; (4) parole represented 37% of the releases from incarceration in fiscal 2014; (5) violent offenders are released closer to their parole eligibility date than nonviolent offenders; and (6) individuals paroled for possession with intent to distribute CDS and second-degree assault served 40% and 38% of their sentences prior to parole, respectively (both of these offenses are eligible for parole after 25% of the sentence has been served).

Though the majority of the council's discussion has focused on sentencing, incarceration, and post-release issues (*e.g.,* parole and probation), some members of the council have mentioned that an analysis of the pretrial system, including bail and pretrial detention, is an important component of justice reinvestment and comprehensive criminal justice reform. According to data presented by Pew, pretrial detainees made up 23% of the State's total incarcerated population and

65% of the local jail population in fiscal 2014. Baltimore City had the largest pretrial population per 100,000 residents in fiscal 2014, with 440 pretrial detainees per 100,000 residents. Worcester and Frederick counties, the jurisdictions that ranked second on the list, each had 180 pretrial detainees per 100,000 residents. The median number of days an individual in Maryland spends in jail prior to receiving a prison sentence has increased from 144 days in fiscal 2005 to 163 days in fiscal 2014. At 268 days, Prince George's County ranked as the jurisdiction with the longest median pretrial detention in fiscal 2014, followed by Baltimore City with 205 days.

In addition to the full council meetings, JRCC has held advisory stakeholder group meetings across the State and has established three policy development subgroups – sentencing, release and reentry, and supervision. Chapter 42 requires JRCC to report its findings and recommendations to the Governor and General Assembly by December 31, 2015.

Pretrial Process

Increased attention has been focused on Maryland's pretrial detention process since the Maryland Court of Appeals' decisions in *DeWolfe v. Richmond*, 434 Md. 403 (2012) (*"Richmond I")* and 434 Md. 444 (2013) (*"Richmond II")*. In those decisions, the Maryland Court of Appeals held that (1) under the Maryland Public Defender Act, no bail determination may be made by a District Court commissioner concerning an indigent defendant without the presence of counsel, unless representation by counsel is waived (*Richmond I*) and (2) pursuant to the Maryland Declaration of Rights, an indigent defendant has a right to State-furnished counsel at an initial appearance before a District Court commissioner (*Richmond II*).

Though several bills were introduced during the 2014 and 2015 legislative sessions to address the court's decision in *Richmond II*, none passed. However, the Judiciary created the District Court of Maryland Appointed Attorneys Program to provide attorney representation to indigent criminal defendants during initial appearances. The fiscal 2015 budget restricted $10,000,000 of the Judiciary's general fund appropriation to be used only for the purpose of providing attorneys for required representation at initial appearances before District Court commissioners, consistent with the *Richmond II* decision. Any funds not expended for this purpose were required to revert to the general fund. The Budget Reconciliation and Financing Act (BRFA) of 2014 specified that authorization of State funds in the fiscal 2015 State budget for this purpose represents a one-time allocation and provides no authority for additional State expenditures or commitment of funds without separate authorization in the State budget as passed by the General Assembly. The fiscal 2016 budget and the 2015 BRFA contain similar provisions. In fiscal 2015, the Judiciary spent approximately $8.1 million on hourly wages and travel reimbursements for the District Court Appointed Attorneys Program. Accordingly, approximately $1.9 million reverted to the general fund in fiscal 2015.

In fiscal 2015, District Court commissioners conducted 146,180 initial appearances. Defendants waived their right to counsel in 95,143 of those initial appearances, for a statewide waiver rate of 65%. Appointed attorneys represented defendants in 47,900 initial appearances. Fifty percent of defendants who were presented at an initial appearance in fiscal 2015 were released following their appearances on personal recognizance or through unsecured personal bonds.

Criminal Law

Marijuana Decriminalization

The Maryland General Assembly passed legislation in 2015, not only to legalize the possession of drug paraphernalia related to the recreational use of small amounts of marijuana for personal use, but also to establish a civil penalty for smoking marijuana in public. However, the Governor vetoed the legislation due to concerns that its enactment would contribute to incidences of impaired driving by making it harder for police to detain and/or search those who smoke marijuana while driving a vehicle.

Background

In recent years, more states across the country have considered legislation to either decriminalize or legalize the use and possession of small amounts of marijuana. The changes have been inconsistent and differ widely regarding issues such as legalized markets, legalized amounts, and who may possess marijuana. To date, four states (Alaska, Colorado, Oregon, and Washington) and the District of Columbia have legalized limited amounts of marijuana for recreational use. However, in November, voters in Ohio rejected a ballot initiative to legalize recreational and medical marijuana use. In 2016, Nevada voters will decide whether to legalize an ounce or less of marijuana for recreational use. Although the possession of marijuana remains illegal at the federal level, the U.S. Department of Justice announced in August 2013 that it would defer its right to challenge state legalization laws.

Possession of Marijuana

In general in Maryland, a defendant who possesses marijuana is guilty of a misdemeanor and subject to a maximum penalty of one year imprisonment and/or a $1,000 fine. Chapter 158 of 2014 made possession of less than 10 grams of marijuana a civil offense with maximum fines that increase with each subsequent offense. By the third offense, or for any offense committed by a person younger than age 21, the court must summon the person for trial, order the person to attend a drug education program, and refer the person to an assessment and treatment, if necessary. A person younger than age 18 who commits this civil offense is also subject to juvenile court procedures and dispositions. There is no explicit prohibition on smoking or consuming marijuana in public.

A citation and the related public court record for a violation for possession of less than 10 grams of marijuana are not subject to public inspection and may not be included on the Maryland Judiciary's public website. Chapter 314 of 2015 authorized a person who is otherwise eligible for an expungement to petition to have a prior conviction for the possession of less than 10 grams of marijuana expunged from the person's criminal record.

Drug Paraphernalia

Unless authorized by law, a person may not possess, deliver or sell, or manufacture or possess with the intent to deliver or sell, drug paraphernalia, while knowing or under circumstances where a person reasonably should know that the drug paraphernalia will be used to commit a number of enumerated acts, including inhaling or introducing a controlled dangerous substance (CDS) into the human body. First-time offenders face a fine of up to $500. Penalties increase to a maximum of two years imprisonment and/or a $2,000 fine with each subsequent violation. If an adult delivers drug paraphernalia to a minor who is at least three years younger, the maximum penalties increase to eight years imprisonment and/or a $15,000 fine.

Chapter 158 of 2014 did not decriminalize the possession of paraphernalia related to the use and possession of marijuana. Other than in situations of medical necessity or if suffering from a debilitating condition, a person who is in possession of drug paraphernalia related to the use and possession of marijuana may still be arrested and criminally convicted. Chapter 351 of 2015 requires the court to dismiss a criminal charge, in a prosecution for possession of marijuana or possession of paraphernalia related to marijuana, if the court finds that the person possessed marijuana or marijuana paraphernalia because of medical necessity.

Driving While Impaired

As long as the driver is not operating or attempting to operate the vehicle, there is no explicit prohibition on either a driver or passengers smoking or consuming marijuana in a vehicle. Chapter 158 of 2014 explicitly stated that making possession of less than 10 grams of marijuana a civil offense did not affect laws relating to operating a vehicle or vessel while impaired by a CDS. Under § 21-902 of the Transportation Article, it is a misdemeanor for a person to drive or attempt to drive any vehicle while impaired by a CDS.

Upon conviction of a drug-related driving offense, a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by the Motor Vehicle Administration. If an offender is transporting a minor at the time of the drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses. Subsequent offenses carry harsher penalties.

Unlike alcohol-related driving offenses where law enforcement may use either a blood or breath alcohol content test to determine whether an individual is driving impaired or while under the influence of alcohol, there is no statutorily specified level of chemicals in the blood that law enforcement can use with certainty to determine whether a person is driving while impaired by marijuana. As a result, law enforcement officers must rely on personal observations, such as evidence of recent consumption, and observations of drug recognition experts certified by the State Police, to detect impairment.

Legislation

During the 2015 legislative session, the General Assembly passed Senate Bill 517 regarding the use and possession of marijuana and drug paraphernalia. The bill established that smoking marijuana in a public place would be a civil offense, punishable by a fine of up to $500. The bill also repealed the criminal prohibition on possession of marijuana-related paraphernalia.

On May 22, 2015, Governor Hogan vetoed Senate Bill 517 on the ground that State and local law enforcement would be left with no authority to make a traffic stop if they see someone smoking marijuana while driving. While Senate Bill 517 did not include a specific ban on a driver smoking marijuana, driving while impaired is still a criminal act and an officer may therefore have reason to stop a person who is smoking marijuana while driving. While the legislature will consider an override of the veto at the 2016 session, it is also likely that bills will be introduced to address the Governor's concerns with Senate Bill 517.

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Criminal Law

Drones

The Federal Aviation Administration is moving toward a plan to safely integrate drones into the national airspace. On the State level, a report is due by the end of the year regarding the benefits of drones while also identifying policies to address potential concerns.

Background

"Unmanned aerial vehicles" (UAVs), or "drones" as they are commonly known, have become increasingly popular devices, and not just among aviation hobbyists. These aerial vehicles come in various sizes, ranging from the size of an insect (nanodrones or micro-UAVs) to the size of a jetliner. Drones are operated by remote control with personnel on the ground and/or autonomous programming. The entire system required to operate a drone – the personnel, the programming or digital network, and the aircraft – is referred to as an "unmanned aerial system" (UAS).

UAVs have been used in numerous applications, including photography, firefighting, surveillance, warfare, search and rescue, wildlife tracking, and border patrol. In the United States, the Federal Aviation Administration (FAA) has approved certificates of authority to operate UAVs on a case-by-case basis for some commercial and other entities.

Federal Oversight

The FAA Modernization and Reform Act, enacted in 2012, requires the United States Secretary of Transportation to develop a plan, by September 30, 2015, to accelerate safe integration of UASs into the national airspace. Although the Act required a final rule by September 30, 2015, the FAA did not issue a Notice of Proposed Rulemaking until February 2015. The FAA has publicly stated that it could take as long as 16 months to develop and issue a final rule. Accordingly, a final rule is not likely until the end of 2016 or early 2017.

The proposed rule pertaining to small UAVs and UASs contains the following elements:

- UAVs must weigh less than 55 pounds and operate only within visual line of sight of the operator;
- UAVs may not operate above persons not directly involved in the operation;

- UAVs may operate only during daytime, at a maximum airspeed of 100 miles per hour, at a maximum altitude of 500 feet above ground level, and must yield the right-of-way to other aircraft, whether manned or unmanned;

- UAS operators must be at least 17 years old, pass a knowledge test initially and every two years, be vetted by the Transportation Security Administration, and have an operator's certificate with a small UAS rating; and

- UAS operators must display aircraft markings on their vehicles and conduct an inspection of the UAS to ensure safe operation.

The proposed rule would not apply to model aircraft that are unmanned and flown only for hobby or recreational purposes.

On October 19, 2015, federal officials announced that UAV owners will be required to register their aircraft with the federal government. The registration requirement is in part an effort to increase accountability amid reports of UAVs interfering with commercial aircraft and concern over the potential threat UAVs pose to aviation safety. The U.S. Department of Transportation and the FAA have formed a task force to develop the registration process, including determining which aircraft should be exempted from registration. According to federal officials, the registration system will require UAV owners to register their aircraft online and familiarize themselves with basic UAV rules and guidelines. The department anticipates that the registration requirement will apply retroactively to current UAV owners and has directed the task force to submit its report by November 20, 2015. The department hopes to have the registration system operational before Christmas, especially given that drones are expected to be one of the top gifts of the 2015 holiday season.

State Activity

In the absence of definitive federal guidance about the incorporation of UAVs into the national airspace, states are faced with managing the potential of UAVs to enhance emergency management, public safety, and agricultural and other commercial operations, and managing the detriment to public safety that may be imposed by the increasing availability and use of UAVs. According to the National Conference of State Legislatures, 26 states have laws on UAS issues, and an additional 6 states have adopted resolutions. In 2015, at least 45 states, including Maryland, have considered at least 156 bills about UAVs. Nineteen of the 26 states (Arkansas, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Michigan, Mississippi, Nevada, New Hampshire, North Carolina, North Dakota, Oregon, Tennessee, Texas, Utah, Virginia, and West Virginia) enacted such legislation in 2015. The laws enacted by most states relate to defining UAVs and/or UASs, prohibiting activities that could invade privacy, and specifying authorized uses for law enforcement, hunting, and the general public.

In Maryland, Chapter 164 of 2015 established that only the State may enact a law or take other official action to restrict, prohibit, or otherwise regulate the testing or operation of UASs. The authority of a county or municipality to prohibit, restrict, or otherwise regulate the testing or operation of UASs is preempted by this law, and any prior enacted local laws are superseded. It requires the Maryland Department of Commerce, in consultation with the University of Maryland, the Maryland Department of Transportation, and other specified parties, to report to the General Assembly by December 31, 2015, on the economic, environmental, agricultural, and other benefits of UASs/UAVs and to identify general policies that should be developed to address public safety, privacy, emergency management, property rights, and economic issues.

Fourth Amendment Concerns

The Fourth Amendment to the U.S. Constitution states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…". In essence, the Fourth Amendment protects individuals from unreasonable searches and seizures by the government. The reasonableness of a governmental search often depends on the location of the search and the reasonableness of the expectation of privacy on the part of the person subject to the search. Generally, U.S. Supreme Court decisions have held a warrantless search as unreasonable when it involves a person's home, including the immediately surrounding property or "curtilage" attached to the home. On the other hand, courts have also held that the Fourth Amendment does not protect individuals from searches that take place in "open fields" because it is unreasonable for a person to have an expectation of privacy over activities that take place in those areas. As of this writing, there is no U.S. Supreme Court case that directly addresses unmanned aerial surveillance in governmental searches.

Public Safety Concerns

In August 2015, two men with a UAV were arrested near the Western Correctional Institution near Cumberland, Maryland. The men were preparing to use the UAV to fly drugs, tobacco, and pornography into the prison. This is the first reported incident of its kind in Maryland, although similar incidents have occurred in Ohio, California, and other locations. The Maryland State Police report that generally, Maryland has not had many of the public safety incidents involving UAVs that have occurred in other states. As the availability and popularity of UAVs continues to grow, however, their presence will likely require new enforcement strategies in Maryland.

Criminal Law

Cell Phone Tracking

The law often fails to keep up with technological advances. Devices such as Stingray/Hailstorm cell site simulators make it easier to track and apprehend suspected criminals. However, federal nondisclosure agreements governing their purchase and use may circumvent state and federal laws intended to insure compliance with standards of due process.

Background

Advances in technology, particularly with respect to electronic communications, have prompted questions regarding law enforcement's access to information contained in electronic devices, such as cell phones. Recently discussion has focused on law enforcement's use of cell site simulators to track the locations of cell phones. These devices, often referred to by their trade names of Stingray or Hailstorm (the latest version of Stingray), mimic cell phone towers and trick cell phones within range to connect with them, allowing law enforcement to determine which cell phones are in the area and where they are located. Much of the controversy regarding these devices has centered on (1) the scope of information gathered by this technology and the legal requirements for use of the technology; (2) the secrecy surrounding the nature of these devices; and (3) the lack of disclosure by law enforcement to judges and defense counsel about the use and capabilities of these devices.

Frequency of Use of Cell Phone Tracking Technology

According to the American Civil Liberties Union (ACLU), 56 law enforcement agencies in 21 states and the District of Columbia use Stingray technology. The frequency with which law enforcement agencies use cell site simulators varies greatly. However, according to recent news reports, the Baltimore Police Department (BPD) has emerged as a frequent user of the technology. According to *The Baltimore Sun*, in April 2015, after BPD's nondisclosure agreement was presented in court for the first time, a detective with the department's Advanced Technical Team testified that the department has used Stingray/Hailstorm technology 4,300 times since 2007. During an April 2015 press conference about the technology, BPD asserted that it cannot store cell phone data, intercept phone calls, search the contents of cell phones, or provide personal identifying information on cell phone owners.

In April 2015, the Baltimore County Police Department disclosed that it purchased a Stingray in February 2010, upgraded it in March 2013, and has used it 622 times. According to the ACLU, Anne Arundel, Montgomery, and Prince George's counties also have Stingray technology.

Nondisclosure Agreements

According to news reports, as a condition of sale, several law enforcement agencies with Stingray devices were required to sign nondisclosure agreements with the Federal Bureau of Investigation (FBI) and Harris Corporation, the manufacturer of the device. Proponents of the nondisclosure agreements claim that disclosing details about the Stingray device could enable individuals, including terrorists, to circumvent the device. Opponents argue that the agreements are being used to skirt public information laws and keep important due process information from judges and defense attorneys.

In BPD's nondisclosure agreement, dated July 13, 2011, the FBI was advised by the Harris Corporation of BPD's request to purchase the technology, and based on the Federal Communication Commission's equipment authorization to Harris, state and local law enforcement agencies must coordinate with the FBI to complete the nondisclosure agreement. Accordingly, the agreement prohibits the BPD from disclosing any information about the device software or hardware to the public and limits BPD to providing only evidentiary results in testimony for a criminal or civil proceeding. BPD was also required to notify the FBI of any potential compromises or disclosures so that the FBI could prevent them, even if that meant dismissal of the relevant criminal cases. Other significant restrictions governed the purchase and use of Stingray/Hailstorm devices by BPD. In fall 2014, a Baltimore City police detective stated in court that he was prohibited from answering questions about the device due to BPD's nondisclosure agreement. The judge threatened to hold the detective in contempt of court if he refused to respond. Prosecutors withdrew the evidence gathered by the technology.

In May 2015, the FBI clarified that the nondisclosure agreements do not prohibit law enforcement from disclosing use of cell site simulators.

New Federal Guidelines and Maryland Law

On September 3, 2015, the U.S. Department of Justice (DOJ) issued new guidelines, applicable to DOJ agents (not state and local law enforcement) and effective immediately, for the use of cell site simulators in domestic criminal investigations. Among other things, the new guidelines require warrants for probable cause, deletion of collected data, exclusion of GPS data, and exclusion of the contents of cell phones, such as emails and text messages. They also contain annual reporting requirements.

Maryland Law

BPD has said in the past that it applies for court orders to use Stingray technology under the "pen register/trap or trace" statute, but declined a recent request by the news media to comment on its current practice. Pen registers can capture outgoing telephone numbers or signaling information; trap and trace devices can capture incoming telephone numbers and signaling information. Critics assert that (1) the pen register/trap and trace statute was designed for technology that is less intrusive than a Stingray; (2) judges are not aware of what they are authorizing when applications for orders do not disclose use of a Stingray; and (3) the intrusive nature of cell site simulators should require a search warrant rather than a court order subject to a lower legal standard.

Pen Register/Trap and Trace Court Orders

In Maryland, an investigative or law enforcement officer may apply for a court order authorizing or approving the installation and use of a pen register or a trap and trace device. The application must include (1) the identities of the officer applying for the order and the law enforcement agency conducting the investigation and (2) a statement under oath by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation.

If the court finds that the information likely to be obtained by the installation and use of the device is relevant to an ongoing criminal investigation, the court must enter an *ex parte* order authorizing the installation and use of a pen register or a trap and trace device. The order must contain specific information and may only authorize the installation and use of a pen register or a trap and trace device for up to 60 days. An extension for no more than 60 days may be granted upon the filing of a new application and a new finding by the court.

Electronic Device Location Information Court Orders

Chapter 191 of 2014 authorizes a court to issue an order authorizing or directing a law enforcement officer to obtain "location information" from an "electronic device." Location information means real-time or present information concerning the geographic location of an electronic device that is generated by or derived from the operation of that device. A court may issue an order by application on a determination that there is probable cause to believe that (1) a misdemeanor or felony has been, is being, or will be committed by the user/owner of the electronic device or the individual about whom electronic location information is being sought and (2) the location information being sought is evidence of, or will lead to evidence of, the misdemeanor or felony being investigated or will lead to the apprehension of an individual for whom an arrest warrant has previously been issued.

Contents of Communications

Chapter 242 of 2014 requires an investigative or law enforcement officer to obtain a search warrant in order to require a provider of wire or electronic communication services to disclose the *contents* of a wire or electronic communication that is in electronic storage in a wire or electronic communications system for any amount of time, rather than the previous application of the requirement to communications in storage for 180 days or less.

Office of the Public Defender – Challenges to Previous Cases

In August 2015, the Deputy Public Defender for Baltimore City announced that her office will review approximately 2,000 cases in which a Stingray device was used without defense counsel's knowledge and determine whether to challenge them. The charges involved in the cases range from larceny to homicide, and the office will give priority to cases in which the defendant is still incarcerated. The Office of the State's Attorney for Baltimore City announced that it hopes to work with the Public Defender's Office to develop a plan on how to proceed with this matter.

