

Part C

State Government

State Agencies, Offices, and Officials

Managing for Results

Managing for Results (MFR) is a planning, performance measurement, and budgeting process that emphasizes the use of resources to achieve measurable results, accountability, efficiency, and continuous improvement in State government programs. MFR began in 1997 as an initiative by Governor Glendening. By the 2000 legislative session, agencies were to have developed complete MFR submissions, including key goals, objectives, and performance indicators with measurement data and use them to support their budget requests. In fiscal 2001 through 2003, the Office of Legislative Audits audited selected agency performance measures and found a general lack of data reliability.

Senate Bill 381 (passed) codifies the MFR process. The bill continues the current practice for each agency to develop an MFR Agency Strategic Plan that identifies a mission statement, selects goals, and chooses objectives and performance measures to assist in measuring progress toward the goals. The bill also requires the Department of Budget and Management (DBM) to review and update the current MFR State Comprehensive Plan and report to the General Assembly on the plan each year beginning with a first report on or before January 31, 2005. The bill also requires the Managing for Results Steering Committee within DBM to invite participation by three members from the Legislative Branch and to submit a report to the General Assembly on or before July 1, 2006, on the progress made in implementing the MFR process and on its effectiveness.

State Treasury

During the 2004 session, six cross filed bills that relate to the State Treasury were passed. Five of these were recommended by the Joint Committee on the Management of Public Funds.

Senate Bill 431/House Bill 686 (both passed) revise the procedures for administering the Undeliverable Checks Fund to comply with federal law and require a more efficient accounting and transfer of funds to the general fund. Specifically, these bills (1) eliminate a seven-year

limitation on issuing replacement checks; (2) clarify that when required by federal or State law or when considered proper by the Treasurer, undeliverable check funds may be returned to their source or transferred to another account; (3) reduce from seven to two years the time required to hold undeliverable checks before transfer to the general fund; and (4) clarify that undeliverable check funds are not subject to the Maryland Uniform Disposition of Abandoned Property Act.

Senate Bill 433/House Bill 689 (both passed) clarify that a fiscal agent appointed to pay principal and interest on State debt is required at least once every six months, in addition to accounting for bonds and coupons redeemed, to account for bonds and coupons not redeemed and to return unredeemed principal and interest to the Treasurer. These bills also require the Treasurer to deposit unredeemed principal and interest in an unrepresented bond and coupon fund and dispose of the unredeemed funds as abandoned property.

Senate Bill 434/House Bill 688 (both passed) revise the procedures for administering the Unpresented Checks Fund. Specifically, these bills (1) eliminate a seven-year limitation on reissuing checks presented for payment; (2) provide that when required by federal or State law or when considered proper by the Treasurer, unpresented checks may be voided and the monies returned to their source or transferred to another account; and (3) clarify that State-issued unpresented check funds are not subject to the Maryland Uniform Disposition of Abandoned Property Act.

Senate Bill 290/House Bill 690 (both passed) clarify the authority of the Treasurer to make banking service agreements and to provide for the terms, conditions, and compensation for a financial institution providing banking services to the State or any State agency. These bills also allow earnings on deposits to offset bank service charges and require that all investment earnings be paid to the general fund. Finally, these bills provide that the Treasurer may authorize agency bank accounts and require that such accounts comply with regulations and policies of the Treasurer and the Comptroller.

Senate Bill 291/House Bill 691 (both passed) repeal the requirement that units of State government deposit all collections, fees, income, and other revenues into the State treasury monthly. Instead, these bills provide that units of State government must deposit these revenues into depositories designated by the Treasurer in accordance with regulations and policies adopted by the Treasurer and the Comptroller.

Senate Bill 324/House Bill 415 (both passed) establish a Task Force on Lending Equity within Financial Institutions Providing State Depository Services. The bills require the task force to (1) identify data to demonstrate whether financial institutions provide adequate access to credit and capital for minority business enterprises; (2) advise the Treasurer in developing additional criteria for selecting of financial institutions as depositories; and (3) develop a strategy to implement a lending equity policy. The task force is to submit to the Governor and the General Assembly an interim report on or before December 1, 2004, and a final report on or before September 1, 2005.

State Agencies

Department of Disabilities

Senate Bill 188 (passed) creates the Department of Disabilities, abolishes the Governor’s Office for Individuals with Disabilities (OID), creates the Maryland Commission on Disabilities, and creates an Interagency Disabilities Board within the new department. The bill transfers OID’s employees, property, funds, and all associated administrative responsibilities to the new department. For a more detailed discussion of this bill, see the subpart “The Disabled” within Part M – Human Resources of this *90 Day Report*.

Office of Minority Health and Health Disparities

Senate Bill 177/House Bill 86 (both passed) create the Maryland Office of Minority Health and Health Disparities within the Department of Health and Mental Hygiene.

In addition to a number of other duties, Senate Bill 177/House Bill 86 require the office to:

- advocate for improving minority health care;
- assist the Secretary of Health and Mental Hygiene in identifying, coordinating, and establishing minority health priorities and work with the Office of Minority Affairs as necessary;
- conduct research and serve as a clearinghouse and resource library for information about minority health and health disparities;
- develop a strategic plan to improve public services and programs targeting minorities;
- develop grant-awarding criteria for programs to improve minority health care;
- identify and review health promotion and disease prevention strategies relating to the leading causes of death and disability among minority populations;
- develop and implement model public and private partnerships in racial and ethnic minority communities for health awareness campaigns and to improve the access, acceptability, and use of public health services;
- develop a statewide plan for increasing the number of racial and ethnic minority health care professionals;

- work with universities and colleges of medicine, nursing, pharmacy, and dentistry in Maryland and other health care professional training programs to develop courses with cultural competency, sensitivity, and health literacy to address racial and ethnic disparities in health care;
- seek to create a statewide alliance with community-based agencies and organizations, historically black colleges and universities, health care facilities, health care provider organizations, managed care organizations, and pharmaceutical manufacturers;
- apply for and accept any grant from the federal government, private foundations, or other sources available for programs related to minority health and health disparities; and
- work with the Office of Minority Affairs as necessary.

Maryland Agricultural and Resource-based Industry Development Corporation

House Bill 1179 (passed) creates the Maryland Agricultural and Resource-based Industry Development Corporation as a public corporation to provide financing to agricultural and resource-based businesses. The bill directs the corporation to report on its status to the Governor, the General Assembly, and specified State organizations within 90 days after the beginning of each fiscal year. For a more detailed discussion of this bill, see Part H – Business and Economic Issues of this *90 Day Report*.

State Lottery Agents – Commingling of Proceeds

Licensed lottery agents must deposit, with a bank that the Treasurer designates and to the credit of the State Lottery Fund, all receipts from the sale of State lottery tickets or shares, less any commission and validation prize payout. *House Bill 750 (passed)* authorizes a licensed agent of the State lottery to deposit specified receipts from the sale of State lottery tickets or shares with a bank that the licensed agent selects. The bill also authorizes a licensed agent to commingle proceeds collected or deposited from the sale of State lottery tickets or shares with business receipts of the licensed agent.

Department of Planning – Priority Funding Areas

The Smart Growth Areas Act of 1997 prohibits the State from providing funding for any growth-related project not located within a Priority Funding Area. The law allows for certain exceptions if the Board of Public Works determines that extraordinary circumstances exist or if the board approves the project as a transportation project that meets specified requirements. Prior to July 1, 2003, the board could request an advisory opinion concerning requests for exceptions from the State Economic Growth, Resource Protection, and Planning Commission. The commission, however, terminated on July 1, 2003.

Senate Bill 53 (passed) transfers authority from the defunct commission to the Department of Planning to render an advisory opinion to the Board of Public Works concerning

requests for exceptions. Upon receiving a request for an advisory opinion from the board and on request of a member of the public, the Department of Planning is required to hold a public meeting to gather relevant information before issuing the advisory opinion.

Advisory Committee on Tourism

House Bill 99 (passed) abolishes the Advisory Committee on Tourism. The General Assembly created this 40-member advisory committee in 1993 to collect data on the fiscal and social effects of tourism in Maryland and advise the Maryland Tourism Development Board on actions and incentives that would help the board carry out its duties. The advisory committee has since become a defunct organization as its role duplicated that of the board and has not met in seven years.

State Designations and Sister-state Relationship Program

State Designations

Title 13 of the State Government Article of the Annotated Code of Maryland lists various emblems and designations adopted by the State. In addition to the State flag and seal, the State has designated an official State bird, boat, cat, crustacean, dinosaur, dog, drink, fish, flower, folk dance, fossil shell, horse, insect, reptile, song, sport, summer theater, theater, and tree.

Senate Bill 428 (passed) adds Lacrosse as the State team sport and the Patuxent River Stone as the State gem.

