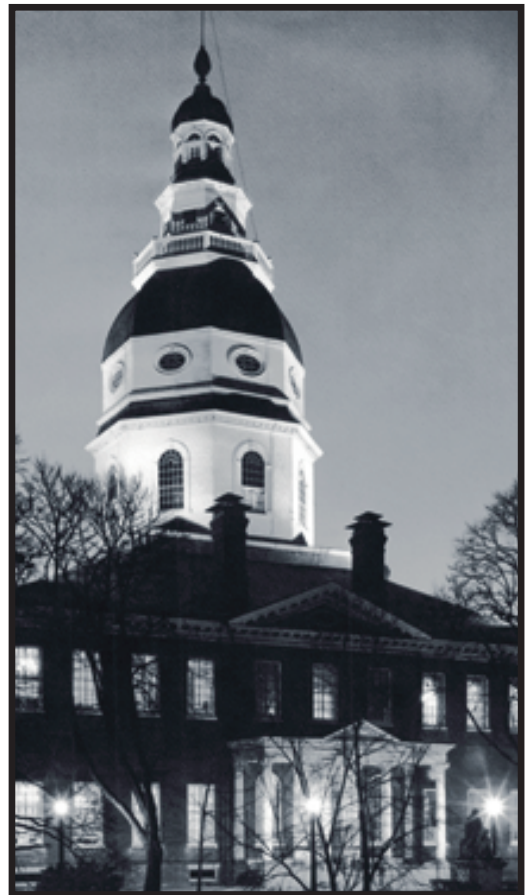


# MAJOR ISSUES REVIEW



*2007-2010*

Department *of* Legislative Services

MARYLAND GENERAL ASSEMBLY

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July 1, 2010

The Honorable Thomas V. Mike Miller, Jr., President of the Senate  
The Honorable Michael E. Busch, Speaker of the House of Delegates  
Members of the General Assembly

Ladies and Gentlemen:

I am pleased to present to you the *Major Issues Review 2007-2010*.

This document summarizes legislative activity over the four-year term. It includes discussion of all major issues, significant bills that did not pass, and gubernatorial vetoes of major legislation.

Information about the operating and capital budgets, as well as aid to local governments, is presented in Part A. Also included in Part A are relevant comparative data relating to State expenditures during the 2007-2010 term.

Like the *90 Day Report* on the 2010 session, the four-year *Major Issues Review* is divided into 12 major parts which are listed in the contents. An alphabetical checklist of major issues considered during the 2007-2010 term is also provided, as well as an index which converts the chapter numbers for each session to their respective bill numbers.

I hope that you find the *Major Issues Review* as helpful a document as you have found similar four-year review documents that were prepared in the past. If you have any questions about the contents of this document, please contact me.

Sincerely,

Karl S. Aro  
Executive Director

KSA/ncs



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# **Part A**

## **Budget and State Aid**

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### **Operating Budget**

#### **Evolution of a Fiscal Crisis**

##### **Background**

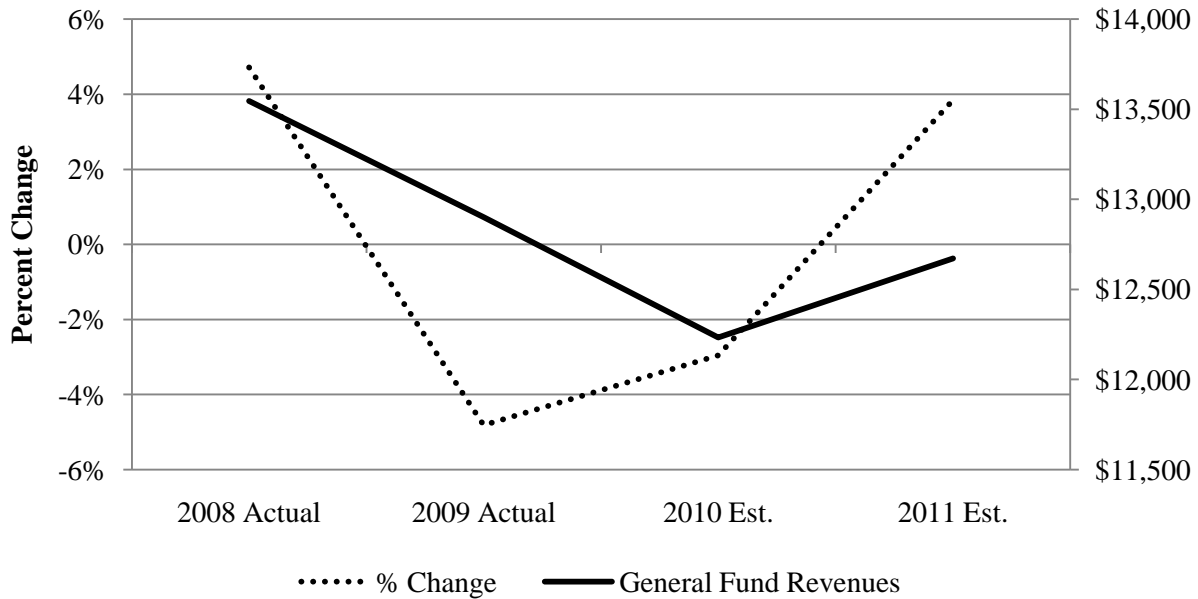
The 2007-2010 legislative term began under difficult fiscal conditions as the State resolved a large structural deficit caused by the phase-in of 2002 legislation to enhance education spending and ended with another large structural deficit caused by the longest post-World War II recession.

Chapter 288 of 2002, the Bridge to Excellence in Public Schools Act, implemented a multi-year increase of \$1.3 billion in additional general fund local education aid without a corresponding revenue source. Despite better-than-expected revenue attainment in mid-decade, by the 2007 session, newly elected Governor Martin J. O'Malley, faced an estimated fiscal 2008 structural shortfall of approximately \$1.3 billion as estimated in the December 2006 *Spending Affordability Committee* (SAC) report. A special session which concluded November 2007 adopted a combination of revenue enhancements, including a one percentage point increase in the State sales tax, and spending cuts to balance the budget.

The United States economy entered a recession in December 2007, which has been the longest downturn since the Great Depression of the 1930s. Its effects were felt at each of the 2008 through 2010 sessions as the State grappled with multi-billion dollar deficits. A housing bubble caused home prices to escalate and spawned a variety of creative financing products including no-interest, balloon, and variable subprime loans. Ultimately, the bubble burst, but the impact had a far reaching impact. Foreclosures of subprime mortgage loans undermined the value of investment portfolios, resulted in the failure of high profile firms, and negatively affected the stock market. Rising energy prices also dampened economic activity, particularly in the auto industry.

In its December 2008 forecast, the Board of Revenue Estimates (BRE) predicted that general fund revenues would eclipse \$14.7 billion in fiscal 2009. However, actual revenue fell below \$12.9 billion, a decline of nearly \$1.9 billion from the estimate. Actual and estimated year-over-year revenue performance is shown in Exhibit A-1.1. As shown, revenue fell by nearly 5% in fiscal 2009 and is estimated to fall by another 3% in fiscal 2010. Actual general fund revenue in fiscal 2008 was \$13.5 billion, falling to \$12.2 billion in fiscal 2010. While some revenue growth is projected for fiscal 2011, the BRE long-term forecast shows that revenue is not expected to surpass the fiscal 2008 level until fiscal 2013.

**Exhibit A-1.1**  
**Ongoing General Fund Revenue**  
**Fiscal 2008-2011**  
**(\$ in Millions)**

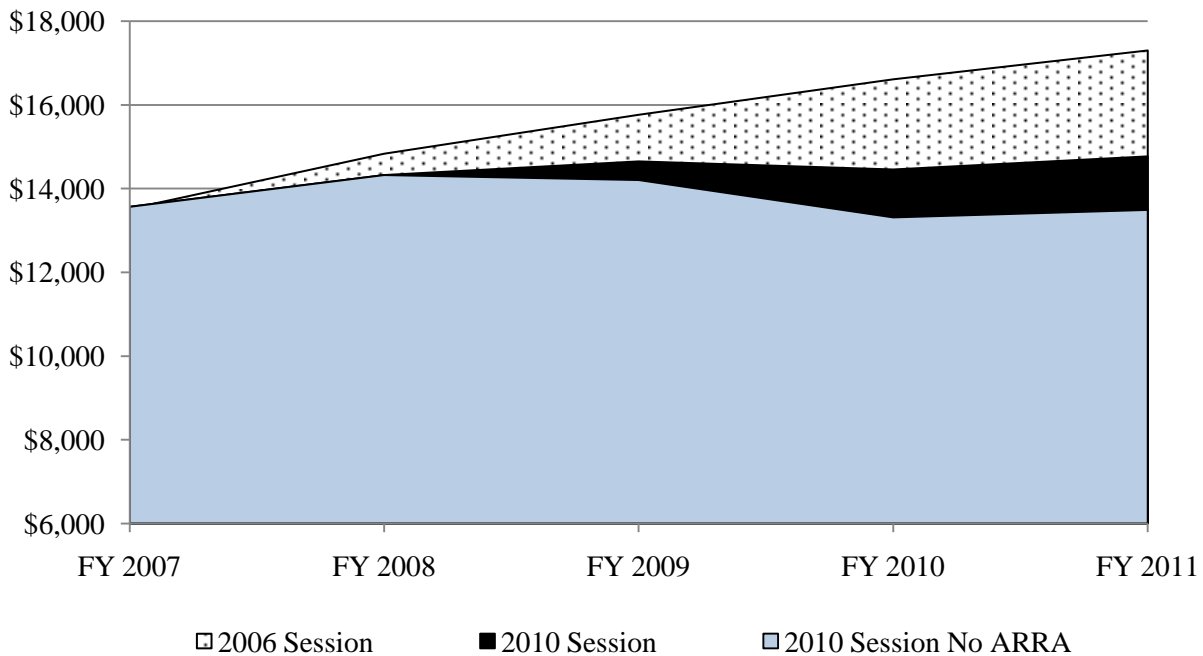


### Engineering a Solution

Efforts to address annual shortfalls have produced budgets that were balanced on a cash basis, but which made limited progress in resolving the overall structural imbalance between ongoing general fund revenues and spending. A combination of actions were adopted each year involving one-time and ongoing budget reductions, new revenues, transfers from the Rainy Day Fund and other non-general fund sources, and federal stimulus aid which supplanted general fund spending.

**Budget Reductions:** Spending cuts have been a mainstay of efforts to maintain balanced budgets. The Governor reduced spending annually in formulating the allowance and withdrew spending through the Board of Public Works (BPW) eight times since taking office. A large amount of general fund spending was withdrawn during the 2009 session through supplemental budgets and replaced by federal stimulus funds. The legislature also adopted its own spending cuts each year. Exhibit A-1.2 compares actual budgets to the Department of Legislative Services (DLS) baseline budget estimate from the December 2006 SAC report for the fiscal 2007 through 2011 period. At that time, it was expected that ongoing general fund spending would total \$17.3 billion by fiscal 2011. However, the fiscal 2011 legislative appropriation, exclusive of federal stimulus funds, is \$13.5 billion; a reduction from the baseline of \$3.8 billion. If federal stimulus spending is included, then the baseline was reduced by \$2.5 billion, to \$14.8 billion.

**Exhibit A-1.2**  
**Slowing General Fund Budget Growth**  
**Spending Compared to Baseline Growth**  
**Fiscal 2007-2011**  
**(\$ in Millions)**



ARRA: American Recovery and Reinvestment Act of 2009

Since taking office in January 2007, the Governor has implemented eight rounds of interim reductions through BPW, as seen in Exhibit A-1.3. Nearly \$1.1 billion in general funds and \$0.6 billion in other funds (largely federal matching funds for Medicaid and other programs) were cut, along with 2,416 regular positions. Most of the reductions were one-time in nature because approximately two-thirds of the general fund budget consists of statutorily mandated entitlement programs and formula-based funding. The bulk of mandated spending supports Medicaid and local education aid programs.

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**Exhibit A-1.3**  
**Cost Containment through the Board of Public Works**  
**Fiscal 2008-2010**  
**(\$ in Millions)**

	<u>Date</u>	<u>General Funds</u>	<u>Other Funds</u>	<u>Total Positions</u>
<b>Fiscal 2008</b>				
1	July 2007	\$128.4	\$67.7	147.4
<b>Subtotal</b>		<b>\$128.4</b>	<b>\$67.7</b>	<b>147.4</b>
<b>Fiscal 2009</b>				
2	June 2008	\$50.1	\$25.0	11.5
3	October 2008	297.2	50.5	830.2
4	November 2008	0.0	1.7	0.0
5	March 2009	67.1	14.6	893.7
<b>Subtotal</b>		<b>\$414.5</b>	<b>\$91.8</b>	<b>1,735.3</b>
<b>Fiscal 2010</b>				
6	July 2009	\$205.3	\$62.3	57.5
7	August 2009	223.3	265.1	363.5
8	November 2009	102.8	97.7	112.0
<b>Subtotal</b>		<b>\$531.4</b>	<b>\$425.1</b>	<b>533.0</b>
<b>Grand Total</b>		<b>\$1,074.3</b>	<b>\$584.6</b>	<b>2,415.7</b>

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**Federal Stimulus Funding:** In February 2009, President Barack H. Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law. ARRA's provisions support State programs by funding infrastructure, education programs, and human services programs, as well as providing discretionary funds. Exhibit A-1.4 shows that ARRA appropriations total \$4.5 billion over the fiscal 2009 to 2011 period, including \$1.6 billion in fiscal 2011.



**Exhibit A-1.4**  
**Federal Stimulus Funding**  
**Fiscal 2009-2011**  
**(\$ in Millions)**

**Federal Stimulus Funds Appropriated in the State Budget**

<u>Code</u>	<u>Agency Title</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Total</u>
<b>ARRA Funds Supplanting General Funds</b>					
M00	Department of Health and Mental Hygiene	\$443.5	\$767.6	\$778.0	\$1,989.1
N00	Department of Human Resources	1.5	1.5	1.5	4.5
Q00	Department of Public Safety and Correctional Services	0.0	53.7	53.2	106.9
R00	Maryland State Department of Education	0.0	297.3	422.3	719.7
R62	Maryland Higher Education Commission	0.0	0.0	0.0	0.0
V10	Department of Juvenile Services	0.0	4.5	4.5	9.0
W10	Department of State Police	0.0	19.9	19.9	39.7
<b>Subtotal</b>		<b>\$445.0</b>	<b>\$1,144.5</b>	<b>\$1,279.4</b>	<b>\$2,868.9</b>
<b>ARRA Funds Not Supplanting General Funds</b>					
C90	Public Service Commission	\$0.0	\$0.0	\$0.4	\$0.4
D13	Maryland Energy Administration	0.0	44.8	23.6	68.3
D15	Executive Boards, Commissions, and Offices	0.1	13.2	11.4	24.7
D26	Department of Aging	0.0	2.0	0.0	2.0
J00	Maryland Department of Transportation	15.0	304.0	211.7	530.7
M00	Department of Health and Mental Hygiene	2.7	0.0	2.8	5.5
N00	Department of Human Resources	66.9	88.1	48.1	203.2
P00	Department of Labor, Licensing, and Regulation	1.8	34.9	0.0	36.8
R00	Maryland State Department of Education	6.8	403.3	9.4	419.5
S00	Department of Housing and Community Development	6.5	183.0	2.8	192.2
T00	Department of Business and Economic Development	0.3	0.0	0.0	0.3
U00	Maryland Department of the Environment	0.0	132.4	2.5	134.9
W00	Department of State Police	0.0	2.4	0.4	2.8
X00	Public Debt	0.0	0.9	7.6	8.5
<b>Subtotal</b>		<b>\$100.1</b>	<b>\$1,208.8</b>	<b>\$320.7</b>	<b>\$1,629.6</b>
<b>Total</b>		<b>\$545.1</b>	<b>\$2,353.3</b>	<b>\$1,600.1</b>	<b>\$4,498.5</b>

ARRA: American Recovery and Reinvestment Act of 2009

With respect to the State budget, ARRA's most significant impact relates to the funds that can support State general fund commitments. The fiscal 2011 budget includes \$1.3 billion to support Medicaid, education, and discretionary State spending. The funds are used in the place of general funds to sustain State funding from fiscal 2009 to 2011. When the funds are no longer available, the State will need to replace the funds or reduce spending.

Medicaid funds total \$778 million in fiscal 2011. Of this, \$389 million has been authorized by the ARRA through December 31, 2010. These funds are available because the legislation increased the federal share of Medicaid funding by increasing the Federal Medical Assistance Percentage. The budget assumes an additional \$389 million will be authorized to support the last half of the fiscal year.

The ARRA provides \$879.8 million in Fiscal Stabilization funds. The legislation requires that 81.8%, which totals \$719.7 million, support education programs. The education funds must first be used to restore elementary and secondary school reductions to fiscal 2008 spending levels. Since Maryland has increased spending, this does not apply. Remaining funds must be used to support State formula increases in fiscal 2010 and 2011 for elementary and secondary education or to restore reductions made to State higher education funding below fiscal 2008 or 2009 levels. The Administration has applied these funds to support elementary and secondary education increases, the largest of which support the geographic cost of education index and supplemental grants (\$108.6 million), compensatory education (\$66.3 million), and local employee fringe benefits (\$228.1 million).

The ARRA allows that 18.2% of the Fiscal Stabilization funds can support general government services. These discretionary funds total \$82.4 million in fiscal 2011. The funds support State agency operations, including employee salaries at the Department of Public Safety and Correctional Services (DPSCS), Department of Juvenile Services (DJS), and Department of State Police.

### **Other Federal Fiscal Stimulus Funds**

The remaining ARRA appropriations total \$320.7 million. These funds provide additional support for State agencies but do not supplant any general funds. The largest share provides \$211.7 million for transportation capital programs, including the State Highway Administration (\$144.4 million) and the Maryland Transit Administration (\$66.7 million). Other uses of these funds include the Supplemental Nutrition Assistance Program at the Department of Human Resources (DHR) (\$21.7 million) and energy efficiency programs at the Maryland Energy Administration (\$19.7 million).

The legislation also provides federal grants for which State and local governments must compete. For example, this includes grants to support law enforcement officers, habitat conservation, and the arts. At this point, it is unclear how much of these funds the State will receive, and they are not included in the ARRA estimates for Maryland. Additional funds may be appropriated by budget amendment if the State is awarded these grants.

To promote accountability, State and federal governments have web sites that track the ARRA spending. Maryland's web site is <http://statestat.maryland.gov/recovery.asp>, and the federal government's web site is <http://www.recovery.gov/>.

**Budget Reconciliation Legislation:** In addition to annual budget bills, budget reconciliation legislation was passed at the 2007 special session and the 2008 through 2010 regular sessions. These bills included provisions that raised revenues, affected transfers from a variety of non-general funds, and modified existing statutory mandates often tied to contingent general fund reductions. A summary of the \$3.2 billion in actions included in reconciliation legislation from the 2008 through 2010 regular sessions is shown in Exhibit A-1.5. Fund transfers, which totaled \$1.6 billion, represented 50% of the total actions.

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**Exhibit A-1.5**  
**Summary of Provisions in Budget Reconciliation Legislation**  
**Fiscal 2008-2011**  
**(\$ in Millions)**

<u>Agency Title</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
Revenues	\$60.0	\$20.4	\$362.0	\$398.9	\$841.3
Transfers	100.0	806.2	565.6	155.8	1,627.7
Contingent Reductions	0.0	26.3	342.1	406.3	774.6
<b>Total</b>	<b>\$160.0</b>	<b>\$852.8</b>	<b>\$1,269.8</b>	<b>\$961.0</b>	<b>\$3,243.6</b>

---

Notable items by fiscal year include:

- **Fiscal 2008:** \$100.0 million was transferred from the Dedicated Purpose Account (DPA), representing payments made toward the State's retiree health care liability. Another \$60.0 million in sales tax revenue that was to be credited to a fund toward replacement of Medevac helicopters was instead credited to the general fund;
- **Fiscal 2009:** Transfers in excess of \$800.0 million were largely comprised of \$367.0 million from the local income tax reserve account, \$137.0 million from Program Open Space (POS), \$73.0 million in other balances from the DPA, and \$53.0 million in remaining balance from the fund for replacement of Medevac helicopters;
- **Fiscal 2010:** Revenue actions totaled \$362.0 million, with nearly \$300.0 million from a percentage of Highway User Revenues (HUR) permanently redirected to the general fund. Among the larger transfers to the general fund, \$187.0 million came from the transfer tax and POS, \$155.0 million from the Bay Restoration Fund, and \$133.0 million

from the fund balances of the University System of Maryland (USM). Most of the environment-related transfers are, or will be, replaced with bond funding. Of the \$342.1 million in contingent reductions tied to budget reconciliation legislation, \$175.0 million represented general fund cuts that were replaced by special funds including Medicaid (\$57.9 million), higher education (\$46.5 million), and low-income energy assistance (\$35.6 million); and

- **Fiscal 2011:** Of nearly \$400.0 million in revenue actions, \$363.0 million is part of the permanent dedication of a share of HUR to the general fund. Contingent reductions in excess of \$400.0 million includes a \$350.0 million cut in aid to education which is being replaced by special funds from the local income tax reserve account which are being credited to the Education Trust Fund. Approximately \$111.0 million of the transfers come from various special fund pay-as-you-go (PAYGO) programs, with portions replaced by general obligation bond funding.

**Rainy Day Fund:** Transfers of amounts in excess of the 5% mandated target balance from the Rainy Day Fund also featured prominently in annual budget balancing plans in fiscal 2008 through 2010. As shown in Exhibit A-1.6, nearly \$1.4 billion in reserve balances were used to bolster general fund spending and balance through annual budget bills. At no time did the balance dip below the 5% requirement, however.