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Courts and Civil Proceedings

Purchase of Structured Settlement Rights

Recent news reports about victims of childhood lead poisoning selling their structured settlement payments for pennies on the dollar have called attention to weaknesses in Maryland's structured settlement protection laws and prompted proposed changes to court rules governing approval of such transactions.

Background

Structured Settlements

Under a traditional settlement agreement, the claimant in a personal injury or workers' compensation action receives a single, lump sum payment in settlement of his or her claim. Under a structured settlement agreement, the claimant (or "payee") instead agrees to receive multiple, smaller payments – typically paid out over the course of many years. Structured settlements have several benefits from a public policy perspective. First, they promote the long-term financial stability of the payee by providing a steady stream of income that can be used to pay future expenses arising from the payee's injury or disability. Second, they minimize the risk that the payee will squander his or her award and become reliant on public assistance. In support of these objectives, federal law encourages the use of structured settlement agreements by granting special treatment to structured settlement payments under the tax code.

Factoring Transactions

Since 1975, insurance companies have committed an estimated $350 billion to structured settlements. This has given rise to a secondary market for structured settlement payments. In some cases, a payee may choose to transfer the rights to receive future payments under a structured settlement agreement in exchange for an immediate, discounted, cash payment. This is called a "factoring transaction," and the companies that specialize in these transfers are known as "factoring companies." Proponents of the factoring industry argue that factoring companies provide an important service to individuals who typically do not have access to traditional forms of credit. A payee may use the cash acquired through a factoring transaction to purchase a vehicle, make a down payment on a house, pay emergency medical bills, or cover other large expenses. However, critics argue that factoring transactions undermine the protective purpose of structured settlement agreements.

In August 2015, *The Washington Post* published an exposé of Maryland's factoring industry. The story described payees, many of them victims of childhood lead poisoning, who had sold their rights to structured settlement payments for pennies on the dollar. One company featured in the article petitioned to buy about $6.9 million worth of future payments – which had a present value of $5.3 million – for about $1.7 million. The article raised questions about how Maryland regulates the factoring market and the extent to which current law adequately protects vulnerable payees from aggressive or misleading business practices.

Current Law

Maryland's Structured Settlement Protection Act

According to the National Association of Settlement Purchasers, 47 states, including Maryland, have adopted some sort of structured settlement protection act. Although the statutes vary in their details, all of them require judicial oversight and approval of factoring transactions.

Maryland's structured settlement protection law, codified in §§ 5-1101 through 5-1105 of the Courts Article, was enacted in 2000. The law prohibits the direct or indirect transfer of structured settlement rights, unless the transfer is authorized in an order of a court based on a finding that:

- the transfer is necessary, reasonable, or appropriate;
- the transfer is not expected to subject the payee or the payee's dependents to undue or unreasonable financial hardship in the future;
- the payee received independent professional advice regarding the legal, tax, and financial implications of the transfer; and
- the transferee (typically, a factoring company) disclosed to the payee the discounted present value of the future payments being transferred.

The transferee must file with the circuit court and serve on all interested parties a notice of the proposed transfer and an application for its authorization.

Gaps and Weaknesses

One of the primary criticisms of Maryland's structured settlement protection law is that it is vulnerable to inconsistent application. While the law requires a court to determine whether a transfer is "necessary, reasonable, or appropriate," it provides no clear guidance on how the court should reach that determination. As a result, judges are left to apply their own, necessarily subjective, criteria to each factoring transaction. Another issue is presented by the law's jurisdictional provisions, which allow petitions to transfer structured settlements to be brought in any county with jurisdiction over an "interested party." Critics have alleged that the law allows factoring companies to "forum shop" for a judge more amenable to their position. Several publications have reported that petitions are overwhelmingly brought outside of payees' counties of residence. There is concern that when a court does not have ties to a payee, it may be less sensitive to the payee's needs and more likely to approve a transaction that is not in the payee's best interests.

Critics also question whether State law adequately assures that payees receive independent professional advice concerning factoring transactions. The law defines "independent professional advice" as the advice of an attorney, certified public accountant, actuary, or "other licensed professional adviser," who is engaged by the payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights. This broad definition of adviser poses several problems. If the adviser is not an attorney, he or she should not be providing legal advice to the payee. On the other hand, if the adviser is an attorney, he or she may not be competent to give advice regarding the tax or financial implications of a transfer agreement. Moreover, although the law specifies that the adviser may not be affiliated with the transferee, many factoring companies provide payees with lists of potential advisers, and some companies even offer to advance the advisers' fees. Payees and their advisers are not required to attend or testify at hearings to approve the transfer of structured settlement rights. Therefore, it is often difficult for courts to assess the qualifications of a particular adviser or to determine how well a payee understands the terms of a particular transfer agreement.

Recent Developments

Changes to Prince George's County Circuit Court Procedures

The Prince George's County Circuit Court, which *The Washington Post* singled out as being particularly lax in its oversight of factoring transactions, has implemented several reforms in recent months. The court now requires payees and their independent professional advisers to appear at hearings on structured settlement transfers. All petitions to transfer structured settlement payments must now be filed using the payee's full name, rather than initials, and the judge who had been responsible for hearing the petitions (who allegedly approved them at a rate of roughly 90%) no longer presides over approval of factoring transactions.

Proposed Changes to the Maryland Rules

On October 15, 2015, the Standing Committee on Rules of Practice and Procedure submitted a report to the Maryland Court of Appeals recommending certain changes to the Maryland Rules. The proposed rules are intended to provide structure and guidance with respect to proceedings on petitions to approve the transfer of payment rights under a structured settlement agreement. Key provisions of the proposed rules include:

- a petition for court approval of a structured settlement transfer must be filed in the circuit court for the county where the payee resides;

- the payee (unless excused by the court), the payee's independent professional adviser, and a duly authorized officer or employee of the transferee must be present to answer questions at the hearing on the petition; and

- the court may appoint a guardian *ad litem* for the payee or arrange for an independent mental health evaluation of the payee.

The Court of Appeals is expected to take up the proposed rules at its conference meeting on November 19.

Courts and Civil Proceedings

Abolishing Contested Elections for Circuit Court Judges

Circuit court judges are the only judges in the State who are subject to contested elections to remain in office following appointment by the Governor. Numerous attempts have been made to abolish contested elections and substitute retention elections, the process used for appellate court judges.

The Judicial Selection and Retention Process

Most judges within the State are appointed and retained through a hybrid process. At all four court levels (the Court of Appeals, the Court of Special Appeals, circuit courts, and the District Court), the Governor appoints a qualified member of the Maryland Bar in the case of a vacancy or the creation of a new judgeship. For both appellate courts, these appointments must be confirmed by the Maryland Senate, and the judge holds the office until the next general election following the expiration of 1 year from the date of the occurrence of the vacancy. At the general election, the incumbent judge's name is placed on the ballot without opposition, and citizens vote for or against the retention of the judge for a 10-year term. For the District Court, judges are appointed by the Governor and serve 10-year terms upon confirmation by the Senate.

To assist in the selection process for judges at all levels, each governor since 1970 has issued an executive order creating judicial nominating commissions to recommend candidates for appointment. The nominating commissions review applications from interested attorneys, interview candidates, and consider recommendations from citizens and various bar associations. The commissions must submit to the Governor a list of candidates who are deemed to be legally and professionally most fully qualified for judicial office, and the Governor must make the appointment from the list.

In contrast to the other judges in the State, circuit court judges face a different process. They are also appointed by the Governor and must stand for election at the first general election following the expiration of 1 year after the occurrence of the vacancy. However, unlike their colleagues on the appellate courts, they are elected to 15-year terms and may face a contested election in which any member of the Maryland Bar who meets the minimum constitutional requirements may challenge the incumbent judges by filing as a candidate. Thus, judges at the circuit court level are the only judges within the State who may face a contested election in order to retain their appointment. It is also only at the circuit court level where an individual may become a judge without a gubernatorial appointment and without being screened and recommended by a judicial nominating commission.

Previous Legislative Action

Since 2002, numerous bills have proposed an amendment to the Maryland Constitution to alter the method by which circuit court judges are selected. Most of the bills have proposed that vacancies in circuit court judgeships be filled in the same manner as vacancies on the Court of Appeals or the Court of Special Appeals, including gubernatorial appointment and Senate confirmation, followed by approval or rejection via retention election by the voters. Many of the bills have also proposed decreasing the term of office for circuit court judges from 15 to 10 years. The most recently introduced bills were House Bill 548 and House Bill 1071 of 2015, both of which would have made the procedures to fill vacancies on the circuit court identical or similar to that of the appellate courts. Other bills that were introduced, but unsuccessful in the 2015 session (Senate Bill 367 and House Bill 582) proposed filling vacancies in circuit court judgeships in the same manner as vacancies in the District Court.

Opponents of judicial elections generally argue that an independent Judiciary is essential to maintaining public trust in the judicial system, and that such trust is eroded when judges who face contested elections are thrust into the role of politicians and must solicit campaign funds, which often come from the attorneys who appear before the court. Opponents also argue that attorneys who challenge the incumbent judges may not have been subjected to the same screening process as the sitting judges.

However, others contend that the issues with judicial elections are predominantly within states in which members of the appellate courts are subject to election and/or judges run as partisan candidates. Furthermore, the use of judicial nominating commissions also has been criticized in some states, as opponents argue that the power to select judges should not be transferred to commissions that are typically made up of political appointments. Proponents of judicial elections argue that, as with other elected offices, any individual who wishes to become a judge and otherwise meets basic criteria should have an opportunity to campaign and be elected by the voters.

Other States

The process of judicial selection and retention in Maryland is similar to the methods that many other states use to fill their judicial vacancies. According to the National Center for State Courts, judges at all levels are initially selected through either partisan or nonpartisan elections in 22 states, while an additional 10 states hold elections only for some judges. Almost half of the states enlist a judicial nominating commission for the initial selection of some or all judges. Regarding the retention or continuance of judges in office, at least some judges must stand for reelection in approximately 30 states. Of these states, in approximately 20 states, all judges are subject to reelection, while in the remaining states, including Maryland, only some judges face contested elections and the remainder stand in retention elections only or are otherwise reappointed. Nine other states exclusively use retention elections for all judges. Several states select and retain judges through legislative election and reelection. Other states either reappoint their judges or do not have a retention method since the judges receive a lifetime tenure upon selection.

Limitations on Judicial Elections

The U.S. Supreme Court recently addressed one of the issues potentially arising from judicial elections. In *Williams-Yulee v. Florida Bar*, No. 13–1499, 575 U.S. __ (2015), a Florida attorney sued the Florida State Bar Association when she was reprimanded and fined for signing her name to a fundraising letter in violation of a rule prohibiting judicial candidates from personally soliciting contributions. The Florida Supreme Court upheld the recommended sanctions, in part noting that the personal solicitation of campaign funds raises an appearance of impropriety and may result in the public questioning the judge's impartiality. In an opinion authored by Chief Justice Roberts, the court affirmed and stated that a state's compelling interest in maintaining public trust in judicial integrity withstood the strict scrutiny required of any measure limiting free speech protected under the First Amendment. Accordingly, the court held that states may prohibit judicial candidates from personally soliciting funds for their election campaigns.

Courts and Civil Proceedings

Birth Injury Fund

Medical liability risks and associated costs have been identified as a major issue affecting access to obstetrical care in Maryland. One proposed approach to address the issue is the establishment of a no-fault birth injury fund.

Background

During the 2014 interim, a workgroup convened by the Department of Health and Mental Hygiene identified medical liability risk and associated costs as one of the major issues affecting access to obstetrical care in Maryland. The workgroup cited results from a 2013 Maryland Hospital Association (MHA) survey showing a 108% increase in total settlement costs for birth injury claims between 2009 and 2013, primarily as a result of large jury awards in two high-profile cases. The workgroup recommended that the legislature seriously consider establishing a no-fault birth injury fund, modeled on existing programs in Florida and Virginia, as a way of addressing this issue. Legislation passed during the following session (Chapter 329 of 2015) authorized MHA, in consultation with the Secretary of Health and Mental Hygiene, the health occupations boards, the Governor's Workforce Investment Board, and other stakeholders, to establish a second workgroup to study access to obstetric services in Maryland. The workgroup's report, which is due in December, is also likely to include recommendations aimed at improving the liability environment for obstetrician/gynecologists (OB/GYNs).

Over the past two years, bills proposing the establishment of a no-fault birth injury fund in Maryland have been introduced in both the House and the Senate, but have failed to pass.

Birth Injury Compensation Plans in Other States

Currently, Virginia, Florida, and New York are the only states to have implemented birth injury compensation programs. The Virginia and Florida programs are very similar. Enacted in 1987 and 1988, respectively, the Virginia Birth-Related Neurological Injury Compensation Act and the Florida Birth-Related Neurological Injury Compensation Plan provide compensation to children who suffer certain severe birth-related neurological injuries as a result of oxygen deprivation or mechanical injury. Both states use administrative processes to determine a child's eligibility for compensation under their programs, and neither state requires a showing of negligence or wrongdoing on behalf of a child's health care provider. Doctors and hospitals in Virginia and Florida can choose whether to participate in their state's compensation plan.

More recently, in 2011, New York established the New York State Medical Indemnity Fund. The New York compensation plan differs from the plans in Virginia and Florida in several important ways. First, participation in the New York program is mandatory for all health care providers. Second, New York law does not create an administrative procedure for adjudicating patients' claims. Instead, the Medical Indemnity Fund pays the future health care expenses of any "qualified plaintiff" who (1) has been found by a jury or court to have sustained a birth-related neurological injury as the result of medical malpractice or (2) has sustained a birth-related neurological injury as the result of alleged medical malpractice, and has obtained a court-approved settlement of his or her claim. **Exhibit 1** summarizes the major features of the Virginia, Florida, and New York compensation plans.

Policy Considerations

Reducing Liability Risk and Facilitating Access to Obstetric Care

Liability rates for OB/GYNs in Florida and Virginia fell soon after those states implemented their compensation programs, and have remained low compared to national averages. Although less information is available for New York, initial data suggests that its program has resulted in lower medical liability premiums for some hospitals but has had little effect on the premiums paid by doctors. There is little evidence, however, that any state's birth injury compensation plan has increased access to obstetrical care. A 2002 report by the Joint Legislative Audit and Review Commission of the Virginia General Assembly concluded that, while the Virginia program had helped to stabilize malpractice premiums, the program's existence did not appear to have a significant impact on the availability of obstetrical services in the state.

Compensating Children and Families

In general, birth injury compensation programs have been successful in reducing the amount of time and money families spend in order to obtain compensation for birth-injured children. In 2004, the Florida Office of Program Policy Analysis and Government Accountability reported that birth injury cases were resolved under the state's compensation program in about two-thirds of the time needed for tort cases. The office further noted that administrative expenses accounted for only 10.3% of total cost per case under the compensation program, compared with 46.9% in a typical medical malpractice case. Evaluations of Virginia's compensation program have yielded similar results. Because New York's compensation program requires patients to first obtain a judgment or settlement in a malpractice suit, it has not resulted in similar efficiencies.

The tort system does have some advantages over the birth injury compensation programs. For example, these programs typically do not compensate mothers who are injured during birth. Moreover, Virginia's and Florida's no-fault systems do not give families the satisfaction of knowing that negligent physicians are being held accountable for their errors. Finally, parents typically have more flexibility in how they use medical malpractice awards, and may be able to spend the money in ways that better meet the specific needs of their children.

Exhibit 1

Major Features of the Virginia, Florida, and New York Birth Injury Compensation Programs

	Virginia	Florida	New York
Covered Entities	Physicians, nurse midwives, and hospitals that provide obstetrical care to indigent patients eligible for Medical Assistance Services and that pay the participation fee	Physicians, nurse midwives, and hospitals that pay the participation fee	Any defendant in a medical malpractice claim or action that results in a judgment or court-approved settlement finding that the plaintiff sustained a "birth-related neurological injury"
Notice Requirements	Must prospectively notify patients of provider's participation in the program; after an infant is delivered, must notify parents of their rights under the program and ways in which the program limits their rights	Must prospectively notify patients of provider's participation in the program; notice must include a clear statement of patients' rights under the program and ways in which the program limits patients' rights	Settlement or judgment must clearly state that all future medical expenses of the plaintiff will be paid by the fund in lieu of that portion of the settlement or award that provides for payment of future medical expenses
Adjudicator	Workers' Compensation Commission	Administrative law judge in the Department of Management Services' Division of Administrative Hearings	Any court of competent jurisdiction

Covered Expenses	• Reasonable and necessary:
	  • Medical care, training, residential and custodial care
	  • Needed equipment
	  • Pharmaceutical costs
	  • Related travel expenses
	• Lost earnings from age 18 to 65
	• One-time family benefit up to $100,000 for infants who die within 180 days of birth
	• Reasonable legal fees
		• Reasonable and necessary:
		  • Medical care, training, residential and custodial care
		  • Needed equipment
		  • Pharmaceutical costs
		  • Related travel expenses
		• One-time family benefit up to $100,000
		• Death benefit of $10,000
		• Reasonable legal fees
			• "Qualifying health care costs" necessary to meet the claimant's health care needs, as determined by a physician, physician assistant, or nurse practitioner, and as otherwise defined by the Commissioner of Health in regulation
			• Reasonable legal fees

Source: Siegal, Mello, and Studdert; New York State Department of Financial Service

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Environment and Natural Resources

The Status of Chesapeake Bay Restoration

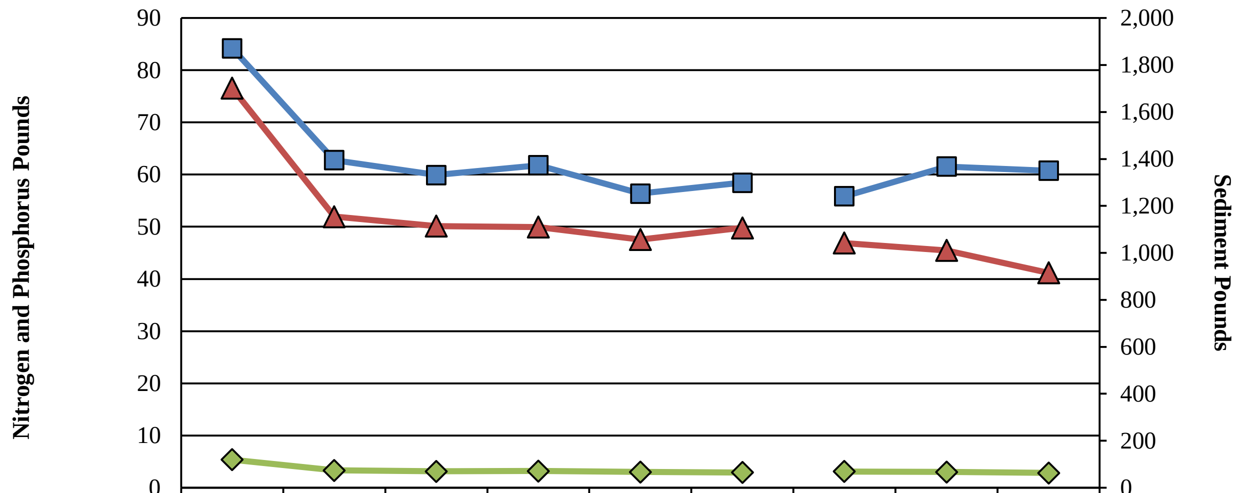
Maryland is in the midst of important discussions about how it will meet and maintain the nutrient and sediment load reductions required under the Chesapeake Bay Total Maximum Daily Load (TMDL). A nutrient trading policy, incorporating the intent to trade in order to meet the TMDL, has been released, and Accounting for Growth discussions are anticipated to begin again soon. Transparency and cost effectiveness are paramount considerations.

Introduction

In December 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under the federal Clean Water Act and in response to consent decrees in the District of Columbia and Virginia. This TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. Bay jurisdictions must develop watershed implementation plans (WIP) that identify the measures being put in place to reduce pollution and restore the bay. Bay jurisdictions also have committed to achieving specific, two-year bay restoration "milestones" in order to assess progress toward achieving nitrogen, phosphorus, and sediment reduction goals. In order to comply with TMDL, Maryland must not only reduce existing pollution loads, but also *maintain* reduced pollution loads as population growth and new development occurs. Maryland has not yet adopted a clear strategy for accounting for new pollution associated with future growth, but it is anticipated that nutrient trading and offsets will play some role in a final strategy.

As shown in **Exhibit 1**, the State must establish pollution control measures by 2025 that, based on 2009 levels, will reduce nitrogen loads to the bay by 20.7%, phosphorus loads by 14.9%, and sediment loads by 3.3%.