Sister-state Relationship Program

Maryland has had a sister-state relationship program since 1989. Maryland has sister-state relationships with nine states in Belgium, Brazil, China, France, Japan, Korea, Mexico, Poland, and Russia. *House Bill 179 (passed)* transfers lead agency responsibility for the Maryland Sister-state Relationship Program from the Office of International Trade in the Department of Business and Economic Development to the Office of the Secretary of State.

Miscellaneous

Acting Attorney General

Senate Bill 164 (passed) allows the senior deputy Attorney General to serve as Acting Attorney General if the Attorney General is temporarily unable or unavailable or during a term specified in any general written notice of temporary inability or unavailability by the Attorney General. In addition, if the Board of Public Works and presiding officers of the General Assembly by majority vote make a determination of the Attorney General's temporary inability or unavailability, the senior deputy Attorney General shall serve until the board and presiding officers by majority vote determine that the Attorney General is able to carry out the duties of the office and give notice of such determination to both the Attorney General and Acting Attorney General.

The bill would also give a circuit court exclusive jurisdiction upon petition by either a member of the Board of Public Works, a presiding officer of the General Assembly, the Attorney General, or the Acting Attorney General to determine any issue arising under the bill's provisions.

Office of Administrative Hearings – Fees for Filing Appeals

House Bill 508 (passed) increases the fees that the Chief Administrative Law Judge may set for filing appeals from \$15 to \$125 for an appeal of a driver's license suspension or revocation related to a violation of the Maryland vehicle law and to \$50 for all other types of appeals. For a more detailed discussion of fee increases, see the subpart "Operating Budget" within Part A – Budget and State Aid of this *90 Day Report*.

Elections

Comprehensive State election reform measures adopted during the 2001 legislative session provided for a uniform statewide voting system (Chapter 564) and provisional voting (Chapter 424). On the federal level, the national Help America Vote Act (HAVA) passed by Congress in 2002 created a federal agency to implement various voting system and election administration standards required under the Act. HAVA establishes uniform election standards for every state, and approximately \$3.6 billion in funding was authorized for the states over three federal fiscal years to assist in compliance. Maryland is eligible to receive up to \$54 million in funding under the Act. The Act outlines requirements covering such subjects as disabled voter access to polling places, mail-in registration, statewide voter registration, and provisional balloting with various implementation deadlines ranging from 2003 to 2006.

These comprehensive State and federal reforms have converged in the past three years to mandate several large-scale initiatives for the State Board of Elections (SBE), including statewide voter registration and a statewide uniform electronic voting system. During the course of the reform efforts, several ancillary issues have arisen and were addressed during the 2004 legislative session.

Conduct of Elections

Electronic Voting System Security Voter Verified Paper Trail

In the wake of the 2000 presidential election recount in Florida, which thrust the operational shortcomings of many local voting systems into the national spotlight, pressure has been building to replace old and inefficient voting systems with more sophisticated and accurate electronic equipment known as direct electronic recording devices (DRE). The DRE generation of computerized voting systems are demonstrably efficient at reducing undervoting and overvoting as well as eliminating uncertainty as to the voters' intentions. Since November 2000, voting equipment usage in the 3,100 local jurisdictions around the nation has dramatically changed. As indicated in **Exhibit C-1** below, punchcard equipment of the variety used in

Florida has decreased by nearly half while DRE usage has more than doubled. Election Data Services estimates that in the November 2004 election, 28 percent of voters will cast their vote on a DRE voting unit and another 32 percent of voters will do so on an optical scan machine that uses machine readable paper ballots.

Exhibit C-1
Changes in Voting System Usage in the U.S.

<u>Type</u>	<u>2000</u>	<u>Percentage</u>	<u>2004</u>	<u>Percentage</u>	<u>Change</u>
Punch Card	582	19%	307	10%	-9%
Lever	452	14%	270	9%	-6%
Paper Ballot	373	12%	299	10%	-2%
Optical Scan	1,303	41%	1,418	46%	4%
Electronic (DRE)	293	9%	669	21%	12%
Mixed	137	4%	151	5%	0.5%
Total	3,140	100%	3,114	100%	

Source: Election Data Services, Voting Equipment Summary 2000 and 2004.

The apparent surge in voting system modernization has slowed amid concerns over the vulnerabilities of DRE software to hackers or substandard computer code and the ease with which the voting units themselves can be manipulated either physically through tampering or through the use of other electronic devices to intercept and modify election results. Several states, including Ohio, have commissioned security analyses of these voting systems to assess the systems' vulnerability to election result manipulation. As states and localities performed these assessments, it became increasingly clear that the design and method of using DRE units rendered them susceptible to internal and external manipulation. Theoretical threats include scenarios in which a programmer would be able to insert codes that could surreptitiously change some votes recorded by a voter undetected.

The use of voter verified paper records or audit trails (VVPT) originated as a way to detect some types of irregularities in electronic vote recording by DREs. VVPT would allow a voter to review a paper printout of their selections and change their selections before a final vote is cast. The paper record would serve as the official ballot to be used in the event of a recount since it is assumed that a voter specifically verified this document, and thus is the best indication of voter intent. Eighteen states have considered some form of VVPT legislation to date. Oregon and California now require VVPT for the 2006 elections. The Secretary of State of Nevada has mandated VVPT beginning in the November 2004 presidential election.

Voter Verified Paper Records in Maryland: In August 2003, the Governor ordered an independent risk assessment of the State's uniform voting system after concerns about the overall security of electronic voting equipment arose in other states and were documented in a Johns Hopkins University report. The risk assessment of the voting system was performed by

Science Applications International Corporation which found 66 components of the voting system that required additional security measures. SBE responded and took action to correct the vulnerabilities in the system.

During the 2003 interim, leaders of the Senate and House of Delegates requested the Department of Legislative Services (DLS) to conduct its own review of the security issues flowing from the risk assessment commissioned by the Governor. This DLS review confirmed the findings of the previous assessment and uncovered additional software, hardware, and operational vulnerabilities. The assessment team of IT security consultants contracted by DLS to assist in the security review recommended the use of VVPT as necessary in some form.

Senate Bill 393/House Bill 53 (both failed) would have required the uniform electronic voting system to produce a paper record of each vote cast that would be made available for inspection and verification by a voter. A voter would have been able to correct any errors made on the ballot before the paper record is preserved at the polling place.

Penalties for Tampering with Voting Equipment: The review of the security of the statewide DRE voting system by DLS included an exercise involving a simulated attack on the hardware and software of the voting system. The results of the exercise found that the voting units could be easily unlocked and disabled. Given this possibility, *House Bill 1390 (passed)* generally increases and changes from misdemeanors to felonies the penalties for concealing, damaging, destroying, tampering, removing, or defacing voting equipment or supplies. For example, tampering, damaging, or otherwise preventing the correct operation of voting equipment is reclassified as a felony and maximum fines for violation of the provision have been increased from \$1,000 to \$10,000.

Minors at Polling Places

State law generally prohibits children over the age of 10 from accompanying a voter inside the voting booth (exceptions are made for a voter who needs assistance due to a physical disability or an inability to read English). Following the 2002 election, a number of legislators heard from constituents who brought their older children with them on election day to observe the election process first hand but were denied access. Accordingly, several bills were introduced in the 2003 and 2004 legislative sessions that would have loosened the age restrictions. *Senate Bill 95* and *House Bill 18 (both passed)* increase the maximum age at which a minor may accompany a voter into the voting booth from 10 to 12 and allow up to two minors under the age of 13 to be present in the voting booth provided that the child is in the care of the voter and does not disrupt or interfere with normal voting procedures.

Election of Circuit Court Judges

After the presidential primary in March 2004, a suit was filed in Anne Arundel County Circuit Court requesting an injunction to prevent SBE from certifying the primary results of circuit court judge candidates on the grounds that unaffiliated voters, who are generally not

permitted to vote in party nominating elections (the primary), are unconstitutionally disenfranchised from participating in the initial selection process for circuit court judges.

Circuit court judges are currently nominated by the two principal political parties during the primary election. Because Maryland holds closed primaries, in which only members of a particular political party may vote for that party's candidates for nomination, candidates for circuit court judge register their candidacies with both parties and appear on the ballots of both principal political parties during the primary. This practice of "cross-filing" candidacies dates back to 1941.

House Bill 1544 (failed) would have required a circuit court judge to be elected at a general election on a nonpartisan basis. Candidates for circuit court judge would not participate in party nominating primaries. The bill also would have established a deadline for filing a certificate of candidacy for the office and provided procedures for filling vacancies.

Procedural and Administrative Matters

Appointment and Removal of the State Administrator of Elections

Amid the controversy surrounding voting machine security discussed above and the statutorily required change in membership of the five-member SBE in 2003 from three Democratic members and two Republican members to three Republican and two Democratic members, two measures concerning the appointment and removal process of the State's chief election official were considered during the 2004 legislative session.

State law provides that the State Administrator of Elections be appointed by and serve at the pleasure of SBE. Removal requires an affirmative vote of four members of SBE who must set forth written charges stating the grounds for dismissal. Valid grounds for dismissal are incompetence, misconduct, or other good cause. SBE must give the State Administrator ample opportunity to be heard.