---

**Exhibit A-1.6**  
**Summary of Rainy Day Fund Transfers to the General Fund**  
**Fiscal 2008-2010**  
**(\$ in Millions)**

		<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Total</u>
HB 50	2007 Session Budget Bill	\$978.0			\$978.0
SB 90	2008 Session Budget Bill		\$125.0		125.0
HB 100	2009 Session Budget Bill		45.0	\$210.0	255.0
SB 140	2010 Session Budget Bill			25.0	25.0
<b>Subtotal</b>		<b>\$978.0</b>	<b>\$170.0</b>	<b>\$235.0</b>	<b>\$1,383.0</b>

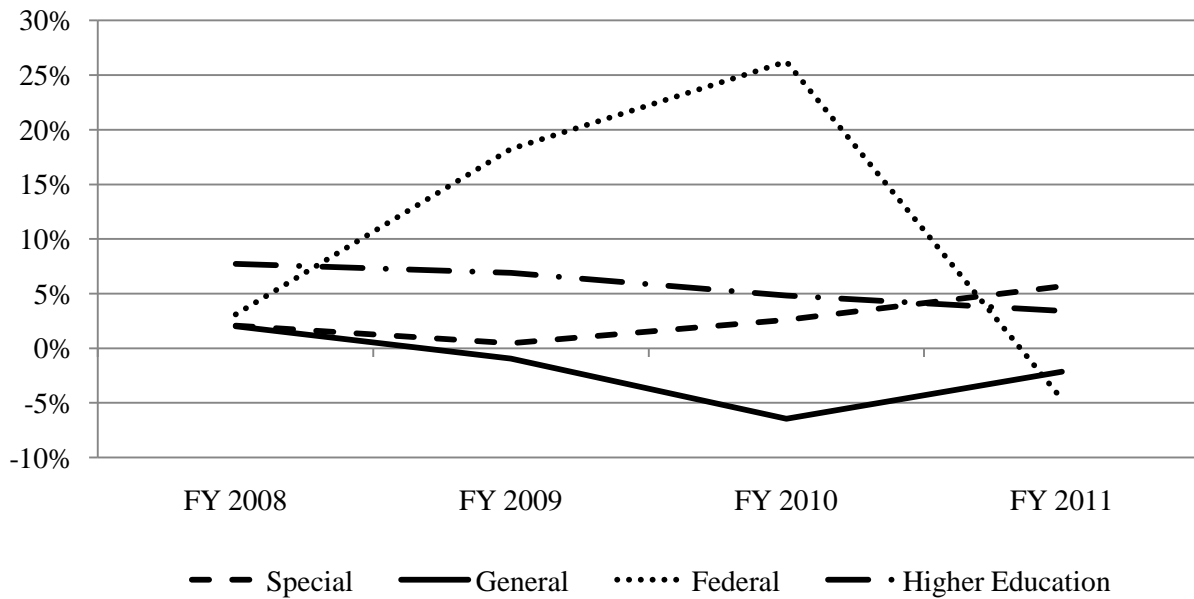
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**Budget Growth and Contraction (Fiscal 2007-2011)**

Between fiscal 2007 and 2011, total expenditures increased by \$3.2 billion, or 11.2%. On average, this equates to about 2.7% annual growth. Changes by revenue source reveal wide variations as the recession resulted in large reductions in general fund sources that were in part

replaced by a large influx of federal assistance. The percent change in spending attributed to each revenue source in the budget can be seen in Exhibit A-1.7.

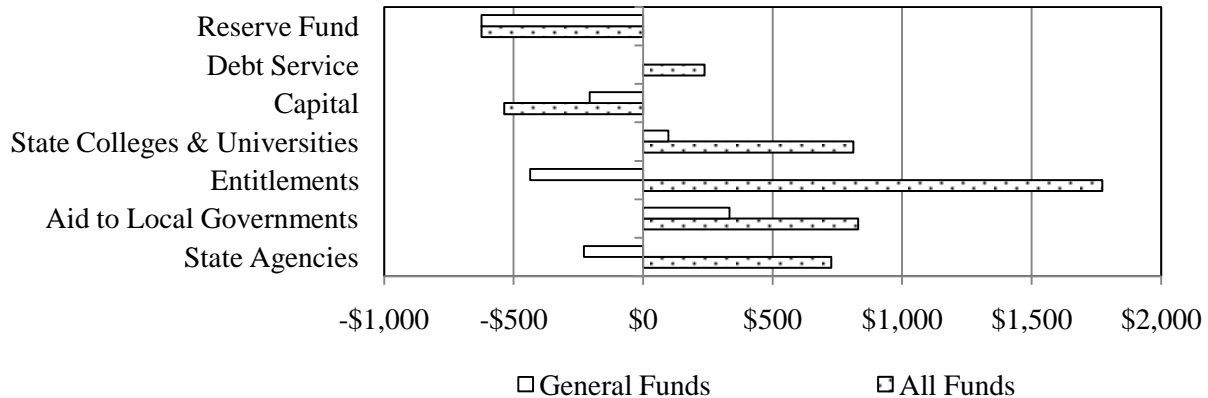
**Exhibit A-1.7  
Budget Change by Revenue Source  
Fiscal 2008-2011**



Nominal general fund growth occurred in fiscal 2008, followed by decreases in spending in fiscal 2009-2011. In part, general fund spending was replaced by federal stimulus dollars, which saw double-digit growth in fiscal 2009 and 2010. Special fund growth was flat throughout the period, except in fiscal 2011 when a large increase from the Education Trust Fund appears due to use of the local income tax reserve account for education aid. Higher education saw growth of 8 and 7% in fiscal 2008 and 2009, respectively, followed by lesser growth in fiscal 2010 and 2011. The dynamics of budgetary change from general and total fund sources is shown in Exhibit A-1.8. The largest growth is in entitlement programs, followed by aid to local governments and higher education. State agencies and debt service also increased. Decreases are seen in PAYGO capital and deposits to the Rainy Day Fund. Each of these areas is discussed below.

**Entitlement Programs:** Entitlements, which largely fund the Medicaid program, grew by \$1.8 billion (31.9%) in all funds. General funds fell by \$436 million (-17.1%). Much of this disparity is due to the replacement of general funds with federal stimulus dollars, as well as higher caseloads and medical inflation matched by the federal government.

**Exhibit A-1.8**  
**Budget Change by Category**  
**Fiscal 2007-2011**  
**(\$ in Millions)**



**General Funds**

	<b>FY 2007</b>	<b>FY 2011</b>		
	<b>Actual</b>	<b>Leg. Approp.</b>	<b>\$ Change</b>	<b>% Change</b>
State Agencies	\$4,721	\$4,493	-\$229	-4.8%
Aid to Local Governments	5,029	5,362	334	6.6%
Entitlements	2,552	2,115	-436	-17.1%
State Colleges & Universities	1,048	1,146	98	9.4%
Capital	217	11	-206	-95.0%
Reserve Fund	638	15	-623	-97.7%
<b>Total</b>	<b>\$14,204</b>	<b>\$13,142</b>	<b>-\$1,063</b>	<b>-7.5%</b>

**Total Funds**

	<b>FY 2007</b>	<b>FY 2011</b>		
	<b>Actual</b>	<b>Leg. Approp.</b>	<b>\$ Change</b>	<b>% Change</b>
State Agencies	\$9,218	\$9,944	\$726	7.9%
Aid to Local Governments	6,460	7,290	830	12.8%
Entitlements	5,566	7,339	1,773	31.9%
State Colleges & Universities	3,924	4,736	812	20.7%
Capital	2,182	1,645	-537	-24.6%
Debt Service	769	1,006	237	30.9%
Reserve Fund	638	15	-623	-97.7%
<b>Total</b>	<b>\$28,757</b>	<b>\$31,975</b>	<b>\$3,218</b>	<b>11.2%</b>

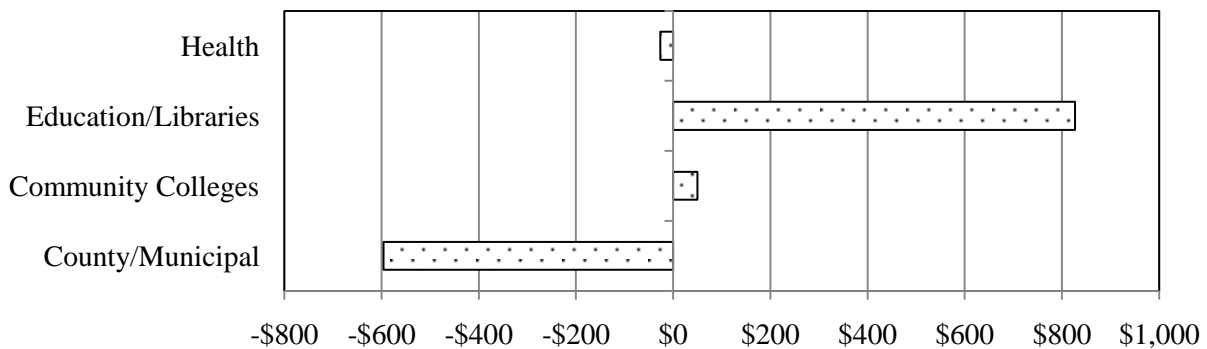
**Higher Education:** Funding for higher education grew by \$812 million (20.7%) between fiscal 2007 and 2011. State general fund aid increased by less than \$100 million. Much of the growth came from federal grants and contracts and enrollment-driven tuition and other revenues. Undergraduate tuition levels were frozen for four years by the Administration. The largest growth in spending in the higher education system was seen in the research, instruction, and scholarship programs, as well as auxiliary enterprises which include self-supported spending on student residences, food service, and bookstore operations.

**Debt Service:** Debt service, which is paid from the State share of the property tax credited to the Annuity Bond Fund, grew by \$237 million (30.9%) as the State continued to increase the level of general obligation debt issuances during the 2007-2010 legislative term.

**Reserve Funds:** Appropriations to the State Reserve Fund are based on the unappropriated general fund surplus in excess of \$10 million at closeout. A large appropriation was made in fiscal 2007 based on better than expected revenue attainment from the fiscal 2005 closeout. There was no appropriation to the Rainy Day Fund in fiscal 2011 because there was no unappropriated surplus at the close of fiscal 2009.

**Local Aid:** Aid to local governments saw positive growth of \$830 million (12.8%) during the 2007-2010 legislative term, driven mostly by general fund mandated education aid formulas as well as the use of federal stimulus funds for teacher’s retirement and other aid programs. Exhibit A-1.9 shows that aid for education/libraries was the main beneficiary of growth during this term. County/municipality aid fell by nearly \$600 million, mostly because a large portion of the HUR was credited to the general fund beginning in fiscal 2010. The local share of POS also decreased as depressed home sales lowered transfer tax revenues.

**Exhibit A-1.9**  
**Change in Aid to Local Governments**  
**Fiscal 2007-2011**  
**(\$ in Millions)**



**PAYGO Capital:** PAYGO capital spending declined by \$537 million (24.6%) in all funds, with virtually no general funds available by the end of the 2007-2010 legislative term. Most PAYGO is funded from special funds and federal funds supporting the transportation capital program, which declined based on flagging motor fuel and titling tax revenues.

**State Agencies:** Similar to entitlements, spending for agency operations increased by \$726 million (7.9%) overall, even though general fund support fell by \$229 million (4.8%). In many instances general funds were replaced by special and federal sources wherever available, which was the case in the health, transportation, and environmental agencies. Exhibit A-1.10 shows the general fund change during the 2007-2010 legislative term. Most agencies received less funding, with increases provided for higher education, health, and juvenile services.

**Exhibit A-1.10**  
**Budget Change for State Agencies – General Funds**  
**Fiscal 2007-2011**  
**(\$ in Millions)**

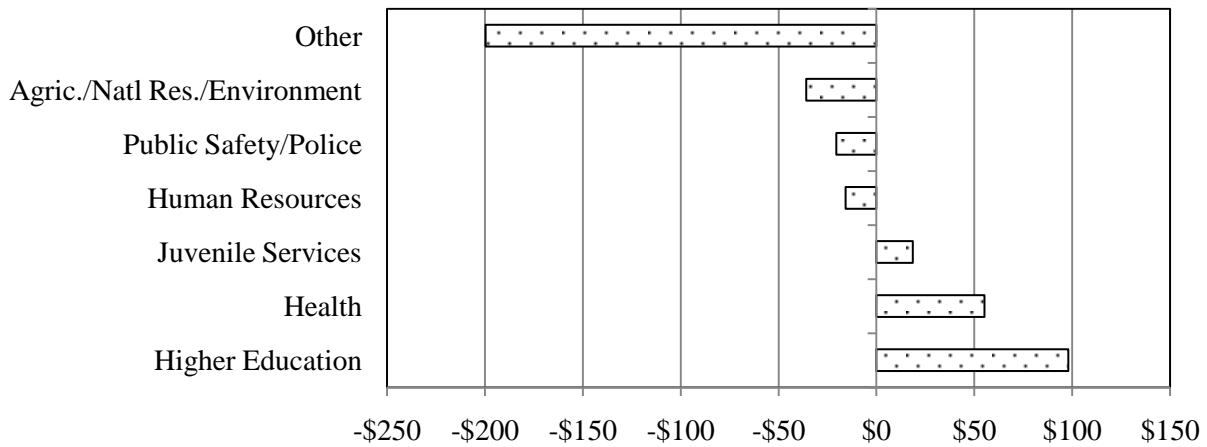
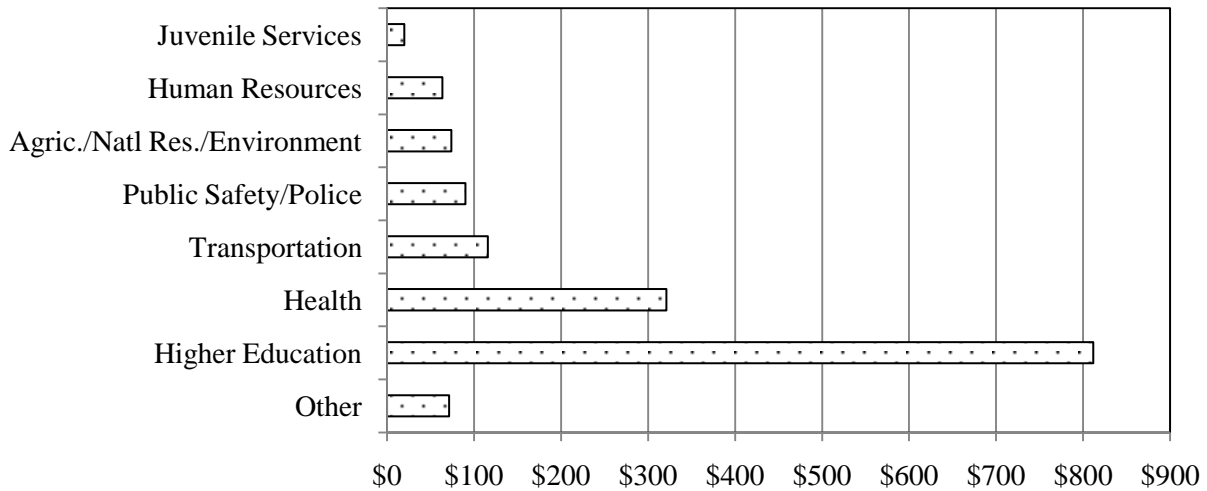


Exhibit A-1.11 shows the change in agency spending in total funds. Higher education agencies saw the largest increase based on growth in grants and contracts, as well as enrollment growth.



**Exhibit A-1.11**  
**Budget Change for State Agencies – Total Funds**  
**Fiscal 2007-2011**  
**(\$ in Millions)**

**All Funds**



**Personnel**

As seen in Exhibit A-1.12, the size of the regular Executive Branch State workforce decreased as a result of budgetary actions over the 2007-2010 legislative term. Including all agencies, the number of regular positions decreased by a net of 1,286 positions, or 1.6%, of the workforce. If higher education is excluded, the number of positions in the Executive Branch decreased from 53,364 in fiscal 2007 to 51,344 in fiscal 2011 – a loss of 2,020 positions. The fiscal 2011 budget directs the Governor to eliminate an additional 500 positions from across the Executive Branch through attrition and gives the Governor the authority to use financial inducements to encourage the incumbents in those positions to leave State service. Three agencies account for approximately 80.0% of the abolished Executive Branch positions with 1,122 from the Department of Health and Mental Hygiene, accounting for almost 15.0% of its workforce. DHR and DPSCS lost a combined 528 positions, accounting for 5.0 and 2.0% of their respective positions. Higher education grew by 1,053 positions, or 5.0%, while the Department of Labor, Licensing, and Regulation increased by 194 positions, or 13.0%, and DJS grew by 160 positions, or 8.0%.

**Exhibit A-1.12**  
**Personnel Trends: Regular Full-time Equivalent Positions**  
**Fiscal 2007-2011**

<u>Department/Service Area</u>	<u>Actual 2007</u>	<u>Leg. Approp. 2011</u>	<u>Change 2007-2011</u>	<u>% Change 2007-2011</u>
<b>Health and Human Services</b>				
Health and Mental Hygiene	7,691.8	6,569.7	-1,122.2	-14.6%
Human Resources	7,021.4	6,691.9	-329.5	-4.7%
Juvenile Services	2,079.9	2,240.1	160.2	7.7%
<b>Subtotal</b>	<b>16,793.1</b>	<b>15,501.6</b>	<b>-1,291.5</b>	<b>-7.7%</b>
<b>Public Safety</b>				
Public Safety and Correctional Services	11,502.5	11,303.6	-198.9	-1.7%
Police and Fire Marshal	2,471.5	2,420.5	-51.0	-2.1%
<b>Subtotal</b>	<b>13,974.0</b>	<b>13,724.1</b>	<b>-249.9</b>	<b>-1.8%</b>
<b>Transportation</b>				
	9,020.5	8,963.0	-57.5	-0.6%
<b>Other Executive</b>				
Legal (Excluding Judiciary)	1,584.1	1,488.5	-95.6	-6.0%
Executive and Administrative Control	1,665.6	1,616.5	-49.1	-2.9%
Financial and Revenue Administration	2,025.5	1,966.0	-59.5	-2.9%
Budget and Management	441.8	451.3	9.5	2.2%
Retirement	201.0	207.0	6.0	3.0%
General Services	636.0	593.0	-43.0	-6.8%
Natural Resources	1,368.5	1,284.0	-84.5	-6.2%
Agriculture	435.5	412.5	-23.0	-5.3%
Labor, Licensing, and Regulation	1,474.6	1,668.6	194.0	13.2%
MSDE and Other Education	2,184.6	1,948.7	-235.9	-10.8%
Housing and Community Development	315.9	311.0	-4.9	-1.6%
Business and Economic Development	292.0	235.0	-57.0	-19.5%
Environment	951.0	970.0	19.0	2.0%
<b>Subtotal</b>	<b>13,576.05</b>	<b>13,152.05</b>	<b>-424.00</b>	<b>-3.1%</b>
<b>Executive Branch Subtotal</b>	<b>53,363.60</b>	<b>51,340.75</b>	<b>-2,022.85</b>	<b>-3.8%</b>
<b>Higher Education</b>	22,794.0	23,846.8	1,052.8	4.6%
<b>Judiciary</b>	3,397.3	3,581.3	184.0	5.4%
<b>Legislature</b>	747.0	747.0	0.0	0.0%
<i>Section 45 Reduction</i>	0.0	-500.0	-500.0	n/a
<b>Grand Total</b>	<b>80,301.9</b>	<b>79,015.8</b>	<b>-1,286.0</b>	<b>-1.6%</b>

MSDE: Maryland State Department of Education

The impact of budget actions on State employee compensation and benefits became increasingly negative over the 2007-2010 legislative term. In fiscal 2008, eligible regular State employees received State matches of \$600 for employee contributions to individual deferred compensation plans; merit increases worth between 1.7 to 3.9% of the standard salary schedule for employees who performed at or above established standards for their classification; and a general salary increase of 2.0%, applied uniformly across all positions. While State employees received compensation enhancements in fiscal 2009 similar to that received in fiscal 2008, a mid-year executive order implementing a furlough and temporary salary reduction plan reduced State employees' salaries by around 1.5%. In fiscal 2010, however, State employees received no compensation enhancements, and the deferred compensation match was eliminated. Furthermore, a furlough and temporary salary reduction plan caused State employee salaries to fall by an average of 2.6% in 2010. State employees will again not receive cost-of-living increases, merit increases, or deferred compensation matches in fiscal 2011, and furloughs and temporary salary reductions will continue into a third year.

### **Budget Outlook**

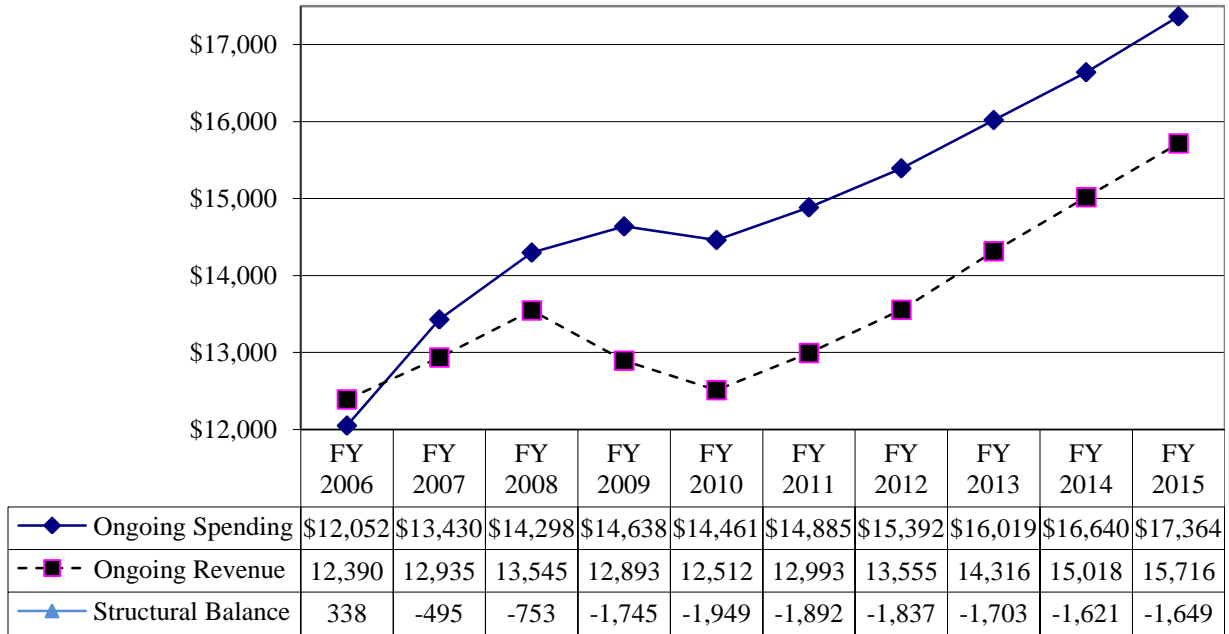
Exhibit A-1.13 provides the DLS long-term general fund forecast. On a cash basis, the fiscal 2011 budget is balanced with a projected closing balance of \$205 million in addition to \$632 million in the Rainy Day Fund. Budget action reduced the projected cash deficit in future years to approximately \$1.6 billion which will need to be addressed beginning with the fiscal 2012 budget to be submitted at the 2011 legislative session. On a structural basis, there continues to be a large gap between ongoing general fund revenues and spending as seen in Exhibit A-1.14. The fiscal 2011 structural deficit is projected at \$1.9 billion but decreases to approximately \$1.6 billion by the end of the forecast period due to statutory changes adopted at the 2010 session.