Exhibit 1
Maryland's Pollution Reduction Goals in the Watershed Implementation Plan Phase II
(Million Pounds Per Year)



	1985 Baseline	2009 Baseline	2011 Progress	2012 Progress	2013 Progress	2014 Progress	2015 Milestone	2017 Target	2025 Target
Nitrogen	76.6	51.9	50.2	50.0	47.6	49.8	46.8	45.5	41.2
Phosphorus	5.4	3.3	3.1	3.2	3.0	2.9	3.1	3.0	2.8
Sediment	1,871.3	1,395.1	1,331.6	1,373.0	1,252.7	1,298.8	1,240.4	1,367.8	1,349.7

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

EPA issued its Interim Evaluation of Maryland's 2014-2015 Milestones and WIP Progress on June 10, 2015. Maryland's current progress is as follows:

- **Nitrogen:** The State is not on track to meet the 2017 target due to agricultural production changes, including greater corn production, and slower than anticipated stormwater load reductions. However, it is recognized that upgrades to wastewater treatment plants (WWTP) are in progress and other efforts continue to accelerate implementation across all other sectors.

- **Phosphorus:** The State is on track to meet the 2017 target, but excess manure and fertilizer are causing worsening phosphorus trends on the Eastern Shore. Therefore, the level of effort to manage phosphorus may need to be increased.

- **Sediment:** The State is on track to meet the 2017 target.

Financing Strategy

Maryland's restoration cost for the Phase II WIP informs its overall financing strategy. The State's Phase II WIP included a $14.4 billion restoration cost estimate for the 2010 through 2025 time period. Budget bill language in the fiscal 2015 operating budget bill included the intent that a report be submitted including projected fiscal 2015 to 2025 annual spending for restoration. The Environmental Finance Center at the University of Maryland in College Park released a financing strategy covering the intent of the budget bill language in July 2015 titled "Maryland's Chesapeake Bay Restoration Financing Strategy Final Report." The financing strategy estimated costs and revenues as shown in **Exhibit 2**. Overall, the Environmental Finance Center estimated a $7.8 billion financing gap, primarily in the areas of onsite wastewater (septic systems) and urban stormwater.

Exhibit 2
Watershed Implementation Plan Financing Gap
($ in Billions)

Sector	Estimated Costs	Estimated Revenue Flows	Financing Gap
Point Source Wastewater	$2,430	$2,430	
Onsite Wastewater	3,700	297	$3,403
Agriculture	928	738	190
Urban Stormwater	7,388	3,203	4,185
Total	**$14,446**	**$6,668**	**$7,778**

Source: Environmental Finance Center

The financing strategy made two major points about Maryland's prognosis for Chesapeake Bay restoration: (1) the restoration can be either regulated by the State or financed by the State and (2) the ultimate success of the restoration is dependent on how Maryland maintains nutrient and sediment loads into the future. The financing strategy noted that the nutrient and sediment loads can be reduced through market systems and that the reductions can be maintained by both market mechanisms and long-term financing strategies for conservation of forests, agricultural lands, and open space.

Nutrient Trading

One way to finance bay restoration is through nutrient trading, which some argue is a more efficient and cost-effective process than government regulation. Nutrient trading is a market-based approach that involves the exchange (buying and selling) of nutrient reduction credits (*i.e.*, pollution allocations) between sources in order to protect and improve water quality. These credits have a monetary value that may be paid to the seller for installing best management practices to reduce nitrogen or phosphorus. As a result, compliance entities with low-cost pollution reduction options have an incentive to reduce nutrient loadings beyond what is required of them and to sell the excess credits to sources with higher control costs.

The Administration released a nutrient trading policy statement on October 23, 2015. The statement indicates a timeline for implementation of nutrient trading and some parameters for how it will work. The intent is as follows: to hold a nutrient trading symposium in December 2015, reconvene a modified nutrient trading workgroup to discuss particulars, participate in an environmental finance symposium in calendar 2016 convened by EPA and the bay states, hold a conference in mid-calendar 2016 at which a guidance document addressing EPA's nine elements of trading programs common to all bay jurisdictions will be released, and explore aquaculture nutrient credit generation ideas in the summer of calendar 2016. Two of the main policy parameters are as follows:

- **Purpose:** The option has been maintained of trading between the four major sectors (WWTPs, septic systems, agriculture, and stormwater) in order to meet the nutrient and sediment load reductions under TMDL, which appears to be an expansion of the original intent to use nutrient trading only to maintain the nutrient and load reductions in the face of population growth once TMDL has been met, and otherwise to use best management practices to meet TMDL.

- **Geography:** The geographic areas within which trading will occur are (1) the Potomac River Basin; (2) the Patuxent River Basin; and (3) the combination of the remaining Western Shore, Eastern Shore, and Susquehanna River Basin, and the option is maintained to expand to interstate trading.

In terms of trading models, Virginia has a nutrient trading program as an option under its Chesapeake Bay Watershed General Permit; the permit requires that new or expanding point sources acquire allocations or credits to offset the entirety of their nutrient load. During calendar 2014, 117 of the 136 actively reporting point source facilities under the General Permit met their waste load allocations without trading. The remaining 19 facilities that exceeded nitrogen and/or phosphorus load allocations acquired enough credits to meet their compliance needs.

In the near-term, Maryland is using the idea of "trading in time" to meet its TMDL obligations. "Trading in time" is the idea of using WWTP and agriculture sector load reductions now to meet, temporarily, the urban stormwater and septic system sector loads. This is possible because it is anticipated that WWTPs will reduce nitrogen loads well below the sector goal and because agricultural sector best management practices are relatively inexpensive. In the long-term, however, there will likely be growth in the WWTP sector as the population increases. Therefore, the WWTP growth capacity will be used and will no longer be available to defray stormwater and septic sector loads.

Accounting for Growth

In order to comply with TMDL, Maryland must not only reduce existing pollution loads, but also *maintain* reduced pollution loads as population growth and new development occurs. Maryland has discussed this requirement as part of its Accounting for Growth policy, which has yet to be finalized. In fact, EPA noted in its June 2015 evaluation that it expected additional information on Accounting for Growth regulations or an alternative milestone commitment to account for growth if the regulations do not move forward. The Administration intends to discuss Accounting for Growth among the bay cabinet agencies and then reconvene some form of the Accounting for Growth workgroup that met in January through July 2013 with the objective of having more information available by December 2015.

As noted above, nutrient trading is one way that Accounting for Growth may be implemented, but there is still a major hurdle to implementation: How to treat agricultural land converted to developed land. Currently, when agricultural land is developed, loading is reduced and the agricultural sector is credited with the load reduction. The development industry would like to credit the load reduction to the urban stormwater sector since the conversion of land use is in a sense a best management practice that reduces nutrient and sediment loading. However, crediting load reductions to the urban stormwater sector creates an incentive to develop agricultural land and thus contravenes other State policy that seeks to maintain agricultural land. This hurdle will need to be addressed in any final Accounting for Growth policy.

Policy Implications

Maryland is in the midst of important discussions about how it will meet and maintain the nutrient and sediment load reductions required under TMDL. The nutrient trading policy statement released on October 23, 2015, conveys a strong statement that the Administration intends to use nutrient trading both to meet and maintain its nutrient and sediment load reductions. The key question will be whether a nutrient trading policy is developed and implemented that is sufficiently transparent and efficient to allow for independent verification of progress toward meeting TMDL and cost effective for both the State and compliance entities to implement. In addition, it remains to be seen how a final Accounting for Growth policy will maintain nutrient and sediment load reductions and address the issue of which sector receives credit for agricultural land converted to developed land without incentivizing the development of agricultural land.

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Environment and Natural Resources

Pesticide Use in Maryland

Legislation introduced, but not passed, during the 2015 session would have restricted the use and sale of neonicotinoid pesticides, which have garnered attention as a potential cause of honey bee losses, and prohibited the application of lawn care pesticides on the grounds of specified facilities primarily used by children. Additionally, a controversial bill passed by the Montgomery County Council in October will prohibit the use of certain pesticides on county-owned and privately owned lawns, playgrounds, mulched recreation areas, and children's facilities.

Overview of Pesticide Regulation

Federal Law

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) prohibits the sale or distribution in the United States of a pesticide that is not registered or exempted from registration by the U.S. Environmental Protection Agency (EPA). Before registering a pesticide, however, EPA must determine that the pesticide will not generally cause unreasonable adverse effects on the environment. Accordingly, EPA assesses a range of potential health and environmental effects associated with the proposed use of the pesticide during the evaluation of an application. Among other things, EPA reviews the pesticide formulation, site and method of use, storage and disposal practices, labeling and directions for use, and research data on the pesticide's efficacy and potential risks.

State Law

In General

Under FIFRA and a cooperative agreement with EPA, Maryland has primary enforcement responsibility for violations of federal pesticide laws. Maryland also has broad authority to adopt regulatory measures, other than labeling or packaging requirements, that are at least as restrictive as federal pesticide laws. Regarding labeling and packaging requirements, both federal and State law recognize that uniformity reduces confusion, promotes clarity and safety, and helps control costs. Accordingly, the Maryland Pesticide Registration and Labeling Law and the Pesticide Applicator's Law authorize the Maryland Department of Agriculture (MDA) to adopt EPA regulations and additional regulations governing the sale, distribution, use, storage, and disposal of pesticides.

Schools and Child Care Facilities

Each public school system in the State is required to implement an integrated pest management program to minimize the use of pesticides in its school buildings and on school grounds. Integrated pest management is a pest control program that uses inspections, monitoring, and various methods of pest control, such as sanitation, structural repair, and other nonchemical methods, to keep pests from causing economic, health-related, or aesthetic damage. Pesticides may be used when nontoxic options are unreasonable or have been exhausted.

Each school system must designate a contact person to answer questions about the pest management program and to maintain a file of pesticide product labels and material safety data sheets. Schools must provide specified notices at the beginning of each school year, before a pesticide application, and within 24 hours after an emergency pesticide application.

In child care facilities licensed by the Maryland State Department of Education, a pesticide may be used only if the pesticide is (1) approved by EPA; (2) used according to the manufacturer's instructions; (3) used only when children are not in care; and (4) stored apart from food, beverages, and cleaning agents.

Local Law

Federal and State pesticide laws do not specifically address whether local jurisdictions may regulate pesticides. Consequently, a local jurisdiction may regulate pesticides in a manner that is at least as restrictive as, and consistent with, the applicable federal and State laws (*Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991)). Examples of local regulations include signage requirements in Prince George's County, consumer information requirements in Montgomery County, and an integrated pest management plan for county parks and athletic facilities in Anne Arundel County.

Recent Legislation

Neonicotinoid Pesticides

Pollinator species such as bees, birds, and insects are essential for food production and biodiversity and contribute significantly to the U.S. economy. Of all of the pollinating species, honey bees are the most important. In 2011 alone, honey bees contributed more than $26 million in pollinator services to crops grown in Maryland. U.S. honey bee populations have been declining for decades. However, in 2006, honey bee losses gained national attention when commercial beekeepers along the East Coast reported significant population declines of 30% to 90%. While scientists do not yet know the cause of honey bee losses, most agree that there are multiple stressors that contribute to population declines, including habitat loss, pests, disease, pesticides, nutritional deficiencies, and bee hive management practices. Of these stressors, neonicotinoid pesticides, the most widely used pesticide in the world, have garnered attention as a potential cause of honey bee losses.

Senate Bill 163/House Bill 605 of 2015 would have (1) established a labeling requirement for any seed, plant material, or plant that has been treated with a neonicotinoid pesticide; (2) prohibited a person from selling a neonicotinoid pesticide in the State unless the person also sells a restricted-use pesticide; and (3) prohibited a person from using a neonicotinoid pesticide unless the person is a certified applicator, a farmer who uses the product for agricultural purposes, or a veterinarian. The required label would have read: "WARNING: Bees are essential to many agricultural crops. This product has been treated with neonicotinoid pesticides, found to be a major contributor to bee deaths and the depletion of the bee population."

Lawn Care Pesticides

In recent years, concerns have been raised regarding the effect of routine lawn care pesticide applications on public health and the environment, with particular attention on the potential health effects on children. In an effort to reduce pesticide exposure to children, House Bill 995 of 2015 would have prohibited the application of a lawn care pesticide on the grounds of any child care center, school, or recreation center, or on any other recreational field used by a child under the age of 18, unless an emergency application is necessary to eliminate an immediate threat to human health. The bill also included emergency application, recordkeeping, and notice requirements.

In October 2015, the Montgomery County Council passed more comprehensive pesticide legislation (Montgomery County Bill 52-14), which, in part, prohibits the use of certain pesticides on county-owned and privately owned lawns, playgrounds, mulched recreation areas, and children's facilities. The bill authorizes pesticide applications under specified circumstances, including for weed or invasive species control, human health or agricultural-related purposes, and the prevention of significant economic damages. The bill will go into effect without the Montgomery County Executive's signature, as the county executive returned the bill unsigned citing concerns regarding State preemption and anticipated court challenges. In spring 2015, an assistant Attorney General advised that a general ban on the application of pesticides to lawns is likely preempted by State law.

Policy Implications

The effect of neonicotinoid pesticide and other lawn care pesticide use on public health and the environment has received significant attention in recent years. With respect to neonicotinoids, although there is no clear indication that they are the cause of honey bee declines, concerns remain that exposure to neonicotinoids impairs the normal functioning of honey bees and makes honey bees more susceptible to parasites and disease. Additionally, although some policies are currently in place to minimize pesticide exposure to children, proposals to further reduce pesticide exposure are anticipated. Finally, recent local legislation restricting lawn care pesticide applications is likely to spark additional legislative activity.

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Environment and Natural Resources

Oyster Restoration

The Department of Natural Resources unveiled a new management and restoration plan for oysters in 2009, which increased the State's network of oyster sanctuaries, expanded opportunities for oyster aquaculture, and maintained quality oyster habitat for the public oyster fishery. Since then, the General Assembly has continually reviewed the plan due to concerns about user conflicts with regard to aquaculture, the role of county oyster committees, the lack of suitable oyster shell for planting, and the designation of Harvest Reserve Areas. Recent regulatory and policy changes may lead to legislation during the 2016 session.

Background

In response to the oyster population in the Chesapeake Bay languishing at 1% of historic levels, decreased suitable oyster habitat, a dwindling number of harvesters, and the recommendations of the State's Oyster Advisory Commission, the Department of Natural Resources (DNR) unveiled a new management and restoration plan for oysters and the State's oyster industry in December 2009. The plan increased the State's network of oyster sanctuaries from 9% to 24% of the bay's remaining quality oyster bars, established oyster aquaculture leasing opportunities and related financial assistance programs, and maintained 76% of the bay's remaining quality oyster habitat for the public oyster fishery. DNR's oyster restoration activities also included the construction of artificial oyster reefs, increased production of juvenile oysters, and the promotion of oyster aquaculture.

DNR committed to re-evaluating the State's oyster sanctuary network five years after implementation of the new sanctuary program. The end of this evaluation period is July 1, 2016, and DNR is expected to provide a full sanctuary evaluation report at that time.

Aquaculture

A person who wishes to obtain an aquaculture lease is required to undergo an application process that includes DNR providing public notice and an opportunity for any person who may be adversely affected to protest the proposed lease. In determining the location of leasing areas, DNR must consider potential user conflicts by other uses of the proposed area, including navigation, recreation, and commercial fishing. The issue of how to address user conflicts with respect to aquaculture is a consistent concern for the General Assembly. For instance, in the 2015 session, the General Assembly considered SB 709/HB 419 (both failed), which would have required DNR to mitigate and minimize user conflicts presented by new aquaculture leases.

Because of Natural Resources Police staffing shortages and the isolation of most aquaculture leases, enforcement is a consistent issue for aquaculture. For instance, Chapter 235 of 2015 established treble civil liability damages and other liability damages for a person who unlawfully harvests, damages, or transfers oysters on leased areas. The General Assembly consistently looks to stakeholders and other states to find appropriate penalties for poaching on leases, improve the monitoring of leased areas and aquaculture products, and find other appropriate enforcement mechanisms.

County Oyster Committees

County oyster committees are established in each tidewater county in the State for each oyster harvesting gear to advise DNR on oyster propagation in the respective areas. The law governing county oyster committees is decades old and does not reflect current realities. In some cases, there are not enough oyster harvesters in a specific county who use a particular gear to serve on the five-member committees. To this end, in the 2015 session, the General Assembly considered SB 931 (failed), which would have streamlined the membership, duties, and appointment process for the committees, and HB 1002 (failed), which would have required DNR to examine issues related to the committees over the 2015 interim and report its findings to the General Assembly. In addition, DNR adopted regulations during the 2015 interim to streamline and modernize the election process for the committees.

Oyster Shell Production

Obtaining sufficient oyster shell to plant on sanctuaries, sell for use in new and expanded leased areas, and plant on the public oyster fishery is a vital component of oyster restoration. Native oyster shell is in short supply, and out-of-state shell is expensive and, according to some stakeholders, not as effective as native shell. To this end, the initial version of HB 1002 (failed) considered by the General Assembly in the 2015 session would have allowed county oyster committees to use their State-provided funds to purchase shell for the public oyster fishery. In addition, over the 2015 interim DNR applied to the U.S. Army Corps of Engineers for a permit to dredge oyster shells from the Man O'War Shoals in Baltimore County, a controversial step in the minds of recreational anglers who feel that dredging will damage this productive recreational fishing ground.

Harvest Reserve Areas

Harvest Reserve Areas (HRA) are commercial fishing areas that are harvested on a rotational basis. The HRAs are closed to harvest for a certain period of time to provide ecological benefits while increasing the number of harvestable oysters. The county oyster committees contend that the HRAs are not functioning as designed. As a result, the General Assembly considered repealing the authority of DNR to establish HRAs under SB 931 of 2015 (failed). DNR, however, proposed regulations during the 2015 interim to close 10 of the 12 HRAs.

Policy Implications

Since the enactment of DNR's oyster management and restoration plan, the General Assembly has continually reviewed elements of the plan and made changes that it considered necessary. The General Assembly will continue its oversight of oyster restoration activities in the 2016 session and beyond, especially in light of recent regulatory and policy changes and the anticipated 2016 evaluation of the sanctuary program.

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Environment and Natural Resources

Air Quality and Greenhouse Gas Emissions Reductions

As a result of recent legislative efforts, Maryland is well-positioned to meet air quality requirements under federal law, as well as greenhouse gas (GHG) emissions reductions mandated under State law. However, air quality in parts of the State could be improved, and further GHG emissions reductions will be needed to minimize the impacts of climate change.

Background

Maryland has taken several actions over the past decade to improve air quality and reduce greenhouse gas (GHG) emissions in the State. The Healthy Air Act (Chapter 23 of 2006), the State's participation in the Regional Greenhouse Gas Initiative (RGGI), the Clean Cars Act (Chapters 111 and 112 of 2007), and the Greenhouse Gas Emissions Reduction Act (GGRA) of 2009 (Chapters 171 and 172) have led to dramatic improvements in air quality and have reduced the number of days in which Marylanders breathe unhealthy air.

As a result of these actions, Maryland is well-positioned to meet the requirements of the new federal Clean Power Rule (finalized in August 2015), which will reduce carbon pollution from power plants across the country. In addition, according to the Maryland Department of the Environment (MDE), the State is also on track to exceed the requirement under the GGRA to reduce GHG emissions by 25% from 2006 levels by 2020. However, because parts of Maryland are still in nonattainment for ozone, and the State is particularly vulnerable to the effects of climate change, especially sea level rise, the State should continue, and perhaps accelerate, its efforts going forward.

Air Quality

Under the federal Clean Air Act, states are required to attain and maintain National Ambient Air Quality Standards (NAAQS) for six primary ("criteria") pollutants – carbon monoxide, lead, nitrogen dioxide (which includes oxides of nitrogen (NOx)), ozone, particle pollution, and sulfur dioxide. Areas of the State where air pollution levels persistently exceed the NAAQS for a particular pollutant may be designated nonattainment.

Ozone Pollution

Despite recent efforts, parts of Maryland are designated nonattainment for ozone. Ground level ozone is created by chemical reactions between NOx and volatile organic compounds (VOC) in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NOx and VOCs. Breathing ozone may trigger a variety of health problems and may have harmful effects on sensitive vegetation and ecosystems. Although parts of the State remain in nonattainment for ozone, since 2010, the number of days that 8-hour ozone concentrations exceeded the 2008 health-based standards have declined, from 43 days statewide in 2010, to 5 days statewide in 2014.

NOx Pollution

At the end of 2014, the O'Malley Administration proposed regulations that would have established NOx emission standards and additional monitoring and reporting requirements for coal-fired electric generating units in Maryland. The proposed regulations had two parts – standards for 2015 and standards for 2020. However, the regulations were held for review by the Hogan Administration before a notice of final adoption was published in the *Maryland Register*; accordingly, they were not adopted. Instead, in May 2015, the Hogan Administration adopted emergency regulations that included part of the proposal from 2014, effectively establishing NOx standards for 2015 only (corresponding proposed regulations went into effect in August 2015).