Senate Bill 792 (failed) would have provided the State Administrator with a judicial review process in response to any removal action by SBE. Any order of removal would be stayed until a final disposition by a court. The bill would have also given the Senate a role in the appointment of the State Administrator by requiring the advice and consent of that body before appointment. *Senate Bill 295 (failed)* would have repealed the "good cause" requirement in State law that must be satisfied before SBE can take action to remove the State Administrator, essentially allowing the State Administrator to be terminable at will.

Campaign Finance

Public Financing of Campaigns

Chapter 169 of 2002 created a 15-member commission to study public funding of elections for candidates for statewide and State legislative offices. The commission was required

to collect information regarding current practice in Maryland and in other jurisdictions and determine the feasibility of implementing a public financing system for statewide and legislative candidates. The commission reported its findings and recommendations in February 2004 and supported the establishment of a system of publicly funded campaigns for the statewide offices of Governor/Lieutenant Governor, Comptroller, Attorney General, and candidates for the General Assembly.

Senate Bill 562 (failed) encapsulated the commission's recommendations for partial funding of statewide candidate campaigns and full funding for candidates to the General Assembly. The income tax check-off, qualifying contributions collected by participating candidates, seed money contributions, fines for violations of the election law, voluntary donations, and other sources were recommended as contributing revenue sources; however, the estimated cost of the program was nearly \$58 million in each four-year election cycle. *Senate Bill 725/House Bill 1317 (both failed)* also would have established a program for public financing for General Assembly candidates only. The costs of the program would have been supported primarily by several new fees and surcharges against drivers who are assessed points for violating certain traffic laws and drivers convicted of drunk driving, as well as a 10 percent surcharge on all civil and criminal fines.

Payment for Walk-around Services

In September 2003, the Maryland Court of Appeals invalidated the provision in Title 13 of the Election Article that prohibited a campaign finance entity or person acting on its behalf, from paying an individual for walk-around services on the grounds that the law was too vague and infringed on the free speech provisions of the U.S. Constitution and the Constitution of Maryland (*State v. Brookins*, 376 Md. 697 (2003)). Walk-around services are generally performed by paid campaign workers who engage in electioneering activities on election day such as distributing campaign material and urging voters to vote for a particular candidate.

Pursuant to the Court of Appeals' ruling, *Senate Bill 301 (passed)* repeals the prohibition on a campaign finance entity from paying an individual for walk-around services and requires these payments to be made by check drawn from a designated campaign account. In addition, expenditures for walk-around services must be reported on the entity's campaign finance report.

Contributions

The widespread use of the Internet for political campaign activity has encouraged the use of credit cards as a cheaper, more convenient means of soliciting and contributing money. Since the Federal Election Commission recognized credit card payments as eligible contributions for purposes of the Presidential Election Campaign Fund in 1999, political campaigning via the Internet has increased substantially for candidates in all types of elections. *Senate Bill 846* and *House Bill 733 (both passed)* remove the \$100 transaction limit on credit card campaign contributions and allow credit card contributions up to the statutory limit of \$4,000 to any one campaign finance entity and \$10,000 to all campaign finance entities.

Ethics

Ethics Commission Orders – Judicial Review

Under current law, a final order of the State Ethics Commission is stayed during the course of any judicial review if a timely appeal has been filed. The period of judicial review can be quite lengthy if appeals are taken through the appellate courts. In proceedings to discipline a regulated lobbyist, for example, the period of appeals may allow the individual to continue lobbying for an extended period after being suspended or barred from lobbying by the commission. *House Bill 298 (passed)* specifies that the enforcement of a final order by the commission may be stayed at the discretion of the commission or the reviewing court. The bill will be applied prospectively and does not affect any matter or violation that occurred before the effective date of October 1, 2004.

Financial Disclosure

Sources of Earned Income

House Bill 608 (passed) clarifies that a public official or other individual required to file an annual financial disclosure statement with the State Ethics Commission must disclose all secondary employment of the individual or member of the individual's immediate family. Additionally, the individual filing the disclosure is no longer required to include a listing of a minor child's employment or a business entity of which the child is the sole or partial owner on the disclosure statement, unless the place of employment or the business entity is (1) subject to the regulation or authority of the agency that employs the individual; or (2) has contracts in excess of \$10,000 with the agency that employs the individual.

Real Property Owned by Specified State Employees

House Bill 1318 (passed) requires the Governor to designate, by executive order, that specific State employees disclose to the State Ethics Commission any interest the employees have in real property in Maryland and any other information the Ethics Commission considers a conflict of interest related to those employees' employment. The designated employees include home inspectors, building code enforcement officials, lead inspectors, and environmental sanitarians. The State Ethics Commission may also require these employees to disclose any other information considered to be a conflict of interest relating to their employment. In addition, the bill provides that Baltimore City health and housing inspectors who inspect for lead hazards are considered "local officials" for purposes of the city's financial disclosure provisions.

Encumbrances on Real Property

Current law requires detailed information about debts owed by the public officials and other individuals who must file annual financial disclosure statements but only if the debt is owed to an entity that does business with the State. *House Bill 610 (failed)* would have modified the provision to require an individual filing a financial disclosure statement to include

information about any debt owed on real property, regardless of whether the creditor does business with the State. However, the bill also would have exempted real property debts from many of the specific disclosure details applicable to other types of debts.

Miscellaneous Information

The current form for the annual financial disclosure statement contains a page on which the official or employee may provide any additional information not specifically required by the Ethics Law. *House Bill 650 (failed)* would have eliminated this additional page in order to avoid the submission of voluminous extraneous documents that must be retained on file with the State Ethics Commission and (as to members of the General Assembly) the Joint Committee on Legislative Ethics.

Procurement

Task Force to Study Efficiency in Procurement

Created by Chapter 386 of 2003, the Task Force to Study Efficiency in Procurement was charged with studying the State procurement system and making recommendations to the Governor and General Assembly on ways to improve the State system, including the overall organization of the State system, the dispute resolution process, the procurement of information technology, and other efficiencies. The task force met throughout the 2003 interim and developed 31 recommendations which are outlined in the final report of the task force issued in December 2003. The recommendations of the task force were the impetus for many of the procurement bills introduced in the 2004 session.

Reverse Auctions

Reverse auctions allow the State to request supplies and then have businesses bid on the price at which they would supply those supplies. The auction lasts for a specified time and the lowest bidder receives the contract with the State. *Senate Bill 722 (passed)* repeals, for a period of three years, the \$1 million floor on reverse auction bids for supplies and also adds authorization to procure services and equipment by auction bidding. Construction contracts and information technology service contracts are specifically excluded from the authorized uses of reverse auction bids. The bill also requires the Department of Legislative Services to review and evaluate the impact of repealing the \$1 million floor on State expenditures and administrative efficiency.

Participation in Federal Contracts

Under current law, primary procurement units cannot participate in intergovernmental cooperative purchasing agreements if the State's participation is valued at less than \$250,000. *Senate Bill 831 (passed)* authorizes primary procurement units to participate in federal contracts with no restriction on the value of the State's participation.

Ethics Law – Architectural and Engineering Services

Current law prohibits an individual, or the individual's employer, who assists an executive unit in the drafting of specifications, an invitation for bids, or a request for proposals for a particular procurement from participating in the procurement as a bidder or offeror. There are several exceptions, however, and providing architectural and engineering services for programming, master planning, or other project planning services does not preclude an individual or their employer from submitting a bid or proposals. *Senate Bill 56 (passed)* includes the design of certain construction projects among the architectural and engineering services that an individual may provide for a project and still be able to submit a bid or proposal for that project. These design services, however, may not involve lead or prime design responsibilities or construction phase responsibilities on behalf of the State.

Dispute Resolution Process

Senate Bill 416/House Bill 767 (both passed) authorize units of State government to assert contract claims against contractors, provide for review of State claims, and specify that units of State government may appeal the final decision of a unit to the Maryland State Board of Contract Appeals (MSBCA). *Senate Bill 600 (passed)* specifies that a contractor may be represented by legal counsel in any appeal before the MSBCA and permits individuals other than lawyers to represent contractors in expedited procedures (which are limited, by regulation, to disputes involving \$10,000 or less) before MSBCA. *Senate Bill 212/House Bill 430 (both failed)* would have established a three-year alternative dispute resolution pilot program for contract claims.

Whistleblower Protections

House Bill 1044 (passed) prohibits employers that enter into contracts with a unit of State government under the State procurement law from taking or refusing to take personnel actions against an employee as a reprisal for whistleblowing. Employers are prohibited from taking personnel action as a reprisal against an employee who discloses information regarding (1) an abuse of authority, gross mismanagement, or waste of money; (2) a substantial specific danger to public health or safety; or (3) a violation of law. Employers also are prohibited from taking a personnel action as a reprisal against an employee who objects to or refuses to participate in an activity, policy, or practice in violation of law.