As noted, the State has been grappling with multi-billion dollar shortfalls due to significant revenue declines arising from the economic downturn. Since much of the general fund budget is driven by statutory mandates and entitlements, many of the one-time revenue and spending actions adopted at each session were successful in producing budgets that were balanced on a cash basis but did not improve structural balance. Legislative action at the 2010 session implemented several structural changes in spending, which included limiting annual inflationary increases in education formulas, permanently crediting a portion of the HUR to the general fund, calling for level funding employee compensation in fiscal 2012, and revising mandated increases in community college and other formulas.

**Exhibit A-1.13**  
**General Fund Budget Outlook**  
**Fiscal 2009-2015**  
**(\$ in Millions)**

<b>Revenues</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2011-15</b>
	<b>Actual</b>	<b>Working</b>	<b>Leg.</b>	<b>Est.</b>	<b>Est.</b>	<b>Est.</b>	<b>Est.</b>	<b>Avg</b>
			<b>Approp.</b>					<b>Annual</b>
								<b>Change</b>
Opening Fund Balance	\$487	\$87	\$154	\$205	\$0	\$0	\$0	
Transfers	189	791	175	43	60	57	60	
One-time Revenues/Legislation	871	192	25	0	0	0	0	
<b>Subtotal One-time Revenue</b>	<b>\$1,548</b>	<b>\$1,070</b>	<b>\$353</b>	<b>\$248</b>	<b>\$60</b>	<b>\$57</b>	<b>\$60</b>	-36%
Ongoing Revenues	\$12,893	\$12,512	\$13,033	\$13,601	\$14,363	\$15,063	\$15,762	
Revenue Adjustments – Legislation	0	0	-40	-46	-47	-45	-46	
<b>Subtotal Ongoing Revenue</b>	<b>\$12,893</b>	<b>\$12,512</b>	<b>\$12,993</b>	<b>\$13,555</b>	<b>\$14,316</b>	<b>\$15,018</b>	<b>\$15,716</b>	5%
<b>Total Revenues &amp; Fund Balance</b>	<b>\$14,440</b>	<b>\$13,582</b>	<b>\$13,346</b>	<b>\$13,803</b>	<b>\$14,376</b>	<b>\$15,076</b>	<b>\$15,775</b>	4%
<b>Ongoing Spending</b>								
Operating Spending	\$14,638	\$14,465	\$15,025	\$15,556	\$16,413	\$17,092	\$17,879	
Video Lottery Terminal Revenues								
Supporting Education	0	-11	-114	-145	-372	-479	-523	
Multi-year Commitments	0	7	25	15	15	65	65	
Ongoing Reductions	0	0	0	0	0	0	0	
Ongoing Spending – Legislation	0	0	-51	-34	-37	-39	-56	
<b>Subtotal Ongoing Spending</b>	<b>\$14,638</b>	<b>\$14,461</b>	<b>\$14,885</b>	<b>\$15,392</b>	<b>\$16,019</b>	<b>\$16,640</b>	<b>\$17,364</b>	4%
<b>One-time Spending</b>								
Pay-as-you-go Capital	\$14	\$0	\$1	\$1	\$1	\$1	\$1	
One-time Reductions	0	-4	-464	0	0	0	0	
One-time Spending – Legislation	0	0	0	0	0	0	0	
Federal Stimulus Funds	-445	-1,144	-1,279	0	0	0	0	
Appropriation to Rainy Day Fund	147	115	0	50	50	50	50	
<b>Subtotal One-time Spending</b>	<b>-\$285</b>	<b>-\$1,033</b>	<b>-\$1,743</b>	<b>\$51</b>	<b>\$51</b>	<b>\$51</b>	<b>\$51</b>	n/a
<b>Total Spending</b>	<b>\$14,353</b>	<b>\$13,428</b>	<b>\$13,142</b>	<b>\$15,443</b>	<b>\$16,070</b>	<b>\$16,691</b>	<b>\$17,415</b>	7%
<b>Ending Balance</b>	<b>\$87</b>	<b>\$154</b>	<b>\$205</b>	<b>-\$1,640</b>	<b>-\$1,694</b>	<b>-\$1,615</b>	<b>-\$1,640</b>	
Rainy Day Fund Balance	\$692	\$614	\$632	\$680	\$718	\$753	\$789	
Balance over 5% of General Fund (GF) Revenues	47	-12	-1	0	0	0	0	
As % of GF Revenues	5%	5%	5%	5%	5%	5%	5%	
<b>Structural Balance</b>	<b>-\$1,745</b>	<b>-\$1,949</b>	<b>-\$1,892</b>	<b>-\$1,837</b>	<b>-\$1,703</b>	<b>-\$1,621</b>	<b>-\$1,649</b>	

**Exhibit A-1.14**  
**Actual and Projected General Fund Structural Deficits**  
**Fiscal 2006-2015**  
**(\$ in Millions)**



Significant aspects of each of the budgets adopted over the past four years are discussed below.

**2007 Session (Fiscal 2008)**

The 2006 elections resulted in a change in leadership when Democratic Governor Martin O’Malley defeated the incumbent Republican Governor Robert L. Ehrlich, Jr. Though the economy had improved relative to the early 2000s, the State still faced a structural deficit estimated by DLS in December 2006 at \$1.3 billion. In part, this was due to significant spending increases for local education aid mandated by Chapter 288 of 2002. Fiscal 2008 was the final year of the phase-in of \$1.3 billion in additional spending. The economy was beginning to show signs of weakening after several years of robust growth in the housing market. The Governor submitted a budget that was balanced and below the level recommended by SAC, but which relied on the use of nearly \$1.0 billion in balance above that 5% requirement from the Rainy Day Fund. The new Governor requested that significant action not be taken at the 2007 session so that he could have additional time to better understand the fiscal situation and to develop options for addressing it.

Final action on the budget resulted in approval of \$379.2 million in fiscal 2007 deficiencies and \$30.0 billion in fiscal 2008 spending, including the final phase-in of the Bridge to Excellence in Public Schools Act funding enhancements for local education aid. Compared to fiscal 2007, the budget grew by \$554.4 million, or 1.9%, and was \$71.5 million below the 7.9% growth limit recommended by SAC. State employees received a 2.0% general salary increase, (one-half of that amount was offset by a phased increase in higher employee contributions for retirement that was part of legislation enacted in 2006 to enhance benefits). The legislature also adopted an across-the-board cut of \$10.0 million to continue savings from a hiring freeze that began in fiscal 2007.

A required appropriation of \$162.8 million was made to the Rainy Day Fund, but as noted, \$978.0 million was withdrawn to help balance the fiscal 2008 budget. This left an estimated \$674.0 million in reserve, a balance equal to the required 5% of general fund revenues.

### **2007 Special Session**

In July 2007, the Governor withdrew nearly \$200.0 million in spending through BPW, including \$128.4 million in general funds and the abolition of 147 positions. By October, the Governor issued an executive order calling for a special session which began on October 29. The Administration proposed a package of legislation to raise general fund revenue, modify selected mandates, expand access to health care, provide additional transportation funding, place a constitutional amendment before voters to permit video lottery terminals, and to allocate video lottery terminal proceeds.

After three weeks of hearings, the legislature completed action on a plan that included revenue enhancements, spending reductions, and additional expenditures. The sales tax was increased from 5 to 6% with a portion dedicated to the Transportation Trust Fund (TTF), the corporate income tax was raised from 7.00 to 8.25%, the tobacco tax increased by \$1 per pack, and the income tax was made more progressive. This package was expected to raise over \$850 million in net new revenue. Budget reconciliation legislation limited growth in education formulas, eliminated 500 vacant positions, and directed the Governor to adopt other spending cuts totaling \$550 million. Savings were offset by additional spending for transportation, expansion of health care, and the creation of special funds accounts for higher education, bay restoration, and replacement of Medevac helicopters.

### **2008 Session (Fiscal 2009)**

Heading into the 2008 session, the economy continued to falter. Revenue estimates had been revised downward for fiscal 2008, beginning in March 2007, and again by BRE in September and December 2007. The Governor proposed a \$31.6 billion budget that was again below the limit recommended by SAC. Fiscal 2009 revenues were revised downward by BRE during the session.

Final legislative action approved nearly \$300 million in fiscal 2008 deficiencies and \$31.2 billion in total fiscal 2009 spending. The approved budget grew by \$1.2 billion, or 4%, above the fiscal 2008 program and was below the SAC recommended growth limit. Passage of a balanced budget was made possible through a package of budget reconciliation bills which provided limited mandate relief, transferred balances from special fund accounts, and effected contingent reductions in the budget. Exhibit A-1.15 summarizes the effects of the legislation.

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**Exhibit A-1.15**  
**Budget Reconciliation Legislation**  
**2008 Session**  
**(\$ in Millions)**

		<u>FY 2008</u>	<u>FY 2009</u>
SB 527 (Chapter 414 of 2008)	Spending Mandate & Revenue Dedication Relief Act	\$60.0	\$25.0
SB 540 (Chapter 417 of 2008)	Transfer of Special Fund Balances	100.0	25.0
SB 545 (Chapter 589 of 2008)	Health Care Funds – Transfers and Disbursements		21.3
<b>Total</b>		<b>\$160.0</b>	<b>\$71.3</b>

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Other significant legislation included *Chapter 10 of 2008*, which repealed application of the sales and use tax to computer services and established for three years a personal income tax rate of 6.25% on taxable income over \$1 million effective January 1, 2008. This action resulted in a loss of \$100 million in revenue but was recovered by reducing the distribution of the sales tax to the TTF for five years and by expressing the intent that the Governor cut at least \$50 million from the fiscal 2009 budget through BPW.

The budget balancing plan left 5% in reserve, as the budget appropriated surplus funds from the fiscal 2007 closeout of \$146.5 million but withdrew \$125.0 million to support the fiscal 2009 budget.

**2009 Session (Fiscal 2010)**

The economy continued to underperform, as the housing and subprime mortgage crisis reverberated through the financial services sector. Revenue was below expectations at the fiscal 2008 closeout, and BRE wrote down fiscal 2009 revenues by \$432 million in September

and another \$415 million in December 2008. Fiscal 2010 estimates were revised downward by more than \$900 million. After withdrawing \$50 million through BPW to complete 2008 session action which repealed the expansion of the sales tax to computer services, the Governor implemented reductions in October and November through BPW to reduce almost \$350 million in spending and to abolish 830 positions. As part of the plan to balance the budget, the Governor issued an executive order in December 2008 which announced a plan to furlough employees during the remaining six months of fiscal 2009, by up to five days depending on salary level. SAC set a limit for the 2009 session at 0.7%, the lowest level ever adopted.

The Governor submitted a fiscal 2010 allowance totaling \$32.0 billion, relying on \$1.5 billion in transfers and contingent reductions through proposed budget reconciliation legislation. The budget was below the limit recommended by SAC. During session, BRE wrote down revenues by another \$445 million in fiscal 2009 and over \$700 million in fiscal 2010. By that time, the ARRA was passed, providing stimulus funding for states. The Governor withdrew nearly \$900 million in general funds through two supplemental budgets and appropriated almost \$2.3 billion in additional federal aid. Of this, \$445 million supplanted general funds in the fiscal 2009 budget and \$1.1 billion supplanted fiscal 2010 general funds.

Final legislative action resulted in a fiscal 2010 budget totaling \$32.2 billion, an increase of \$1.0 billion, or 3.3%, above the fiscal 2009 budget. The legislature also approved \$576 million in fiscal 2009 deficiencies. When counting the ARRA funds, the budget was \$107 million, or -0.51%, below the SAC limit. *Chapter 487 of 2009*, the Budget Reconciliation and Financing Act of 2009, included almost \$1.5 billion in transfers, revenues, and contingent reductions across fiscal 2009 through 2011 to help balance the budget. Exhibit A-1.16 summarizes the actions in Chapter 487.

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**Exhibit A-1.16**  
**Budget Reconciliation Legislation**  
**2009 Session**  
**(\$ in Millions)**

		<u><b>FY 2009</b></u>	<u><b>FY 2010</b></u>	<u><b>FY 2011</b></u>
HB 101 (Ch. 487 of 2009)	Revenues	-\$4.6	\$167.0	\$101.9
HB 101 (Ch. 487 of 2009)	Transfers	781.2	54.4	21.9
HB 101 (Ch. 487 of 2009)	Contingent Reductions	3.4	329.9	
<b>Total</b>		<b>\$780.0</b>	<b>\$551.2</b>	<b>\$123.8</b>

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Employee compensation was level funded in fiscal 2010, with no provision made for a general salary increase, steps, or a deferred compensation match. The Rainy Day Fund also assisted in balancing the fiscal 2010 budget through the transfer of \$210 million to the general fund. This was offset by about \$140 million appropriated to the fund, representing a portion of surplus funds from the fiscal 2008 closeout. This left an estimated \$651 million in reserve, or 5%, of estimated revenues.

### **2010 Session (Fiscal 2011)**

The Governor withdrew another \$756 million from the budget through BPW actions in July and August, which included \$429 million in general funds. As part of the August BPW action, the Governor issued an executive order to implement five government shutdown days plus up to five furlough days for employees based on salary. BRE revised the fiscal 2010 estimate downward in September by nearly \$700 million, followed by another BPW reduction of \$201 million in November. SAC recommended a 0% rate of growth.

The Governor submitted a fiscal 2011 allowance of \$32.5 billion along with nearly \$800 million in deficiency appropriations. The budget relied heavily on transfers and contingent reductions in conjunction with budget reconciliation legislation, totaling \$1.8 billion over fiscal 2010 and 2011. It also recognized \$1.3 billion in federal ARRA funding to supplant general funds, including nearly \$400 million on the assumption that an enhanced federal Medicaid match would be provided for the last six months of fiscal 2011.

Final legislative action produced a fiscal 2011 budget of \$32.0 billion, which was \$308 million, or 1.0%, below fiscal 2010 levels. Deficiencies of just over \$700 million were also approved for fiscal 2010. On a spending affordability basis, the approved budget was \$238 million below 2009 session spending levels, or -1.14% below the 0.0% growth limit. As shown in Exhibit A-1.17, budget reconciliation legislation provided nearly \$1.6 billion in transfers, revenues, and contingent reductions to help balance the budget. For the second year in a row, State employees did not receive any cost-of-living increase, steps, or a deferred compensation match. The budget also continued the combination of employee furloughs and government shutdown days that had been implemented in the fiscal 2010 budget. The Rainy Day Fund balance held a 5% balance for fiscal 2011, with no appropriations into the fund nor any portion of the balance transferred to the general fund. Exhibit A-1.18 illustrates budget changes by major expenditure category by fund.

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**Exhibit A-1.17**  
**Budget Reconciliation Legislation**  
**2010 Session**  
**(\$ in Millions)**

		<u><b>FY 2009</b></u>	<u><b>FY 2010</b></u>	<u><b>FY 2011</b></u>
SB 141 (Ch. 484 of 2010)	Revenues		\$195.0	\$297.0
SB 141 (Ch. 484 of 2010)	Transfers		511.3	134.0
SB 141 (Ch. 484 of 2010)	Contingent Reductions	\$1.6	12.3	406.3
<b>Total</b>		<b>\$1.6</b>	<b>\$718.6</b>	<b>\$837.2</b>

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**Exhibit A-1.18**  
**State Expenditures – General Funds**  
**Fiscal 2007-2011**  
**(\$ in Millions)**

<b>Category</b>	<b>Actual</b>	<b>Actual</b>	<b>Actual</b>	<b>Work. Appr.</b>	<b>Legislative</b>	<b>FY 2007 to FY 2011</b>	
	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>Approp.</b>	<b>\$ Change</b>	<b>% Change</b>
					<b>FY 2011</b>		
Debt Service	\$0.0	\$29.3	\$0.0	\$0.0	\$0.0	\$0.0	n/a
County/Municipal	\$228.2	\$241.7	\$213.5	\$189.6	\$178.5	-\$49.7	-21.8%
Community Colleges	205.9	241.7	254.7	256.2	256.1	50.2	24.4%
Education/Libraries	4,530.9	5,223.0	5,442.7	5,258.5	4,890.5	359.6	7.9%
Health	63.7	67.0	57.4	37.3	37.3	-26.4	-41.4%
<b>Aid to Local Governments</b>	<b>\$5,028.6</b>	<b>\$5,773.4</b>	<b>\$5,968.3</b>	<b>\$5,741.6</b>	<b>\$5,362.4</b>	<b>333.7</b>	<b>6.6%</b>
Foster Care Payments	\$248.8	\$246.3	\$243.0	\$240.4	\$244.9	-\$3.9	-1.6%
Assistance Payments	43.1	33.7	38.2	95.5	53.3	10.2	23.6%
Medical Assistance	2,203.5	2,214.5	1,903.1	1,588.3	1,743.6	-459.9	-20.9%
Property Tax Credits	56.2	56.3	57.3	73.2	73.5	17.3	30.7%
<b>Entitlements</b>	<b>\$2,551.6</b>	<b>\$2,550.9</b>	<b>\$2,241.6</b>	<b>\$1,997.4</b>	<b>\$2,115.2</b>	<b>-436.4</b>	<b>-17.1%</b>
Health	\$1,320.8	\$1,369.5	\$1,402.2	\$1,355.3	\$1,376.0	\$55.2	4.2%
Human Resources	278.0	295.7	308.0	271.3	262.2	-15.8	-5.7%
Systems Reform Initiative	32.2	38.7	33.8	24.4	20.7	-11.5	-35.7%
Juvenile Services	238.5	266.7	266.9	260.6	257.0	18.5	7.8%
Public Safety/Police	1,212.7	1,215.6	1,255.5	1,171.8	1,192.1	-20.5	-1.7%
Higher Education	1,047.5	1,129.5	1,131.9	1,147.6	1,145.5	98.0	9.4%
Other Education	401.3	386.6	398.4	313.9	350.6	-50.7	-12.6%
Agric./Natl. Res./Environment	139.9	146.6	122.4	105.7	104.0	-35.8	-25.6%
Other Executive Agencies	604.4	566.3	547.7	521.8	549.9	-54.5	-9.0%
Legislative	68.2	70.8	73.6	75.4	75.6	7.5	10.9%
Judiciary	325.5	343.8	367.4	366.6	370.3	44.9	13.8%
OPEB	100.0	100.0	0.0	0.0	0.0	-100.0	-100.0%
Across-the-board Reductions	0.0	0.0	0.0	0.0	-35.3	-35.3	n/a
<b>State Agencies</b>	<b>\$5,768.9</b>	<b>\$5,929.9</b>	<b>\$5,907.9</b>	<b>\$5,614.5</b>	<b>\$5,668.8</b>	<b>-\$100.1</b>	<b>-1.7%</b>
<b>Total Operating</b>	<b>\$13,349.1</b>	<b>\$14,283.5</b>	<b>\$14,117.7</b>	<b>\$13,353.5</b>	<b>\$13,146.4</b>	<b>-\$202.7</b>	<b>-1.5%</b>
Capital/Heritage Reserve Fund	163.9	41.9	23.7	5.1	10.8	-153.1	-93.4%
Transfer to MDTA	53.0	0.0	65.0	0.0	0.0	-53.0	n/a
Reserve Funds <sup>(1)</sup>	638.4	162.8	146.5	114.9	15.0	-623.4	-97.7%
<b>Appropriations</b>	<b>\$14,204.4</b>	<b>\$14,488.2</b>	<b>\$14,352.9</b>	<b>\$13,473.5</b>	<b>\$13,172.2</b>	<b>-\$1,032.2</b>	<b>-7.3%</b>
Reversions	0.0	0.0	0.0	-45.5	-30.6	-30.6	n/a
<b>Grand Total</b>	<b>\$14,204.4</b>	<b>\$14,488.2</b>	<b>\$14,352.9</b>	<b>\$13,428.0</b>	<b>\$13,141.6</b>	<b>-\$1,062.8</b>	<b>-7.5%</b>

MDTA: Maryland Transportation Authority  
OPEB: Other Post Employment Benefits

Note: The fiscal 2010 working appropriation includes deficiencies, targeted reversions, and legislative reductions to the deficiencies.

<sup>(1)</sup> Excludes \$53 million in fiscal 2007 and \$65 million in fiscal 2009 appropriated to the Dedicated Purpose Account that was transferred to the Maryland Transportation Authority. These monies are included in the transfer to MDTA line. Also excludes \$100 million in fiscal 2007 and 2008 for OPEB costs which are included under the State agencies.