In September, the Hogan Administration proposed additional regulations to require NOx reductions that coal-fired electric generating units must meet by June 1, 2020. Despite the placement of a temporary hold on the regulations by members of the Joint Committee on Administrative, Executive and Legislative Review who were concerned that the new regulations were less protective than regulations originally proposed by the O'Malley Administration, the regulations are expected to be formally adopted by the end of the year.

Greenhouse Gas Emissions

According to the Intergovernmental Panel on Climate Change, the world's temperatures are climbing, and human activities are very likely contributing to this increase. Continued global warming is expected to affect sea levels and weather patterns, resulting in impacts on human health, the environment, and the economy. Maryland is already experiencing significant loss of land from sea level rise, which has risen about 8 inches in the last 100 years.

Greenhouse Gas Emissions Reduction Act of 2009

In light of Maryland's particular vulnerability to the impacts of climate change, the GGRA was enacted to require the State to develop plans, adopt regulations, and implement programs to reduce GHG emissions 25% from 2006 levels by 2020. The GGRA exempts the manufacturing sector from control under the Acts unless those controls are required by federal law or regulation, or are part of existing State law in effect prior to 2009. The emissions reduction requirement will terminate December 31, 2016, unless it is reauthorized by legislation. The Acts also required MDE, by October 1, 2015, to submit a progress report to the Governor and the General Assembly.

This report, the *2015 Greenhouse Gas Emissions Reduction Act Plan Update*, released in October 2015, summarized the progress made toward the 2020 reduction requirement.

To achieve reductions, the State developed a comprehensive, multi-sector, multi-agency plan with assistance from more than a dozen State agencies and nongovernmental organizations. According to MDE, Maryland is on target to not only meet, but to exceed, the 25% required emissions reduction. **Exhibit 1** shows that with the combined emissions reductions of all programs in the *2015 Greenhouse Gas Emissions Reduction Act Plan Update*, Maryland will exceed the 25% required reduction in GHG emissions by 3.71 million metric tons of carbon dioxide-equivalent. Among the suite of Maryland's programs, EmPOWER Maryland, the Maryland Renewable Energy Portfolio Standard, and the State's participation in RGGI are projected to provide some of the greatest reductions in GHG emissions.

Exhibit 1

Projected GHG Emissions Reductions in Maryland

(In $MMtCO_2e$)

Required 25% Reduction in Statewide GHG Emissions	34.66
Projected Emissions Reductions from All Programs	38.37
Difference	**3.71**

GHG: greenhouse gas
MMtCO2e: million metric tons of carbon dioxide-equivalent

Source: *2015 Greenhouse Gas Emissions Reduction Act Plan Update*

Despite this progress, MDE also reports in its *2015 Greenhouse Gas Emissions Reduction Act Plan Update* that the scientific consensus is that worldwide GHG emissions reductions as high as 72% by 2050, or earlier, will be needed to minimize the impacts of climate change. While Maryland has a head start in reducing GHG emissions, more reductions will be needed. In response, MDE recommends that the 2020 goal be maintained, and that additional enhancements to existing programs should be considered, as long as the enhancements have a clear positive impact on Maryland's economy and job creation, while also protecting consumers. MDE also recommended (1) adopting a "next step" of incremental progress toward deeper science-based reductions needed by 2050; (2) requiring an every three-year check-in on GHG emissions reductions to include economic and job goals; (3) analyzing emerging issues linked to continuing the State's progress in reducing GHG emissions; and (4) increasing efforts on climate resiliency to ensure that the State is prepared for extreme weather and changing climate conditions. Finally, MDE recommends that an existing exemption for the manufacturing sector in Maryland be maintained.

Maryland Commission on Climate Change

Originally established by executive order in April 2007, the Maryland Commission on Climate Change (MCCC), codified by Chapter 429 of 2015, is responsible for advising the Governor and General Assembly on ways to mitigate the causes of, prepare for, and adapt to the consequences of climate change. At an October meeting, MCCC members expressed unanimous support for recommending the adoption of a plan to reduce greenhouse gas emissions by 40% by 2030, with the same manufacturing exemption that was contained in the GGRA. MCCC is expected to include this recommendation, along with others, in its annual report, which will be released by the end of the year.

Policy Implications

Due to recent legislative efforts, Maryland is well-positioned to meet air quality requirements under federal law, as well as GHG emissions reductions mandated under State law. However, the State is already feeling the impacts of climate change, and further reductions in GHG emissions are needed. Recent regulatory changes and new recommendations from MDE and MCCC may lead to legislative proposals to reinforce, or potentially expand, the State's existing suite of programs to reduce NOx and GHG emissions in the State.

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State Government

Automatic Voter Registration

Recent enactments in Oregon and California establish a system of automatic voter registration for driver's license or identification card holders through the transfer of electronic records between the state motor vehicle agency and election administration officials. In Maryland, the Motor Vehicle Administration (MVA) implemented an electronic voter registration process in 2012 under the National Voter Registration Act of 1993 (the "Motor Voter" law) that allows individuals conducting business with the MVA to opt to register to vote, a process that has resulted in a significant increase in the State voter rolls. However, calls are growing in the State for a more robust "automatic" voter registration system.

Introduction

In the United States, registering to vote and keeping a voter registration record up to date are historically an individual's responsibility. In many other countries, the government takes a more active role in registering people to vote and in keeping their records current. In March 2015, Oregon became the first American state to adopt a form of automatic voter registration. Under the Oregon legislation, all eligible individuals who hold a state driver's license or identification card are automatically registered to vote unless they affirmatively choose to opt out. California enacted legislation implementing a system of electronic voter registration at the state motor vehicle agency similar to the system currently in operation at Maryland's Motor Vehicle Administration (MVA). If Maryland were to adopt a system similar to Oregon's, MVA would have to identify which State driver's license or identification card holders are citizens of the United States. Automatic voter registration could also be implemented at other government agencies in Maryland using a system similar to Oregon's or the system currently in use at MVA.

The Oregon System

By January 1, 2016, Oregon's Department of Transportation is required to transmit electronic records to the Secretary of State containing the name, age, residence, citizenship status, and electronic signature of each state driver's license or identification card holder who is eligible to vote. The Secretary of State forwards the records to the county clerk in the county where each individual resides. The clerk mails a notice to each individual describing how to opt out of voter registration and how to select a political party affiliation. If an individual does not decline to be registered to vote within 21 days of the issuance of the notice, the individual is registered to vote if the individual is not already registered. Oregon's Department of Transportation already collects data on the citizenship status of driver's license and identification card holders, which is essential to the process of determining which individuals in the department's database are eligible to register.

Legislation in Other States

California enacted legislation modeled on the Oregon law in October 2015. California's law differs from the Oregon law in some important respects. In California, individuals may affirmatively opt out of voter registration when completing a driver's license or identification card transaction at the Department of Motor Vehicles. Therefore, there is no need for a subsequent mailing to individuals informing them of how to opt out of registration, as in Oregon. Also, individuals who wish to register at the Department of Motor Vehicles must affirmatively attest that they meet all voter eligibility requirements, including United States citizenship. In Oregon, no such attestation is necessary because the motor vehicle agency uses information already in its possession to determine the eligibility of prospective voters, including citizenship. However, under both the Oregon and California systems, electronic records of individuals who are eligible to register are transmitted from the Department of Motor Vehicles directly to the Secretary of State.

The New Jersey legislature also passed automatic voter registration legislation in June 2015, but the governor vetoed it. That legislation was nearly identical to the Oregon law. According to the Brennan Center for Justice, in addition to Oregon, California, and New Jersey, legislation to implement automatic voter registration has been introduced in 15 states, the District of Columbia, and the United States Congress. Six of the proposed bills would implement automatic voter registration at state agencies that provide social services in addition to the state motor vehicle agency.

Implementation of Automatic Voter Registration in Maryland

Maryland, like most other states, is subject to the National Voter Registration Act (NVRA) of 1993, which requires certain state government agencies to offer individuals the opportunity to register to vote. Agencies that must provide voter registration services under the federal law include the state motor vehicle agency, all agencies that provide public assistance, and all agencies primarily engaged in providing services to individuals with disabilities. States must also designate other offices as voter registration agencies. In Maryland, voter registration agencies include the MVA, local departments of social services, the Office of Mobility Certification in the Maryland Transit Administration, local offices on aging, public institutions of higher education, and marriage license offices of the clerks of court, among others.

MVA implemented an electronic voter registration process in 2012. This process is similar to the system that will be implemented in California under the automatic voter registration legislation adopted this year. Under Maryland's current system at MVA, applicants for a driver's license or identification card complete the voter registration process by entering information electronically, unless they affirmatively decline to register. Applicants attest that they meet all the qualifications to become a registered voter, including United States citizenship. MVA then transmits the electronic records of applicants directly to the State Board of Elections (SBE). This electronic voter registration system has resulted in a substantial increase in the number of individuals registering to vote at MVA compared to previous years, when prospective voters were offered paper applications that were often not returned to election officials.

If Maryland were to adopt Oregon's system of automatic voter registration, electronic records of all eligible individuals in the MVA database would be transmitted to SBE to be registered. Individuals would then be notified of the opportunity to opt out through a subsequent mailing. It would be necessary for MVA to develop a system to identify those individuals in its database who are citizens of the United States. MVA does not currently determine the citizenship status of driver's license and identification card holders; it determines only whether applicants are lawfully present in the United States, a category that includes legally present noncitizens. It would also be necessary to ensure that potential registrants meet all other voter eligibility requirements. In addition, the mandate of the NVRA to conduct voter registration in person at MVA cannot be waived if the State adopts automatic voter registration. Therefore, registration at MVA would have to be conducted through both in-person transactions and transfers of records of eligible individuals from the MVA database.

There are other considerations if Oregon's model of voter registration were implemented in Maryland. Individuals may not closely review the mailing they receive notifying them of their pending registration and the opportunity to opt out. This could lead to individuals becoming registered unintentionally. In addition, individuals who do not follow the instructions to choose a party affiliation would be registered as unaffiliated. Voters who are unaffiliated may not vote in Maryland's closed primary elections, which may cause some newly registered voters to be turned away if they appear to vote in a primary. It is also noteworthy that Maryland conducts mailings to unregistered individuals in the MVA database that provide instructions on how to register to vote. SBE also plans to notify unregistered individuals in the MVA database by mail of the opportunity to register and vote on the same day during early voting beginning in 2016.

All voter registration agencies in Maryland other than MVA currently register voters by using paper forms. Automatic voter registration at these agencies could take the form of a system similar to the one currently in place at Maryland's MVA or a system similar to Oregon's. In the 2014 legislative session, legislation was introduced to require the local departments of social services, the office of mobility certification in the Maryland Transit Administration, the Maryland Health Benefit Exchange, and public institutions of higher education to implement a system of electronic registration similar to MVA's by July 1, 2016. If a system similar to Oregon's were implemented at these agencies, each agency would have to develop the capability to determine whether its clients are citizens, and procedures would need to be in place to ensure that registrants meet all other qualifications for voting. Each agency would also have to continue to offer its clients the opportunity to register to vote in person in accordance with the NVRA.

State Government

Implementation of a New Voting System

Certification standards first enacted in 2007 required any future voting system in the State to produce a "voter-verified paper record." In the intervening years, concerns about the availability of a voting system that would meet the State standards and a lack of funding delayed implementation of the new voting system. However, the delays are now over, and State and local boards of elections are well into implementation of the new voting system and equipment throughout the State for the 2016 elections.

Introduction

The State Board of Elections and local boards of elections are implementing a new voting system in time for the 2016 election cycle. It is a paper-based system, in which voters make their selections, whether by hand or by using a touchscreen ballot marking device, on a voter-verifiable paper ballot. The new system is a result of legislation enacted in 2007 (Chapters 547 and 548 of 2007, later amended by Chapter 428 of 2009), which required that a voting system certified by the State Board of Elections provide a "voter-verifiable paper record." The legislation was prompted by concerns at that time about the accuracy and security of the State's touchscreen voting system (used through the 2014 elections), which recorded voters' selections electronically.

Funding and Implementation of the Voting System

Under Chapters 547 and 548 of 2007, the modified voting system certification requirements applied to each election occurring on or after January 1, 2010, but the process of implementing a new voting system was delayed, due in part to questions about the availability of a voting system that would meet all of the State's standards and in part to a lack of funding for a new system. In fiscal 2013 and 2014, however, the State budget included funding to support the planning process for the new voting system, and a roughly three-year process of planning, testing, certification, procurement, and implementation began. The certification process included technical and usability testing, along with a public demonstration in September 2014. The new voting system, provided by Elections Systems & Software, was certified and selected by the State Board of Elections in October 2014, and the voting system contract was approved by the Board of Public Works in December 2014. The contract consists of a lease of the system for an initial period covering the 2016 elections and two additional option periods, covering the 2018 and 2020 elections. The cost of the full, roughly six-year period (the initial and options periods) is $29 million, split equally between the State and local boards of elections, with each county's share prorated on the basis of the county's voting age population. A 2001 law requires that the State and counties share costs associated with the State's voting system.

Voting System Description

On Election Day, voters generally will mark their selections by hand on paper ballots in a voting booth and then feed those paper ballots into an optical scan machine that scans and tabulates the votes from the ballots and collects the ballots in a bin. Alternatively, some voters, including voters with disabilities, will use a ballot marking device. The ballot marking devices are used in a manner similar to the State's touchscreen voting machines that are being replaced, but instead of electronically recording the voter's selections, the ballot marking device prints the voter's choices on a paper ballot, which the voter can then review and feed into the same scanner into which ballots marked by hand are fed.

During early voting, however, all voters will use the ballot marking devices. At early voting centers, different ballot styles need to be available for voters from different parts of a county since voters will be voting on different candidates and offices based on their residency. Larger counties can have significant numbers of different ballot styles, and the State board indicates that providing preprinted paper ballots for all ballot styles at early voting centers would be unworkable. The ballot marking devices do not require preprinted ballots. Instead, in combination with the e-poll books used to check in voters, the devices are able to provide the correct ballot style for the voter on the touchscreen – based on the voter's residence – and then print the voter's choices on a paper ballot.

Status of Implementation

The State and local boards of elections are well into implementation of the new system with the bulk of the equipment having been received, put through acceptance testing, and distributed to the local boards of elections. The State Board of Elections and local boards recently conducted a mock election, which allowed election officials to conduct a test run through the various elections system processes involved in an election. The City of Rockville also used the State's new voting system for the first time in a live election in its 2015 municipal election (early voting, October 24-25; Election Day, November 3). The State Board of Elections is in the process of developing and modifying guides and manuals for election officials and election judges. The board is also focusing on transportation and staffing services associated with the voting system and the election process in general. A statewide voter outreach campaign to create awareness and promote acceptance of the new voting system was planned by the board, but the Board of Public Works denied a contract with an outside firm to conduct such a campaign. As of late October 2015, it does not appear that a statewide campaign of that magnitude will be undertaken, but the State and local boards of elections will still engage in voter outreach through public demonstrations, social media, and press coverage. The Department of Information Technology has expressed concern over readiness of the new voting system for the 2016 election cycle, but as of late November, the State Board of Elections is moving forward as planned with implementation of the system.

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State Government

Redistricting

Concerns on some fronts about how legislative and congressional districts are formed continue to draw calls in Maryland and across the country for redistricting reform, including the formation of independent redistricting commissions.

Background

Every 10 years, Maryland is required to redraw legislative and congressional district lines to account for changes in the State's population. This process is commonly known as redistricting. Continued concerns regarding the redistricting process in Maryland and other states have led to increased calls for the establishment of redistricting commissions.

Current Redistricting Processes in Maryland

Legislative Redistricting

Article III, § 5 of the Maryland Constitution governs the legislative redistricting process. The Governor is required to prepare a constitutionally sufficient redistricting plan after each decennial census. The Governor submits the plan to the Presiding Officers of the General Assembly, who are then required to introduce the plan as a joint resolution no later than the first day of the regular session in the second year following the census. The General Assembly may adopt a joint resolution that sets out a different constitutionally sufficient redistricting plan. If the General Assembly does adopt its own plan by the forty-fifth day after the opening of the regular session, then that plan becomes law. However, if the General Assembly fails to meet the forty-fifth day deadline, the Governor's plan becomes law. Once a redistricting plan becomes law, a registered voter may petition the Court of Appeals to review the plan and take appropriate action if the plan does not meet the requirements of the Constitution of the United States or the Maryland Constitution.

Congressional Redistricting

Unlike the process for legislative redistricting, Maryland law does not contain any provisions governing the redistricting process for congressional districts. The congressional redistricting plan is introduced as a bill in the General Assembly. It must be passed by both houses and may be vetoed by the Governor, as is the case for any other bill. Traditionally, the Governor submits the congressional plan along with the legislative plan.

Recent Redistricting Commission Efforts in Maryland

Maryland Redistricting Reform Commission

On August 6, 2015, Governor Lawrence J. Hogan, Jr. established the Maryland Redistricting Reform Commission by executive order. Among other things, the commission was required to (1) conduct a comprehensive examination of ideas that could enhance the integrity of the State's congressional and legislative redistricting process; (2) review approaches of other states that have established an independent, nonpartisan redistricting commission; (3) conduct regional summits in various parts of the State; and (4) develop a recommendation for a constitutional amendment on congressional and legislative redistricting.

On November 3, 2015, the Maryland Redistricting Reform Commission voted to make a number of recommendations to the Governor, including the following:

- Both congressional and legislative districts must be of substantially equal population; comply with the federal Voting Rights Act and other applicable federal law; and be congruent, contiguous, and compact.

- A nine-member independent commission made up of three Democrats, three Republicans, and three unaffiliated voters should be established to draw both congressional and legislative district lines.

- Certain individuals, such as members of the General Assembly and nonresidents of the State, should be excluded from serving on the independent commission.

- The independent commission should be required to use a specified process and criteria, including not considering voter registration or past voting results, when drawing congressional and legislative lines.

- Both the General Assembly and the Governor should have an opportunity to approve or reject the plans.

- For legislative districts, the allowable population variance among districts should be decreased, the Governor and the General Assembly should examine the benefits of establishing a uniform standard of using three single-member delegate districts, and the practice of subdividing districts into one two-member and one single-member district should be prohibited unless it needs to be done to meet federal requirements.

- Governor Hogan and the Presiding Officers should send letters to the leadership of the U.S. Congress and the governors and legislative leaders of the other states communicating what Maryland is doing regarding redistricting reform, congratulating those states that have done redistricting reform, and urging the other states do the same.

In order to implement some of the recommendations, the Maryland Constitution would need to be amended.

Legislative Proposals

Since the last legislative and congressional redistricting plans were adopted in 2011, several bills have been introduced to change the redistricting process. Most bills would have established a redistricting commission that would be charged with drawing the legislative or congressional district lines, or both. The composition and process of each proposed commission varied widely. The majority of proposals, however, attempted to create commissions that would be removed from political influences.

Redistricting Commissions in Other States

Twenty-one states have some type of redistricting commission. The composition and responsibilities of the commissions vary greatly; however, as seen in **Exhibit 1**, the commissions can be categorized into three types according to the commission's role in the process. The first type, and the most widely used, is a commission that has primary responsibility for drawing the legislative and congressional district maps. With this type of commission, generally, the maps that are drawn by the commission become the official maps without any legislative action. The second type is a commission that has an advisory role only. These types of commissions are required to submit the commission's proposed map to the legislature for approval. The final type is a commission that serves as a backup should the legislature fail to meet the deadline for approving a map. At that point, the commission would draw the redistricting maps, which would then become law without any legislative action.

In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S.____ (2015), the U.S. Supreme Court ruled that the use of an independent redistricting commission to draw congressional district lines does not violate the Elections Clause of the U.S. Constitution.

Exhibit 1
Redistricting Commissions in Other States

	Primary Responsibility	Advisory	Backup
Alaska	X		
Arizona	X		
Arkansas	X		
California	X		
Colorado	X		
Connecticut			X
Hawaii	X		
Idaho	X		
Illinois			X
Maine		X	
Mississippi			X
Missouri	X		
Montana	X		
New Jersey	X		
New York		X	
Ohio	X		
Oklahoma			X
Pennsylvania	X		
Texas			
Vermont		X	
Washington	X		

Source: National Conference of State Legislatures; Department of Legislative Services

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State Government

Reorganization of State Procurement

The General Assembly – in consultation and cooperation with the Governor's Office, the State Treasurer's Office, the Comptroller, the Board of Public Works, other procurement control agencies, and stakeholders – has continued the effort begun during the 2014 interim to review State procurement structures, policies, and practices with the goal of enhancing the cost effectiveness, efficiency, and transparency of the State procurement system.