Minority Business Enterprise (MBE)

The MBE program in Maryland began in 1978. In 1989, the U.S. Supreme Court held in the *City of Richmond v. J. A. Croson Co.* that state or local MBE programs using race-based classifications are subject to strict scrutiny under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. Since the *Croson* decision, the State has commissioned three minority business utilization studies to continue to provide support for Maryland's MBE program. Based on the study completed in January 2001, Chapter 339 of 2001 established the current overall goal of 25 percent for the total value of contracts being awarded to certified

minority business enterprises and separate goals of 7 percent for African American businesses and 10 percent for women-owned businesses.

The 2001 enactment also revised the definition of minority business enterprise to require that the daily business operations be managed by one or more socially and economically disadvantaged individuals who are also owners. The legislation defined socially and economically disadvantaged individuals and created a rebuttable presumption that individuals who fall within the defined criteria are socially and economically disadvantaged. Units are required to obtain waivers from the Governor's Office of Minority Affairs only if a successful bidder or offeror is unable to meet the MBE goal in an individual solicitation. State law requires that procurement units try to achieve the annual MBE goals, but there are no penalties for units failing to meet annual goals. Each procurement unit must (1) implement a program enabling the unit to evaluate each contract to determine the appropriateness of the goal and (2) meet the maximum feasible portion of the goals by using race neutral measures to facilitate MBE participation in the procurement process.

Governor's Commission on Minority Business Reform

The Governor's Commission on Minority Business Reform, established during the 2003 interim, reviewed the State's MBE program and issued its final report on December 31, 2003. The commission focused its review of the MBE program and small business procurement on (1) strengthening the Office of Minority Affairs to carry out its mandate, including resources for enforcement of State law, training, and evaluation of the MBE program and small business procurement; (2) assisting business development by creating a one-stop shop with which small and minority businesses could interact with the State, enforcing existing law, changing the procurement system, and providing more support for business development; (3) improving MBE and small business access to capital; and (4) providing incentives for certification as an MBE.

Based on the findings and recommendations of the commission, the Administration proposed two bills. *Senate Bill 904 (passed)* creates a small business reserve program and requires certain agencies to award at least 10 percent of specified types of procurement contracts to small businesses. Specified units are required to award at least 10 percent of the units' total dollar value of goods, supplies, services, maintenance, construction, construction-related, architectural service, and engineering service contracts to small businesses. The bill specifies that any procurement of goods, supplies, services, maintenance, construction, construction-related, architectural service, and engineering service contracts is eligible for inclusion in the small business reserve.

Small businesses include all businesses certified by the Maryland Department of Transportation as minority business enterprises. A small business must be independently owned and operated, not the subsidiary of another business, and not dominant in its field of operation. The bill defines the categories of wholesale, retail, manufacturing, service, and construction and restricts the number of persons employed and the average amount of the gross sales in the most recently completed three fiscal years from operations in each category.

Senate Bill 903 (passed) establishes the Office of the Special Secretary for Minority Affairs. The duties of the special secretary are identical to the current duties of the Director of the Office of Minority Affairs. The bill also requires agencies to include a statement of the expected level of minority business participation in the specifications of invitations for bids and requests for proposals. The bill further specifies that MBE regulations must include a requirement that a bid or proposal based on a solicitation with an expected degree of MBE participation identify the specific commitment of certified MBEs at the time of submission.

Other MBE Legislation

The General Assembly also considered several other MBE bills. **House Bill 483 (passed)** increases the total personal net worth an individual may have and still achieve MBE certification from \$750,000 to \$1.5 million. **House Bill 721 (passed)** requires the MBE certification agency (currently the Maryland Department of Transportation) to develop and maintain a directory of all MBEs in the State that includes (1) all contact information available to the certification agency for the MBE; (2) the certification number and minority status of the MBE; (3) contact information for up to three professional references for the MBE; (4) other information the certification agency considers necessary or appropriate to encourage participation in the procurement process by MBEs; and (5) identification of MBEs that have become certified during the current calendar year.

Wage Rates – Service and Construction Contracts

Living Wage

Senate Bill 621 (passed) requires employers with State contracts for services valued at greater than \$100,000 to pay their employees a “living wage.” The living wage is set at \$10.50 for fiscal 2005 and then adjusted annually by the Commissioner of Labor and Industry. If employers provide health insurance to workers, the employer may reduce the wages paid by all or part of the hourly cost of the employer’s share of the premium for each employee. Employers are not required to pay a living wage (1) if higher wages are required under other provisions of State law; (2) to employees who are 17 years old or younger for the duration of the contract; or (3) to employees who work full time for less than 13 consecutive weeks for the duration of a contract subject to the living wage. The living wage does not apply to contracts (1) for services needed immediately to prevent or respond to an imminent threat to public health or safety; (2) with a public service company; (3) with a nonprofit organization; (4) between units; or (5) between a unit and a county or Baltimore City.

Living wage laws are currently in force in 105 localities and counties in the United States. There are currently no statewide living wage laws. Wage levels without health benefits range from \$6.15 in New Orleans, Louisiana to \$13.00 in Fairfax, California. In Maryland, Baltimore City and Montgomery and Prince George’s counties have passed living wage laws. In Baltimore City, Ordinance 442 requires the payment of a living wage set by the Board of Estimates. The hourly wage rate in effect for fiscal 2004 is \$8.70. The board revises the living

wage level annually. Montgomery and Prince George's counties each have living wage rates set at \$10.50.

The Department of Labor, Licensing, and Regulation (DLLR) indicates that there are approximately 148,363 private sector employers in Maryland, with less than 10 percent of those being nonprofit. DLLR estimates that no more than 15 percent of total employers would be affected by the application of the living wage law.

Prevailing Wage Rates

The federal Davis-Bacon Act requires that federal or District of Columbia public works construction contracts over \$2,000 contain a prevailing wage clause. Under the provisions of the Act, contractors or their subcontractors are required to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on similar projects. Maryland adopted a prevailing wage law in 1945 but it only applied to road projects in Allegany, Garrett, and Washington counties. In 1969, the statute was amended to include public works projects of the State costing \$500,000 or more. By definition, prevailing wages are the hourly wage rates paid in the locality in which the construction work is to be performed.

Senate Bill 660/House Bill 425 (both failed) would have increased the threshold amount at which the State prevailing wage rate applies to construction contracts from \$500,000 to \$2.5 million and would have required the Commissioner of Labor and Industry to adjust the threshold annually by the consumer price index or another appropriate index.

Currently, school construction projects fall under the prevailing wage law if 50 percent or more of the construction costs are State funded. *House Bill 396 (failed)* and *House Bill 532 (failed)* were identical bills that would have required that 75 percent or more of a school construction project be funded by State sources in order for the prevailing wage law to apply.

Applicability of Procurement Law to State Entities

Morgan State University

Senate Bill 430 (passed) expands the procurement authority of Morgan State University (MSU). The bill generally aligns MSU autonomy and procurement laws with those of St. Mary's College of Maryland (SMCM). Both MSU and SMCM are public higher education institutions outside the University System of Maryland (USM). SMCM was granted these powers in 1992, and USM was granted many of these powers in 1999. The bill expands the powers of MSU to include the acquisition and sale of property, the borrowing of money for any corporate purpose, and the ability to sue or be sued. MSU's current autonomy over capital construction projects is maintained.

The bill generally exempts MSU from State law governing procurement, information technology, and telecommunications. However, consistent with the current exemptions for USM, the bill requires Board of Public Works' approval of contracts for services or capital

improvements exceeding \$500,000. Subject to review and approval by the Board of Public Works and the General Assembly's Administrative, Executive, and Legislative Review Committee, the Board of Regents of MSU is required to establish procurement policies and procedures that promote the purposes of State procurement law. MSU is also required to purchase supplies and services, to the maximum extent practicable, from State Use Industries, Blind Industries and Services, and sheltered workshops. The Board of Regents of MSU also is required to develop an information technology plan for MSU that is functionally compatible with the State information technology plan.

Procurement Exemptions

House Bill 894 (passed) exempts the College Savings Plans of Maryland from State procurement laws for services of managers to invest the assets of the Maryland Prepaid College Trust and for expenditures to manage, maintain, and enhance the value of the trust's assets. The bill provides that the trust would still be subject to the Minority Business Enterprise program. This exemption is identical to one that already exists in current law for the State Retirement and Pensions System. *Senate Bill 849 (passed)* exempts USM from some of the existing procurement laws and policies when it procures investment management services and investments for its gift and endowment assets. Procurements must be made in accordance with the management and investment policies adopted by the Board of Regents of USM.

House Bill 725 (failed) would have repealed many of the current procurement exemptions for various units of State government and made the units subject to the requirements of the State procurement law. Senate Bill 600, discussed earlier, also requires the Department of Legislative Services, with the assistance and cooperation of the Board of Public Works (BPW) and State units, to conduct a study that reviews all exemptions from the State procurement law and submit a report to the Governor and General Assembly on or before December 1, 2004. Additionally, the bill requires the BPW to review the level of delegation of its procurement responsibilities to units of State government and whether there are appropriate safeguards and accountability measures in place to promote the purposes of the State's procurement law. This study also is due on or before December 1, 2004.