**Exhibit A-1.18 (Continued)**  
**State Expenditures – Special and Higher Education Funds\***  
**Fiscal 2007-2010**  
**(\$ in Millions)**

<u>Category</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Work. Appr.</u>	<u>Legislative</u>	<u>FY 2007 to FY 2011</u>	
	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>Approp.</u>	<u>\$ Change</u>	<u>% Change</u>
					<u>FY 2011</u>		
Debt Service	\$768.7	\$782.2	\$881.5	\$944.7	\$998.3	\$229.7	29.9%
County/Municipal	724.5	664.8	523.0	195.4	178.4	-546.2	-75.4%
Community Colleges	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Education/Libraries	0.0	0.2	1.4	13.0	467.0	467.0	n/a
Health	0.0	0.0	0.0	0.0	0.0	0.0	n/a
<b>Aid to Local Governments</b>	<b>\$724.5</b>	<b>\$665.0</b>	<b>\$524.4</b>	<b>\$208.4</b>	<b>\$645.4</b>	<b>-\$79.1</b>	<b>-10.9%</b>
Foster Care Payments	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1	\$0.0	-5.2%
Assistance Payments	12.9	13.4	17.1	13.4	16.4	3.5	27.1%
Medical Assistance	131.3	231.4	386.0	542.0	453.9	322.6	245.7%
Property Tax Credits	0.0	0.0	0.0	0.0	0.0	0.0	n/a
<b>Entitlements</b>	<b>\$144.3</b>	<b>\$244.9</b>	<b>\$403.1</b>	<b>\$555.5</b>	<b>\$470.3</b>	<b>\$326.1</b>	<b>226.0%</b>
Health	\$216.9	\$232.8	\$260.2	\$297.0	\$297.2	\$80.3	37.0%
Human Resources	75.2	86.1	67.2	98.2	100.9	25.6	34.1%
Systems Reform Initiative	0.6	0.6	0.5	0.0	0.0	-0.6	-100.0%
Juvenile Services	4.1	0.4	0.2	0.2	0.2	-3.9	-95.1%
Public Safety/Police	192.2	203.1	194.9	224.3	222.0	29.8	15.5%
Higher Education	2,876.6	3,098.4	3,312.0	3,471.8	3,590.0	713.4	24.8%
Other Education	27.9	37.6	34.4	52.9	45.1	17.2	61.6%
Transportation	1,315.2	1,399.2	1,422.1	1,434.8	1,413.4	98.2	7.5%
Agric./Natl. Res./Environment	120.9	119.1	165.9	204.7	217.4	96.5	79.8%
Other Executive Agencies	468.3	438.8	464.9	559.2	598.7	130.4	27.9%
Legislative	0.1	0.2	0.3	0.1	0.1	0.0	0.0%
Judiciary	37.4	39.1	41.9	53.0	48.6	11.3	30.2%
Across-the-board Reductions	0.0	0.0	0.0	0.0	-2.3	-2.3	n/a
<b>State Agencies</b>	<b>\$5,335.5</b>	<b>\$5,655.5</b>	<b>\$5,964.6</b>	<b>\$6,396.1</b>	<b>\$6,531.4</b>	<b>\$1,195.9</b>	<b>22.4%</b>
<b>Total Operating</b>	<b>\$6,972.9</b>	<b>\$7,347.5</b>	<b>\$7,773.7</b>	<b>\$8,104.8</b>	<b>\$8,645.4</b>	<b>\$1,672.5</b>	<b>24.0%</b>
Capital	1,215.7	1,172.4	985.0	955.0	849.7	-366.0	-30.1%
<b>Grand Total</b>	<b>\$8,188.6</b>	<b>\$8,519.8</b>	<b>\$8,758.7</b>	<b>\$9,059.8</b>	<b>\$9,495.1</b>	<b>\$1,306.5</b>	<b>16.0%</b>

\* Includes higher education fund (current unrestricted and current restricted) net of general and special funds.

Note: Fiscal 2010 working appropriation includes deficiencies, targeted reversions, and legislative reductions to the deficiencies. The fiscal 2011 legislative appropriation includes \$436.6 million in special fund spending that will be added by budget amendment to replace general fund reductions.

**Exhibit A-1.18 (Continued)**  
**State Expenditures – Federal Funds**  
**Fiscal 2007-2010**  
**(\$ in Millions)**

<u>Category</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Work. Appr.</u>	<u>Legislative</u>	<u>FY 2007 to FY 2011</u>	
	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>Approp.</u>	<u>\$ Change</u>	<u>% Change</u>
					<u>FY 2011</u>		
Debt Service	\$0.0	\$0.0	\$0.0	\$0.9	\$7.6	\$7.6	n/a
County/Municipal	\$37.1	\$42.0	\$41.3	\$82.0	\$108.6	\$71.5	192.5%
Community Colleges	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Education/Libraries	665.0	707.7	701.1	1,406.1	1,168.9	503.8	75.8%
Health	4.5	4.5	4.5	4.5	4.5	0.0	0.0%
<b><i>Aid to Local Governments</i></b>	<b><i>\$706.7</i></b>	<b><i>\$754.2</i></b>	<b><i>\$746.9</i></b>	<b><i>\$1,492.6</i></b>	<b><i>\$1,282.0</i></b>	<b><i>\$575.3</i></b>	<b><i>81.4%</i></b>
Foster Care Payments	\$95.2	\$106.2	\$108.2	\$125.4	\$107.0	\$11.7	12.3%
Assistance Payments	432.9	511.3	703.4	571.8	816.2	383.4	88.6%
Medical Assistance	2,342.2	2,418.6	3,161.5	3,686.8	3,830.4	1,488.2	63.5%
Property Tax Credits	0.0	0.0	0.0	0.0	0.0	0.0	n/a
<b><i>Entitlements</i></b>	<b><i>\$2,870.2</i></b>	<b><i>\$3,036.1</i></b>	<b><i>\$3,973.1</i></b>	<b><i>\$4,384.0</i></b>	<b><i>\$4,753.6</i></b>	<b><i>\$1,883.3</i></b>	<b><i>65.6%</i></b>
Health	\$774.2	\$808.5	\$883.6	\$913.3	\$960.1	\$185.8	24.0%
Human Resources	471.1	475.6	570.8	565.6	525.0	53.8	11.4%
Systems Reform Initiative	14.9	14.9	7.3	7.3	7.7	-7.2	-48.4%
Juvenile Services	10.5	9.4	7.4	16.2	16.0	5.4	51.6%
Public Safety/Police	15.8	17.1	21.6	107.4	96.8	81.0	512.7%
Higher Education	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Other Education	212.4	203.8	212.5	301.0	227.2	14.8	6.9%
Transportation	72.6	79.2	93.7	88.4	90.2	17.6	24.2%
Agric./Nat'l. Res./Environment	55.6	54.7	58.5	81.0	69.1	13.5	24.2%
Other Executive Agencies	405.8	414.0	459.5	665.1	524.4	118.6	29.2%
Judiciary	4.3	3.3	3.8	4.2	4.0	-0.3	-7.5%
Across-the-board Reductions	0.0	0.0	0.0	0.0	-10.6	-10.6	n/a
<b><i>State Agencies</i></b>	<b><i>\$2,037.4</i></b>	<b><i>\$2,080.4</i></b>	<b><i>\$2,318.8</i></b>	<b><i>\$2,749.5</i></b>	<b><i>\$2,509.8</i></b>	<b><i>\$472.4</i></b>	<b><i>23.2%</i></b>
<b>Total Operating</b>	<b>\$5,614.3</b>	<b>\$5,870.8</b>	<b>\$7,038.7</b>	<b>\$8,627.0</b>	<b>\$8,553.0</b>	<b>\$2,938.7</b>	<b>52.3%</b>
Capital	749.2	690.6	720.2	1,168.3	784.8	35.6	4.8%
<b>Grand Total</b>	<b>\$6,363.5</b>	<b>\$6,561.3</b>	<b>\$7,758.9</b>	<b>\$9,795.3</b>	<b>\$9,337.8</b>	<b>\$2,974.4</b>	<b>46.7%</b>

Note: Fiscal 2010 includes \$428.9 million in deficiencies.

**Exhibit A-1.18 (Continued)**  
**State Expenditures – State Funds**  
**Fiscal 2007-2010**  
**(\$ in Millions)**

<u>Category</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Work. Appr.</u>	<u>Legislative</u>	<u>FY 2007 to FY 2011</u>	
	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>\$ Change</u>	<u>% Change</u>
Debt Service	\$768.7	\$811.5	\$881.5	\$944.7	\$998.3	\$229.7	29.9%
County/Municipal	\$952.7	\$906.5	\$736.5	\$385.1	\$356.8	-\$595.9	-62.5%
Community Colleges	205.9	241.7	254.7	256.2	256.1	50.2	24.4%
Education/Libraries	4,530.9	5,223.2	5,444.1	5,271.5	5,357.5	826.6	18.2%
Health	63.7	67.0	57.4	37.3	37.3	-26.4	-41.4%
<b>Aid to Local Governments</b>	<b>\$5,753.2</b>	<b>\$6,438.3</b>	<b>\$6,492.7</b>	<b>\$5,950.1</b>	<b>\$6,007.8</b>	<b>\$254.6</b>	<b>4.4%</b>
Foster Care Payments	\$248.9	\$246.4	\$243.0	\$240.5	\$245.0	-\$3.9	-1.6%
Assistance Payments	56.0	47.1	55.3	108.9	69.7	13.7	24.4%
Medical Assistance	2,334.8	2,445.9	2,289.2	2,130.3	2,197.4	-137.4	-5.9%
Property Tax Credits	56.2	56.3	57.3	73.2	73.5	17.3	30.7%
<b>Entitlements</b>	<b>\$2,695.9</b>	<b>\$2,795.8</b>	<b>\$2,644.7</b>	<b>\$2,552.9</b>	<b>\$2,585.6</b>	<b>-\$110.3</b>	<b>-4.1%</b>
Health	\$1,537.8	\$1,602.3	\$1,662.5	\$1,652.4	\$1,673.2	\$135.5	8.8%
Human Resources	353.3	381.8	375.2	369.6	363.1	9.9	2.8%
Systems Reform Initiative	32.8	39.3	34.3	24.4	20.7	-12.1	-36.9%
Juvenile Services	242.7	267.2	267.1	260.8	257.2	14.6	6.0%
Public Safety/Police	1,404.8	1,418.7	1,450.5	1,396.1	1,414.1	9.3	0.7%
Higher Education	3,924.0	4,227.8	4,443.9	4,619.4	4,735.5	811.5	20.7%
Other Education	429.3	424.3	432.8	366.8	395.8	-33.5	-7.8%
Transportation	1,315.2	1,399.2	1,422.1	1,434.8	1,413.4	98.2	7.5%
Agric./Nat'l. Res./Environment	260.8	265.7	288.3	310.4	321.5	60.7	23.3%
Other Executive Agencies	1,072.7	1,005.1	1,012.6	1,080.9	1,148.6	75.9	7.1%
Legislative	68.3	71.1	74.0	75.5	75.7	7.5	10.9%
Judiciary	362.8	382.9	409.2	419.5	419.0	56.1	15.5%
OPEB	100.0	100.0	0.0	0.0	0.0	-100.0	-100.0%
Across-the-board Reductions	0.0	0.0	0.0	0.0	-37.7	-37.7	n/a
<b>State Agencies</b>	<b>\$11,104.3</b>	<b>\$11,585.4</b>	<b>\$11,872.4</b>	<b>\$12,010.6</b>	<b>\$12,200.2</b>	<b>\$1,095.8</b>	<b>9.9%</b>
<b>Total Operating</b>	<b>\$20,322.1</b>	<b>\$21,631.0</b>	<b>\$21,891.4</b>	<b>\$21,458.3</b>	<b>\$21,791.9</b>	<b>\$1,469.8</b>	<b>7.2%</b>
Capital/Heritage Reserve Fund	1,379.6	1,214.3	1,008.7	960.1	860.5	-519.1	-37.6%
Transfer to MDTA	53.0	0.0	65.0	0.0	0.0	-53.0	-100.0%
Reserve Funds <sup>(1)</sup>	638.4	162.8	146.5	114.9	15.0	-623.4	-97.7%
<b>Appropriations</b>	<b>\$22,393.0</b>	<b>\$23,008.1</b>	<b>\$23,111.6</b>	<b>\$22,533.3</b>	<b>\$22,667.4</b>	<b>\$274.3</b>	<b>1.2%</b>
Reversions	0.0	0.0	0.0	-45.5	-30.6	-30.6	n/a
<b>Grand Total</b>	<b>\$22,393.0</b>	<b>\$23,008.1</b>	<b>\$23,111.6</b>	<b>\$22,487.8</b>	<b>\$22,636.7</b>	<b>\$243.7</b>	<b>1.1%</b>

<sup>(1)</sup> Excludes \$53 million in fiscal 2007 and \$65 million in fiscal 2009 appropriated to the Dedicated Purpose Account that was transferred to the Maryland Transportation Authority. These monies are included in the transfer to MDTA. Also excludes \$100 million in fiscal 2007 and 2008 for OPEB costs which are included under the State agencies.

MDTA: Maryland Transportation Authority  
OPEB: Other Post Employment Benefits

Note: The fiscal 2010 working appropriation includes deficiencies, targeted reversions, and legislative reductions to the deficiencies. The fiscal 2011 legislative appropriation includes \$436.6 million in special fund spending that will be added by budget amendment to replace general fund reductions.

**Exhibit A-1.18 (Continued)**  
**State Expenditures – All Funds**  
**Fiscal 2007-2010**  
**(\$ in Millions)**

<u>Category</u>	<u>Actual FY 2007</u>	<u>Actual FY 2008</u>	<u>Actual FY 2009</u>	<u>Work. Appr. FY 2010</u>	<u>Approp. FY 2011</u>	<u>FY 2007 to FY 2011 \$ Change</u>	<u>% Change</u>
Debt Service	\$768.7	\$811.5	\$881.5	\$945.5	\$1,006.0	\$237.3	30.9%
County/Municipal	\$989.8	\$948.5	\$777.8	\$467.1	\$465.4	-\$524.4	-53.0%
Community Colleges	205.9	241.7	254.7	256.2	256.1	50.2	24.4%
Education/Libraries	5,196.0	5,930.9	6,145.2	6,677.6	6,526.4	1,330.5	25.6%
Health	68.2	71.5	61.9	41.8	41.8	-26.4	-38.7%
<b>Aid to Local Governments</b>	<b>\$6,459.8</b>	<b>\$7,192.5</b>	<b>\$7,239.5</b>	<b>\$7,442.7</b>	<b>\$7,289.8</b>	<b>\$829.9</b>	<b>12.8%</b>
Foster Care Payments	\$344.1	\$352.6	\$351.3	\$365.9	\$351.9	\$7.9	2.3%
Assistance Payments	488.9	558.4	758.7	680.7	885.9	397.0	81.2%
Medical Assistance	4,677.0	4,864.5	5,450.6	5,817.1	6,027.8	1,350.9	28.9%
Property Tax Credits	56.2	56.3	57.3	73.2	73.5	17.3	30.7%
<b>Entitlements</b>	<b>\$5,566.1</b>	<b>\$5,831.9</b>	<b>\$6,617.8</b>	<b>\$6,936.8</b>	<b>\$7,339.2</b>	<b>\$1,773.0</b>	<b>31.9%</b>
Health	\$2,312.0	\$2,410.8	\$2,546.1	\$2,565.7	\$2,633.3	\$321.3	13.9%
Human Resources	824.4	857.4	946.0	935.2	888.1	63.7	7.7%
Systems Reform Initiative	47.7	54.2	41.5	31.8	28.4	-19.3	-40.5%
Juvenile Services	253.2	276.6	274.5	277.0	273.2	20.0	7.9%
Public Safety/Police	1,420.6	1,435.7	1,472.0	1,503.5	1,510.9	90.3	6.4%
Higher Education	3,924.0	4,227.8	4,443.9	4,619.4	4,735.5	811.5	20.7%
Other Education	641.7	628.0	645.4	667.8	622.9	-18.7	-2.9%
Transportation	1,387.8	1,478.5	1,515.9	1,523.2	1,503.6	115.8	8.3%
Agric./Natl. Res./Environment	316.4	320.4	346.8	391.4	390.6	74.1	23.4%
Other Executive Agencies	1,478.5	1,419.1	1,472.1	1,746.0	1,673.1	194.6	13.2%
Legislative	68.3	71.1	74.0	75.5	75.7	7.5	10.9%
Judiciary	367.2	386.2	413.0	423.7	423.0	55.8	15.2%
OPEB	100.0	100.0	0.0	0.0	0.0	-100.0	-100.0%
Across-the-board Reductions	0.0	0.0	0.0	0.0	-48.2	-48.2	n/a
<b>State Agencies</b>	<b>\$13,141.7</b>	<b>\$13,665.8</b>	<b>\$14,191.2</b>	<b>\$14,760.2</b>	<b>\$14,709.9</b>	<b>\$1,568.2</b>	<b>11.9%</b>
<b>Total Operating</b>	<b>\$25,936.3</b>	<b>\$27,501.7</b>	<b>\$28,930.1</b>	<b>\$30,085.2</b>	<b>\$30,344.8</b>	<b>\$4,408.5</b>	<b>17.0%</b>
Capital/Heritage Reserve Fund	2,128.8	1,904.9	1,728.9	2,128.4	1,645.3	-483.4	-22.7%
Transfer to MDTA	53.0	0.0	65.0	0.0	0.0	-53.0	-100.0%
Reserve Funds <sup>(1)</sup>	638.4	162.8	146.5	114.9	15.0	-623.4	-97.7%
<b>Appropriations</b>	<b>\$28,756.5</b>	<b>\$29,569.4</b>	<b>\$30,870.5</b>	<b>\$32,328.6</b>	<b>\$32,005.2</b>	<b>\$3,248.7</b>	<b>11.3%</b>
Reversions	0.0	0.0	0.0	-45.5	-30.6	-30.6	n/a
<b>Grand Total</b>	<b>\$28,756.5</b>	<b>\$29,569.4</b>	<b>\$30,870.5</b>	<b>\$32,283.1</b>	<b>\$31,974.6</b>	<b>\$3,218.1</b>	<b>11.2%</b>

(1) Excludes \$53 million in fiscal 2007 and \$65 million in fiscal 2009 appropriated to the Dedicated Purpose Account that was transferred to the Maryland Transportation Authority. These monies are included in the transfer to MDTA line. Also excludes \$100 million in fiscal 2007 and 2008 for OPEB costs which are included under the State agencies.

MDTA: Maryland Transportation Authority

OPEB: Other Post Employment Benefits

Note: The fiscal 2010 working appropriation includes deficiencies, targeted reversions, and legislative reductions to the deficiencies. The fiscal 2011 legislative appropriation includes \$436.6 million in special fund spending that will be added by budget amendment to replace general fund reductions.

## Capital Budget

A total of \$13.0 billion was authorized by the General Assembly for the State's capital program during the 2007-2010 term. Total authorizations by major category are shown in Exhibit A-2.1.

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### Exhibit A-2.1 Authorization by Major Category 2007-2010 Sessions

	<u>\$ in Millions</u>	<u>% of Total</u>
Transportation	\$6,728.3	51.7%
Environment	2,320.1	17.8%
Higher Education	1,279.8	9.8%
Education	1,288.8	9.9%
Public Safety	274.4	2.1%
Local Projects	390.8	3.0%
Housing/Community Development	340.1	2.6%
Economic Development	83.8	0.6%
State Facilities	209.8	1.6%
Health/Social	179.9	1.4%
De-authorizations	-92.9	-0.7%
<b>Total</b>	<b>\$13,002.9</b>	<b>100.0%</b>

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Transportation projects accounted for approximately half of the capital program, with environment, education, and higher education comprising the other top three capital program categories. Exhibit A-2.2 provides greater detail of capital authorizations by session year.