Background

Each year, the State of Maryland procures about $7 billion in construction, services, and commodities from outside vendors. Although the laws and regulations governing the procurement process have changed over the years, the basic organization and structure of the State procurement system have remained largely unchanged since 1980. By contrast, an increasing number of states have recently reformed their procurement systems to refocus on strategic goals, including maximizing the buying power of the state and enhancing transparency.

During the 2014 interim, the Department of Legislative Services (DLS) conducted a review of procurement structures, policies, and practices in Maryland. The review followed and was intended to build upon a review ordered by the Board of Public Works (BPW). During its meeting on July 12, 2012, Governor Martin J. O'Malley asked BPW to "bring someone in to kick the tires…we need to pull this apart and put it back together." In response, BPW contracted with Treya Partners to conduct a comprehensive review of Maryland's procurement system and make recommendations for its improvement. Treya's report contained 11 findings and recommendations targeted at reducing fragmentation in the structure of the State's procurement system and maximizing strategic sourcing and best practices.

Recommendations

The DLS review examined the current condition of State procurement, described reforms undertaken by other states, and provided policy recommendations to enhance the cost effectiveness, efficiency, and transparency of State procurement. DLS concurred with many of Treya's findings and concluded that Maryland would benefit from the types of reforms implemented in other states, adapted to the State's unique conditions. Implementation of these reforms, however, would be hampered by a fragmented system and inadequate human resource development. To address the fragmented system, DLS recommended establishing the position of chief procurement officer (CPO) within BPW to report directly to the board and carry out the board's procurement control functions as head of a new Office of the Chief Procurement Officer. Within this structure, the CPO should have the flexibility to allow specified agencies to take the lead on specialized procurements for which they have expertise. The DLS report notes that Maryland is one of only a handful of states that lacks a CPO, which has hampered its ability to institute meaningful procurement reform that maximizes the State's buying power. Further, fragmented oversight of procurement by multiple control agencies has resulted in conflicting or inconsistent interpretation of procurement policies and procedures, inadequate data on State spending patterns, lax contract management, and poor relationships with State vendors. Consolidating procurement control under one office should enhance coordination, efficiency, transparency, and vendor satisfaction.

Additional recommendations in the DLS report included:

- retaining BPW as the lead control agency for procurement by most Executive Branch agencies and maintaining the current exemption from BPW oversight for capital projects related to State roads, bridges, and highways;
- reorienting the purpose of State procurement to be obtaining the best value for the State rather than the best price, with performance-based metrics developed by the CPO to measure progress;
- charging the CPO with advising the General Assembly on proposed legislation and the appropriateness of existing exemptions and preferences in order to enhance the efficiency and transparency of State procurement;
- increasing the minimum value of most contracts requiring BPW approval from the existing threshold of $200,000, except that contracts of any value that use general obligation bond proceeds must still be approved by BPW;
- assigning most procurement staff in the State (not including those in the Maryland Department of Transportation and University System of Maryland personnel systems) to the Office of the Chief Procurement Officer, including those who remain located in other Executive Branch agencies;
- charging the CPO with working with the Department of Budget and Management to reconfigure position titles, classifications, and compensation for procurement staff to establish clear lines of authority and a career track for procurement professionals;
- placing eMaryland Marketplace (eMM) under the control of the CPO and revisiting the option to link eMM to the State's financial management system;
- repealing obsolete programs and taking advantage of eProcurement to consolidate reporting requirements; and
- raising the ceiling for small procurements from $25,000 to $50,000 and incorporating all small procurements and purchasing card transactions into annual reporting by the CPO.

As a result of the DLS review, in the 2015 session, the General Assembly considered House Bill 698 (failed), which would have implemented the recommendations found in the DLS report. Although House Bill 698 did not pass, it has served as the basis for an ongoing review led by the House Health and Government Operations Committee of State procurement structures, policies, and practices in anticipation of legislation in the 2016 session. This continued review has taken place in cooperation with the Governor's Office, the State Treasurer's Office, the Comptroller, BPW, and other procurement control agencies. The key issue that has emerged from this joint effort is determining the optimal size and structure of the proposed Office of the Chief Procurement Officer to allow it to effectively carry out all of its envisioned responsibilities. As the procurement reform effort moves forward, this topic will be the subject of continued discussions by the stakeholders.

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State Government

Regulations Review

Over the past year and a half, first the General Assembly and more recently the Governor established independent entities focused on the interplay between Maryland's regulatory process and the State's business climate. However, the Joint Committee on Administrative, Executive, and Legislative Review, established in 1964, has played a leading role in providing an independent review of agency regulations to assess their legal sufficiency and economic impact, including the fiscal impact of proposed regulations on the State and local agencies, the State budget, and small businesses.

Introduction

Maryland's current regulatory process is the subject of increased attention in light of the State's renewed focus on fostering a business-friendly climate. Both the General Assembly and the Governor have established entities to provide additional oversight of current or proposed regulations and make recommendations to promote efficiency and protect the State's economic interests.

Joint Committee on Administrative, Executive, and Legislative Review

The Joint Committee on Administrative, Executive, and Legislative Review (AELR) was established in 1964 to review regulations proposed for adoption by a unit of the Executive Branch of State government and determine whether the regulations conform with both the statutory authority of the unit and the legislative intent of the statute under which the regulations are proposed. AELR is composed of 20 members – 10 senators appointed by the President of the Senate and 10 delegates appointed by the Speaker of the House. A House chair and a Senate chair alternate each calendar year as the presiding chair.

To assist AELR with its oversight responsibility, the Department of Legislative Services (DLS) provides three counsel as AELR's primary staff. Each regulation is submitted to AELR and reviewed by DLS staff before publication in the *Maryland Register*. DLS staff analyze each regulation for legal sufficiency and evaluate the unit's assessment of the economic impact of a regulation as it pertains to the fiscal impact on State and local agencies, the State budget, and small businesses in the State. If a regulation contains an increase or decrease in a license fee, the promulgating unit must include a clearly written explanation and justification for the increase or decrease and other specified information. Since 2014, each proposed regulation and accompanying legal and fiscal analysis have been posted on the General Assembly's website (www.mgaleg.maryland.gov) under *Committees/AELR/Analyses/Regulations*.

AELR also monitors the periodic review by each unit of the unit's existing body of regulations. Each regulation is reviewed to (1) determine whether the regulations of a unit continue to be necessary for the public interest, continue to be supported by statutory authority and judicial opinions, or are obsolete or otherwise are appropriate for amendment or repeal and (2) assist the Executive Branch in being accountable and responsive to the public interest. This program of review and evaluation is performed by each unit every eight years on a schedule set out by executive order from the Governor. When an evaluation report is available for public inspection and comment, a notice is published in the *Maryland Register*.

Advisory Council on the Impact of Regulations on Small Businesses

In response to a February 2015 report from the Maryland Economic Development and Business Climate Commission (Augustine Commission), Chapter 137 of 2015 establishes the Advisory Council on the Impact of Regulations on Small Businesses (advisory council) within the Department of Business and Economic Development (DBED) to review proposed regulations to determine whether they have a significant small business impact.

The advisory council is staffed by DBED and consists of eight members, including specified unit heads or their designees, members of the General Assembly, small business owners, and minority business enterprise and women's business enterprise owners. The advisory council must meet at least once annually but may meet as often as necessary to carry out its duties. For each proposed regulation, the advisory council must estimate the range of costs for small businesses and, if a significant impact is found, the council must (1) identify whether the regulation is necessary to comply with federal law and (2) submit a written statement to AELR and DLS within 15 days of receiving the proposed regulation. If a proposed regulation establishes a standard that is more restrictive or stringent than an applicable federal standard, the advisory council must identify the net cost, alternatives, and potential benefits. Chapter 137 establishes additional requirements for units and DLS, including requiring DLS to review the findings of the advisory council. After notification by the advisory council that a proposed regulation will have a significant small business impact, any member of AELR may request a hearing. AELR must hold a hearing if requested and may request that the unit delay adoption of the regulation.

As of October 2015, the General Assembly members have been appointed to the advisory council, but the business owner members and the secretary of a unit with experience in the regulatory process have not yet been appointed. Additionally, Chapter 137 requires the Augustine Commission to examine whether the advisory council should consider whether a proposed regulation poses a potential unreasonable burden on consumers, but this examination has not been initiated.

Regulatory Reform Commission

On July 9, 2015, Governor Larry Hogan established the Regulatory Reform Commission by Executive Order 01.01.2015.20. The charge of the commission is to conduct a comprehensive review of the State's current regulations from an economic perspective, specifically focusing on identifying regulations that pose the greatest barriers and burdens to job attraction, retention, and creation and formulating substantive solutions to those barriers and burdens to attract and retain businesses in the State.

The commission consists of 10 public members with experience in various economic sectors and the Lieutenant Governor and may consist of up to 12 public members. The commission must review and analyze regulations in 10 specified areas, but the Governor may include additional areas as deemed necessary. The commission must meet as frequently as necessary to meet specified deadlines and must hold regional public meetings to study the impact of Maryland's regulatory climate on the business community, other stakeholders, and the public. In addition, the commission must submit an annual report to the Governor by December 1 of each year that details recommendations for improving Maryland's regulatory climate; a final report is due on December 1, 2017. The commission terminates on July 9, 2018.

As of October 2015, the commission has held eight meetings – two organizational meetings and six regional meetings across the State. Agendas, minutes for the meetings, and reports when available can be found on the Lieutenant Governor's website at http://governor.maryland.gov/ltgovernor/home/regulatory-reform/. The commission anticipates that its first report will focus mainly on findings, whereas the majority of recommendations will be in the 2016 annual report and 2017 final report.

Local Government

State Aid to Local Governments

State aid to local governments is projected to total $7.3 billion in fiscal 2017, representing a $231.8 million or 3.3% increase over the prior year.

Local governments are projected to receive $7.3 billion in State aid in fiscal 2017, representing a $231.8 million (3.3%) increase over the prior year. Most of the State aid in fiscal 2017, as in prior years, is targeted to public schools, while funding for counties and municipalities will account for 8.0% of total State aid. Public schools will receive $6.3 billion in fiscal 2017 or 86.1% of total State aid. Counties and municipalities will receive $588.3 million, community colleges will receive $310.8 million, libraries will receive $72.5 million, and local health departments will receive $48.4 million. In terms of year-over-year funding enhancements, State aid for public schools will increase by $181.7 million (3.0%), library aid will increase by $1.4 million (2.0%), community college aid will increase by $14.7 million (5.0%), and local health department grants will increase by $2.7 million (6.0%). Also, county and municipal governments will realize a $31.3 million (5.6%) increase in State aid. **Exhibit 1** shows the change in State aid by governmental entity for fiscal 2017. **Exhibit 2** shows the change in State aid by major programs.

Exhibit 1
State Aid to Local Governments
($ in Millions)

Governmental Entity	FY 2016	FY 2017	$ Change	% Change
Public Schools	$6,142.1	$6,323.8	$181.7	3.0%
County/Municipal	557.0	588.3	31.3	5.6%
Community Colleges	296.1	310.8	14.7	5.0%
Libraries	71.1	72.5	1.4	2.0%
Local Health Departments	45.7	48.4	2.7	6.0%
Total	**$7,112.0**	**$7,343.8**	**$231.8**	**3.3%**

Source: Department of Legislative Services

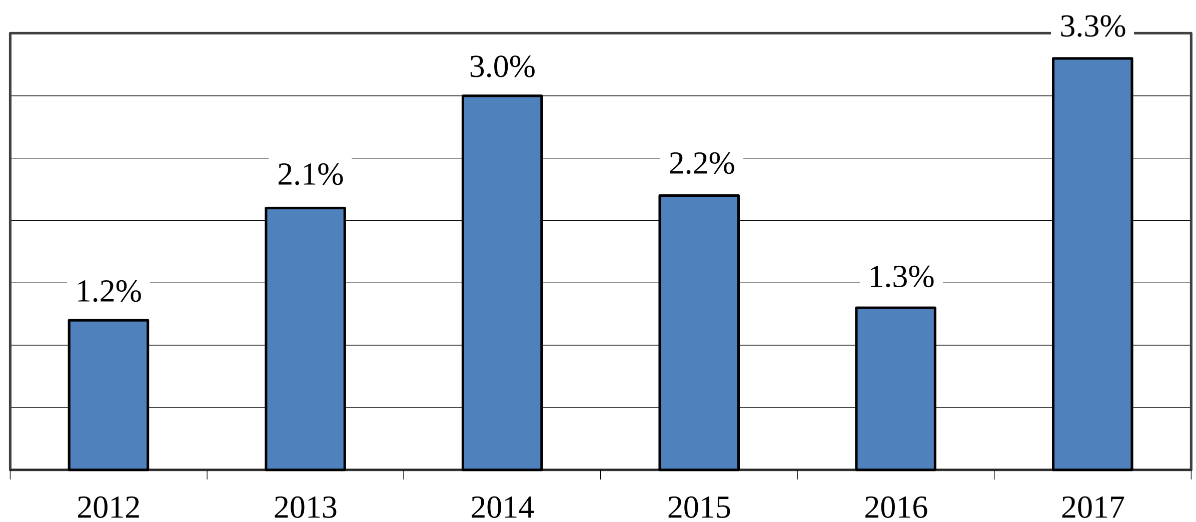
Exhibit 2
State Aid by Major Programs
Fiscal 2015-2017

	FY 2015	FY 2016	FY 2017	Difference	Percent Difference
Public Schools					
Foundation Program	$2,882,444,201	$2,947,082,596	$2,977,218,145	$30,135,549	1.0%
Supplemental Grant	46,620,083	46,620,083	46,620,083	0	0.0%
Geographic Cost Index	132,684,798	68,100,237	137,981,788	69,881,552	102.6%
Net Taxable Income Education Grant	26,860,207	23,821,409	37,375,090	13,553,681	56.9%
Foundation – Special Grants	593,055	86,321	0	-86,321	-100.0%
Compensatory Aid	1,251,675,638	1,305,132,944	1,357,082,568	51,949,624	4.0%
Student Transportation	258,379,692	266,246,924	271,467,334	5,220,410	2.0%
Special Education – Formula Aid	271,702,888	275,997,329	278,919,617	2,922,288	1.1%
Special Education – Nonpublic Placements	110,917,896	122,617,896	126,015,757	3,397,861	2.8%
Limited English Proficiency Grants	197,658,807	217,180,270	236,798,164	19,617,894	9.0%
Guaranteed Tax Base	59,390,154	53,762,142	54,892,939	1,130,797	2.1%
Aging Schools Program	6,108,990	6,109,000	6,109,000	0	0.0%
Head Start/Prekindergarten	6,100,000	6,100,000	6,100,000	0	0.0%
Other Education Programs	92,324,127	73,940,221	65,633,602	-8,306,619	-11.2%
Subtotal Direct Aid	**$5,343,460,536**	**$5,412,797,372**	**$5,602,214,087**	**$189,416,716**	**3.5%**
Retirement Payments	$738,575,041	$729,277,478	$721,583,838	-$7,693,640	-1.1%
Total Public School Aid	**$6,082,035,577**	**$6,142,074,850**	**$6,323,797,925**	**$181,723,076**	**3.0%**
Libraries					
Library Aid Formula	$34,446,212	$35,405,976	$36,368,463	$962,487	2.7%
State Library Network	16,323,271	16,612,968	17,016,786	403,818	2.4%
Subtotal Direct Aid	**$50,769,483**	**$52,018,944**	**$53,385,249**	**$1,366,305**	**2.6%**
Retirement Payments	$18,528,257	$19,108,558	$19,151,832	$43,274	0.2%
Total Library Aid	**$69,297,740**	**$71,127,502**	**$72,537,081**	**$1,409,579**	**2.0%**
Community Colleges					
Community College Formula	$219,538,748	$222,744,622	$233,708,766	$10,964,144	4.9%
Other Programs	30,694,475	31,376,231	32,664,487	1,288,256	4.1%
Subtotal Direct Aid	**$250,233,223**	**$254,120,853**	**$266,373,253**	**$12,252,400**	**4.8%**
Retirement Payments	$40,292,676	$42,008,279	$44,425,181	$2,416,902	5.8%
Total Community College Aid	**$290,525,899**	**$296,129,132**	**$310,798,434**	**$14,669,302**	**5.0%**
Local Health Grants	**$41,743,209**	**$45,663,898**	**$48,388,206**	**$2,724,308**	**6.0%**
County/Municipal Aid					
Transportation	$192,918,784	$201,536,896	$205,926,496	$4,389,600	2.2%
Public Safety	116,199,831	117,907,931	123,938,664	6,030,733	5.1%
Program Open Space	26,446,000	23,453,500	17,679,750	-5,773,750	-24.6%
Disparity Grant	127,738,286	129,819,872	134,661,222	4,841,350	3.7%
Gaming Impact Grants	36,841,812	38,876,975	61,862,123	22,985,148	59.1%
Teacher Retirement Supplemental Grant	27,658,661	27,658,661	27,658,661	0	0.0%
Other Grants	9,191,117	17,730,005	16,524,242	-1,205,763	-6.8%
Subtotal Direct Aid	**$536,994,491**	**$556,983,840**	**$588,251,158**	**$31,267,318**	**5.6%**
Retirement Payments	$0	$0	$0	$0	
Total County/Municipal Aid	**$536,994,491**	**$556,983,840**	**$588,251,158**	**$31,267,318**	**5.6%**
Total State Aid	**$7,020,596,916**	**$7,111,979,222**	**$7,343,772,804**	**$231,793,583**	**3.3%**

Source: Department of Legislative Services

Exhibit 3 shows the annual change in State aid to local governments, beginning with fiscal 2012. The projected growth of 3.3% in fiscal 2017 is above the annual growth exhibited in recent years, which is largely due to the restoration of full funding for the Geographic Cost of Education Index grants and higher local gaming impact grants due to the scheduled opening of the Prince George's County gaming facility. Funding for the Geographic Cost of Education Index grants increases from $68.1 million in fiscal 2016 to $138.0 million in fiscal 2017. Funding for local gaming impact grants increases from $38.9 million in fiscal 2016 to $61.9 million in fiscal 2017. These two programs account for $92.9 million or 40.1% of the State aid increase in fiscal 2017.

Exhibit 3
Annual Change in State Aid to Local Governments
Fiscal 2012-2017



Source: Department of Legislative Services

Exhibit 4 shows the increase in State support for local governments in recent years by governmental entity. During this period, State aid has increased by 12.4% or approximately 2.4% on an average annualized basis. Public schools realize the majority of the funding increase with direct education aid increasing by $656.7 million. In addition, county and municipal governments receive a $201.9 million funding increase during this same period. Increases in direct aid are partially offset by a 10.9% decrease in retirement aid to local government employees resulting from changes to retirement plans and sharing of retirement costs, including administrative costs, with local governments.

Exhibit 4
State Aid by Governmental Entity
($ in Millions)

	FY 2012	FY 2017	$ Change	% Change
Public Schools	$4,945.5	$5,602.2	$656.7	13.3%
Libraries	48.8	53.4	4.6	9.4%
Community Colleges	230.4	266.4	35.9	15.6%
Local Health	38.3	48.4	10.1	26.4%
County/Municipal	386.4	588.3	201.9	52.3%
Subtotal – Direct Aid	**$5,649.4**	**$6,558.6**	**$909.2**	**16.1%**
Retirement Payments	$881.7	$785.2	-$96.5	-10.9%
Total	**$6,531.1**	**$7,343.8**	**$812.7**	**12.4%**

Source: Department of Legislative Services

The State also provides grants for specific capital projects, including funding for school construction, county detention centers, low-income housing, and water supply facilities. Proceeds from the sale of State bonds are the primary source of funding for these capital project grants. The State capital and operating budgets include approximately $516.6 million in fiscal 2016 and an estimated $466.3 million in fiscal 2017 for State programs providing grants primarily to local governments. As **Exhibit 5** shows, public school construction projects account for well over half of total capital funds earmarked for local projects in fiscal 2016 and 2017, while environment and recreation programs account for about one-quarter in both years.