Procurement Preferences

Current law authorizes reciprocal preferences for resident bidders in competitive sealed procurements. *House Bill 718 (passed)* expands the authorization of State units to provide reciprocal preferences to include all procurements that use the competitive sealed proposal method. Under the bill, State units may give a preference in any procurement using the competitive sealed proposals method, identical to the preference that another state would give to its residents, to a Maryland resident business if (1) a responsible offeror whose principal office or principal base of operations is in another state submits an offer; (2) the state in which the nonresident's principal office is located or the state in which the nonresident has its principal operation through which it would provide the goods or services provides a resident business preference; and (3) the preference does not conflict with a federal law or grant affecting the procurement contract.

House Bill 811 (passed) requires the Secretary of General Services, the Secretary of Transportation, and the Chancellor of the University System of Maryland to establish a price preference for the purchase of environmentally preferable products and equipment (EPPs). EPPs are products, including supplies, and equipment manufactured and designed for utilization in accordance with a broad range of measures that prevent or minimize environmental degradation, including (1) recycling; (2) resource conservation; (3) source reduction; (4) use of components that are free of toxic or degrading agents or contain the least amount of toxic or degrading agents necessary to meet applicable job specifications recycling; (5) use of innovative technology; (6) use of renewable resources; and (7) waste minimization.

Miscellaneous Procurement Provisions

Notice of Invitations for Bids, Requests for Proposals, and Awarding of Certain Contracts

Under current law, units are required to publish notice of invitations for bids, requests for proposals, and the award of certain contracts in the *Contract Weekly* and *Contract Weekly Online*. **House Bill 702 (passed)** phases in a requirement to publish the information only on eMaryland Marketplace on and after July 1, 2006. Until July 1, 2006, the unit shall publish the information in the *Contract Weekly* and eMM. The bill prohibits units from charging a fee to access information on eMM. Instead, the agencies will deduct and retain a fee, established annually by the Department of Budget and Management by regulation, from the procurement contract price.

Debarment

House Bill 920 (passed) expands the list of offenses for which a person may be debarred (that is, legally prevented) from participation in the State procurement process to include a contractor competing for State contracts if they or any officer, employee, representative, agent, or consultant of the contractor knowingly (1) makes any offer or promise of future employment or business opportunity to, or engage in any discussion of future employment or business opportunity with, any procurement official of the agency conducting the procurement; (2) offers, gives, or promises to offer or give any money, gratuity, or other thing of value to any procurement official of the agency conducting the procurement; or (3) solicits or obtains from any officer or employee of an agency conducting the procurement, before the award of a contract, any proprietary or source selection information regarding the procurement.

Regulations and Procedures

Open Meetings Act

Senate Bill 87/House Bill 73 (both passed) authorize any person to file a petition with a circuit court to determine the applicability of open session requirements of the State's Open Meetings Act to a session of a public body, require a public body to comply with these

provisions of law, or void a public body's action. Previously, a person could only file a petition if the person was adversely affected by a public body's failure to comply with the open session requirements of the Open Meetings Act. In a recent case, a Howard County Circuit Court judge interpreted the "adversely affected" standard for standing under the Open Meetings Act to mean a specific interest or property right that has been specially affected in a way different from that suffered by the public generally. The case is now on appeal to the Court of Special Appeals.

Under the Open Meetings Act, a public body must meet in open session unless a closed session is authorized by law. Before a meeting in either closed or open session, a public body must give advance written notice of the meeting. The general public may attend meetings in open session. A public body may meet in closed session under limited circumstances, including the consultation with legal counsel and the discussion of specified personnel matters, the acquisition of real property for a public purpose, and specified expenditures.

Senate Bill 111 (passed) expands the definition of "public body" under the Open Meetings Act to include a board, commission, or committee appointed by an official who is subject to the policy direction of the Governor or the chief executive authority of a political subdivision. In addition, on the request of the Open Meetings Compliance Board, the bill requires a public body to include with its written response to a complaint filed with the board a copy of (1) the written notice of the meeting; (2) a written statement describing the reason for closing the meeting; and (3) the minutes and any tape recording of the meeting. Public bodies shall retain copies of meeting notices for at least one year after the date of the meeting. The bill also exempts a subcommittee of a public body from the definition of public body, unless the subcommittee is created by the Maryland Constitution; a State statute; a county charter; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or the chief executive authority of a political subdivision. Finally, the bill authorizes a public body to tape record all sessions, not just closed sessions, as previously authorized.

Regulations

Senate Bill 309/House Bill 429 (both passed) modify the process for adopting emergency and proposed regulations. The bills provide that the Joint Committee on Administrative, Executive, and Legislative Review may not approve the emergency adoption of a proposed regulation earlier than 10 days after the committee's receipt of the regulation unless the Governor declares that immediate adoption is necessary to protect the public health or safety. The bills also require the General Assembly's web site to include certain information about emergency regulations received by the committee. In addition, a member of the public may register a request with the Department of Legislative Services to receive information about emergency regulations by U.S. mail or electronic mail. Finally, the bills authorize the committee to exercise any power it has over emergency or proposed regulations over specific, distinct, and severable provisions of an emergency or proposed regulation.

Personnel

Budget Actions on State Personnel

Employee Compensation

Total State expenditures for employee compensation, which are estimated to cost \$5.5 billion in fiscal 2005, constitute a major component of the fiscal 2005 budget. Over the fiscal 2004 working appropriation, regular employee expenditures increase \$194.2 million, or 4.0 percent, to \$5.1 billion in the fiscal 2005 budget. Contractual employee expenditures increase \$6.1 million, or 1.5 percent, over the fiscal 2004 working appropriation. In fiscal 2005, many components of compensation unavailable to regular employees in fiscal 2004 are again available. The Governor's proposed 1.6 percent general salary increase was replaced with a \$752 flat-rate general salary increase; merit or increment increases are available to all eligible employees.

The State's match of up to \$600 in contributions to individual deferred compensation plans is again not funded for fiscal 2005. Furthermore, although the fiscal 2005 budget allows a \$22.8 million increase for health insurance, status quo coverage in fiscal 2005 requires an increase of approximately \$70 million. Since the fiscal 2005 budget requires that any changes in health insurance coverage have to be agreed upon as a result of signed memoranda of understanding negotiated with labor organizations, the State could be facing a \$50 million problem regarding the cost of employee health insurance. Workers' compensation insurance shows a relatively large increase due to an Injured Workers' Insurance Fund operating account surplus available in fiscal 2004 but no longer available in fiscal 2005.

Position Cap and Elimination

The fiscal 2005 budget again caps the number of Executive Branch personnel but, unlike last year, this cap excludes higher education positions. Accordingly, the 74,100 full-time equivalents (FTE) limit in fiscal 2004 was lowered to 52,834 FTEs for fiscal 2005; the number of Executive Branch FTE contractuels is capped at 2,811. An exception to the contractual ceiling is given to the Department of Juvenile Services, which may create up to 360 FTE contractual positions to operate the Charles H. Hickey Jr., School.

The fiscal 2005 budget directs the Governor to abolish the number of positions necessary to meet the fiscal 2005 cap and specifies that at least half of the position reductions must be classified as officials and administrators or positions related to government relations or public information. However, the Administration can raise the fiscal 2005 cap by the number of non-State positions added in fiscal 2004 through the "Rule of 250" or Section 19 of the 2003 budget bill (Chapter 202 of 2003).

For a more detailed discussion of budget actions on State personnel, see Part A – Budget and State Aid of this *90 Day Report*.

Health Insurance

On December 8, 2003, President Bush signed into law the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 which establishes a voluntary prescription drug benefit as Medicare Part D. *Senate Bill 614 (passed)* requires the State Employee and Retiree Health and Welfare Benefit Plan (State plan) to continue to include a retiree prescription drug benefit plan. The State plan shall continue providing drug benefits to retirees despite the enactment of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 or any other federal law permitting states to discontinue prescription drug benefit plans to state retirees.

Military Administrative Leave

Chapter 389 of 2003 allowed State employees who serve in the military to receive paid leave while on active duty; the leave is limited to the difference between a member's federal active duty base salary and State base salary or direct wages and may not exceed an employee's State salary. Eligible employees must elect to use the military administrative leave authorized by Chapter 389 or the fully paid military leave (up to 15 days) allowed under a separate provision of law. The leave took effect July 1, 2003, and is scheduled to terminate July 1, 2004.

Senate Bill 394/House Bill 201 (both passed) extends the July 1, 2004, termination date to June 30, 2005, for military administrative leave granted to a regular employee of any branch of State government who is on, or called to, active duty on or after July 1, 2003. Approximately 250 Executive Branch employees are on active duty in addition to employees from other branches; 150 have participated in the military administrative leave program since it began.