**Exhibit A-2.2**  
**Capital Program Authorizations**  
**2007-2010 Sessions**  
**(\$ in Millions)**

	<b>2007 Session (FY 2008)</b>	<b>2008 Session (FY 2009)</b>	<b>2009 Session (FY 2010)</b>	<b>2010 Session (FY 2011)</b>	<b>Subtotal</b>	<b>Total</b>
<b><u>Uses of Funds</u></b>						
<b>State Facilities</b>						\$209.8
Facilities Renewal	\$13.0	\$14.3	\$22.4	\$10.4	\$60.1	
Other	24.7	56.4	52.8	15.8	149.7	
<b>Health/Social</b>						179.9
State Facilities	19.7	50.9	19.8	5.8	96.2	
Private Hospitals	5.0	5.0	5.0	5.0	20.0	
Other	12.4	17.7	10.7	22.9	63.7	
<b>Environment</b>						2,320.1
Natural Resources	248.4	110.8	209.2	137.1	705.5	
Agriculture	83.4	56.8	42.9	46.1	229.2	
Environment	238.6	300.7	349.9	453.1	1,342.3	
MD Environmental Service	1.0	11.9	7.2	0.0	20.1	
Energy	3.5	2.2	10.0	7.3	23.0	
<b>Public Safety</b>						274.4
State Corrections	36.8	20.2	73.9	17.8	148.7	
Local Jails	12.9	19.8	17.5	5.5	55.7	
State Police	0.3	2.5	64.7	2.5	70.0	
<b>Education</b>						1,288.8
School Construction	388.5	327.4	266.4	250.0	1,232.3	
Other	15.1	4.1	18.5	18.8	56.5	
<b>Higher Education</b>						1,279.8
University System	172.4	190.4	161.7	234.8	759.3	
Morgan State University	8.7	11.9	44.8	30.5	95.9	
St. Mary's College	1.1	4.6	1.7	0.0	7.4	
Community Colleges	61.4	81.1	87.5	78.7	308.7	
Private Colleges/Univ.	8.0	9.0	9.0	8.0	34.0	
UMMS	10.0	26.0	28.5	10.0	74.5	
<b>Housing/Community Development</b>						340.1
Housing	67.9	90.5	94.9	78.7	332.0	
Other	2.4	1.1	4.3	0.3	8.1	

	<b>2007 Session (FY 2008)</b>	<b>2008 Session (FY 2009)</b>	<b>2009 Session (FY 2010)</b>	<b>2010 Session (FY 2011)</b>	<b>Subtotal</b>	<b>Total</b>
<b>Economic Development</b>						83.8
Economic Development	44.0	18.5	7.0	14.3	83.8	
<b>Local Projects</b>						390.8
Administration	41.6	40.2	50.7	25.8	158.3	
Legislative	23.1	26.2	21.3	17.6	88.2	
InterCounty Connector	0.0	0.0	55.0	89.3	144.3	
<b>Transportation</b>						6,728.3
Transportation	1,753.3	1,739.4	1,720.2	1,515.4	6,728.3	
<b>De-authorizations</b>						-92.9
De-authorizations	-19.8	-2.6	-30.8	-39.7	-92.9	
<b>Total</b>	<b>\$3,277.4</b>	<b>\$3,237.0</b>	<b>\$3,426.7</b>	<b>\$3,061.8</b>	<b>\$13,002.9</b>	<b>\$13,002.9</b>
<b><u>Sources of Funds</u></b>						
<b>Debt</b>						
General Obligation	\$821.1	\$935.0	\$1,110.0	\$1,144.5	\$4,010.6	
Revenue Bonds	530.0	521.0	454.0	382.0	1,887.0	
<b>Subtotal</b>	<b>\$1,351.1</b>	<b>\$1,456.0</b>	<b>\$1,564.0</b>	<b>\$1,526.5</b>	<b>\$5,897.6</b>	
<b>Current Funds (PAYGO)</b>						
General	\$42.5	\$30.9	\$7.1	\$10.8	\$91.3	
Special	1,027.4	1,048.8	612.6	634.4	3,323.2	
Federal	856.3	701.2	1,243.0	890.1	3,690.6	
<b>Subtotal</b>	<b>\$1,926.2</b>	<b>\$1,780.9</b>	<b>\$1,862.7</b>	<b>\$1,535.3</b>	<b>\$7,105.1</b>	
<b>Total Funds</b>	<b>\$3,277.3</b>	<b>\$3,236.9</b>	<b>\$3,426.7</b>	<b>\$3,061.8</b>	<b>\$13,002.7</b>	

UMMS: University of Maryland Medical System

## **Fiscal Strain Impacts Debt Affordability Limits and New Debt Authorizations**

The Capital Debt Affordability Committee (CDAC) annually reviews the size and condition of all tax-supported debt to ensure that the State's tax-supported debt burden remains within affordability limits. Tax-supported debt consists of general obligation (GO) debt, transportation debt, Grant Anticipation Revenue Vehicles (GARVEEs), bay restoration bonds, capital leases, Stadium Authority debt, and bond or revenue anticipation notes. The committee makes annual, nonbinding recommendations to the Governor and the General Assembly on the appropriate level of new GO and academic revenue debt. The economic strain on the State's budget during the 2007-2010 term resulted in significant alterations to the amount of new annual

GO authorizations proposed by the committee. Each year of the term, the committee proposed additional GO authorizations to mitigate the impact of construction costs escalation and to allow the GO bond program to help the operating budget appropriations by replacing balances and revenues transferred from various capital accounts to the general fund. Exhibit A-2.3 shows the committee's long-term forecast as proposed prior to the 2006 session compared to actual GO authorizations for each session in the 2007-2010 term.

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**Exhibit A-2.3**  
**Capital Debt Affordability Committee Recommended Levels**  
**Of General Obligation Bond Authorizations**  
**2007-2011 Legislative Sessions**  
**(\$ in Millions)**

<u>Session</u>	<u>2005 Report Recommended New Authorizations</u>	<u>Actual New GO Authorizations</u>	<u>Increased Authorization</u>
2007	\$710	\$810	\$100
2008	730	935	105
2009	745	1,110	365
2010	770	1,140	370
<b>Total</b>	<b>\$2,955</b>	<b>\$3,995</b>	<b>\$940</b>

Source: *Report of the Capital Debt Affordability Committee on Recommended Debt Authorizations*, September 2005 and December 2009.

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- **2007 Session:** In response to continued high capital demand, the committee proposed a permanent \$100 million increase in the base for the 2007 session. Since the annual increase is 3% (instead of the flat \$15 million prior to 2006), this also results in higher annual increases.
  - **2008 Session:** In response to continued high capital demand, the committee proposed a permanent \$100 million increase in the base for the 2008 session.
  - **2009 Session:** In order to continue to accommodate the use of GO bond funds in lieu of pay-as-you go (PAYGO) funds and to allow for the bond program to fund what would otherwise require funding in the operating budget, an additional \$150 million was authorized on a one-time basis and not built into the base.
  - **2010 Session:** GO bond authorization levels were set to return to the levels originally recommended for the 2010 session by eliminating the one-time \$150 million of additional authorizations provided in the 2009 session. However, due to the need to accommodate operating budget relief in the capital budget and to provide for economic stimulus, an additional \$150 million was authorized for the 2010 session.

By the end of the 2007-2010 term, the fiscal crises and decline in State revenues brought about a change in the CDAC's out-year proposed debt authorizations. In order to remain within affordability measures, prior to the 2010 session CDAC preliminarily reduced the level of out-year GO bond authorizations as shown in Exhibit A-2.4. Despite adding \$150 million in fiscal 2011, the total proposed out-year authorizations declined by \$400 million from fiscal 2011 to 2015.

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**Exhibit A-2.4**  
**2009 Revision to General Obligation Bond Authorizations**  
**Fiscal 2011-2015**  
**(\$ in Millions)**

<b>Fiscal Year</b>	<b>September Recommendation</b>	<b>December Recommendation</b>	<b>Difference</b>
2011	\$990	\$1,140	\$150
2012	1,020	925	-95
2013	1,050	925	-125
2014	1,080	925	-155
2015	1,110	935	-175
<b>Total</b>	<b>\$5,250</b>	<b>\$4,850</b>	<b>-\$400</b>

Source: Capital Debt Affordability Committee, December 2009

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### **Capital Program Used for Operating Budget Relief and Fund Transfers**

As shown in Exhibit A-2.5, during the 2007-2010 term, the GO bond program was used to reduce operating budget appropriations and to replace funds transferred from various capital accounts to the general fund in the 2009 and 2010 sessions. The fiscal situation limited the use of PAYGO funds to support the capital program and resulted in the shift of funding for certain grant and loan programs to the bond program. In total, the fiscal 2010 and 2011 budgets included transfers amounting to \$666.78 million, comprised of \$524.1 million of fund balance and another \$142.6 million of fiscal 2010 and 2011 revenues that would otherwise have been appropriated as special funds in the operating budget. Transfers made in the Budget Reconciliation and Financing Act of 2009 were fully replaced with bond authorizations in the fiscal 2010 capital budget as well as a \$70.0 million authorization using revenue bonds through *Chapter 419 of 2009*. The fiscal 2011 budget plan replaced most of the fiscal 2011 transferred revenues with GO bonds in fiscal 2011; \$11.3 million of Stateside Program Open Space (POS) and Rural Legacy Program fiscal 2011 transfers were pre-authorized for the 2011 session. However, the planned replacement of fund balance transfers was programmed to be spread out over three fiscal years with \$176.9 million replaced in fiscal 2011, \$127.9 million in fiscal 2012, and \$33.7 million in fiscal 2013. In addition, GO bond funds were used to fund the State's commitment to programs and projects in lieu of using general funds. This principally included funding for the InterCounty Connector (ICC).

**Exhibit A-2.5**  
**Bond Replacement of Capital Program Transfers to the**  
**General Fund and Other Operating Budget Relief**  
(\$ in Millions)

	<u>Amount</u>
<b><u>Fiscal 2009 and 2010 (Unexpended Capital Balance Transfers)</u></b>	
Local Share Program Open Space	\$103.1
Capital Development – Program Open Space	22.7
Rural Legacy Program	10.6
Agricultural Land Preservation	10.0
State Land Acquisition – Program Open Space	145.9
Ocean City Beach Replenishment – Program Open Space	2.1
Ocean City Beach Replenishment – Other	3.4
Waterway Improvement Fund	12.5
Bay Restoration Fund	155.0
Neighborhood Business Development Fund	3.6
Community Legacy Financial Assistance Fund	0.4
Special Loan Programs Fund	2.1
Helicopter Replacement Fund	52.7
<b>Total</b>	<b>\$524.1</b>
<b><u>Fiscal 2009 through 2011 (Special Fund Revenue Transfers)</u></b>	
Program Open Space/Agricultural Land Preservation	\$54.0
Bay Restoration Fund	45.0
Waterway Improvement Fund	3.9
Neighborhood Business Development Fund	3.2
Homeownership Programs Fund	3.0
Special Loan Programs Fund	2.5
Program Open Space and Agricultural Land Preservation	31.0
<b>Total</b>	<b>\$142.6</b>
<b><u>Fiscal 2010 and 2011 (Operating Budget Relief)</u></b>	
InterCounty Connector	\$144.3
Public Safety Communication System	21.7
Community Legacy Program	11.1
Neighborhood Business Development	0.9
Homeownership Programs	8.3
Special Loan Programs	6.8
Rental Housing	2.9
Water Quality Loan Program	6.6
Drinking Water Loan Program	4.5
Aging Schools Program	6.1
Tri-County Council of Southern Maryland	2.0
<b>Total</b>	<b>\$215.2</b>

## **Split-funding and Pre-authorization Policy**

During the four-year term, the General Assembly initiated a policy that allowed for capital projects to be split funded over two or three fiscal years while still allowing the project to be bid for construction with just the initial construction authorization. Typically before work may commence on a capital project authorized in the capital budget bill, the Board of Public Works must be presented with evidence that the work specified in the enabling act can be completed with the funds authorized. This policy, however, was revised during the 2007-2010 term as a means to initiate more construction projects. The benefits of this approach is that it allows the State to only provide what is necessary to adequately cash flow a construction project over a multiple-year period, thereby freeing up limited debt capacity for other capital priorities in the year in which the budget is being considered.

This funding approach lends itself to projects that both command a large share of the capital budget and require multiple years to complete. This approach was first tested in the 2007 capital budget, which included three projects for which funding, including any necessary pre-authorization, was phased over a two-year period. Experimentation with this new policy continued in the 2008 session to fund the construction of a new Rockville District Court project. As the fiscal situation worsened into the 2009 and 2010 sessions and the pressure to fund capital priorities while also using the capital program to relieve operating budget pressures mounted, the use of split funding and pre-authorizing projects was increased. The 2009 session included \$172.1 million for the split funding and pre-authorization of 11 projects, including 4 community college projects funded as grants to local governments through the Maryland Higher Education Commission Community College Facilities Grant Program. By the 2010 session, split funding authorizations had become the customary manner for funding large and expensive projects and included pre-authorizations that extended out two fiscal years. The 2010 capital budget bill included \$260.4 million in GO authorizations that does not take effect until fiscal 2012 and another \$72.5 million in authorizations that does not take effect until fiscal 2013. Exhibit A-2.6 shows the pre-authorizations for the 2011 and 2012 sessions and the amounts funded in the fiscal 2011 budget for the respective projects.

**Exhibit A-2.6**  
**Pre-authorizations Included in the 2010 MCCBL for the**  
**2011 and 2012 Sessions**

<u>Project Title</u>	<u>2010 Session Authorization Amounts</u>	<u>2011 Session Pre-authorization Amounts</u>	<u>2012 Session Pre-authorization Amounts</u>
BPW: State Government Center – Annapolis Legislative Facilities Lowe House Office Building	\$0	\$4,250,000	\$4,000,000
MSDE: Western Maryland Regional Library	2,500,000	2,500,000	0
MHEC: Community College Facilities Grant Program	78,745,000	33,633,000	0
DNR: Natural Resources Development Fund – Harriet Tubman Underground Railroad State Park – Visitor Center	0	1,650,000	0
DPSCS: New Youth Detention Facility (BCDC)	17,520,000	38,000,000	25,600,000
UMCP: Physical Sciences Complex	41,100,000	44,100,000	10,600,000
UB: New Law School Building	37,300,000	38,500,000	0
UMBC: New Performing Arts and Humanities Facility	37,400,000	37,400,000	0
DNR: State and Local Program Open Space	54,141,000	40,366,000	32,283,000
DSP: State Police Helicopters	0	20,000,000	0
<b>Total</b>	<b>\$268,706,000</b>	<b>\$260,399,000</b>	<b>\$72,483,000</b>

BCDC: Baltimore City Detention Center  
 BPW: Board of Public Works  
 DNR: Department of Natural Resources  
 DPSCS: Department of Public Safety and Correctional Services  
 DSP: Department of State Police  
 MCCBL: Maryland Consolidated Capital Bond Loan

MHEC: Maryland Higher Education Commission  
 MSDE: Maryland State Department of Education  
 UB: University of Baltimore  
 UMBC: University of Maryland Baltimore County  
 UMCP: University of Maryland, College Park

Note: The proposed pre-authorization for the Maryland Higher Education Commission Community College Grant Program would allow for the split funding of community college projects started in the 2009 session by the legislature. The 2010 session list included \$9,466,000 for Howard Community College – Allied Health Building; \$6,064,000 for Hagerstown Community College – Arts and Sciences Complex; \$868,000 for Prince George’s Community College – Center for Health Studies; \$2,586,000 for Prince George’s Community College – Circulation/Roadway Modifications; \$3,500,000 for Anne Arundel Community College – Library Renovation and Addition; \$3,245,000 for College of Southern Maryland – Phase II Campus Development; and \$7,904,000 for Harford Community College – Susquehanna Center.

## Public-private Partnerships

During the term, the State began to utilize public-private partnership (P3) agreements as one means to maintain and expand capital infrastructure investment without dedicating limited GO bond capacity. While primarily utilized to finance transportation-related infrastructure, the State initiated a multi-year phased redevelopment of the State Center complex in Baltimore City and the financing of the Department of Health and Mental Hygiene's new public health laboratory as P3s.

For additional discussion on the expanded use of P3 agreements as a mechanism to supplement and support the financing and construction of State infrastructure, see the "Transportation" subpart of Part G – Transportation and Motor Vehicles in this *Major Issues Review*.

## Transportation

During the four-year term, the economic strain on the State's budget heavily impacted transportation funding and planning. During the 2007 special session, the legislature completed action on a fiscal plan that sought to address the long-term structural deficit as well as provide additional revenue to the Transportation Trust Fund (TTF) for capital projects.

*Chapter 6 of the 2007 special session* increased the titling tax and titling revenues to the TTF, increased the titling certificate fee, ended certain general fund transfers resulting in more revenues dedicated to the TTF, and dedicated sales tax revenues to the fund. Furthermore, in recognition of the additional bonding capacity associated with the increased revenues, the statutory debt outstanding limit for Consolidated Transportation Bonds was increased from \$2.0 billion to \$2.6 billion. The additional revenues provided for in the special session were modified by *Chapter 10 of 2008*, which repealed the sales tax on computers and temporarily reduced the share of the sales tax to be distributed to the TTF.

For additional discussion of transportation initiatives and funding, see the "Transportation" subpart of Part G – Transportation and Motor Vehicles in this *Major Issues Review*.

## Capital Program Funding

With the additional revenue provided for in the 2007 special session, the 2008-2013 capital program as introduced increased by \$2.1 billion. Approximately 92% of the additional funding was divided between the Maryland Transit Administration (MTA) and the State Highway Administration (SHA). The additional capital funding was programmed for system preservation funding and expansion projects. However, the economic recession dramatically reduced titling tax revenues as well as other transportation revenues which resulted in the Maryland Department of Transportation making reductions to its six-year capital program. In total, the 2009-2014 capital program was reduced by approximately \$2.2 billion compared to



the 2008-2013 capital program, effectively offsetting any gains from the 2007 revenue increase. The reductions to the capital program were largely in SHA and MTA since that is where most of the additional revenue was applied with an emphasis on maintaining as many system preservation projects as possible.

Helping to offset the capital reductions was the federal American Recovery and Reinvestment Act (ARRA) that was signed into law in February 2009. Maryland received approximately \$566 million in additional federal highway and transit funding to help offset the earlier capital reductions. The department elected to fund smaller system preservation projects that could quickly begin construction to meet federal requirements on the use of the funds. Local jurisdictions also received a portion of the funding for federal aid eligible highway and transit projects.

## **Environment**

Capital funding for environmental programs totaled \$2.37 billion over the 2007-2010 term. These programs are typically administered by the Department of Natural Resources, the Maryland Department of Agriculture, and the Maryland Department of the Environment (MDE).

MDE programs, principally the Bay Restoration Fund to reduce the nitrogen discharge levels at the State's 67 largest wastewater treatment plants and the Water Quality and Drinking Water loan programs, received the largest amount of environmental program funding. Capital authorizations from the Bay Restoration Fund are derived from a fee paid by users of wastewater treatment plants and users of onsite sewage septic systems. The revenues are used on a PAYGO basis and to support the issuance of revenue bonds. The Maryland Water Quality Financing Authority (MWQFA) plans to issue \$530 million of Bay Restoration Fund backed revenue bonds. During the 2007-2010 term, a total of \$350 million of these bonds were authorized. However, only \$50 million of these bonds was issued during the term due to project cash-flow needs. Instead, the upgrades were primarily funded on a PAYGO basis using available fund revenues. Subsequent issuances will be made as project cash-flow needs dictate. By the end of the legislative term, it became apparent that the fund revenues will not fully support the estimated total project costs. MDE now estimates that the cost to upgrade the 67 major wastewater treatment plants is \$1.54 billion. Estimated available revenues would fund approximately \$881 million, leaving a shortfall of approximately \$659 million potentially unfunded which will need to be addressed in the next term.

During the 2007-2010 term, funding for the Water Quality Revolving Loan Program and Drinking Water Revolving Loan Program was bolstered with \$119.2 million of federal funds made available through the ARRA. In addition to providing an additional source of funds to make loans to local governments for wastewater and drinking water upgrades, the additional federal authorization enabled MWQFA to cancel \$48 million of revenue bonds authorized by the General Assembly in the 2009 session for these programs.

## Transfer Tax

The State's land preservation programs are principally funded through the distribution of State transfer tax revenues. At the beginning of the term, annual transfer tax revenue collections were robust to the benefit of the various programs funded through this source. However, a sluggish real estate market and overall statewide economic recession severely reduced State transfer tax collections and disrupted annual funding levels. Annual budgeted revenues and budgeted adjustments for any over or under revenue attainment declined dramatically from fiscal 2008 to 2011. In addition, the diversion of revenues to support other priorities further reduced the amount of transfer tax revenues available to support capital programs. This included the annual allocation of \$21 million from the local POS share to fund the operations of State parks as authorized in *Chapter 2 of the 2007 special session* and the budgeting for annual debt service on the POS bonds authorized by *Chapter 419 of 2009*.

Although budget reconciliation legislation adopted in the 2009 and 2010 sessions used the transfer tax revenues and available transfer tax fund balances to help balance the State's operating budget, the policy called for the replacement of all transferred funds with additional GO bond authorizations so that the programs already impacted by reduced annual revenues and other revenue diversions would not need to be cut completely out of the State's operating and capital budgets.

For additional discussion on the use of transfer tax revenues, see the "Natural Resources" subpart of Part K – Natural Resources, Environment, and Agriculture in this *Major Issues Review*.

## Public School Construction

During the 2007-2010 term, the General Assembly continued to focus on providing adequate funding for public school construction projects consistent with the goals established in the 2004 Public School Facilities Act. Through this Act, the State committed to providing \$250 million annually for a total of \$2 billion over an eight-year period beginning with the fiscal 2006 budget, with the remaining balance funded by local government. During the four-year term, the State invested a total of \$1.85 billion toward the State's nominal funding goal of \$2.0 billion by 2013. For an additional discussion on the allocation of authorized funds for public school construction, see the "Education – Primary and Secondary" subpart of Part L – Education of this *Major Issues Review*.

Public school construction funding was further supplemented with \$15.6 million in interest-free Qualified Zone Academy Bonds (QZABs) in the form of a grant to the Interagency Committee on School Construction. QZABs were created under the federal Tax Reform Act of 1997 as a new type of debt instrument to finance education projects. QZAB funds may be used in schools located in a federal Enterprise or Empowerment Zone, or where at least 35% of the student population qualifies for free or reduced price meals. Federal law requires that QZAB projects receive a 10% private sector match, which may be in the form of cash; in-kind goods

such as equipment or technology; services such as help developing curriculum; and internships or field trips. The State does not pay interest on QZAB issuances. Instead, the State repays the principal only, and the bondholder receives a federal tax credit in lieu of interest payments each year until the bond matures. QZABs are issued with the full faith and credit of the State. Therefore, QZABs are considered State debt.

*Chapter 585 of 2007* authorized the State to issue a total of \$11.1 million of QZABs and further required that \$5.5 million be allocated to the 24 jurisdictions as required by Section 5-206(f) of the Education Article for the Aging Schools Program. Through fiscal 2009, Maryland allowed QZAB proceeds to be used only for renovation and repair (brick-and-mortar) projects as part of the Aging Schools Program. *Chapter 707 of 2009* expanded the use of previously authorized QZABs for equipment, which is an authorized use under Section 1397E of the Internal Revenue Service code. *Chapter 707* also authorized the Maryland State Department of Education to allocate QZAB funds to local education agencies. *Chapter 523 of 2010* authorized the State to issue an additional \$4.5 million in QZABs allocated to the State in 2008. Of this amount, \$1.0 million was allocated to the Aging School Program in the same manner as was done in the 2007 session. In 2009, Maryland's federal QZAB allocation was \$15.9 million, and bonds for these funds must be issued by December 31, 2011. The 2009 allocations were higher nationwide because the ARRA included \$1.4 billion to expand the program.

## Higher Education

The General Assembly continued its high level of funding support for the higher education system by authorizing just over \$1.280 billion during the 2007-2010 term. These funds provided for the construction of new science and technology buildings, liberal arts and performing arts centers, and research centers at State four-year institutions, community colleges throughout the State, and private colleges and universities. Exhibit A-2.7 shows the funding for each of the four-year institutions as well as the total funding for community college projects and private colleges.