Exhibit 5
State Funding for Local Government Capital Projects
($ in Millions)

	FY 16 Amount	FY 17 Amount	FY 16 % of Total	FY 17 % of Total
Education				
Public School Construction	$293.5	$270.0	56.8%	57.9%
Community College Projects	54.9	60.0	10.6%	12.9%
Public Libraries	5.0	5.0	1.0%	1.1%
Subtotal	**$353.4**	**$335.0**	**68.4%**	**71.8%**
Environment and Recreation				
Chesapeake Bay Restoration Fund	$94.0	$54.0	18.2%	11.6%
Chesapeake Bay Water Quality Funds	30.7	38.5	5.9%	8.3%
Water Supply Financial Assistance Program	2.7	2.5	0.5%	0.5%
Waterway Improvement Fund	3.4	6.0	0.7%	1.3%
Community Parks and Playgrounds	5.0	2.5	1.0%	0.5%
Hazardous Substance Cleanup	0.7	1.0	0.1%	0.2%
Mining Remediation Program	0.5	0.5	0.1%	0.1%
Subtotal	**$136.9**	**$105.0**	**26.5%**	**22.5%**
Health/Social				
Strategic Demolition and Smart Growth Impact Project	$7.5	$7.5	1.5%	1.6%
Community Health Facilities Grant Program	5.3	5.3	1.0%	1.1%
Community Legacy Program	6.0	6.0	1.2%	1.3%
Partnership Rental Housing Program	6.0	6.0	1.2%	1.3%
Shelter & Transitional Housing Facilities	1.5	1.5	0.3%	0.3%
Subtotal	**$26.3**	**$26.3**	**5.1%**	**5.6%**
Total	**$516.6**	**$466.3**	**100.0%**	**100.0%**

Source: Department of Legislative Services

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

Local Government

Allocation of State Aid among Local Jurisdictions

The majority of State aid to local governments is distributed inversely to local property and income wealth so that jurisdictions with greater capacity to raise revenue from local sources receive less State aid.

Reliance on State Aid

State aid is the largest revenue source for many county governments in Maryland, accounting for 27.7% of total county revenues in fiscal 2013. In nine counties (Anne Arundel, Baltimore, Calvert, Carroll, Garrett, Kent, Queen Anne's, Talbot, and Worcester), State aid is the second largest revenue source after property taxes. In Howard and Montgomery counties, State aid is the third largest revenue source after both property and income taxes.

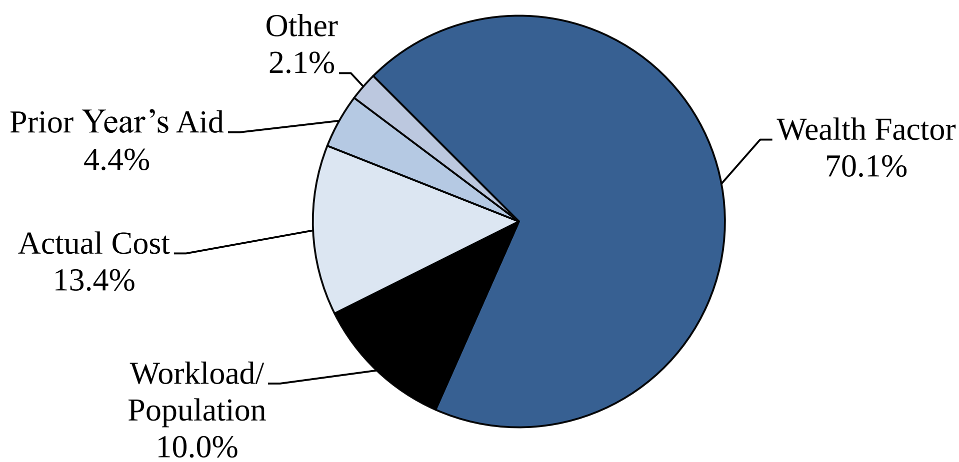
Dependence on State aid varies, with less affluent jurisdictions relying on State aid as their primary revenue source while more affluent jurisdictions rely more heavily on local property and income taxes. For example, State aid accounts for 17.6% of total revenues in Montgomery County but 51.3% in Caroline County. This difference is due to the fact that approximately 70% of State aid is distributed inversely to local wealth. Utilizing local wealth measures to distribute State aid attempts to offset the inequalities in the revenue capacity among local jurisdictions.

State aid is the fourth largest revenue source for municipalities, representing 4.4% of total revenues in fiscal 2013. As with counties, the reliance on State aid varies for municipalities, ranging from 0.6% of total revenues for the one locality in St. Mary's County to 22.5% for localities in Somerset County. State aid to municipalities is targeted primarily to transportation, police and fire services, parks and recreation, and community development projects.

Distribution Basis for State Aid

The State utilizes nearly 80 programs to allocate funding to local governments. Programs that distribute funding inversely to local wealth accounted for about 70% of State aid in fiscal 2016. Most of these programs also base State aid on a workload measure, such as school enrollment or population. In fiscal 2000, around 56% of State aid was distributed based on local wealth. The increased utilization of local wealth as a basis to distribute State aid improves fiscal equity among jurisdictions by making certain jurisdictions less dependent on their own tax base to fund public services. **Exhibit 1** shows State aid by the basis for distribution.

Exhibit 1
State Aid by Basis for Distribution
Fiscal 2016



Trends
($ in Millions)

	FY 2000	% of Total	FY 2016	% of Total
Wealth Factor	$1,935.5	56.1%	$4,988.2	70.1%
Workload/Population	697.0	20.2%	712.3	10.0%
Actual Cost	513.4	14.9%	953.9	13.4%
Prior Year's Aid	146.1	4.2%	310.0	4.4%
Other	158.3	4.6%	147.6	2.1%
Total	**$3,450.3**	**100.0%**	**$7,112.0**	**100.0%**

Source: Department of Legislative Services

Wealth Equalizing and Targeting of Education Aid

Because funding public education is a shared State and local responsibility, part of the State's constitutional responsibility to provide a "thorough and efficient system of free public schools" involves offsetting the disparities in taxable wealth among the counties.

The State aid structure compensates for wealth differences by providing less aid per pupil to the more wealthy jurisdictions and more aid per pupil to the less wealthy jurisdictions through a number of wealth-equalized funding formulas. Although most State aid formulas are designed to have the State pay roughly one-half of program costs, the State's share for the less wealthy jurisdictions is higher than 50%, and the State's share for more wealthy jurisdictions is lower than 50%. **Exhibit 2** illustrates the inverse relationship between local wealth and direct per pupil State aid, as discussed further below.

Enhanced targeting of State aid was a primary goal of the Bridge to Excellence in Public Schools Act (Chapter 288 of 2002). The targeted funds are based on enrollment-driven formulas for three groups: (1) special education students; (2) students eligible for free and reduced-price meals; and (3) students with limited English proficiency. The At-risk Student Index shown in Exhibit 2 compares for each county the sum of students in each of these categories to full-time equivalent enrollment. Because a student may be in more than one of these groups, an index result of over 100% is possible, as in the case of Baltimore City.

Results of the State Education Aid Structure

Exhibit 2 shows how State aid per pupil is driven by each county's wealth and by the share of its student population that is identified as being at greater risk of performing below State standards. For example, the exhibit shows that Baltimore City had the fourth lowest wealth per pupil in fiscal 2016 and the student population with the greatest needs. As a result, Baltimore City received the most direct State aid per student at $11,004. Somerset County, with the third lowest wealth per pupil in the State and a student population with relatively high needs (third highest), received the second-highest per pupil direct aid amount at $10,526. Talbot and Worcester counties, which had the highest wealth per pupil figures in fiscal 2016, received the two lowest levels of direct State aid per pupil, at $3,050 and $3,155, respectively. Examining the needs of each county's student population and the wealth in each county helps to explain the relative amounts of State aid that each school system receives. School systems with high needs and low wealth receive the most State aid per pupil, while systems with high wealth and lower needs receive less State aid per pupil.

Exhibit 2
Factors Affecting State Funding for Public Schools
Fiscal 2016

	At-risk Student Index			Local Wealth Per Pupil			Direct Education Aid Per Pupil	
1.	Baltimore City	106.1%	24.	Wicomico	$276,605	1.	Baltimore City	$11,004
2.	Prince George's	91.3%	23.	Caroline	284,456	2.	Somerset	10,526
3.	Somerset	88.3%	22.	Somerset	289,596	3.	Caroline	9,382
4.	Dorchester	78.3%	21.	Baltimore City	292,864	4.	Allegany	9,340
5.	Wicomico	74.9%	20.	Allegany	299,197	5.	Wicomico	9,181
6.	Caroline	72.6%	19.	Washington	345,731	6.	Dorchester	8,664
7.	Allegany	71.7%	18.	Dorchester	353,979	7.	Prince George's	8,428
8.	Kent	64.9%	17.	Prince George's	378,600	8.	Washington	7,608
9.	Baltimore	64.3%	16.	Cecil	385,432	9.	Cecil	6,702
10.	Washington	61.6%	15.	Charles	389,280	10.	Charles	6,391
11.	Montgomery	60.2%	14.	Frederick	420,738	11.	Frederick	5,816
12.	Worcester	59.3%	13.	St. Mary's	434,423	12.	St. Mary's	5,799
13.	Talbot	58.5%	12.	Harford	457,132	13.	Baltimore	5,763
14.	Garrett	58.4%	11.	Carroll	460,527	14.	Garrett	5,643
15.	Cecil	57.8%	10.	Calvert	470,644	15.	Harford	5,602
16.	Anne Arundel	48.2%	9.	Baltimore	500,086	16.	Carroll	5,197
17.	Charles	45.9%	8.	Howard	558,318	17.	Calvert	5,162
18.	Harford	45.4%	7.	Queen Anne's	574,248	18.	Kent	4,924
19.	St. Mary's	43.8%	6.	Garrett	608,084	19.	Queen Anne's	4,641
20.	Frederick	41.1%	5.	Anne Arundel	610,015	20.	Anne Arundel	4,332
21.	Queen Anne's	40.3%	4.	Montgomery	706,889	21.	Howard	4,296
22.	Howard	33.3%	3.	Kent	815,518	22.	Montgomery	4,172
23.	Calvert	33.2%	2.	Talbot	1,041,921	23.	Worcester	3,155
24.	Carroll	32.0%	1.	Worcester	1,113,630	24.	Talbot	3,050
	Statewide	**63.5%**		**Statewide**	**$496,206**		**Statewide**	**$6,347**

At-risk percentage equals the sum of students with disabilities, students eligible for free and reduced-price meals, and students with limited English proficiency divided by the number of full-time equivalent (FTE) students. Because of overlap among these three at-risk populations, the figure may be greater than 100%. Per pupil measures are based on FTE.

Source: Department of Legislative Services

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Local Government

Local Revenue Trends

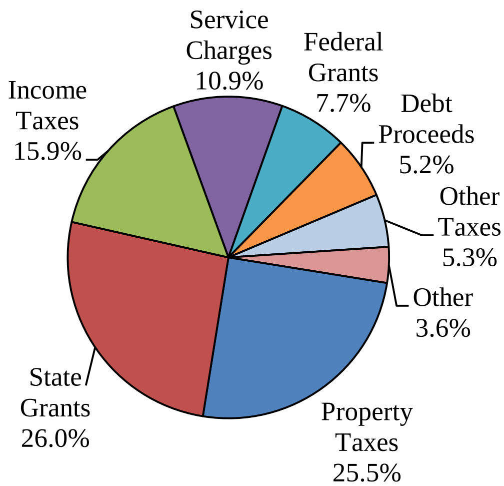
Local taxes account for approximately 47% of county revenues and represent the primary local revenue source for most counties. Overall, county governments are projecting a modest increase in local tax revenues in fiscal 2016. However, several local governments continue to experience limited growth or declines in property and income tax collections.

General fund revenues for county governments are projected to total $14.5 billion in fiscal 2016. As shown in **Exhibit 1**, this represents a 3.2% average annual increase over the amount of general fund revenues collected in fiscal 2014. The projected growth in general fund revenues is slightly above the estimated growth in local tax revenues, which includes both general and special fund revenues. The average annual increase in local tax revenues is projected at 2.9% in fiscal 2016. In total, local governments are projected to collect $14.1 billion in local tax revenues, a $781.9 million increase since fiscal 2014. **Exhibit 2** shows the growth in local tax revenues in fiscal 2014 through 2016.

The local government revenue outlook is influenced by two primary factors: a rebound in local income tax collections due to improvements in the overall State economy; and limited property tax collections. Local governments are projected to collect $5.0 billion in local income tax revenues in fiscal 2016, a $268.2 million increase since fiscal 2014. This represents an average annual increase of 2.8% over the two-year period. Property tax collections are expected to increase by $434.6 million over the two-year period, representing an average annual increase of 3.0%. Local property tax collections will total $7.7 billion in fiscal 2016. Local property tax collections have begun to slowly grow in recent years after several years of steady decline due to the downturn in the State's housing market. As shown in **Exhibit 3**, property assessments declined sharply in recent years and only began to increase beginning in fiscal 2014. However, several county governments have had to raise property tax rates to balance their budgets and improve funding to public schools.

Two other local revenue sources significantly affected by the downturn in the housing market include recordation and transfer taxes. At the height of the real estate market, local governments collected over $1.2 billion in recordation and transfer taxes, as shown in **Exhibit 4**. By fiscal 2011, collections totaled only $511.8 million. In fiscal 2016, local governments are projecting $748.1 million in recordation and transfer tax collections. This represents a $236.3 million increase over the amount collected in fiscal 2011 and illustrates that recordation and transfer tax collections continue to rebound. A more detailed depiction of the growth in local tax revenues in fiscal 2016 is provided in **Exhibit 5**.

Exhibit 1
Sources of Revenue for Counties and Baltimore City



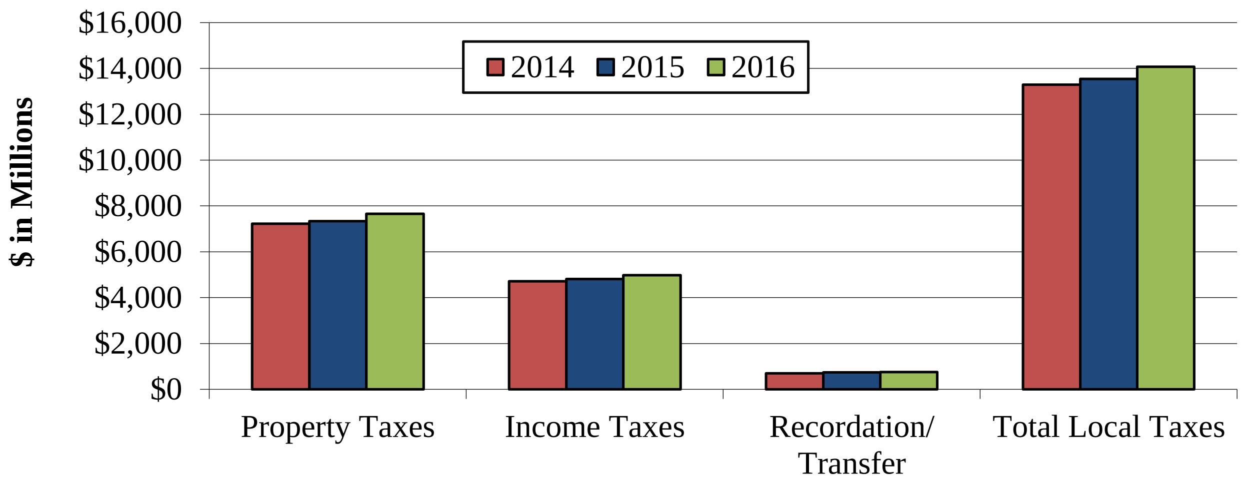
FY 2013 = $28.6 Billion

Average Annual Change
Fiscal 2014-2016

Property Taxes	3.0%
Income Taxes	2.8%
Recordation Taxes	2.4%
Transfer Taxes	4.5%
Hotel/Motel Taxes	5.2%
Admissions Taxes	3.3%
Total Local Taxes	2.9%
General Fund Revenues	3.2%

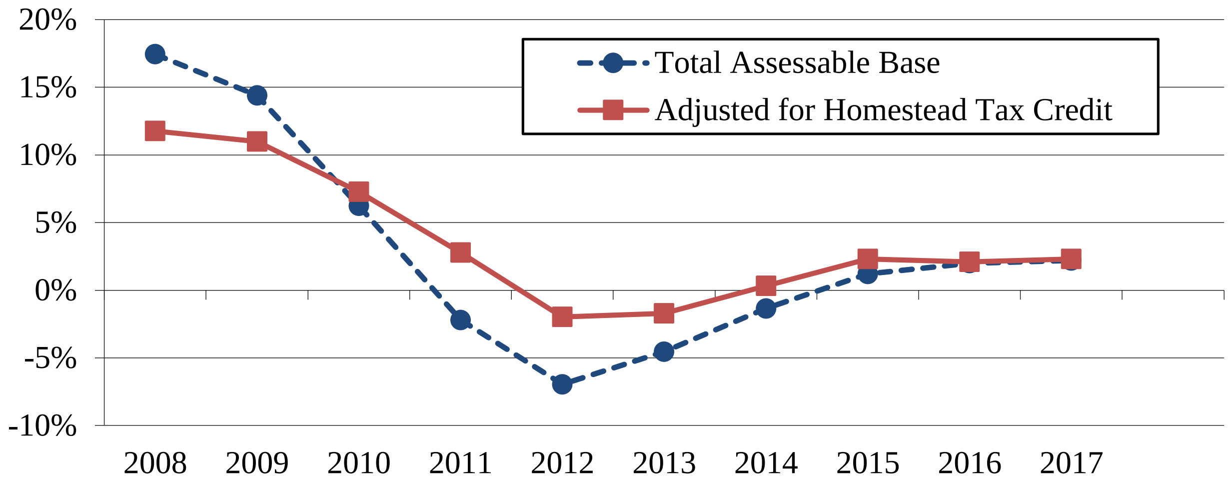
Source: Department of Legislative Services; county budgets

Exhibit 2
Local Tax Revenue Inches Upward
Fiscal 2014-2016



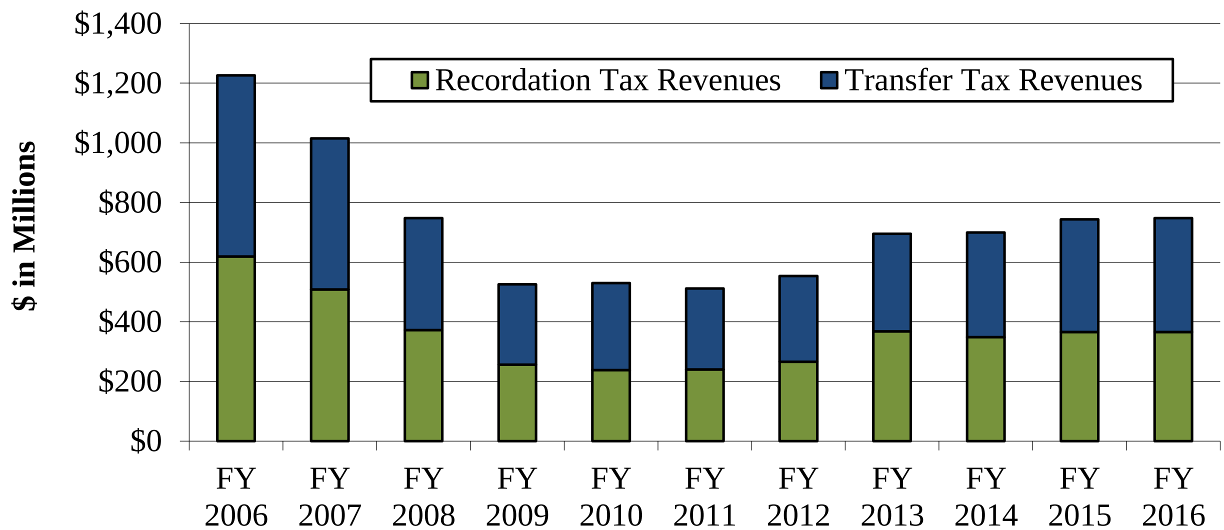
Source: Department of Legislative Services; county budgets

Exhibit 3
Homestead Tax Credit Softened Impact on County Assessable Base



Source: Department of Legislative Services; county budgets

Exhibit 4
Real Estate Meltdown Impacts Recordation and Transfer Taxes



Source: Department of Legislative Services; county budgets

Exhibit 5
Total Local Taxes for Fiscal 2014-2016

County	FY 2014	FY 2015	FY 2016	FY 2014-2015 $ Difference	FY 2015-2016 $ Difference	Average Annual Difference
Allegany	$71,751,521	$69,677,192	$69,193,541	-$2,074,329	-$483,651	-1.8%
Anne Arundel	1,190,748,304	1,228,085,700	1,250,040,300	37,337,396	21,954,600	2.5%
Baltimore City	1,251,051,146	1,297,696,740	1,320,373,191	46,645,594	22,676,451	2.7%
Baltimore	1,645,650,001	1,695,009,171	1,746,589,846	49,359,170	51,580,675	3.0%
Calvert	213,775,519	217,761,755	221,957,103	3,986,236	4,195,348	1.9%
Caroline	37,747,761	39,630,149	38,430,884	1,882,388	-1,199,265	0.9%
Carroll	341,132,496	349,003,364	357,457,910	7,870,868	8,454,546	2.4%
Cecil	158,933,466	161,438,962	167,793,853	2,505,496	6,354,891	2.7%
Charles	323,923,133	340,571,019	346,466,900	16,647,886	5,895,881	3.4%
Dorchester	44,703,064	44,156,490	44,391,359	-546,574	234,869	-0.3%
Frederick	468,914,049	490,130,799	497,342,360	21,216,750	7,211,561	3.0%
Garrett	66,393,929	62,008,041	63,021,883	-4,385,888	1,013,842	-2.6%
Harford	496,721,706	506,400,302	516,893,631	9,678,596	10,493,329	2.0%
Howard	1,025,978,866	1,063,285,503	1,098,435,307	37,306,637	35,149,804	3.5%
Kent	45,699,070	45,357,432	45,398,006	-341,638	40,574	-0.3%
Montgomery	3,387,029,982	3,339,549,506	3,496,584,928	-47,480,476	157,035,422	1.6%
Prince George's	1,668,445,556	1,718,750,500	1,906,449,700	50,304,944	187,699,200	6.9%
Queen Anne's	111,504,509	114,711,580	117,189,232	3,207,071	2,477,652	2.5%
St. Mary's	194,526,554	200,000,814	205,106,992	5,474,260	5,106,178	2.7%
Somerset	21,480,914	21,315,196	22,030,255	-165,718	715,059	1.3%
Talbot	70,291,603	73,980,408	72,621,500	3,688,805	-1,358,908	1.6%
Washington	198,539,955	202,788,617	204,025,180	4,248,662	1,236,563	1.4%
Wicomico	109,264,341	113,591,118	108,495,095	4,326,777	-5,096,023	-0.4%
Worcester	155,309,740	156,209,723	165,167,382	899,983	8,957,659	3.1%
Total	**$13,299,517,185**	**$13,551,110,081**	**$14,081,456,338**	**$251,592,896**	**$530,346,257**	**2.9%**

Source: Department of Legislative Services; county budgets

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Local Government

Local Government Tax Actions

Five county governments had to raise the local property tax rate in order to balance their budgets and improve funding to public schools, with one county increasing the rate above the charter limit. However, four county governments were able to reduce local property tax rates slightly.