Pensions and Retirement

Retiree Health Care

Postretirement Health Benefits Trust Fund

Maryland partially subsidizes the health insurance premiums for retired State employees. Like most other states, Maryland currently funds this subsidy on a "pay-as-you-go" basis. The State's actuary has informally estimated the unfunded liabilities associated with this subsidy to be approximately \$3 billion. To address these growing costs and anticipate the time when government accounting standards may require recognition of these liabilities, *Senate Bill 548/House Bill 1095 (both passed)* establish the Postretirement Health Benefits Trust Fund. The purpose of the fund is to assist the State in financing the postretirement health insurance subsidy paid by the State.

Beginning in fiscal 2006, any subsidy received by the State that is provided to employers as a result of the federal Medicare Prescription Drug, Improvement, and Modernization Act of

2003 or other similar federal subsidy must be deposited into the fund. The members of the Board of Trustees for the State Retirement and Pension System (SRPS) are the fund's trustees and are required to invest the fund's assets, to the extent possible, in the same manner as those of the other systems of SRPS. For fiscal 2006 through 2016, no payments may be made from the fund. For fiscal 2016 and each fiscal year thereafter, the board of trustees must transfer to the general fund, for the sole purpose of assisting in the payment of the State's postretirement health insurance subsidy, the lesser of (1) one-quarter of the prior year's investment gains; or (2) the amount necessary to pay the annual health insurance premium and other costs that constitute the State's postretirement health insurance subsidy. If for any reason the State discontinues the postretirement health insurance subsidy, the fund's assets must be transferred to the general fund.

Group health plans, such as the State plan, that provide employment-based retiree health care coverage with a drug benefit at least actuarially equivalent to the Medicare Part D plan will receive federal subsidies of 28 percent of costs for coverage (above \$250 and up to \$5,000) per qualified retiree in 2006. The federal subsidy is 28 percent in 2006, and then indexed in out-years to the annual growth in average per capita spending by Medicare beneficiaries for Part D drugs.

Maryland Transit Administration Retiree Health Benefit

Senate Bill 63/House Bill 835 (both passed) permit a surviving spouse or dependent child of a Maryland Transit Administration retiree to participate in the State Employees and Retirees Health and Welfare Benefits Plan after the retiree's death. These individuals had previously participated in the retiree health plan until an opinion by the Attorney General held that they were not eligible.

Employees of Child Support Services Vendors – Purchase of Additional Service Credit

The General Assembly passed Senate Bill 78/House Bill 812 of 2003 to allow members of the Employees' Retirement System (ERS) or the Employees' Pension System (EPS) who were formerly employed by a private vendor that provided child support services to receive or purchase additional service credit. That legislation was vetoed by Governor Ehrlich. During the 2004 session, the General Assembly voted to override the Governor's veto and the bills were signed into law as **Chapters 1 and 4 of 2004**.

Chapters 1 and 4 apply to 51 members of ERS or EPS who (1) were employees of the State prior to November 1, 1996; (2) as of November 1, 1996, were employed by a private vendor to provide child support enforcement services in Baltimore City; and (3) resumed employment with the State as of November 1, 2002. Chapters 1 and 4 allow these individuals to receive service credit for the time these individuals were employed by the private vendor through October 31, 2002, subject to an actuarial reduction of member contributions not repaid.

Reemployment of Retirees

A program to allow certain retirees of the Teachers' Pension System (TPS) and Teachers' Retirement System (TRS) to receive both a pension and a salary under specified circumstances will terminate on June 30, 2004. While the program had been effective in bringing approximately 900 retired educators back to work, legislators heard testimony on abuses of the program. These abuses included: teachers returning to high-performing schools when the purpose of the program had been to direct them to needier schools; teachers rehired at excessive salaries; and rehired teachers having only limited classroom duties, again in contravention to the goals of the program.

A retiree of a teachers' or employees' system who receives a service retirement allowance or vested allowance and who returns to employment with a participating employer of SRPS may receive a reduction in benefits. Benefits are reduced dollar-for-dollar by the amount that the retiree's earnings exceed the difference between the average final salary and the basic allowance at the time of retirement. This limitation applies if the retiree is reemployed with the same employer from which the individual retired or if the retiree becomes reemployed within 12 months of receiving an early service retirement allowance.

In the past five years, Chapter 518 of 1999, Chapter 245 of 2000, and Chapter 732 of 2001 created exemptions from the earnings limitation for retired teachers, principals, and supervisors of principals (respectively) who are reemployed under certain circumstances. These exemptions were enacted to address statewide teacher and principal shortages. In addition to the exemptions created for retired school personnel, Chapter 733 of 2001 created a temporary exemption from the earnings limitation for retired health care practitioners reemployed on a contractual basis by the Department of Health and Mental Hygiene in a State health care facility or county board of health. All four chapter laws terminate June 30, 2004. Individuals who have benefited from the exemptions created by these chapters will now be subject to the earnings limitations.

Despite the program's termination, there remain significant opportunities for retired teachers to return to teaching without impact to their pensions. Current law provides that a retiree of a teachers' or employees' system may be rehired without an earnings limitation if the retiree is reemployed by a different employer than the one from which the retiree retired. A retired Maryland teacher may therefore seek reemployment with a different local school system than the one from which the individual retired with no earnings limitation. A retiree may also be rehired on a part-time basis by the same school system from which they are left; in that case, the retiree would need to coordinate with the school system and the State Retirement Agency to determine the amount the member can earn under the reemployment earnings limitation so as not to trigger the earnings offset.

The Department of Legislative Services (DLS) expects that the termination of the exemptions will lead to a decline in the number of teachers who retire in their first year of eligibility. Teachers who retire sooner pay less employee contributions into the system and collect benefits from the system over a longer period of time. These two factors lead to an

increase in State pension liabilities. If the existing exemptions for the earnings limitations had been extended during the 2004 session, DLS estimates that total liabilities for SRPS would have increased by as much as \$56.9 million. The termination of the exemptions will accordingly save SRPS approximately \$56.9 million in actuarial liabilities.

The reemployment bills that were introduced during the 2004 session included *House Bill 55 (failed)*, *House Bill 306 (failed)*, *House Bill 774 (failed)*, *House Bill 1153 (failed)*, *House Bill 1254 (failed)*, *Senate Bill 8 (failed)*, and *Senate Bill 308 (failed)*.

Special Pay Plan

Senate Bill 688 (passed) creates a Special Pay Plan effective July 1, 2005. A Special Pay Plan is a deferred compensation plan organized under section 401(a) of the Internal Revenue Code that allows an employer, in this case the State, to transfer the cash value of the unused annual leave and other undefined contributions at the time of an employee's separation from service into a tax-deferred account on behalf of the employee. The bill requires eligible State employees to deposit the value of their accrued annual leave remaining at the time of retirement into the Special Pay Plan. The Secretary of Budget and Management is required to select a designated company to administer the Special Pay Plan and may designate any unit of State government to oversee the Special Pay Plan. The employee would be able to manage the investment of the funds with the Special Pay Plan's third-party administrator, take the cash value of the unused annual leave, or roll over the unused annual leave to another qualified tax-deferred plan.

State employees may currently receive any unused annual leave as a lump-sum payment in their final payroll transaction. The lump-sum is determined by multiplying one-tenth of the employee's bi-weekly salary times the number of days of unused annual leave that were accrued at the end of the previous calendar year and current year annual leave that remains unused at the time of separation. For fiscal 2003, the State paid approximately \$17 million in unused annual leave.

Exhibit C-2 provides a comparison of the payment of unused annual leave to the employee in a lump-sum cash distribution versus participation in a Special Pay Plan. The employee and employer would each save the 7.65 percent federal payroll taxes for FICA. The employee would also defer payment of federal, State, and local taxes until distributions are made from the Special Pay Plan account. Eligibility for mandatory participation in the program would be determined by regulation.

Exhibit C-2
Tax Implications of Lump-sum Distributions vs. Special Pay Plan
Net Employee Payment

	Current Law Lump-sum Distribution	Special Pay Plan
Cash Value of Unused Annual Leave	\$10,000	\$10,000
Federal Payroll Taxes (FICA) (7.65%)	765	-
Federal Income Tax Withholding (28%) ¹	2,800	Tax Deferred
State and Local Income Tax (4.75% State – 2.9% Local) ²	765	Tax Deferred
Net Payment to Employee	\$5,670	\$10,000

¹Assumes federal marginal tax rate of 28 percent.

²Reflects average local income tax rate of 2.9 percent.

Source: Department of Legislative Services

Joint Committee on Pensions

The Joint Committee on Pensions of the General Assembly introduced six bills in the 2004 session. Five of these bills were introduced at the request of the board of trustees for the State Retirement and Pension System (SRPS), and four were passed. In addition, the joint committee introduced one bill under its own initiative that did not pass.