The University System of Maryland member institutions received over half (\$759.4 million) of the funding, including \$66.0 million for various facility renewal projects at member campuses. During the four-year term, the State's contribution for community college construction increased substantially over what was provided in the previous term; \$308.7 million compared to \$192.7 million in the previous four-year term. Other substantial beneficiaries included Morgan State University at \$95.9 million and private colleges and universities receiving \$34.0 million.

**Exhibit A-2.7**  
**Higher Education Capital Funding by Institution**  
**Fiscal 2008-2011**  
**(\$ in Thousands)**

<b><u>Institution</u></b>	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>	<b><u>Total</u></b>
University of Maryland, Baltimore	\$0	\$62,227	\$13,756	\$2,606	\$78,589
University of Maryland, College Park	28,800	22,100	12,318	46,531	109,749
Towson University	13,505	27,613	35,725	38,650	115,493
Coppin State University	87,064	56,172	12,116	6,497	161,849
University of Baltimore	1,211	4,033	5,416	37,300	47,960
Bowie State University	0	0	37,265	33,253	70,518
Salisbury University	12,509	0	28,000	9,869	50,378
University System of Maryland – Facility Renewal	15,000	17,000	17,000	17,000	66,000
University of Maryland University College	1,185	0	0	0	1,185
University of Maryland Eastern Shore	0	0	0	3,000	3,000
Frostburg State University	0	0	0	2,681	2,681
University of Maryland Baltimore County	2,725	0	0	37,400	40,125
University of Maryland Center for Environmental Science	9,200	1,343	0	0	10,543
University of Maryland – Shady Grove	1,200	0	0	0	1,200
St. Mary's College	1,077	4,647	1,685	0	7,409
Morgan State University	8,740	11,873	44,846	30,450	95,909
Independent Colleges	8,000	9,000	9,000	8,000	34,000
Community Colleges	61,390	81,028	87,546	78,745	308,709
<b>Total</b>	<b>\$251,606</b>	<b>\$297,036</b>	<b>\$304,673</b>	<b>\$351,982</b>	<b>\$1,205,297<sup>1</sup></b>

<sup>1</sup> This does not include authorized funding for the University of Maryland Medical System. The figures include \$5.0 million authorized for the Garrett College Community Center project in fiscal 2008, a portion of which was eligible for State aid through the Maryland Higher Education Commission Community College Facilities Grant Program.

## **Housing and Community Development**

Capital investment in housing and community development programs administered by the Department of Housing and Community Development (DHCD) totaled \$340.1 million over the four-year period. The State's fiscal crisis, which virtually eliminated the use of general funds to support the capital program, reduced the amount of capitalization of the State's housing and community development programs during the four-year term. Instead, these programs relied almost exclusively on GO bond authorizations and special funds derived from investments and principal and interest payments on loans. The most significant event impacting the funding for these programs occurred in the 2009 session when DHCD was awarded \$123.1 million in capital

eligible federal stimulus funds made available through the ARRA which impacted DHCD's capital budget in fiscal 2010 and 2011. The ARRA funds included:

- \$79.2 million in Monetization Funds intended to benefit developers awarded federal Low-Income Housing Tax Credits (LIHTC). During the term, developers were increasingly unable to raise sufficient equity from the LIHTC which slowed the development of affordable rental housing.
- \$31.7 million for the Tax Credit Assistance Program also intended to benefit developers that have been awarded federal LIHTC. This was intended to target developers that already sold their LIHTC allocation to investors but generated such insufficient equity that their respective project still lacked adequate financing.
- \$10.0 million for the Multifamily Energy Efficiency and Housing Affordability Program. These funds were provided as reimbursable funds from the Maryland Energy Administration which received the federal funds as part of its ARRA award. The program provides grants for energy efficiency and renewable energy improvements to affordable rental housing developments, particularly those that have received financing through DHCD's multifamily programs.
- \$2.2 million to supplement the existing Community Development Block Grant Program.

### **Public Safety**

Authorized funding for public safety projects totaled \$274.4 million during the 2007-2010 term. A total of \$148.7 million was authorized for State correctional facilities. Funding for the design and construction of a new women's detention and youth detention facility at the Baltimore City Detention Center (BCDC) represented the most significant State correctional facility project. Design and initial construction funding needed for demolition were provided during the term. However, additional construction funding for these BCDC projects, estimated at \$273.6 million, is programmed in the 2010 *Capital Improvement Program* (CIP) for fiscal 2013 through 2015. State capital authorizations for local jail construction projects initially totaled \$55.7 million. However, several projects later lacked local government support reflecting the tight fiscal climate affecting State and local government finances. This resulted in the de-authorization of \$11.5 million of State authorizations initially authorized in the four-year term.

Authorizations for Department of State Police capital projects primarily reflect the policy to replace the State's Medevac helicopter fleet initiated during the term. The General Assembly's intent to replace the existing fleet dates back to the 2007 legislative session. *Chapter 6 of the 2007 special session* provided that a portion (\$110 million) of the revenues from the increased sales and use tax in fiscal 2008 be directed to the State Police Helicopter Replacement Fund (SPHRF). *Chapter 6* also expressed the intent of the General Assembly that the Governor include sufficient expenditures from the fund to purchase three helicopters per year from fiscal 2009 to 2012. However, the Spending Mandate and Revenue Dedication Relief Act of 2008 (*Chapter 414 of 2008*) modified *Chapter 6* to dedicate \$50 million, rather than

\$110 million, to SPHRF. To replace this funding, *Chapter 414* also required the Governor to include a total of \$70 million for the purchase of Medevac helicopters in the fiscal 2010, 2011, and 2012 budgets.

During the 2008 legislative session, the General Assembly approved \$33.6 million in PAYGO special funds to procure the first installment of three Medevac helicopters. However, due to budget constraints, the Budget Reconciliation and Financing Act of 2009 authorized the transfer of this funding to the general fund. In lieu of these funds, the fiscal 2010 capital budget authorized \$55.2 million in general obligation bonds to fund the initial replacement of up to three new helicopters. The 2010 CIP calls for the purchase of additional helicopters to replace MSPAC's aging fleet between fiscal 2012 and 2015.

## State Aid to Local Governments

### Overview

State aid to local governments will total \$6.4 billion in fiscal 2011, which represents \$1,131 per State resident. During this legislative term (fiscal 2008 through 2011), State aid to local governments increased at an average annual rate of 2.9%, even though the State was confronted with major fiscal challenges during most of this period. During this four-year period, the State provided local governments with \$693.0 million in additional State aid, with public schools receiving most of the additional funding with an influx of \$1.2 billion in funding. State funding for local health departments and county and municipal governments actually decreased over the 2007-2010 legislative term as shown in Exhibits A-3.1 and A-3.2. The increase in public school funding has been partially paid from monies received under the federal American Recovery and Reinvestment Act (ARRA) that was passed in 2009. State aid for public schools in fiscal 2010 includes \$297.3 million in federal ARRA funding. For fiscal 2011, the amount totals \$422.3 million. Under the ARRA, these funds do not continue after fiscal 2011.

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### Exhibit A-3.1 State Aid to Local Governments Fiscal 2007 and 2011 (\$ in Millions)

	<u>FY 2007</u>	<u>FY 2011</u>	<u>Difference</u>	<u>% Difference</u>
Public Schools	\$4,475.4	\$5,717.5	\$1,242.0	27.8%
Libraries	55.5	65.5	10.0	18.1%
Community Colleges	205.9	256.1	50.2	24.4%
Health	63.7	37.3	-26.4	-41.4%
County/Municipal	953.5	370.6	-582.9	-61.1%
<b>Total</b>	<b>\$5,754.0</b>	<b>\$6,447.0</b>	<b>\$693.0</b>	<b>12.0%</b>

Source: Department of Legislative Services

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**Exhibit A-3.2**  
**Annual Change in State Aid**  
**Fiscal 2008-2011**  
**(\$ in Millions)**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
Public Schools	\$690.9	\$212.9	\$127.8	\$210.5	\$1,242.0
Libraries	8.6	-0.7	0.6	1.5	10.0
Community Colleges	35.8	13.0	1.5	-0.1	50.2
Health	3.3	-9.6	-20.1	0.0	-26.4
County/Municipal	-46.8	-168.5	-341.3	-26.3	-582.9
<b>Total</b>	<b>\$691.9</b>	<b>\$47.1</b>	<b>-\$231.5</b>	<b>\$185.5</b>	<b>\$693.0</b>

State retirement payments made on behalf of local school systems, libraries, and community colleges account for a portion of the increases over the 2007-2010 legislative term, with retirement payments increasing by \$425.6 million, or 89.6%. This increase is due to the rise in the retirement contribution rate and employee salaries. Under the federal ARRA, \$228.1 million in federal funds are being used to cover teachers' retirement payments. In comparison, direct aid to local governments only realized a 5.1% increase during this period. Exhibit A-3.3 shows the amount of State funding for direct aid and retirement payments since fiscal 2007.

**Exhibit A-3.3**  
**Summary of State Aid to Local Governments**  
**Fiscal 2007-2011**  
**(\$ in Millions)**

<u>Fiscal</u>	<u>Direct Aid</u>	<u>Retirement</u>	<u>Total Aid</u>	<u>% Difference</u>
2007	\$5,279.1	\$474.8	\$5,754.0	
2008	5,843.1	602.9	6,445.9	12.0%
2009	5,832.3	660.7	6,493.0	0.7%
2010	5,457.9	803.6	6,261.5	-3.6%
2011	5,546.6	900.4	6,447.0	3.0%

Source: Department of Legislative Services

## **Recent Trends in State Aid**

The 2007-2010 legislative term started with the culmination of several years of record increases in State aid to local governments, followed by three straight years of cost containment actions which primarily affected funding to county and municipal governments. Cost containment actions, the desire to limit the impact on public school funding, and the availability of federal ARRA funds for education have significantly shifted the allocation of State aid to local governments. In fiscal 2007, public schools received nearly 78.0% of total State aid with county and municipal governments receiving 17.0% of total State aid. Today, public schools receive close to 90.0% of total State aid; whereas, county and municipal governments receive less than 6.0% of total State aid allocations. This funding shift has had a significant impact on the availability of State funding for numerous local public services, such as local highway maintenance, land preservation, and public safety. For example, while overall State aid has increased by 12.0% over the 2007-2010 legislative term, State funding for local transportation grants has decreased by 74.8% while State funding for public safety has decreased by 22.0%.

## **Reductions to State Aid Programs**

After several years of record increases in State aid, the General Assembly approved legislation at the 2007 special session that reduced funding for several State aid programs beginning in fiscal 2009 to help address the State's general fund budget gap. Education aid was reduced by \$142.7 million from statutory funding levels, whereas State aid to counties and municipalities was reduced by \$63.9 million. The decrease in education aid resulted from a two year freeze in the inflationary adjustment to the per student funding level used in education aid formulas. The decrease in county and municipal funding resulted from reductions to the highway user revenues, the elimination of the electric utility grant, and a transfer of local Program Open Space (POS) funding to the State's park system.

As the national recession that began in December 2007 started to impact State finances, the General Assembly continued to constrain the growth in State aid at the 2008 session as part of the State's cost containment measures, with State funding for environmental education, public libraries, and local community colleges being reduced. These reductions were followed by actions by the Board of Public Works in October 2008 that reduced funding for education, community colleges, public safety, and local health programs. In total, State aid to local governments was reduced by approximately \$241.8 million in fiscal 2009, with public school funding being cut by \$146.5 million and county/municipal funding being cut by \$64.4 million as illustrated in Exhibit A-3.4.



**Exhibit A-3.4**  
**State Aid Reductions in Fiscal 2009-2011**

	FY 2009	FY 2010	FY 2011
Funding Formulas – Inflation Freeze	-\$142,738,100	-\$393,068,500	-\$469,336,400
Nonpublic Placements	0	-16,110,000	-16,110,000
School Improvement Grants	-2,750,000	-11,379,600	-11,379,600
Aging Schools	0	-5,558,000	-5,558,000
Quality Teacher Incentives	0	-5,300,000	-5,300,000
Student Transportation	0	0	-4,343,700
Headstart Program	0	-1,200,000	-1,200,000
Science and Math Initiative	-169,000	-1,169,000	-1,169,000
Environmental Education	-150,000	-1,075,000	-1,075,000
Gifted and Talented	-121,000	-534,400	-534,400
Food Services	-312,000	-312,000	-312,000
Principal Fellowship Program	-159,700	-159,700	-159,700
School Based Health Centers	-144,000	-144,000	-144,000
<b>Subtotal – Public Schools</b>	<b>-\$146,543,800</b>	<b>-\$436,010,200</b>	<b>-\$516,621,800</b>
Library Aid Formula	-2,479,700	-4,820,400	-4,696,500
State Library Network	-907,700	-2,608,800	-2,608,600
<b>Subtotal – Libraries</b>	<b>-\$3,387,400</b>	<b>-\$7,429,200</b>	<b>-\$7,305,100</b>
Cade Formula	-16,096,000	-38,982,300	-60,466,500
<b>Subtotal – Community Colleges</b>	<b>-\$16,096,000</b>	<b>-\$38,982,300</b>	<b>-\$60,466,500</b>
Local Health Grants	-11,401,200	-31,476,900	-31,476,900
<b>Subtotal – Local Health Departments</b>	<b>-\$11,401,200</b>	<b>-\$31,476,900</b>	<b>-\$31,476,900</b>
Highway User Revenues	-15,700,000	-321,422,400	-339,690,000
Electric Utility Grant	-30,615,200	-30,615,200	-30,615,200
Police Aid Formula	-504,500	-20,611,300	-18,975,500
Program Open Space	-17,556,500	-17,556,500	-17,556,500
Baltimore City Special Grant	0	-500,000	-3,075,000
Local Employee Retirement	0	-2,974,000	-2,974,000
<b>Subtotal – County/Municipal Governments</b>	<b>-\$64,376,200</b>	<b>-\$393,679,400</b>	<b>-\$412,886,200</b>
<b>Total State Aid Reductions</b>	<b>-\$241,804,600</b>	<b>-\$907,578,000</b>	<b>-\$1,028,756,500</b>

With the continuation of the fiscal crisis, the General Assembly made significant reductions to State aid programs at the 2009 session, with State funding for local highways and transportation projects receiving the largest share of the reductions. Funding for local highway user grants was reduced by \$101.9 million, with an additional \$60.0 million reduction based on local wealth and tax effort. State retirement payments for certain local officials (other than teachers) were also eliminated. Local school systems realized reductions to nonpublic placements for special education students, the aging schools program, teacher quality incentives, school improvement grants, and other smaller discretionary programs. Additional reductions from statutorily mandated increases were made to local libraries and community colleges.

Due to declining general fund revenues, the Board of Public Works reduced fiscal 2010 appropriations for several local aid programs in August 2009. Highway user revenues for county and municipal transportation purposes were reduced by an additional \$159.5 million beyond the \$161.9 million reduction that was enacted during the 2009 session. Additional reductions were made to community colleges and local health departments. In total, actions taken in 2007, 2008, and 2009 to constrain the growth in State aid resulted in budgetary savings of \$907.6 million in fiscal 2010.

For most of the aid programs reduced by the Board of Public Works, the underlying statutes for the aid programs would have required higher funding levels in fiscal 2011. Through the Budget Reconciliation and Financing Act of 2010 (*Chapter 484 of 2010*), the General Assembly approved \$390.8 million in reductions to these and other statutorily mandated local programs in fiscal 2011. A portion of the reductions was offset by an additional \$24.4 million in funding under the disparity grant program. As a result, local governments will realize a net reduction in statutorily mandated funding of \$366.4 million in fiscal 2011. State funding for local highways and transportation projects received the largest share of reductions, with funding being reduced by \$339.7 million. As shown in Exhibit A-3.4, the combined actions by the General Assembly over the prior three years will result in a net reduction in State aid of over \$1 billion in fiscal 2011.

### **Changes by Program**

Exhibit A-3.5 summarizes the distribution of direct aid by governmental unit and shows the estimated State retirement payments for local government employees in fiscal 2007 and 2011. Exhibit A-3.6 compares total State aid in fiscal 2007 and 2011 by program.

**Exhibit A-3.5**  
**State Assistance to Local Governments**  
**Fiscal 2011 Legislative Appropriation**  
**(\$ in Thousands)**

County	<i>Direct State Aid</i>						Retirement	Total	Change Over FY 2007	Percent Change
	County - Municipal	Community Colleges	Public Schools	Libraries	Health	Subtotal				
Allegany	\$8,676	\$5,898	\$83,670	\$758	\$909	\$99,910	\$10,604	\$110,514	\$8,203	8.0%
Anne Arundel	8,635	28,695	294,144	1,913	3,142	336,528	76,536	413,064	38,749	10.4%
Baltimore City	220,240	0	872,075	6,461	6,675	1,105,452	83,503	1,188,955	50,799	4.5%
Baltimore	10,786	36,335	525,841	5,249	4,302	582,514	99,745	682,258	61,307	9.9%
Calvert	1,267	2,206	86,901	402	370	91,147	17,683	108,829	7,035	6.9%
Caroline	2,936	1,434	42,617	273	538	47,799	5,249	53,048	2,314	4.6%
Carroll	2,212	7,409	140,799	982	1,232	152,635	27,149	179,783	10,653	6.3%
Cecil	1,379	5,252	100,188	717	806	108,342	15,666	124,009	12,096	10.8%
Charles	1,954	7,042	150,492	791	995	161,274	25,698	186,972	18,910	11.3%
Dorchester	2,881	1,293	31,843	244	429	36,690	4,560	41,250	1,604	4.0%
Frederick	3,389	8,667	209,002	1,140	1,512	223,710	39,128	262,838	38,192	17.0%
Garrett	2,857	3,343	24,376	155	437	31,168	4,658	35,826	-3,889	-9.8%
Harford	3,350	10,240	209,609	1,548	1,737	226,485	37,165	263,650	17,397	7.1%
Howard	4,617	13,901	210,196	770	1,215	230,699	63,068	293,766	59,110	25.2%
Kent	580	589	10,012	96	336	11,613	2,448	14,061	-2,390	-14.5%
Montgomery	15,058	40,821	526,108	2,662	3,015	587,663	181,460	769,123	199,143	34.9%
Prince George's	42,216	22,412	884,253	5,648	5,007	959,537	133,491	1,093,028	98,708	9.9%
Queen Anne's	844	1,682	31,133	132	418	34,209	6,945	41,154	1,213	3.0%
St. Mary's	1,417	2,310	95,031	624	809	100,191	15,271	115,462	13,144	12.8%
Somerset	5,636	808	23,726	263	429	30,863	3,216	34,079	-70	-0.2%
Talbot	857	1,308	11,194	101	329	13,790	4,040	17,831	-3,876	-17.9%
Washington	2,150	7,857	144,452	1,128	1,381	156,968	19,965	176,933	27,012	18.0%
Wicomico	3,780	4,587	115,327	838	947	125,480	14,654	140,134	22,385	19.0%
Worcester	1,434	1,849	17,967	138	313	21,701	8,502	30,203	-2,813	-8.5%
Unallocated	21,439	6,463	26,656	15,658	0	70,216	0	70,216	18,061	34.6%
<b>Total</b>	<b>\$370,591</b>	<b>\$222,403</b>	<b>\$4,867,616</b>	<b>\$48,690</b>	<b>\$37,283</b>	<b>\$5,546,583</b>	<b>\$900,402</b>	<b>\$6,446,985</b>	<b>\$692,994</b>	<b>12.0%</b>

Note: County/Municipal includes the municipal share of police aid, highway user revenue, and fire aid.

**Exhibit A-3.5 (Cont.)**  
**State Assistance to Local Governments**  
**Fiscal 2007 Actual**  
**(\$ in Thousands)**

County	<i>Direct State Aid</i>						Retirement	Total
	County - Municipal	Community Colleges	Public Schools	Libraries	Health	Subtotal		
Allegany	\$18,766	\$5,187	\$70,406	\$697	\$1,528	\$96,583	\$5,728	\$102,311
Anne Arundel	64,928	24,462	238,827	1,844	5,369	335,429	38,886	374,315
Baltimore City	332,676	0	741,840	6,061	11,380	1,091,957	46,199	1,138,156
Baltimore	75,483	34,073	442,974	4,684	7,398	564,612	56,339	620,951
Calvert	16,529	1,781	73,248	386	641	92,585	9,209	101,795
Caroline	8,442	1,101	37,209	241	902	47,895	2,839	50,734
Carroll	20,148	6,149	125,563	886	2,093	154,839	14,292	169,131
Cecil	11,160	4,249	86,145	615	1,371	103,540	8,373	111,912
Charles	17,891	6,025	128,721	764	1,694	155,095	12,967	168,062
Dorchester	8,790	1,012	26,496	215	721	37,234	2,412	39,646
Frederick	26,113	6,580	168,532	1,013	2,569	204,806	19,841	224,647
Garrett	10,063	2,777	23,433	158	733	37,165	2,551	39,715
Harford	26,228	8,635	186,600	1,384	2,953	225,799	20,454	246,253
Howard	32,725	10,901	156,861	694	2,089	203,269	31,387	234,656
Kent	4,509	509	9,418	90	562	15,088	1,363	16,451
Montgomery	89,710	33,385	343,460	2,396	5,255	474,206	95,774	569,980
Prince George's	105,283	19,656	786,700	6,049	8,591	926,279	68,041	994,320
Queen Anne's	7,645	1,420	26,446	127	706	36,343	3,598	39,941
St. Mary's	11,513	2,044	78,709	571	1,371	94,208	8,111	102,318
Somerset	9,499	626	21,417	251	718	32,511	1,638	34,149
Talbot	7,072	1,213	10,536	91	551	19,463	2,244	21,706
Washington	17,858	6,230	112,114	993	2,335	139,530	10,391	149,921
Wicomico	13,197	3,967	90,450	684	1,602	109,899	7,849	117,748
Worcester	10,217	1,489	16,283	127	536	28,653	4,363	33,015
Unallocated	5,231	4,823	26,880	15,220	0	52,155	0	52,155
<b>Total</b>	<b>\$951,673</b>	<b>\$188,294</b>	<b>\$4,029,270</b>	<b>\$46,240</b>	<b>\$63,668</b>	<b>\$5,279,145</b>	<b>\$474,846</b>	<b>\$5,753,991</b>

Note: County/Municipal includes the municipal share of police aid, highway user revenue, and fire aid.