Local Government Tax Rates

More local jurisdictions chose to increase local tax rates in fiscal 2016 than chose to decrease them. As shown in **Exhibit 1**, nine counties changed their local property tax rates, with five counties increasing their rates and four counties decreasing them. The rate increase in Prince George's County exceeded the county's charter limit. In addition, Anne Arundel County lowered its local income tax rate, while Worcester County increased its income tax rate. No county altered its recordation tax rate, but a few counties increased their transfer, admission and amusement, and hotel rental tax rates. A comparison of local tax rates for fiscal 2015 and 2016 is provided in **Exhibit 2**.

Exhibit 1
Counties Changing Local Tax Rates
Fiscal 2014-2016

	Fiscal 2014		Fiscal 2015		Fiscal 2016	
	▲	▼	▲	▼	▲	▼
Real Property	7	2	3	4	5	4
Local Income	2	1	0	1	1	1
Recordation	0	0	0	0	0	0
Transfer	0	0	0	0	2	0
Admissions/Amusement	0	0	0	0	1	0
Hotel Rental	0	0	1	0	1	0

Note: ▲ represents a tax rate increase. ▼ represents a tax rate decrease.
Source: 2015 Local Government Budget and Tax Rate Survey, Department of Legislative Services/Maryland Association of Counties

Exhibit 2
Local Tax Rates – Fiscal 2015 and 2016

County	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel Rental	
	FY 2015	FY 2016	CY 2015	CY 2016	FY 2015	FY 2016	FY 2015	FY 2016	FY 2015	FY 2016	FY 2015	FY 2016
Allegany	$0.979	$0.978	3.05%	3.05%	$3.50	$3.50	0.5%	0.5%	7.5%	7.5%	8.0%	8.0%
Anne Arundel	0.943	0.923	2.56%	2.50%	3.50	3.50	1.0%	1.0%	10.0%	10.0%	7.0%	7.0%
Baltimore City	2.248	2.248	3.20%	3.20%	5.00	5.00	1.5%	1.5%	10.0%	10.0%	9.5%	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	0.960	0.980	2.73%	2.73%	5.00	5.00	0.5%	0.5%	0.0%	0.0%	5.0%	5.0%
Carroll	1.018	1.018	3.03%	3.03%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Cecil	0.991	0.991	2.80%	2.80%	4.10	4.10	0.0%	0.5%	6.0%	6.0%	3.0%	3.0%
Charles	1.205	1.205	3.03%	3.03%	5.00	5.00	0.0%	0.5%	10.0%	10.0%	5.0%	5.0%
Dorchester	0.976	0.976	2.62%	2.62%	5.00	5.00	0.75%	0.75%	0.5%	0.5%	5.0%	5.0%
Frederick	1.060	1.060	2.96%	2.96%	6.00	6.00	0.0%	0.0%	0.0%	0.0%	3.0%	3.0%
Garrett	0.990	0.990	2.65%	2.65%	3.50	3.50	1.0%	1.0%	4.5%	6.0%	6.0%	6.0%
Harford	$1.042	$1.042	3.06%	3.06%	$3.30	$3.30	1.0%	1.0%	5.0%	5.0%	6.0%	6.0%

County	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel Rental	
	FY 2015	FY 2016	CY 2015	CY 2016	FY 2015	FY 2016	FY 2015	FY 2016	FY 2015	FY 2016	FY 2015	FY 2016
Howard	1.190	1.190	3.20%	3.20%	2.50	2.50	1.0%	1.0%	7.5%	7.5%	7.0%	7.0%
Kent	1.022	1.022	2.85%	2.85%	3.30	3.30	0.5%	0.5%	4.5%	4.5%	5.0%	5.0%
Montgomery	1.008	0.999	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	1.374	3.20%	3.20%	2.75	2.75	1.4%	1.4%	10.0%	10.0%	5.0%	7.0%
Queen Anne's	0.847	0.847	3.20%	3.20%	4.95	4.95	0.5%	0.5%	5.0%	5.0%	5.0%	5.0%
St. Mary's	0.857	0.852	3.00%	3.00%	4.00	4.00	1.0%	1.0%	2.0%	2.0%	5.0%	5.0%
Somerset	0.915	1.000	3.15%	3.15%	3.30	3.30	0.0%	0.0%	4.0%	4.0%	5.0%	5.0%
Talbot	0.527	0.536	2.40%	2.40%	6.00	6.00	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	0.952	0.952	3.20%	3.20%	3.50	3.50	0.0%	0.0%	6.0%	6.0%	6.0%	6.0%
Worcester	0.770	0.835	1.25%	1.75%	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, Howard, Montgomery, and Prince George's counties include special tax rates. Real property tax is per $100 of assessed value. Income is a percentage of taxable income. Recordation tax is per $500 of transaction.

Source: 2015 Local Government Budget and Tax Rate Survey, Department of Legislative Services/Maryland Association of Counties

Property Tax

For fiscal 2016, five counties – Caroline, Prince George's, Somerset, Talbot, and Worcester – increased their real property tax rates. Allegany, Anne Arundel, Montgomery, and St. Mary's counties decreased their real property tax rates. Real property tax rates range from $0.536 per $100 of assessed value in Talbot County to $2.248 in Baltimore City.

Local Income Tax

Anne Arundel County was the only jurisdiction to lower its local income tax rate for calendar 2016, decreasing the rate from 2.56% to 2.50%. Worcester County increased its local income tax rate from 1.25% to 1.75%. Local income tax rates range from 1.75% in Worcester County to 3.2% in Baltimore City and Howard, Montgomery, Prince George's, Queen Anne's, and Wicomico counties.

Recordation Tax

No county changed its recordation tax rate for fiscal 2016. Recordation tax rates range from $2.50 per $500 of transaction in Baltimore and Howard counties to $6.00 per $500 of transaction in Frederick and Talbot counties.

Transfer Tax

Two counties, Cecil and Charles, began imposing a transfer tax at a 0.5% rate in fiscal 2016. No other county altered its transfer tax rate. Local transfer tax rates range from 0.5% in eight counties (Allegany, Caroline, Cecil, Charles, Kent, Queen Anne's, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. Five counties (Calvert, Carroll, Frederick, Somerset, and Wicomico) do not impose a tax on property transfers.

Admissions and Amusement Tax

One county, Garrett, increased its admissions and amusement tax rate in fiscal 2016, from 4.5% to 6.0%. No other county altered its admissions and amusement tax rate. Caroline and Frederick counties are the only jurisdictions that do not impose an admissions and amusement tax. Currently, 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.

Hotel Rental Tax

One county, Prince George's, increased its hotel rental tax rate in fiscal 2016, from 5% to 7%. No other county altered its hotel rental tax rate. Hotel rental tax rates range from 3.0% in Cecil and Frederick counties to 9.5% in Baltimore City.

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 9 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.

The counties may exceed the charter limitations on local property taxes for the purpose of funding the approved budget of the local board of education. If a local property tax rate is set above the charter limit, the county governing body may not reduce funding provided to the local board of education from any other local source and must appropriate to the local board of education all of the revenues generated from any increase beyond the existing charter limit. Any use of this authority must be reported annually to the Governor and the General Assembly. This authority was adopted at the 2012 session to ensure that counties have the fiscal ability to meet new maintenance of effort requirements. In fiscal 2013, Talbot County became the first jurisdiction to exercise this new authority by establishing a 2.6 cent supplemental property tax rate for the local board of education. No jurisdiction exercised this authority in fiscal 2014 or 2015. In fiscal 2016, Prince George's County became the second county to exercise this authority by enacting a 4 cent supplemental property tax rate to fund its schools.

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Local Government

Local Government Salary Actions

The majority of county governments and boards of education provided salary enhancements to their employees in fiscal 2016, with 12 counties and 14 boards providing cost-of-living adjustments and 12 counties and 21 boards providing merit/step increases.

County Salary Actions

With salary actions still pending in 2 counties, at least 17 counties are providing their employees a cost-of-living adjustment (COLA), general salary increase (GSI), step increase, or combination of enhancements in fiscal 2016, compared to 21 counties in fiscal 2015. More specifically, 12 counties have indicated that they are providing their employees with a COLA or GSI in fiscal 2016, compared to 16 counties in fiscal 2015. Twelve counties are providing step or merit increases in fiscal 2016, compared to 16 in fiscal 2015.

Similarly, the number of boards of education providing salary enhancements remained relatively constant in fiscal 2016. Twenty-three boards of education are providing a COLA, GSI, step increase, or combination of enhancements for their employees in fiscal 2016, compared to 20 boards that did so in fiscal 2015. Fourteen boards of education have indicated that they are providing COLAs or general salary increases for their employees in fiscal 2016, while 12 boards did so in fiscal 2015. Additionally, 21 boards of education provided step or merit increases for their employees in fiscal 2016, compared to 18 boards in fiscal 2015. **Exhibit 1** compares local salary actions in fiscal 2015 and 2016, while **Exhibit 2** shows specific local salary actions for fiscal 2016.

No county governments designated service reduction days or implemented employee furloughs in fiscal 2015 or 2016. However, 1 board of education reduced the work year for 10-month clerical staff and instructional assistants by 1 day in fiscal 2015. While no county government indicated plans to lay off employees in fiscal 2016, 4 boards of education eliminated 109 positions through employee layoffs, compared to 15 positions at 2 local school systems in fiscal 2015. Two boards of education also eliminated positions through attrition in fiscal 2015 and 2016. Finally, 1 county government revised layoff plans during fiscal 2015, resulting in the elimination of 41 positions. **Exhibit 3** describes the local government furlough, salary reduction, and layoff plans for fiscal 2016 and changes made during fiscal 2015.

State Salary Actions

For comparison purposes, the State awarded no salary enhancements of any kind to its employees in fiscal 2016; although a 2% COLA and step increases were awarded in fiscal 2015.

Exhibit 1
Local Government Salary Actions
Fiscal 2015 and 2016

	County Government		Public Schools	
Salary Action	**FY 2015**	**FY 2016**	**FY 2015**	**FY 2016**
COLA/GSI				
No COLA/GSI	8	10	12	10
COLA/GSI	16	12	12	14
Still Pending	0	2	0	0
Stipend/Bonus[1]	2	1	3	2
Step/Merit Increases[2]	16	12	18	21
Furlough/Salary Reductions	0	0	1	0
Layoffs	1	0	2	4

	State Government		CPI-Urban Consumers[3]	
	FY 2015	**FY 2016**	**FY 2015**	**FY 2016**
COLA Amount	2.0%[4]	0.0%	0.7%	0.8%
One-time Bonus	$0	$0		
Furloughs	No	No		
Step/Merit Increases	Yes[5]	No		

COLA: cost-of-living adjustment
CPI: Consumer Price Index
GSI: general salary increase

[1] In fiscal 2015, Garrett County employees received a performance incentive in addition to a GSI; Frederick County Public Schools employees received a payment to offset insurance premium increases in addition to a COLA; Baltimore County and Baltimore County Public Schools employees received a bonus in addition to a step increase; and Carroll County Public Schools employees received a bonus. For fiscal 2016, Charles County employees receive a bonus; Carroll County Public Schools employees receive a bonus in addition to a COLA; and in Somerset County, teachers with national certification receive a bonus as well as teachers and administrators with advanced degrees.

[2] Although included in the count as a general step increase in fiscal 2015 and 2016, Wicomico County limited its step increase in both fiscal years to its police officers.

[3] Forecast of the CPI for 2015 (actual) and 2016 (estimate) comes from IHS, Inc.

[4] Fiscal 2015 COLA effective January 1, 2015.

[5] Fiscal 2015 increment effective July 1, 2014, or January 1, 2015, depending on date hired.

Source: 2015 Local Government Salary Action Survey, Department of Legislative Services

Exhibit 2
Local Government Salary Actions in Fiscal 2016

	County Government Generally		Board of Education Teachers	
County	**COLA/GSI**	**Step/Merit**	**COLA/GSI**	**Step/Merit**
Allegany	3.0%	No	1.0%	Yes
Anne Arundel	2.0%-3.0%[1]	No	2.0%	No
Baltimore City	Varies[2]	Yes[3]	1.0%[4]	Yes[5]
Baltimore	3.0%	Yes	5.0%[6]	Yes
Calvert	0.0%	No	0.0%[7]	No
Caroline	Varies[8]	No	0.0%	Yes[9]
Carroll	1.25%[10]	Yes	2.5%[11]	No
Cecil	Pending	Pending	1.3%	Yes
Charles	0.0%[12]	No	0.0%	Yes[13]
Dorchester	0.5%	Yes	1.0%[14]	Yes[15]
Frederick	0.0%	No	0.0%	Yes[16]
Garrett	0.0%	No	Limited[17]	Yes[18]
Harford	0.0%	Yes	1.0%	Yes[19]
Howard	Limited[20]	Yes	0.0%	Yes[21]
Kent	Varies[22]	No	0.0%	Yes
Montgomery	2.0%	Yes[23]	2.0%	Yes
Prince George’s	Pending	Pending	1.0%[24]	Limited[25]
Queen Anne’s	1.5%	Yes[26]	1.0%	Yes
St. Mary’s	0.0%	Yes	0.0%	Yes[27]
Somerset	2.5%	No	1.0%	Yes[28]
Talbot	0.0%	Yes[29]	0.0%	Yes
Washington	0.0%	Yes	0.0%[30]	Yes[31]
Wicomico	0.0%	Limited[32]	0.8%	Yes
Worcester	0.0%	No	0.0%	Yes[33]
Number Granting	**12**	**12**	**14**	**21**

COLA: cost-of-living adjustment
GSI: general salary increase

Comments

[1] In Anne Arundel County, nonunion employees, correctional program specialists, and park rangers receive 2% COLA; all others receive 3%.
[2] Baltimore City firefighters receive no salary increase, City Union of Baltimore employees receive 1%, and police officers 6%; all others receive 2%.
[3] Eligible Baltimore City employees, with the exception of Managerial and Professional Society, receive built-in step increases.
[4] Baltimore City teachers and administrators receive 1.0% COLA; paraprofessionals 1.5%. Contract negotiations are pending for other school employees.
[5] Eligible Baltimore City teachers, administrators, and paraprofessionals receive step increases; contract negotiations are pending for other school employees.
[6] Baltimore County teachers and administrators receive 5% COLA; other professional employees and support staff receive 3%.
[7] Calvert County teachers and administrators will not receive a COLA increase.
[8] Caroline County employees receive GSI ranging from $250 to $1,750.
[9] In lieu of a step increase, Caroline County teachers and support personnel on longevity steps (step 15 or above) receive a 1.5% salary increase.
[10] Carroll County employees in general receive a 1.25% COLA, with the exception of sheriff's office employees who are under a new salary plan.
[11] In addition to a 2.5% COLA increase, Carroll County Public Schools employees receive a 1.0% bonus.
[12] Charles County employees awarded a one-time $1,500 bonus.
[13] In lieu of a step increase, Charles County teachers and administrators at the highest step receive 2% COLA; support staff at step 17 or higher receive 1%.
[14] Dorchester County teachers and administrators receive 1% GSI; support personnel receive 2%.
[15] All eligible Dorchester County Public Schools employees receive a one-step increase, and longevity stipends are awarded, starting at 28 years of service for teachers and administrators and 30 years for support staff. Employees at the top of the scale receive a 1% salary increase in lieu of a step increase.
[16] Eligible Frederick County Public Schools employees receive a delayed step increase (effective December 1, 2015), equal to an average of 3.5%.
[17] With the exception of teachers, who receive a step increase, all Garrett County Public Schools employees receive a 1.5% COLA; administrators receive 2.0%.
[18] Garrett County teachers receive a step increase; no step increases for administrators and support personnel (although those employees do receive a COLA increase).
[19] All eligible Harford County Public Schools employees receive a 3% step increase, except for noncertificated supervisors and administrators, who receive 1%.
[20] Howard County police officers, police sergeants, and fire and rescue receive a 4% GSI; the remaining county employees did not receive a general salary increase.
[21] Howard County Public Schools employees will receive a delayed step increase on December 24, 2015.
[22] Kent County employees transitioned to a new salary plan; increases awarded based on formula yielding one of three possible outcomes of at least a 1% increase for all.
[23] With the exception of Management Leadership Service employees, all eligible employees of Montgomery County receive a 3.5% increment.
[24] Prince George's County teachers and custodial staff receive 1% COLA, support staff 2%, and no COLA increase for administrators.
[25] Prince George's County teachers and administrators receive a delayed step increase; no step increases for custodial and support staff.
[26] Queen Anne's County employees receive merit increases of 1%, 2%, or 3%.
[27] St. Mary's County teachers and support personnel receive three reclaimed steps; administrators receive two.
[28] In addition to step increases for eligible employees, Somerset County teachers with national certification receive a $2,000 bonus; teachers and administrators receive bonuses of $1,500 for Master's degree plus 30 credits or $2,100 for a doctorate.
[29] Talbot County employees receive a delayed step increase ranging from 1% to 3%, effective January 1, 2016.
[30] No COLA for Washington County teachers and administrators; support staff still in negotiations.
[31] Washington County teachers, support staff, and administrators receive one step; administrators at top of scale receive 1% GSI; one step added to teachers' pay scale.
[32] Wicomico County police officers receive a 1-1/2 step increase; all other county employees received no increases.
[33] In lieu of a step increase, Worcester County teachers and support personnel at the top of the scale receive a 1% salary increase.