House Bill 644 (passed) repeals the requirement that the board of trustees for SRPS reduce a disability retirement benefit by any related workers' compensation benefits, if the disability retirement benefit is received for an occupational disease. **House Bill 891 (passed)** requires that creditable service, not eligibility service, will be the service criterion used to determine whether a member of the Law Enforcement Officers' Pension System (LEOPS) is eligible to participate in the system's deferred retirement option program. **House Bill 892 (passed)** requires that the administrative and operational expenses of the board of trustees and the State Retirement Agency be allocated to the various retirement and pension systems of SRPS on a pro rata basis according to the total membership of each system, rather than the current method based on the subsystems' assets.

In an attempt to reduce the complexity of the State's pension law, *House Bill 1057 (passed)* amended 10 provisions of the State Personnel and Pensions Article. Some of the provisions effective July 1, 2004, are:

- optional membership in EPS is eliminated for an individual who after June 30, 2004, becomes (1) an elected or appointed official; (2) an employee of the Governor's Office; (3) an employee of the Senate or House of Delegates; or (4) a member of a participating governmental unit;
- the requirement that appointed officials must work a minimum of 130 days in order to participate in EPS is repealed, requiring these individuals to enroll in EPS if they work at least 500 hours in a given fiscal year; and
- the procedures for the board of trustees to temporarily suspend a disability retirement allowance are clarified.

The following provisions are effective January 1, 2005:

- transfers from the teachers' or employees' retirement systems to the pension systems are discontinued;
- the retirement system tier in LEOPS is closed to new members in LEOPS;
- the options for members of TRS and ERS to make alternate retirement selections or voluntary contributions are discontinued; and
- the Local Fire and Police System is closed to new participating governmental units.

Failed Joint Committee Bills

House Bill 645 (failed), introduced at the request of the board of trustees, would have clarified that the five-year restriction on benefits paid on transferred service credit would have applied to service retirements only, thus exempting disability benefits from this requirement. *House Bill 643 (failed)*, introduced by the joint committee, would have altered the current procedures that govern the disability hearings for SRPS.

Miscellaneous Pension Bills

Senate Bill 78/House Bill 148 (both passed) remove the requirement that the surviving spouse of a retired judge or former member must be age 50 or older to begin receiving the 50 percent survivor benefit that is normally paid to a spouse at the death of the retired judge. *House Bill 507 (passed)* removes the requirement for Board of Public Works' approval to rehire individuals on a temporary basis who retired under the Workforce Reduction Act of 1996 and the University System of Maryland Workforce Flexibility Act of 1998. The bill also removes the 2

percent aggregate limit on the reemployment of these individuals. *Senate Bill 504/House Bill 1255 (both passed)* authorize the City of Salisbury to transfer its firefighters and paramedics from EPS to LEOPS.

Senate Bill 397 (passed) provides that a former member of the teachers' pension system would be able to claim prior military service credit if the former member (1) was employed by the Maryland Department of Agriculture on or after July 1, 1985; (2) left State employment on or after June 30, 1997; (3) had earned at least 12 years of service credit prior to separation from State service; and (4) lived outside of the U.S. for a period of at least three years after leaving State service.

General Assembly

State Budget – Legislature's Authority to Add or Increase Items

Under Article III, Section 52 of the Maryland Constitution, the General Assembly is prohibited from increasing any budget item or adding any new appropriations item to the executive budget for Executive Branch agencies. The General Assembly can only increase or add an appropriations item relating to the Legislative or Judicial Branch. In addition, appropriations in the Executive Branch cannot be transferred by the General Assembly from one department, agency, or unit of the Executive Branch to another. Maryland is the only state in which the legislature cannot increase or transfer appropriations for the Executive Branch in the annual operating budget bill.

Senate Bill 370/House Bill 1247 (both failed) would have amended the Constitution, subject to ratification by the voters, to allow the General Assembly to increase and make additional appropriations for Executive Branch agencies. The total appropriation for the Executive Branch approved by the General Assembly would be limited to the total allowance for the Executive Branch submitted by the Governor. Therefore, an addition in one area would have necessitated a reduction in one or more other areas. The Governor would have been given line-item veto authority for items within the Executive Branch budget that were increased or added by the General Assembly. If the Governor exercised that veto authority, the presiding officers could convene an extraordinary session within 30 days after the Governor's action. The extraordinary session would be limited solely to the budget vetoes.

Legislative Review of Reductions

An appropriation in the Executive Branch budget may be reduced when the Governor finds and declares the reduction to be necessary to avoid a deficit in the fiscal year for which the appropriation is made. A reduction made under this authority is subject to approval of the Board of Public Works, composed of the Governor, State Comptroller, and State Treasurer, and an appropriation may not be reduced more than 25 percent. However, the authority does not apply to appropriations in the budgets of the Legislative and Judicial branches, appropriations made for the payment of principal and interest on State debt, mandated appropriations for public schools,

the salary of a public officer during the term of office, or appropriations for the salary of any nontemporary employee in the State Personnel Management System.

House Bill 622 (failed) would have reduced the amount by which the Governor could cut an appropriation from 25 to 10 percent. It also would have required the Board of Public Works to provide at least a 21-day public notice and an invitation to the Legislative Policy Committee and budget committees of the General Assembly to comment on the proposed reduction. The bill would have required the Department of Legislative Services to prepare an analysis of the practical and fiscal effects of the proposed reductions within 10 days after the issuance of the public notice.

Office of Legislative Audits

During the course of an audit conducted by the Office of Legislative Audits (OLA), an apparent criminal violation may be discovered. *House Bill 124 (passed)* requires the Legislative Auditor to report an alleged criminal violation discovered during the course of an audit, review, or investigation to the Attorney General and an appropriate State's Attorney. The bill grants to the Attorney General the powers and duties of a State's Attorney, including the use of grand juries, to investigate and prosecute the alleged violations. The Attorney General and State's Attorney are also required to keep the Legislative Auditor's report confidential unless a prosecution is initiated.

Senate Bill 144/House Bill 121 (both failed) would have made several changes in the process for audits by OLA. The bill would have altered the audit schedule for the Maryland Agricultural Land Preservation Fund from once each year to once every three years. Audits of the Physician Rehabilitation Committee and licensees of the State Racing Commission would have been changed from once every two years to once every three years. Audits of licensees of the State Racing Commission would have been conducted contemporaneously with OLA's audit of the State Racing Commission. In addition, the bill would have repealed provisions requiring OLA to review the audit reports of local boards of education and local library boards.

Annotated Code

Code Revision

Although no new articles of the Annotated Code were produced this year as part of the ongoing Code Revision project, *Senate Bill 75 (Ch. 26)* was enacted to transfer miscellaneous provisions of the unrevised black volumes of the Code into appropriate revised articles (maroon volumes). This housekeeping measure, known as the "stragglers bill," also updates statutory language of the transferred provisions in the standard code revision style, without making substantive changes to the law. The Act recodifies provisions relating to:

- water companies;
- location of local correctional facilities;

- fines and forfeitures;
- catastrophic health emergencies;
- quarantine of vessels;
- complaints against civil and military officers;
- the Community Service Trust Fund;
- the Maryland African American Museum Corporation;
- costs of archeological work in a State construction project; and
- effect of military service on applications for licenses to engage in business.

Additionally, several provisions of law initially proposed for recodification were found by the review committee to be obsolete, and they are repealed in Senate Bill 75. In each instance, the Office of the Attorney General verified the finding that the provisions were no longer utilized. These provisions, none of which has been modified for 100 years or more, deal with:

- private institutions and societies for the care and protection of minors;
- withholding of wages by railroad companies; and
- provisions relating to the fees of local officers.

Another bill, *House Bill 1052 (Ch. 66)*, makes a variety of corrections to errors and omissions in the Public Safety Article, a revised article that was enacted in 2003 as part of the ongoing Code Revision process.

Annual Corrective and Curative Bills

Because the General Assembly delegates very little editorial control to the publishers of the Annotated Code with respect to making nonsubstantive and technical changes in the Code, the Department of Legislative Services has long had the statutory authority to prepare legislation to make these sorts of changes both in the statutory text and bill titles of prior years' enactments.

These corrective measures are the Annual Corrective Bill, *Senate Bill 74 (Ch. 25)*, and the Annual Curative Bill, *Senate Bill 73 (Ch. 24)*, respectively. Neither enactment contains any substantive change.

Study Commissions and Task Forces

Each year, the General Assembly creates temporary study commissions and task forces to conduct in-depth studies of important issues that are not possible to undertake during the annual sessions because of the pace of activities. The following bills relate to the creation of only those new study commissions and task forces that include members of the General Assembly in their membership.

Business Owner Compensation in Condemnation Proceedings

When a governmental entity acquires land in a condemnation proceeding, the owner is paid the fair market value of the property taken and, under certain circumstances, relocation expenses. If the owner is a business, the business's "goodwill" is not considered in determining fair market value. *Senate Bill 275 (passed)* creates a Task Force on Business Owner Compensation in Condemnation Proceedings. The task force will study (1) the concept of business goodwill, with a focus on small business goodwill, and the appropriateness of developing a method to determine its value to calculate compensation in condemnation proceedings; (2) the feasibility of requiring condemning agencies to study the effect of condemnation on businesses; (3) the appropriateness of establishing a fund to provide financial assistance for affected businesses; (4) the feasibility of shortening the condemnation process to lessen uncertainty for businesses; (5) the appropriateness of making a legislative proposal on business owner compensation in condemnation proceedings; and (6) the circumstances in which condemnation can be used.