**Exhibit A-3.5 (Cont.)**  
**State Assistance to Local Governments**  
**Dollar Difference Between Fiscal 2011 Legislative Appropriation and Fiscal 2007 Actual**  
**(\$ in Thousands)**

County	<i>Direct State Aid</i>						Subtotal	Retirement	Total
	County - Municipal	Community Colleges	Public Schools	Libraries	Health				
Allegany	-\$10,090	\$712	\$13,263	\$61	-\$619	\$3,327	\$4,876	\$8,203	
Anne Arundel	-56,293	4,233	55,317	69	-2,227	1,099	37,650	38,749	
Baltimore City	-112,437	0	130,235	401	-4,705	13,495	37,304	50,799	
Baltimore	-64,696	2,263	82,867	565	-3,096	17,902	43,405	61,307	
Calvert	-15,261	425	13,653	16	-272	-1,439	8,473	7,035	
Caroline	-5,506	333	5,408	32	-363	-96	2,409	2,314	
Carroll	-17,936	1,260	15,236	96	-861	-2,204	12,857	10,653	
Cecil	-9,781	1,002	14,043	102	-564	4,803	7,294	12,096	
Charles	-15,936	1,017	21,771	27	-700	6,179	12,731	18,910	
Dorchester	-5,909	282	5,347	29	-292	-543	2,147	1,604	
Frederick	-22,724	2,088	40,470	127	-1,057	18,904	19,288	38,192	
Garrett	-7,206	567	943	-4	-296	-5,997	2,107	-3,889	
Harford	-22,877	1,604	23,009	164	-1,215	686	16,711	17,397	
Howard	-28,108	3,000	53,335	76	-874	27,429	31,681	59,110	
Kent	-3,929	80	593	6	-226	-3,475	1,085	-2,390	
Montgomery	-74,652	7,436	182,648	266	-2,240	113,457	85,686	199,143	
Prince George's	-63,067	2,756	97,553	-401	-3,584	33,257	65,450	98,708	
Queen Anne's	-6,801	262	4,687	5	-288	-2,135	3,347	1,213	
St. Mary's	-10,095	266	16,322	53	-563	5,983	7,160	13,144	
Somerset	-3,863	183	2,309	12	-289	-1,648	1,578	-70	
Talbot	-6,214	95	658	10	-222	-5,672	1,797	-3,876	
Washington	-15,708	1,627	32,338	134	-953	17,438	9,574	27,012	
Wicomico	-9,417	620	24,877	154	-654	15,580	6,805	22,385	
Worcester	-8,783	360	1,684	11	-223	-6,951	4,139	-2,813	
Unallocated	16,207	1,640	-224	438	0	18,061	0	18,061	
<b>Total</b>	<b>-\$581,082</b>	<b>\$34,109</b>	<b>\$838,346</b>	<b>\$2,451</b>	<b>-\$26,384</b>	<b>\$267,439</b>	<b>\$425,556</b>	<b>\$692,994</b>	

Note: County/Municipal includes the municipal share of police aid, highway user revenue, and fire aid.

**Exhibit A-3.5 (Cont.)**  
**State Assistance to Local Governments**  
**Percent Change: Fiscal 2011 Legislative Appropriation over Fiscal 2007 Actual**

County	<i>Direct State Aid</i>						Subtotal	Retirement	Total
	County - Municipal	Community Colleges	Public Schools	Libraries	Health				
Allegheny	-53.8%	13.7%	18.8%	8.7%	-40.5%	3.4%	85.1%	8.0%	
Anne Arundel	-86.7%	17.3%	23.2%	3.8%	-41.5%	0.3%	96.8%	10.4%	
Baltimore City	-33.8%	n/a	17.6%	6.6%	-41.3%	1.2%	80.7%	4.5%	
Baltimore	-85.7%	6.6%	18.7%	12.1%	-41.8%	3.2%	77.0%	9.9%	
Calvert	-92.3%	23.9%	18.6%	4.0%	-42.3%	-1.6%	92.0%	6.9%	
Caroline	-65.2%	30.2%	14.5%	13.4%	-40.3%	-0.2%	84.9%	4.6%	
Carroll	-89.0%	20.5%	12.1%	10.9%	-41.1%	-1.4%	90.0%	6.3%	
Cecil	-87.6%	23.6%	16.3%	16.6%	-41.2%	4.6%	87.1%	10.8%	
Charles	-89.1%	16.9%	16.9%	3.6%	-41.3%	4.0%	98.2%	11.3%	
Dorchester	-67.2%	27.8%	20.2%	13.6%	-40.6%	-1.5%	89.0%	4.0%	
Frederick	-87.0%	31.7%	24.0%	12.5%	-41.1%	9.2%	97.2%	17.0%	
Garrett	-71.6%	20.4%	4.0%	-2.3%	-40.4%	-16.1%	82.6%	-9.8%	
Harford	-87.2%	18.6%	12.3%	11.9%	-41.2%	0.3%	81.7%	7.1%	
Howard	-85.9%	27.5%	34.0%	11.0%	-41.8%	13.5%	100.9%	25.2%	
Kent	-87.1%	15.7%	6.3%	6.8%	-40.2%	-23.0%	79.6%	-14.5%	
Montgomery	-83.2%	22.3%	53.2%	11.1%	-42.6%	23.9%	89.5%	34.9%	
Prince George's	-59.9%	14.0%	12.4%	-6.6%	-41.7%	3.6%	96.2%	9.9%	
Queen Anne's	-89.0%	18.5%	17.7%	4.1%	-40.8%	-5.9%	93.0%	3.0%	
St. Mary's	-87.7%	13.0%	20.7%	9.3%	-41.0%	6.4%	88.3%	12.8%	
Somerset	-40.7%	29.2%	10.8%	4.8%	-40.2%	-5.1%	96.4%	-0.2%	
Talbot	-87.9%	7.8%	6.2%	11.4%	-40.3%	-29.1%	80.1%	-17.9%	
Washington	-88.0%	26.1%	28.8%	13.5%	-40.8%	12.5%	92.1%	18.0%	
Wicomico	-71.4%	15.6%	27.5%	22.6%	-40.9%	14.2%	86.7%	19.0%	
Worcester	-86.0%	24.2%	10.3%	8.4%	-41.7%	-24.3%	94.9%	-8.5%	
Unallocated	309.8%	34.0%	-0.8%	2.9%	n/a	34.6%	n/a	34.6%	
<b>TOTAL</b>	<b>-61.1%</b>	<b>18.1%</b>	<b>20.8%</b>	<b>5.3%</b>	<b>-41.4%</b>	<b>5.1%</b>	<b>89.6%</b>	<b>12.0%</b>	

Note: County/Municipal includes the municipal share of police aid, highway user revenue, and fire aid.

**Exhibit A-3.6**  
**Total State Assistance to Local Governments**  
**Direct State Aid**  
**Fiscal 2007 and 2011**

<b><u>Program</u></b>	<b><u>FY 2007</u></b>	<b><u>FY 2011</u></b>	<b><u>Difference</u></b>
Foundation Aid	\$2,493,198,205	\$2,763,479,579	\$270,281,374
Supplemental Program	0	46,496,417	46,496,417
Geographic Cost of Education Index	0	126,612,027	126,612,027
Compensatory Education	726,652,649	1,041,059,587	314,406,938
School Transportation – Regular	179,393,418	220,692,402	41,298,984
School Transportation – Special Education	22,668,900	23,726,000	1,057,100
Special Education – Formula	231,835,479	264,001,563	32,166,084
Special Education – Nonpublic Placements	116,467,781	112,770,182	-3,697,599
Special Education – Infants and Toddlers	5,810,781	10,389,104	4,578,323
Limited English Proficiency Grants	88,829,756	151,196,206	62,366,450
Extended Elementary	19,262,500	0	-19,262,500
Aging Schools	15,148,000	6,108,990	-9,039,010
Teacher Development/Mentoring Programs	6,250,976	5,552,000	-698,976
Adult Education	5,433,622	6,933,622	1,500,000
Food Service	7,468,641	7,156,664	-311,977
Gifted and Talented Grants	524,568	0	-524,568
Out-of-County Placements	5,838,030	6,120,000	281,970
Headstart	2,961,996	1,800,001	-1,161,995
Guaranteed Tax Base	60,498,363	47,391,600	-13,106,763
Other Programs	41,026,189	26,129,854	-14,896,335
<b>Total Primary and Secondary Education</b>	<b>\$4,029,269,854</b>	<b>\$4,867,615,798</b>	<b>\$838,345,944</b>
Library Formula	\$31,019,681	\$33,032,330	\$2,012,649
Library Network	15,219,970	15,657,837	437,867
<b>Total Libraries</b>	<b>\$46,239,651</b>	<b>\$48,690,167</b>	<b>\$2,450,516</b>
Community College Formula	\$164,829,603	\$194,407,433	\$29,577,830
Grants for ESOL Programs	2,500,000	3,812,145	1,312,145
Optional Retirement	10,012,000	13,824,000	3,812,000
Small College Grant/Allegany and Garrett Grant	3,200,209	3,896,346	696,137
Statewide Programs	7,751,918	6,462,776	-1,289,142
<b>Total Community Colleges</b>	<b>\$188,293,730</b>	<b>\$222,402,700</b>	<b>\$34,108,970</b>

<u>Program</u>	<u>FY 2007</u>	<u>FY 2011</u>	<u>Difference</u>
Highway User Revenue	\$554,888,317	\$134,296,005	-\$420,592,312
Elderly and Handicapped Transportation Aid	4,182,207	4,305,938	123,731
Paratransit	3,072,464	2,926,702	-145,762
<b>Total Transportation</b>	<b>\$562,142,988</b>	<b>\$141,528,645</b>	<b>-\$420,614,343</b>
Police Aid	\$64,861,903	\$45,420,982	-\$19,440,921
Fire And Rescue Aid	9,999,997	10,000,001	4
Vehicle Theft Prevention	2,301,573	1,860,000	-441,573
9-1-1 Grants	12,906,374	9,400,000	-3,506,374
Community Policing	2,000,000	1,974,000	-26,000
Foot Patrol/Drug Enforcement Grants	4,462,500	4,228,210	-234,290
Law Enforcement Training Grants	50,207	100,000	49,793
Stop Gun Violence Grants	952,805	928,478	-24,327
Violent Crime Grants	4,841,858	4,750,714	-91,144
Baltimore City State's Attorney Grant	1,985,000	1,959,195	-25,805
Annapolis Crime Grant	0	174,000	174,000
Domestic Violence Grants	200,000	196,354	-3,646
War Room/Sex Offender Grant	1,554,982	1,445,313	-109,669
School Vehicle Safety Grant	332,753	550,000	217,247
Body Armor	50,000	49,088	-912
<b>Total Public Safety</b>	<b>\$106,499,952</b>	<b>\$83,036,335</b>	<b>-\$23,463,617</b>
Program Open Space	\$135,649,292	\$15,252,842	-\$120,396,450
Critical Area Grants	731,133	316,930	-414,203
<b>Total Recreation/Environment</b>	<b>\$136,380,425</b>	<b>\$15,569,772</b>	<b>-\$120,810,653</b>
<b>Local Health Formula</b>	<b>\$63,667,951</b>	<b>\$37,283,484</b>	<b>-\$26,384,467</b>
<b>Utility Property Tax Grant</b>	<b>\$30,615,201</b>	<b>\$0</b>	<b>-\$30,615,201</b>
<b>Disparity Grant</b>	<b>\$109,450,400</b>	<b>\$121,436,013</b>	<b>\$11,985,613</b>
Horse Racing Impact Aid	\$1,205,600	\$705,600	-\$500,000
Payments in Lieu of Taxes	818,598	1,005,837	187,239
Security Interest Filing Fees	2,885,858	0	-2,885,858
Video Lottery Terminal Impact Aid	0	6,809,000	6,809,000
Senior Citizens Activities Center	500,000	500,000	0
Statewide Voting Systems	1,174,345	0	-1,174,345
<b>Total Other Direct Aid</b>	<b>\$6,584,401</b>	<b>\$9,020,437</b>	<b>\$2,436,036</b>
<b>Total Direct Aid</b>	<b>\$5,279,144,553</b>	<b>\$5,546,583,351</b>	<b>\$267,438,798</b>



<u>Program</u>	<u>FY 2007</u>	<u>FY 2011</u>	<u>Difference</u>
Retirement – Teachers	\$446,142,301	\$849,836,103	\$403,693,802
Retirement – Libraries	9,271,611	16,853,392	7,581,781
Retirement – Community Colleges	17,589,481	33,712,536	16,123,055
Retirement – Local Employees	1,843,020	0	-1,843,020
<b>Total Payments-in-Behalf</b>	<b>\$474,846,413</b>	<b>\$900,402,031</b>	<b>\$425,555,618</b>
<b>Total State Assistance</b>	<b>\$5,753,990,966</b>	<b>\$6,446,985,382</b>	<b>\$692,994,416</b>

ESOL: English for Speakers of Other Languages

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### Primary and Secondary Education

Among other changes made to State spending requirements, *Chapter 2 of the 2007 special session* eliminated fiscal 2009 and 2010 inflationary adjustments to the per student funding level used in education aid formulas. The per student funding level is used to determine the funding provided through most of the State's large education aid formulas, including the foundation program and the compensatory education, special education, and limited English proficiency formulas. The geographic cost of education index (GCEI) and guaranteed tax base formulas are also affected by changes to the per pupil amount used in the formulas.

To mitigate the loss in funding for local school systems, Chapter 2 established a new supplemental grant formula that ensured every school system of at least a 1% increase in State aid in each year of the freeze. In addition, the Administration agreed to speed up implementation of the GCEI formula, a discretionary aid formula that had not previously received State funding. Instead of fully funding the GCEI over three years from fiscal 2009 to 2011, as the Administration had planned, the formula would be funded at a higher level in fiscal 2009 and would be completely phased in by fiscal 2010. Even with these two upwards adjustments, fiscal 2009 State funding for schools was \$142.7 million less than the amount it would have been without the freeze, and this amount grew to \$393.1 million in the second year of the freeze. Although education aid continued to increase during the freeze, the increases were smaller than they would have been without the Chapter 2 changes. By fiscal 2011, the reduction in State support for education resulting from Chapter 2 summed to \$469.3 million.

**Foundation Program:** The foundation program is the basic State education funding mechanism for public schools which ensures a minimum per pupil funding level and requires county governments to provide a local match. The formula is calculated based on a per pupil foundation amount and student enrollment. The per pupil foundation amount for fiscal 2011 is set at \$6,694, and the student enrollment count used for the program totals 817,610 students. Enrollment for the formula is based on the September 30, 2009 full-time equivalent student enrollment count. Less affluent local school systems, as measured by assessable base and net taxable income, receive relatively more aid per pupil than wealthier school systems. The State

provides funding for roughly 50% of the program's cost. Under the Budget Reconciliation and Financing Act of 2010, the inflationary increase in the foundation amount is capped at 1% through fiscal 2015. State aid under the foundation program will total \$2.8 billion in fiscal 2011. Between fiscal 2007 and 2011, foundation aid has increased by \$270.3 million.

**Supplemental Grants:** Nine local school systems will receive supplemental grants totaling \$46.5 million in fiscal 2011. The supplemental grants were established during the 2007 special session to guarantee increases of at least 1% in State education aid for all local school systems during the two years, fiscal 2009 and 2010, that inflationary increases for the per pupil foundation amount were eliminated. Supplemental grants will not be recalculated in future years but will continue at fiscal 2010 levels, less a \$4.7 million reduction in fiscal 2011 that will recapture overpayments to eight local school systems that are due to a miscalculation in school system wealth bases in fiscal 2009.

**Compensatory Education:** The compensatory education program provides additional funding based on the number of economically disadvantaged students. The formula recognizes disparities in local wealth by adjusting the grants per eligible student by local wealth. The formula is calculated based on 97% of the annual per pupil amount used in the foundation program and the number of students eligible for free and reduced price meals. The State provides funding for 50% of the program's cost. The per pupil State funding amount for fiscal 2011 is set at \$3,247, and the student enrollment count used for the program totals 306,606. State aid under the compensatory education program will total \$1 billion in fiscal 2011. Between fiscal 2007 and 2011, compensatory aid has increased by \$314.4 million.

**Special Education:** State aid for special education recognizes the additional costs associated with providing programs for students with disabilities. Most special education students receive services in the public schools; however, if an appropriate program is not available in the public schools, students may be placed in a private school offering more specialized services. The State and local school systems share the costs of these nonpublic placements.

The special education formula is calculated based on 74% of the annual per pupil foundation amount and the number of special education students from the prior fiscal year. The per pupil State funding amount for fiscal 2011 is set at \$2,477, and the student enrollment count used for the program totals 102,159. State funding for public special education programs will total \$264.0 million in fiscal 2011. Funding for nonpublic placements is estimated to remain unchanged in fiscal 2011 at \$112.8 million. Under current law, a local school system pays its respective local share of the basic cost of education for each nonpublic placement plus two times the total basic cost of education in the system, as well as 30% of any expense above that sum. The State pays 70% of the costs above the base local funding. Prior to fiscal 2010, the State paid 80% of the costs above the base local funding. Between fiscal 2007 and 2011, State funding has increased by \$32.2 million for public programs but has decreased by \$3.7 million for nonpublic programs.

**Student Transportation:** The State provides grants to assist local school systems with the cost of transporting students to and from school. The grants consist of three components: regular student ridership funds; special education student ridership funds; and additional enrollment funds. The regular student ridership funds are based on the local school system's grant in the previous year increased by inflation; increases cannot exceed 8% or be less than 3%. Local school systems with enrollment increases receive additional funds. The special education student ridership funds are based on a \$1,000 per student grant for transporting disabled students.

The Budget Reconciliation and Financing Act of 2010 sets the inflation rate for student transportation grants at 1% for fiscal 2011 through 2015 and reduces the minimum annual inflation adjustment from 3 to 1%. This causes a \$4.3 million reduction in student transportation funding in fiscal 2011. As a result, the fiscal 2011 State budget includes \$220.7 million for regular transportation services and \$23.7 million for special transportation services. Between fiscal 2007 and 2011, State funding has increased by \$41.3 million for regular transportation services and \$1.1 million for special transportation services.

**Limited English Proficiency:** The State provides grants based on non- and limited-English proficient (LEP) students using a definition consistent with federal guidelines. The LEP formula is based on 99% of the annual per pupil foundation amount, with the State providing funding for 50% of the program's cost. The fiscal 2011 grant per LEP student is \$3,314. State funding for the program will total \$151.2 million in fiscal 2011. The number of LEP students in Maryland totals 44,062 for the 2009-2010 school year. Between fiscal 2007 and 2011, LEP funding has increased by \$62.4 million.

**Geographic Cost of Education Index:** This is a discretionary formula that provides additional State funds to local school systems where costs for educational resources are higher than the State average. Funding for the formula was provided in fiscal 2009 for the first time, and fiscal 2011 funding totals \$126.6 million reflecting a 100% phase-in for the formula. Thirteen local school systems receive funding from the geographic cost of education index formula.

**Guaranteed Tax Base Program:** The Bridge to Excellence in Public Schools Act included an add-on grant for jurisdictions with less than 80% of statewide per pupil wealth that contributed more than the minimum required local share under the foundation program in the prior year. The grant is based on local support for education relative to local wealth. The grant cannot exceed 20% of the per pupil foundation amount. Nine local school systems will qualify for grants totaling \$47.4 million in fiscal 2011. Between fiscal 2007 and 2011, funding for this program has decreased by \$13.1 million.

**Aging Schools Program:** The Aging Schools Program provides State funding to local school systems for improvements, repairs, and deferred maintenance of public school buildings. These repairs are generally not covered by the capital school construction program and are necessary to maintain older public schools. State funding for the Aging Schools Program will total \$6.1 million in fiscal 2011 with an additional \$4.6 million for school wiring. The Budget Reconciliation and Financing Act of 2010 authorizes general obligation bond funds to be used

instead of general funds for the Aging Schools Program in fiscal 2011. Between fiscal 2007 and 2011, funding for the Aging Schools Program has decreased by \$9.0 million.

***Judy Hoyer and Head Start Programs:*** These programs provide financial support for the establishment of centers that provide full-day, comprehensive, early education programs, and family support services that will assist in preparing children to enter school ready to learn. This program also provides funding to support childhood educators, and statewide implementation of an early childhood assessment system. The fiscal 2011 State budget includes \$7.6 million for Judy Center grants, \$3.0 million for school readiness and program accreditation, and \$1.8 million for head start programs. Funding for these programs has remained constant over the 2007-2010 legislative term.

***Teacher Quality Incentives:*** The State provides salary enhancements for teachers obtaining national certification and a stipend for teachers and other nonadministrative certificated school employees working in low-performing schools. The Budget Reconciliation and Financing Act of 2009 (*Chapter 487 of 2009*) altered eligibility and bonus amounts for the Quality Teacher Incentives, including the elimination of the \$1,000 salary signing bonuses for qualifying teachers. The fiscal 2011 State budget includes \$4.2 million for teacher quality incentives; \$96,000 for the Governor's Teacher Excellence Award Program which distributes awards to teachers for outstanding performance; and \$1.4 million for teacher quality and national certification grants. Funding for teacher quality incentives has decreased by \$700,000 over the 2007-2010 legislative term.

***Food and Nutrition Services:*** In addition to federal funds provided under the School Lunch Act of 1946, the State provides matching funds to support food and nutrition programs for low-income children. The programs provide free and reduced price breakfasts, lunches, and snacks to public or private nonprofit school students. All public schools in the State are required to provide subsidized or free nutrition programs for eligible students. The fiscal 2011 State budget includes \$7.2 million for food and nutrition services. Funding for food and nutrition services has decreased by \$312,000 over the 2007-2010 legislative term.