Exhibit 3
Local Government Furloughs, Salary Reductions, and Layoffs:
Plans for Fiscal 2016 and Changes Made During Fiscal 2015

County	Furlough/Reduction	Layoffs	
Allegany	No	Yes	School system indicated that 1 position was involuntarily eliminated in fiscal 2016. Since the beginning of fiscal 2014, an additional 80.1 positions have been eliminated through attrition, including 28 positions in fiscal 2016.
Anne Arundel	No	No	
Baltimore City	No	Yes	City laid off 41 employees in fiscal 2015; school system indicated plans to lay off 78 administrative support positions in fiscal 2016.
Baltimore	No	No	
Calvert	No	Yes	School system indicated plans to lay off 9 teachers and 18 support staff in fiscal 2016.
Caroline	No	No	
Carroll	Yes	No	School system indicated that the work year for 10-month clerical and instructional assistants was reduced by 1 day each in fiscal 2013, 2014, and 2015.
Cecil	No	No	
Charles	No	No	
Dorchester	No	No	
Frederick	No	Yes	School system indicated that 13 employees were laid off in fiscal 2015 and 81.7 teacher positions were eliminated in fiscal 2016. All but 3 of the positions eliminated in fiscal 2016 were absorbed by attrition.
Garrett	No	No	
Harford	No	No	

County	Furlough/Reduction	Layoffs	
Howard	No	No	
Kent	No	Yes	School system did not renew two teachers in fiscal 2015.
Montgomery	No	No	
Prince George's	No	No	
Queen Anne's	No	No	
St. Mary's	No	No	
Somerset	No	No	
Talbot	No	No	
Washington	No	No	
Wicomico	No	No	
Worcester	No	No	
Total Jurisdictions Implementing Plans	**1**	**5**	

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Local Government

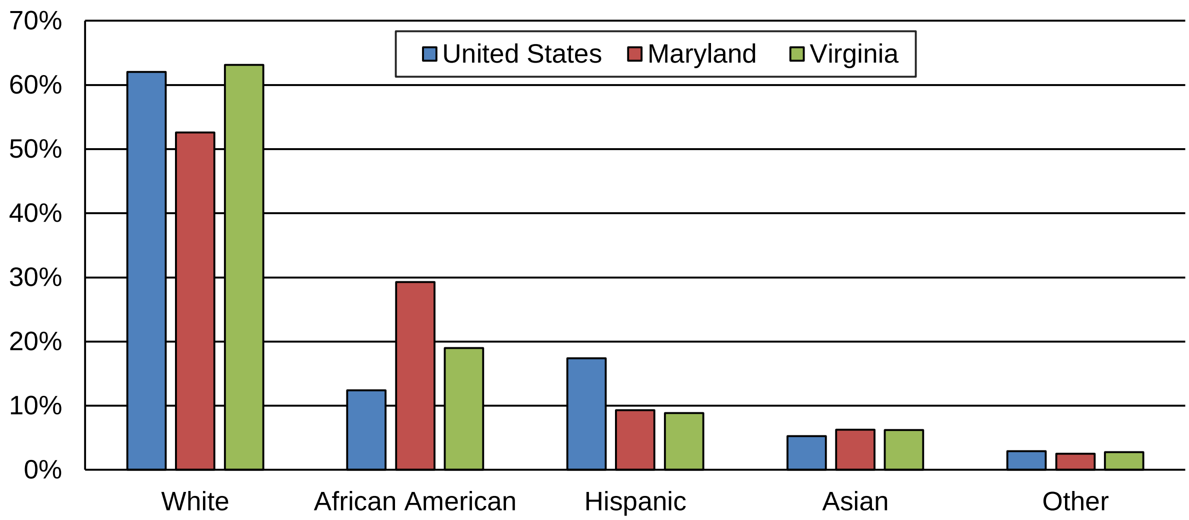
Maryland Demographic Profile

Maryland continues to be one of the most diverse and affluent states in the nation. Maryland ranks sixth in terms of the minority share of the State's population. The State has the highest median household income and the second-lowest poverty rate.

Introduction

Maryland is one of the most diverse and affluent states in the nation. This affluence is spread across all different racial and economic categories of people. Various socio-economic characteristics, including racial composition, poverty rates, and education attainment continue to influence policymakers at the federal, state, and local level. While the national population totals 319 million people, Maryland accounts for nearly 6 million of the total population. Even with a relatively small population, Maryland continues to be a leader in diversity, as illustrated in **Exhibit 1**. Alongside its diverse array of people, Maryland continues to be ranked as one of the most affluent states, with high median household income for people across all backgrounds and low poverty rates compared to the rest of the population in the United States.

Exhibit 1
Racial Composition in 2014

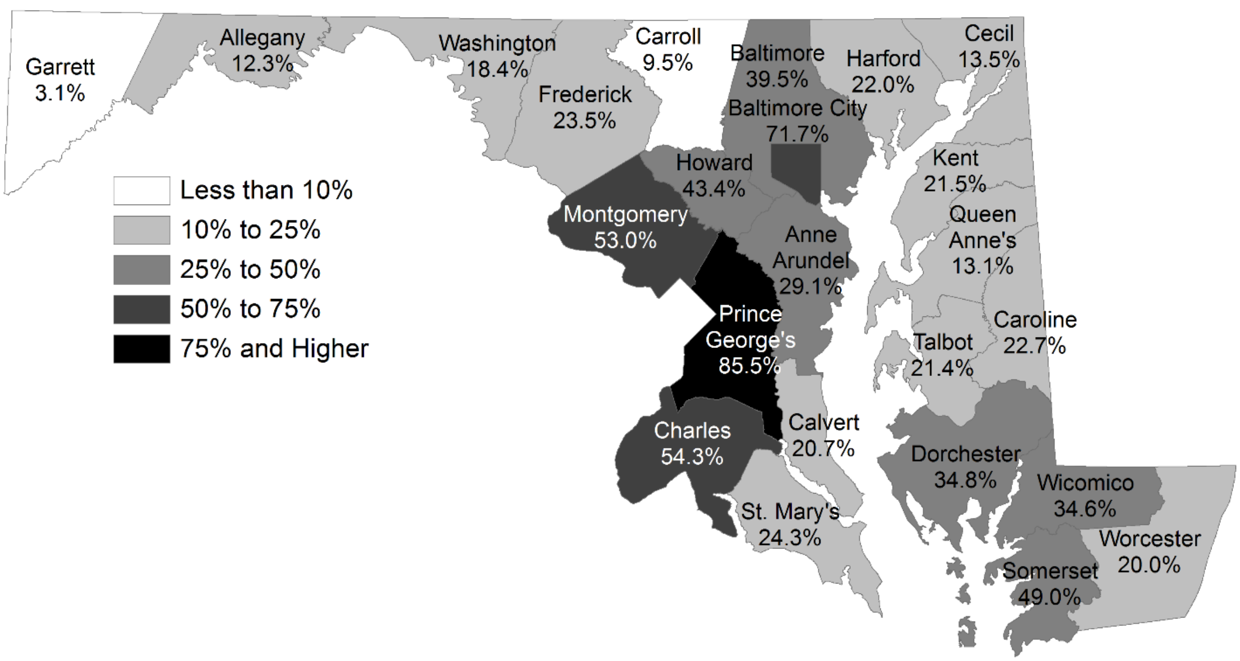


Source: U.S. Census Bureau; Maryland Department of Planning

Current Demographics

According to the U.S. Census Bureau, 6.0 million people currently live in Maryland. Minorities (including African Americans, Hispanics, and Asians) comprise 47.4% of the State's population. Maryland ranks sixth in terms of the minority share of the State population, while Hawaii ranks highest out of all other states. In Maryland, African Americans are the largest minority group followed by Hispanics and Asians. African Americans comprise 29.3% of the State's population; whereas Hispanics account for 9.3% followed by Asians at 6.3%. Four out of the 24 counties in the State have a majority minority population: Baltimore City and Prince George's, Charles, and Montgomery counties as illustrated in **Exhibit 2**.

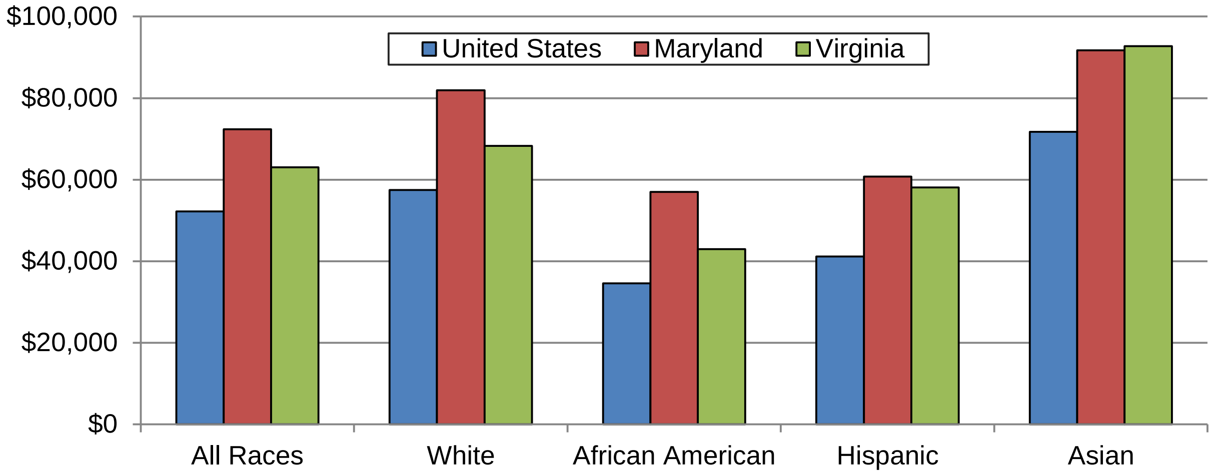
Exhibit 2
Minority Share of County Population



Source: U.S. Census Bureau; Maryland Department of Planning

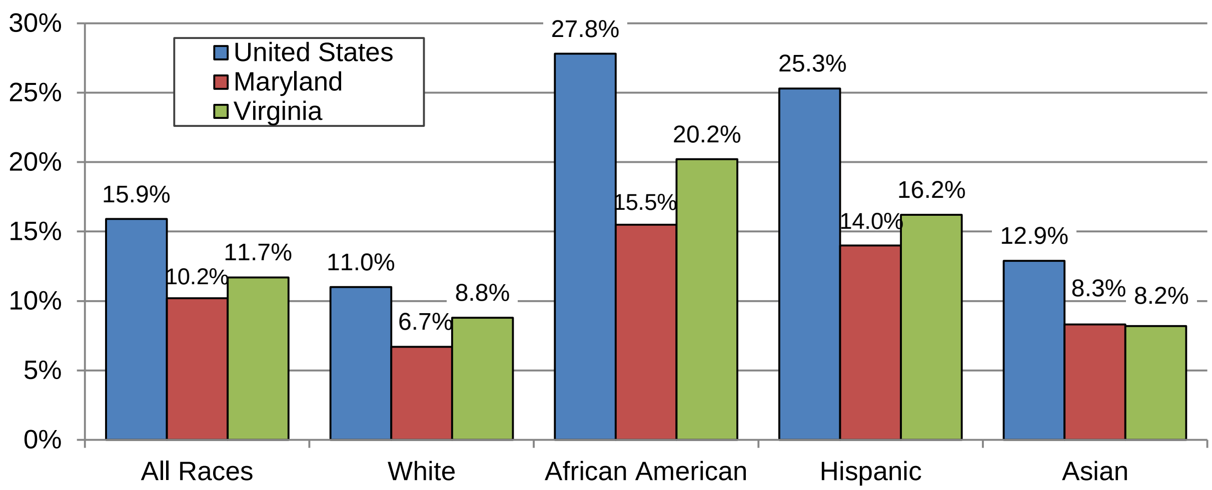
Maryland continues to be one of the most prosperous states in the nation, with a high median household income and low poverty rate. Maryland had the highest median household income and the second-lowest poverty rate in 2014. Maryland's median household income is $73,971 compared to $53,657 nationally. The poverty rate is 10.1% in Maryland compared to 15.5% nationally. The median household income and poverty rates are dissimilar when looked at through the lens of different racial, ethnic, and geographic areas in Maryland. Overall, Maryland still has better statistics for wealth and poverty for those groups than most other states in the nation, as illustrated in **Exhibits 3** and **4**.

Exhibit 3
Median Household Income by Race/Ethnicity
2011-2013 Average



Source: U.S. Census Bureau

Exhibit 4
Poverty Rates by Race/Ethnicity
2011-2013 Average

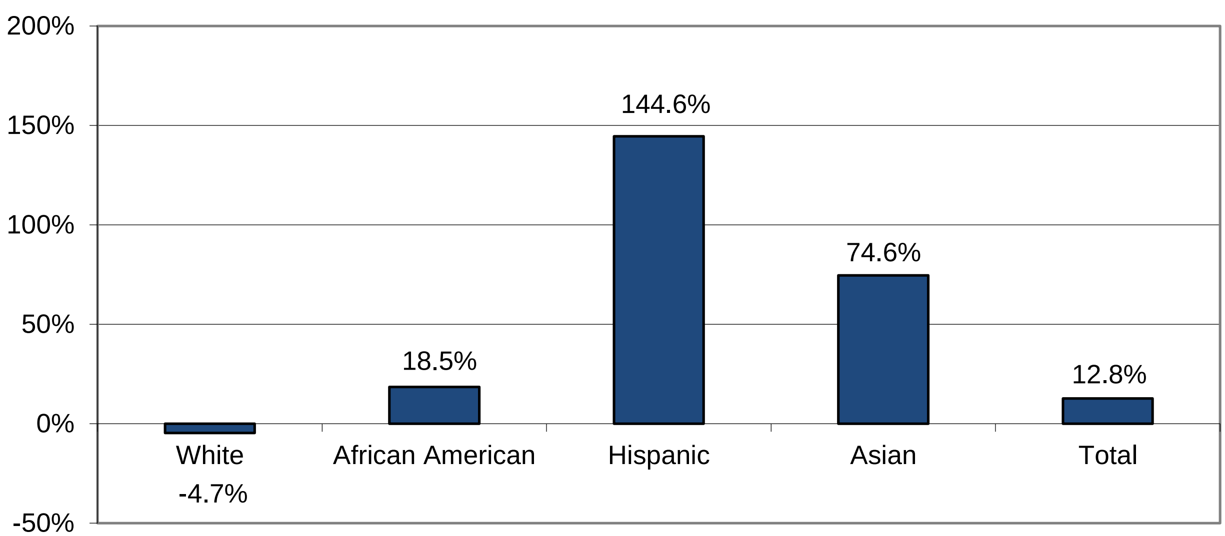


Source: U.S. Census Bureau

Population Trends

Over the last decade, Maryland has trended in growth for all racial and ethnic groups except for non-Hispanic Whites, as illustrated in **Exhibit 5**. Due to this trend, Maryland is moving closer to becoming a majority minority state. Since 2000, the Hispanic population has more than doubled in Maryland. All counties have seen significant growth in their Hispanic population. Prince George's and Montgomery counties have led the way in gains for the Hispanic population. The Asian population has also seen gains in its population in every county in Maryland. Most of the growth has been situated in Montgomery, Howard, and Baltimore counties. The African American population has grown at a relatively slower rate since 2000. Baltimore City has seen a reduction in its African American residents, while Montgomery and Baltimore counties have led the change in growth of their African American residents. Overall, since 2000, there has been a greater population change in minorities in the counties of Montgomery, Prince George's, and Baltimore than the rest of Maryland's counties combined.

Exhibit 5
Maryland Population Growth by Racial/Ethnic Composition
2000-2014



Source: Maryland Department of Planning

Local Government

2016 Legislative Agenda – Maryland Municipal League

The 2016 legislative agenda for the Maryland Municipal League concerns the restoration of local highway user revenues and the protection of Program Open Space funding.

Highway User Revenues

Most municipalities in Maryland rely upon State shared highway user revenues to maintain and improve public roads within their municipal corporate limits, and more than half of all municipalities rely on police aid to assist in providing law enforcement services. Aside from these two revenue sources, municipal governments in Maryland receive limited State support to finance public services. As a result, most municipal governments in Maryland rely on property taxes and service charges to finance public services. In recent years, Maryland's municipal governments have been subject to reduced State funding resulting from decreases in their share of highway user revenues and police aid to help balance the State's operating budget. Although full funding for police aid was restored in the fiscal 2014 State budget, State support for local roadways has not been fully restored to prior funding levels.

Prior to the reduction in State support in fiscal 2010, municipalities received 2.5% of highway user revenues. Today, the municipal share of highway user revenues totals only 0.4%, resulting in a sharp decline in State funding. Municipalities received $46.8 million in highway user revenues in fiscal 2007, compared to approximately $7.0 million today. However, the fiscal 2014 State budget did include a grant of $15.4 million to assist municipalities with local transportation projects. State funding for these grants continued for the following two years, with funding totaling $16.0 million in fiscal 2015 and $19.0 million in fiscal 2016. Even with the grants, the reduction in State funding continues to affect the ability of local governments to provide transportation services within their communities.

Due to the ongoing fiscal outlook, the Maryland Municipal League has adopted, as one of its 2016 legislative initiatives, the reinstatement of funding for municipal highway user revenues and the creation of protections to ensure that municipal highway user revenues are not diverted to the State's general fund in the future.

Program Open Space Funding

Program Open Space provides funds for State and local acquisition and development of public outdoor recreational sites, facilities, and open space. The State share focuses on the acquisition of land for natural resource conservation, with the inclusion of low-impact recreational activities where appropriate. The local jurisdictions' share is used primarily for the acquisition and development of high-impact recreational sites and facilities. Funding for Program Open Space has evolved over time and has been affected by numerous budgetary actions. State transfer tax revenue and unexpended balances have been redirected and transferred, primarily to the general fund, in recent years under budget reconciliation legislation, with the majority of redirected or transferred funding being replaced with bond proceeds. As shown in **Exhibit 1**, transfer tax funding associated with the local share of Program Open Space that has been, or is authorized to be, redirected or transferred over the course of fiscal 2010 through 2018 is replaced with general obligation bonds over the course of fiscal 2010 through 2020. As one of its legislative priorities, the Maryland Municipal League will work to oppose any effort to divert funds from Project Open Space for other State programs.

Exhibit 1

Program Open Space Local Share Transfers and Replacements

($ in Millions)

	Revenue/Balance Transfer		GO Bond Replacement
Fiscal 2010-2014	$176.8	Fiscal 2010-2014	$142.2
Fiscal 2015	43.5	Fiscal 2015	22.8
Fiscal 2016-2018	68.1	Fiscal 2016-2020	123.4
Total	**$288.4**	**Total**	**$288.4**

GO: general obligation

Source: Department of Budget and Management

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Local Government

2016 Legislative Agenda – Maryland Association of Counties

The Maryland Association of Counties has four legislative priorities for the 2016 session, two of which are ongoing efforts from the prior year. Ongoing priorities include the restoration of local transportation funding and enhanced responses to address the growing drug abuse crisis, particularly as it relates to the use of heroin. New priorities involve State funding for school construction and the use of body-worn cameras by local law enforcement officers.

Restoration of Local Transportation Funding

The Maryland Association of Counties (MACo) continues to promote for the 2016 session the restoration of local transportation funding. MACo maintains that the local share of highway user revenues has not recovered from being reduced during the recession. For example, MACo points out that there has been a sizeable reduction in State support for local roadway investment, with State funding declining from approximately $555 million in fiscal 2007 to approximately $170 million in fiscal 2016. Moreover, MACo contends that with the recent expansion of transportation revenues and the additional allocation of funds for roads and bridges earlier this year, the 2016 session is the time for local governments to receive sustained relief from their ongoing struggle to maintain and preserve local roadways. MACo urges State policymakers to re-evaluate transportation funding and take the necessary steps to restore local highway user revenues and roadway infrastructure.

Enhanced Responses to Heroin and Opioid Abuse

The second renewed legislative initiative concerns the growing epidemic of drug abuse and drug-related deaths from the illegal use of heroin and opioids. MACo maintains that similar to other parts of the country, this crisis continues to threaten the lives and livelihood of citizens in each county of the State. MACo is encouraged by recent initiatives taken by the Executive and Legislative branches to fight addiction, reduce drug misuse and related crime, and treat heroin and opioid use disorders, including the Executive Branch's Heroin and Opioid Emergency Task Force and the General Assembly's Joint Committee on Behavioral Health and Opioid Use Disorders. Greater cooperation between the State and county governments is necessary to address this challenge into the foreseeable future. Accordingly, in addition to supporting these ongoing efforts, MACo strongly advocates additional legislation and budget measures to provide enhanced education, prevention, and treatment efforts at the county level.

Funding for School Construction

MACo maintains that the State's commitment to school construction funding needs to remain strong and smart to best serve the modern needs of schoolchildren, educators, and communities. In particular, education funding needs to accommodate contemporary cost factors so as to achieve new environmental and energy standards, satisfy heightened needs for technology, ensure student safety, fulfill community resource needs, and mesh with evolving teaching methods. The counties' share of funding these priorities with the State, particularly for K-12 school construction, depends on State funding formulas and regulations. Therefore, MACo advocates reviewing and updating the State's school funding formulas and guidelines so as to promote the smartest and most effective funding for modern-day schools and retain the State's strong commitment to this top funding priority.

Access to Footage of Body-worn Cameras of Local Law Enforcement Officers

MACo recognizes the growing trend by law enforcement agencies to deploy body-worn cameras (BWC) by their law enforcement officers. However, because this movement involves a myriad of complex legal issues and is still in its early stages in most parts of the country, MACo urges careful consideration of the issue of access to BWC footage under the Maryland Public Information Act (PIA). MACo argues that since the PIA was created primarily to handle paper documents and only recently has accommodated electronic records, the PIA still does not adequately address the practical, technical, and privacy challenges facing a local government with requests for access to potentially hundreds of hours of BWC footage. In addition, recommendations of the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers, established under Chapters 128 and 129 of 2015, are due later this interim to the Maryland Police Training Commission and the General Assembly. Therefore, MACo supports legislation that strikes a reasonable balance between open and transparent access to BWC footage while minimizing the burdens on local governments from overbroad, abusive, or invasive requests.