Lending Equity

At the request of the Governor's Commission on Minority Business Enterprise Reform, the General Assembly passed *Senate Bill 324/House Bill 415 (both passed)* to create a Task Force on Lending Equity within Financial Institutions Providing State Depository Services. The task force will identify data to demonstrate whether financial institutions provide adequate access to credit and capital for minority business enterprises. The task force will also advise the State Treasurer in developing additional criteria for selection of financial institutions as depositories, and develop a strategy to implement a lending equity policy.

Parking for Individuals with Disabilities

Concerns about the potential for abuse in the process for obtaining parking placards and special registration plates for individuals with disabilities resulted in the passage of *Senate Bill 368 (passed)*, which creates a Task Force on Parking for Individuals with Disabilities. The task force will study current laws regarding parking privileges for individuals with disabilities and make recommendations, including draft legislation and regulations, on issues relating to parking placards, special registration plates, and parking spaces designated for those individuals.

Missing Vulnerable Adults

Maryland does not have a statewide plan to address missing vulnerable adults. It has been suggested that a process comparable to the “Amber Alert” system might be established to help locate disoriented adults, such as those suffering from Alzheimer’s disease, who become missing. *House Bill 1016 (passed)* creates a Task Force on Missing Vulnerable Adults. The task force will (1) identify, access, and compile data about missing adults; (2) make recommendations on establishing better communication between counties and the State when vulnerable adults are missing; (3) make recommendations to establish a system to locate and identify missing vulnerable adults and identify unclaimed deceased adults who may be missing vulnerable adults; (4) make recommendations for law enforcement protocols to work with the broadcast media to locate missing adults; and (5) investigate integration with Amber Alert and the broadcast media in locating missing vulnerable adults. A report of findings and recommendations will be made by October 1, 2005.

Elderly and Retiree Migration Into and Out of Maryland

The percentage of Maryland citizens who are over the age of 60 is expected to grow from 15 percent in 2000 to 23 percent in 2030. This demographic is affected by Marylanders moving out-of-state when they retire, as well as the movement of other seniors into the State. While the most current data regarding migration of people aged 65 and over show a net migration loss of Maryland residents aged 65 and older, there is a net migration gain for those aged 74 and over. *Senate Bill 122/House Bill 966 (both passed)* create a Task Force to Study the Dynamics of Elderly and Retiree Migration Into and Out of Maryland. The task force will review all aspects of Maryland’s elderly and retiree migration and evaluate its impact on tax policies and governmental expenditures for benefits. The task force will oversee and help prepare a comprehensive study to be conducted by the Maryland Institute for Governmental Service, the Maryland Institute for Policy Analysis and Research (University of Maryland, Baltimore County), Loyola College, and the Regional Economic Studies Institute.

Unemployment Insurance Financing

Senate Bill 262/House Bill 479 (both passed) extend the termination date of the Unemployment Insurance Funding Task Force by one year from December 31, 2003, to December 31, 2004. The task force, created in 2003, has been reviewing Maryland’s overall unemployment insurance system. Specifically, the task force is charged with examining the fairness of the existing charging and taxation system; the fairness of the existing eligibility and benefit provisions; the need for altering the current system of charging and taxation in order to maintain the Unemployment Insurance Trust Fund at a level sufficient to meet benefit needs; and the impact of changes in the national and State economies and their relationship to changes in the fund.

Access to Public Records

The State’s Public Information Act (PIA) regulates the access by members of the public to State and local government documents. Since its enactment in 1984, PIA has been the subject

of numerous amendments and proposed changes. In recent years, most attention has been directed to either the procedural aspects of PIA or to proposed additional exceptions to the general rule of unfettered public access. The General Assembly has not undertaken a comprehensive study of PIA for many years, and some feel that an assessment of the law as a whole (rather than consideration of items in a piecemeal fashion) would serve the underlying policy goal of open government.

House Bill 951 (passed) establishes a Study Commission to Study the Public's Access to Public Records to undertake such a study. The study commission will examine the law relating to access to public records, assess whether provisions may be obsolete, consult with the Judiciary on its study on public access to court records and the study's results, and make recommendations and propose legislation by December 1, 2004.

Exemption of Law Enforcement Officers' Pensions from Taxation

Income from accidental or special disability retirements is currently exempt from federal and State income tax, but ordinary pensions of public employees in hazardous professions are not. *House Bill 1125 (passed)* establishes a Task Force on the Exemption of Law Enforcement Officers' Pensions from Taxation. The task force will study the issue of exempting members of the State Police Retirement System, the Law Enforcement Officers' Pension System, the Local Fire and Police System, any local pension or retirement system for law enforcement officers, and parole and probation officers who are members of the Employees' Retirement System or the Employees' Pension System from State income taxes on their pensions. The study will focus on (1) the benefit that members would derive from an exemption; (2) the impact on State revenues and the ongoing structural budget deficit; (3) the impact on the State Retirement and Pension System; and (4) the administrative and legal changes necessary to implement such an exemption.

Criminal Offender Monitoring by Global Positioning Systems

House Bill 1242 (passed) creates a Task Force to Study Criminal Offender Monitoring by Global Positioning Systems (GPS). The task force will study how the State can utilize GPS technology to monitor certain classifications of individuals who have committed criminal offenses. Aspects to be investigated include how law enforcement can benefit from linkage to such technology to solve crimes and streamline workload; the feasibility of implementing a global positioning technology program, including a cost-benefit analysis; and issues relating to admissibility of evidence.

GPS was developed by the U.S. Department of Defense to provide navigation capabilities for the military. Since its implementation, GPS has been used in numerous civilian applications as well. The 24-satellite GPS system was completed in 1994, giving positioning accuracy of less than 100 meters in a typical civilian GPS receiver. Florida has been using GPS technology to monitor criminal offenders for several years, with 700 offenders currently being tracked by GPS. Florida has reportedly cut its recidivism rate among those tracked from 50 to 3 percent since the inception of the program.

Youth Gang Activities

Gang activities are on the rise in Maryland. Law enforcement-based research shows that there are approximately 3,600 gang members in Maryland, Washington, D.C., and Virginia. In Prince George’s County alone, the police department reports that the county has 30 to 40 gangs, containing 300 to 400 young people, which are often involved in violent crime such as murder, carjacking, robbery, and assault with weapons. *House Bill 1285 (passed)* creates a Task Force to Study Youth Gang Activities that will receive testimony from community members, police officers, teachers, and other experts regarding their experience in fighting emerging gang activities. The task force will (1) collect data concerning trends in youth gang activity in Baltimore City, Montgomery County, and Prince George’s County; (2) examine prosecution diversion programs and “wrap-around services” available to youth offenders and their families and rate the success of those programs; (3) examine effective practices in other states; (4) perform an assets survey of current community-based gang initiatives in Baltimore City, Montgomery County, and Prince George’s County; and (5) make appropriate recommendations.

Status of Women and Information Technology

According to a study by Computer Research Associates, the number of women who are choosing Information Technology (IT) for undergraduate study is declining. This decline is also evident in the number of women in the IT workforce. *Senate Bill 917/House Bill 1538 (both passed)* create a Task Force on the Status of Women and Information Technology to study this decline and its impact on the future of the IT workforce in Maryland. The task force will develop a statewide Women and Information Technology Plan, as well as strategies for implementing and promoting the plan.

Program Evaluation (“Sunset Review”)

The Maryland Program Evaluation Act, enacted in 1978, is utilized by the General Assembly as a mechanism to monitor and evaluate approximately 70 regulatory boards, commissions, and other agencies of the Executive Branch of State government. The Department of Legislative Services (DLS) is required under this law to periodically undertake the evaluations according to a statutorily based schedule. These evaluations are more commonly known as “sunset review” because the agencies subject to review are usually also subject to termination (“sunset”) unless legislation is enacted to reauthorize them. The methodology for conducting the evaluations by DLS involves an extensive evaluation process by DLS staff. The goals of the process have evolved to reflect the General Assembly’s interest in identifying the strengths and weaknesses of the various regulatory entities that are subject to program evaluation and addressing through legislation appropriate issues relating to the structure, performance, and practices of the agencies.

Bills extending the sunset dates on regulatory entities under the Program Evaluation Act are:

- State Board of Dietetic Practice – *Senate Bill 110/House Bill 353 (both passed)*.

- Respiratory Care Professional Standards Committee – *Senate Bill 72/House Bill 108 (both passed)*.

For an additional discussion of these bills, see under the subpart “Health Occupations” under Part J of this *90 Day Report*.