***Infants and Toddlers Program:*** This program involves a statewide community-based interagency system of comprehensive early intervention services for eligible children who are less than three years old. Eligible children include those who have developmental delays or disabilities. State funding for infants and toddlers programs will total \$10.4 million in fiscal 2011 compared to \$5.8 million in fiscal 2007.

***Adult Education:*** The State provides funding for adult education services through four programs: adult general education; external diploma program; literacy works grant; and adult education and literacy works. The State budget includes \$6.9 million for adult education programs in fiscal 2011, a \$1.5 million increase over the amount provided in fiscal 2007.

***School-based Health Centers:*** The fiscal 2011 State budget includes \$2.7 million for school-based health centers, which provide primary medical care as well as social, mental health, and health education services for students and their families. The funding for these centers was

transferred from the Subcabinet Fund to the Maryland State Department of Education in fiscal 2007.

***Science and Math Education Initiative:*** This program includes summer sessions for teachers and an equipment incentive fund to strengthen science and math education. The State budget includes \$1.3 million for this initiative in fiscal 2011 compared to \$2.5 million in fiscal 2007.

***Teachers' Retirement Payments:*** The State pays 100.0% of the employer's share of retirement costs for local school system employees in the Teachers' Retirement and Pension Systems maintained by the State. Rather than distributing the aid to the local boards of education and billing them for the retirement contributions, the State appropriates a lump-sum payment to the retirement system "on behalf of" the local boards. The appropriation is calculated by increasing the second prior year's salary base by 3.5% and applying the contribution rate certified by the retirement system. Teachers' retirement payments will total \$849.8 million in fiscal 2011. Between fiscal 2007 and 2011, teachers' retirement payments have increased by \$403.7 million. During the 2010 session, legislative provisions for sharing responsibility for the costs between the State and the school boards was discussed but not adopted.

### **Local Libraries**

***Minimum Per Capita Library Program:*** The State provides assistance to public libraries through a formula that determines the State and local shares of a minimum per capita library program. The minimum library program is specified in statute. Overall, the State provides 40% of the minimum program, and the counties provide 60%. The State/local share of the minimum program varies by county depending on local wealth. Chapter 481 of 2005 started a phase-in of enhancements for the library aid formula, increasing the per resident allocation by \$1 per year from \$12 per resident in fiscal 2006 to \$16 per resident by fiscal 2010. However, ***Chapter 2 of the 2007 special session*** deferred the \$1 formula increase for fiscal 2009, and the Budget Reconciliation and Financing Act of 2009 froze the per resident amount used in the local library aid formula at \$14 for fiscal 2010 and 2011. The phase-in of formula enhancements restarts in fiscal 2012 at \$15 per resident; however, the Budget Reconciliation and Financing Act of 2010 freezes the per resident amount at that level for subsequent years. Due to these changes, State funding in fiscal 2011 will total \$33 million. Between fiscal 2007 and 2011, library aid funding has increased by \$2 million.

***State Library Network:*** The network consists of the Central Library of the Enoch Pratt Free Library System in Baltimore City, three regional resource centers, and metropolitan cooperative service programs. The Enoch Pratt Free Library operates as the designated State Library Resource Center. In addition to the State center, regional resource centers serve Western Maryland (Hagerstown), Southern Maryland (Charlotte Hall), and the Eastern Shore (Salisbury). Funding for the State Library Resource Center has equaled \$1.85 per State resident since fiscal 2004. Chapter 481 of 2005 started a phase-in of enhancements for the regional resource centers, increasing the per resident allocation by \$1.00 per year to move from \$4.50 per resident

in fiscal 2006 to \$8.50 per resident by fiscal 2010. However, **Chapter 2 of the 2007 special session** deferred the \$1.00 formula increase for fiscal 2009, and the Budget Reconciliation and Financing Act of 2009 decreased the per resident allocations to the State Library Resource Center and the State's three regional resource centers. Funding for the State Library Resource Center is reduced from \$1.85 per State resident to \$1.67 per resident for fiscal 2010 and 2011. Funding for regional resource centers decreases to \$6.75 per resident of the region in fiscal 2010 and 2011 and increases to \$7.50 per resident in fiscal 2012. The Budget Reconciliation and Financing Act of 2010 continues funding at this level in subsequent years. Due to these changes, State funding in fiscal 2011 will total \$9.4 million for the State Library Resource Center and \$6.2 million for the regional centers. Between fiscal 2007 and 2011, funding for the State library network has increased by \$438,000.

**Retirement Payments:** The State pays 100% of the employers' share of retirement costs for local library employees in the Teachers' Retirement and Pension Systems maintained by the State. State funding for library retirement payments will total \$16.9 million in fiscal 2011. Over the 2007-2010 legislative term, library retirement payments have increased by \$7.6 million.

### Community Colleges

**Senator John A. Cade Funding Formula:** The Budget Reconciliation and Financing Act of 2010 reduces funding under the Cade formula to \$194.4 million in fiscal 2011 and 2012 and resets the phase-in of scheduled formula enhancements. The formula enhancements will be fully phased in by fiscal 2021 at 29% of the per student funding provided to selected public four-year institutions. This provision results in a \$23.1 million reduction in statutorily mandated funding and a \$5.4 million reduction in the amount of funding provided in the prior year. Funding for the Cade formula will total \$194.4 million in fiscal 2011. Since fiscal 2007, funding for the Cade formula has increased by \$29.6 million.

**Special Programs:** State funding in fiscal 2011 will total \$3.3 million for the small college grants and \$0.6 million for the Allegany/Garrett counties unrestricted grants. Funding for statewide and regional programs will total \$6.5 million. The English as a Second Language program will receive \$3.8 million. Over the 2007-2010 legislative term, funding for these programs has increased by \$719,100.

**Retirement Payments:** The State pays 100% of the employer's share of retirement costs for community college faculty in the Teachers' Retirement and Pension Systems maintained by the State. State funding for community college retirement payments will total \$33.7 million in fiscal 2011, a \$16.1 million increase over the 2007-2010 legislative term. In addition, State funding for the optional retirement program will total \$13.8 million in fiscal 2011, a \$3.8 million increase over the 2007-2010 legislative term. As with teacher pensions, language to provide for a shared State/local responsibility for these costs was considered in the 2010 session, but not adopted.

### **Local Health Departments**

The State provides funds to support the delivery of public health services in each of Maryland's 24 jurisdictions. These services include child health, communicable disease prevention, maternal health, family planning, environmental health, and administration of the departments. Due to declining revenues, the fiscal 2010 appropriation for grants to local health departments was reduced from \$57.4 million to \$37.3 million by the Board of Public Works in August 2009. Under the statute, funding would have increased to \$41.0 million in fiscal 2011; however, the Budget Reconciliation and Financing Act of 2010 reduces the base appropriation for the targeted local health formula for fiscal 2011 and 2012 to \$37.3 million and provides for inflationary increases to the program in fiscal 2013. As a result, State aid for local health departments will total \$37.3 million in fiscal 2011. Between fiscal 2007 and 2011, State funding for local health departments has decreased by \$26.4 million.

### **County and Municipal Governments**

**Highway User Revenues:** The State shares various transportation revenues, commonly referred to as highway user revenues, with the counties and municipalities. To address the State's general fund budget gap, the State has had to repeatedly transfer funds dedicated to local transportation purposes to the general fund. For example, the Board of Public Works reduced fiscal 2010 highway user revenues by \$159.5 million in August 2009. This amount was in addition to the \$161.9 million reduction from the statutory funding level that resulted from the 2009 legislative session actions. These reductions coupled with downward revisions in transportation revenues would have resulted in highway user grants of \$140.5 million in fiscal 2010. The Budget Reconciliation and Financing Act of 2010, however, partially restores the fiscal 2010 funding to reflect payments received by the counties and municipalities before the Board of Public Works reduced the appropriation. This results in an estimated \$160.5 million in highway user grants.

Prior to the fiscal 2010 reductions, Maryland local governments received 30.0% of highway user revenues. For fiscal 2011 and 2012, the Budget Reconciliation and Financing Act of 2010 lowers the local shares to 8.5 and 8.1%, respectively. Based on current revenue estimates, this will result in grants totaling \$134.3 million each year. Of this amount, Baltimore City will receive about \$124.5 million, the counties will receive about \$8.0 million, and municipalities will receive \$1.6 million. Beginning in fiscal 2013, the overall local share is 9.2% of highway user revenues: 7.5% for Baltimore City; 1.4% for counties; and 0.3% for municipalities. Between fiscal 2007 and 2011, State funding for highway user revenues has decreased by \$420.6 million.

**Other Transportation Aid:** State funding for elderly/disabled transportation grants will total \$4.3 million in fiscal 2011, while State funding for paratransit grants will total \$2.9 million. Funding for these two programs has remained relatively constant over the 2007-2010 legislative term.

**Police Aid Formula:** Maryland's counties and municipalities receive grants for police protection through the police aid formula. The police aid formula allocates funds on a per capita basis, and jurisdictions with a higher population density receive greater per capita grants. Municipalities receive additional grants based on the number of sworn officers. The Maryland State Police recovers 30% of the State crime laboratories costs relating to evidence-testing services from each county's formula allocation. Due to declining revenues, the fiscal 2010 appropriation for police aid was reduced from \$66.0 million to \$45.4 million by the Board of Public Works in August 2009. Under the statute, the fiscal 2011 funding level would have totaled \$64.4 million; however, the Budget Reconciliation and Financing Act of 2010 limits the amount a local government may receive through the police aid formula in both fiscal 2011 and 2012 to the amount the jurisdiction receives in fiscal 2010. This limitation reduces police aid by \$19.0 million in fiscal 2011. Therefore, after the crime laboratory adjustment, police aid will total \$45.4 million in fiscal 2011. Between fiscal 2007 and 2011, State funding for police aid has decreased by \$19.4 million.

**Public Safety Grants:** State funding for targeted public safety grants will total \$14.2 million in fiscal 2011. These grants include violent crime grants for Baltimore City and Prince George's County, police foot patrol and community policing grants for Baltimore City, a drug enforcement grant for Prince George's County, S.T.O.P. gun violence grants, school bus traffic enforcement grants, domestic violence grants, law enforcement and correctional officers training grants, Baltimore City war room, sex offender and compliance enforcement, and the body armor grants. In addition, \$2.0 million will be provided to the Baltimore City State's Attorney Office to assist in the prosecution of gun offenses and repeat violent offenders, and \$174,000 will be provided to the Capital City Safe Streets Program, an ongoing initiative to fight crime in the City of Annapolis. State funding for public safety grants has remained relatively constant over the 2007-2010 legislative term.

**Vehicle Theft Prevention Program:** This program provides grants to law enforcement agencies, prosecutors' offices, local governments, and community organizations for vehicle theft prevention, deterrence, and educational programs. Funds are used to enhance the prosecution and adjudication of vehicle theft crimes. Funding for the program is provided through the Vehicle Theft Prevention Fund, a nonlapsing dedicated fund that receives up to \$2.0 million a year from penalties collected for lapsed or terminated insurance coverage. Additional funds are received from inspection fees collected for salvaged vehicle verification. State funding for this program will total \$1.9 million in fiscal 2011, a \$442,000 decrease from fiscal 2007.

**Fire, Rescue, and Ambulance Services:** The State provides formula grants to the counties, Baltimore City, and qualifying municipalities for local and volunteer fire, rescue, and ambulance services. The grants are for equipment and renovation projects, not operating costs. The program is funded through the Maryland Emergency Medical System Operations Fund. The grant level is set at \$10 million in fiscal 2011. State funding for this program has remained constant over the 2007-2010 legislative term.



**9-1-1 Emergency Systems Grant:** The State imposes a 25-cent fee per month on telephone subscribers that is deposited into a trust fund that provides reimbursements to counties for improvements and enhancements to their 9-1-1 systems. Counties may only use the trust fund money to supplement their spending, not to supplant it. State funding to local 9-1-1 emergency systems will total \$9.4 million in fiscal 2011. Between fiscal 2007 and 2011, State funding for 9-1-1 grants has decreased by \$3.5 million.

**Program Open Space Grants:** Under POS, the State provides grants to local governments for land acquisition and the development of parks and recreation facilities. Local POS grants will total \$12.4 million in fiscal 2011, with Baltimore City receiving an additional \$2.9 million special POS grant. Between fiscal 2007 and 2011, POS grants have decreased by \$120.4 million due to the decline in revenues from the State transfer tax which funds the program and the shift of local POS funds for the operation of State parks.

**Disparity Grants:** Disparity grants address the differences in the abilities of counties to raise revenues from the local income tax, which is the third largest revenue source for counties after State aid and property taxes. Counties with per capita local income tax revenues less than 75.0% of the State's average receive grants, assuming all counties impose a 2.54% local income tax rate. Aid received by a county equals the dollar amount necessary to raise the county's per capita income tax revenues to 75.0% of the State average. The Budget Reconciliation and Financing Act of 2009 included a provision, beginning in fiscal 2011, that caps each county's funding under the program at the fiscal 2010 level. As a result, State funding for disparity grants was scheduled to total \$97.1 million in fiscal 2011, a \$24.4 million decrease from the prior year. The Budget Reconciliation and Financing Act of 2010, however, changes the statute to use more recent income tax data to determine the grants and maintains the cap on each county's funding. This change results in an additional \$24.4 million in funding and ensures that the counties will receive the same funding as in fiscal 2010. Baltimore City and seven counties (Allegany, Caroline, Dorchester, Garrett, Prince George's, Somerset, and Wicomico) qualify for disparity grants. The fiscal 2011 grant under the statute is based on population estimates for July 2008 and calendar 2008 local income tax revenues raised from a 2.54% local income tax rate. Between fiscal 2007 and 2011, disparity grant funding has increased by \$12.0 million.

## County Level Detail

This section includes information for each county on State aid, State funding of selected services, and capital projects in the county. The three parts included under each county are described below.

### Direct Aid and Retirement Payments

**Direct Aid:** The State distributes aid or shares revenue with the counties, municipalities, and Baltimore City through over 40 different programs. Part A, section 1 of each county's statistical tables compares aid distributed to the county for fiscal 2008 through 2011.

**Retirement Payments:** County teachers, librarians, and community college faculty are members of either the teachers' retirement or pension systems maintained and operated by the State. The State pays the employer share of the retirement costs on behalf of the counties for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Although these funds are not paid to the local governments, each county's allocation is estimated from salary information collected by the State retirement systems. The figure shown in this report for each county is the four-year cumulative total retirement costs (fiscal 2008 through fiscal 2011). These estimates are presented in Part A, section 2 of each county.

### **Estimated State Spending on Health and Social Services**

The State funds the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Part B of each county shows estimates of general and special fund appropriations for health services, social services, and senior citizen services for fiscal 2008 through 2011.

**Health Services:** The Department of Health and Mental Hygiene, through its various administrations, funds in whole or part community health programs that are provided in the local subdivisions. These programs are described below. This does not include spending at the State mental health hospitals, developmental disability facilities, or chronic disease centers.

- **Alcohol and Drug Abuse:** The Alcohol and Drug Abuse Administration funds community-based programs that include primary and emergency care, intermediate care facilities, halfway houses and long-term care programs, outpatient care, and prevention programs. In addition to general fund appropriations, the budget includes money from the Cigarette Restitution Fund for substance abuse treatment programs.
- **Family Health and Primary Care Services:** The Family Health Administration funds community-based programs through the local health departments in each of the subdivisions. These programs include maternal health (family planning, pregnancy testing, prenatal and perinatal care, etc.) and infant and child health (disease prevention, child health clinics, specialty services, etc.). Primary care services are funded for those people who previously received State-only Medical Assistance.
- **Geriatric and Children's Services:** The Medical Care Programs Administration provides funding for community-based programs that serve senior citizens and children. The geriatric services include operating grants to adult day care centers and an evaluation program administered by the local health departments to assess the physical and mental health needs of elderly individuals. This category also includes grants to local health departments related to eligibility determination for the Medicaid and Children's Health programs, transportation services for Medicaid recipients in nonemergency situations, and coordination and outreach services for Medicaid and special needs populations in the HealthChoice program.

- ***Mental Health:*** The Mental Hygiene Administration oversees a wide range of community mental health services that are developed and monitored at the local level by Core Service Agencies. The Core Service Agencies have the clinical, fiscal, and administrative responsibility to develop a coordinated network of services for all public mental health clients of any age within a given jurisdiction. These services include inpatient hospital and residential treatment facility stays, outpatient treatment, psychiatric rehabilitation services, counseling and targeted case management services.
- ***Prevention and Disease Control:*** The Family Health Administration and the Infectious Disease and Environmental Health Administration are responsible for chronic and hereditary disease prevention (cancer, heart disease, diabetes, etc.) and the prevention and control of infectious diseases. They also provide for the promotion of safe and effective immunization practices, the investigation of disease outbreaks, and continuous disease surveillance and monitoring with the support of local health departments and the medical community. The former AIDS Administration is now part of the Infectious Disease and Environmental Health Administration. In addition to general fund appropriations, the budget includes money from the Cigarette Restitution Fund for tobacco use prevention and cessation and for cancer prevention and screening at the local level.
- ***Developmental Disabilities:*** The Developmental Disabilities Administration's community-based programs include residential services, day programs, transportation services, summer recreation for children, individual and family support services, including respite care, individual family care, behavioral support services, and community supported living arrangements.

***Social Services:*** The Department of Human Resources provides funding for various social and community services in the subdivisions. Part B of each county's statistical tables shows fiscal 2008-2011 estimates of funding for those programs that were available by subdivision. Note that fiscal 2011 funding for homeless and women's services is allocated among the subdivisions on the basis of each jurisdiction's share of fiscal 2010 funding and may change.

- ***Homeless Services:*** The State funds programs which provide emergency and transitional housing, food, and transportation for homeless families and individuals. Funding is available by county for the housing counselor, service-linked housing, and emergency and transitional housing programs.
- ***Women's Services:*** The State provides funding for a variety of community-based programs for women. These include the battered spouse program, rape crisis centers, displaced homemakers program, and crime victim's services.
- ***Adult Services:*** The State social services departments in each of the subdivisions provide a variety of services to disabled, elderly, neglected, and exploited adults. Services

include information and referral, crisis intervention, case management, protective services, in-home aid, and respite care for families.

- ***Child Welfare Services:*** The State social services departments in each of the subdivisions offer programs to support the healthy development of families, assist families and children in need, and protect abused and neglected children. Services include adoptive services, foster care programs, family preservation programs, and child protective services.

***Senior Citizen Services:*** The Department of Aging funds a variety of services for senior citizens mostly through local agencies on aging. In Part B of each county, these programs have been combined into two broad categories: long-term care and community services. In this report the fiscal 2011 total spending is allocated among the subdivisions on the basis of each jurisdiction's share of fiscal 2010 funding and may change.

- ***Long-term Care:*** This category includes the following programs: frail and vulnerable elderly, senior care, senior guardianship, the ombudsman program and the innovations in aging program.
- ***Community Services:*** Included in this category are the senior information and assistance program, the senior nutrition program and the insurance counseling program. Also included is a hold harmless grant for certain counties that received less federal funding under the Older Americans Act when 2000 census population figures were factored into the funding formula.

### **Capital Grants and Capital Projects for State Facilities**

This section shows capital grants for local projects as well as capital spending at State-owned facilities funded by the fiscal 2008-2011 operating and capital budgets. For each capital project, the total authorized amount is given, regardless of the funding source, although federally funded projects are shown separately.

The projects included and the funding level are those that were anticipated at the time the operating and capital budgets were adopted for each of the four fiscal years covered in this report. The actual projects funded and/or the amount of funding for specific projects could be significantly different from what is reported here.

***Selected State Grants for Capital Projects:*** The State provides capital grants for public schools, community colleges, local jails, community health facilities, adult day care centers, water quality projects, waterway improvements, homeless shelters, and other cultural, historical, and economic development projects. These projects are listed in Part C for each county. Projects at regional community colleges are shown for each county that the college serves. Projects at wastewater treatment plants that serve more than one county are shown for each county served.

***Capital Projects for State Facilities Located in the County:*** Part D for each county shows capital projects at State facilities and public colleges and universities by the county in which the facility is located. For facilities that are located in more than one county, such as a State park, the total amount of the capital project is shown for all relevant counties. For the universities, projects funded from academic revenue bonds are included. University projects funded by auxiliary revenue bonds are excluded. This report does not include transportation projects.

## Allegany County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$44,527	\$44,991	\$43,504	\$42,911	-3.6
Compensatory Education	20,819	21,637	21,962	21,775	4.6
Student Transportation	3,902	4,009	4,310	4,374	12.1
Special Education	6,665	7,125	6,899	6,727	0.9
Limited English Proficiency Grants	87	165	147	160	83.5
Guaranteed Tax Base	5,507	7,683	8,227	6,753	22.6
Adult Education	188	188	188	188	0.0
Aging Schools	238	178	98	98	-58.9
Other Education Aid	950	829	684	684	-28.0
<b><i>Subtotal</i></b>	<b>\$82,883</b>	<b>\$86,805</b>	<b>\$86,019</b>	<b>\$83,670</b>	<b>0.9</b>
<b><u>Other</u></b>					
Libraries	827	770	770	758	-8.4
Community Colleges	5,918	5,920	5,923	5,898	-0.3
Health Formula Grant	1,625	1,398	909	909	-44.1
* Transportation	7,273	6,461	942	433	-94.0
* Police and Public Safety	1,582	1,129	566	566	-64.2
* Fire and Rescue Aid	239	206	240	240	0.5
Recreation and Natural Resources	1,056	205	69	138	-87.0
Disparity Grant	6,971	6,743	7,299	7,299	4.7
<b>Total Direct Aid</b>	<b>\$108,374</b>	<b>\$109,637</b>	<b>\$102,737</b>	<b>\$99,911</b>	<b>-7.8</b>
Aid Per Capita (\$)	1,491	1,509	1,416	1,374	-7.9
Property Tax Equivalent (\$)	3.39	3.21	2.69	2.52	-25.6

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Allegany County for teachers, librarians, community college faculty, and local officials are estimated to be \$34,976,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$4,373	\$4,500	\$4,291	\$4,120
Family Health and Primary Care	227	220	219	219
Medical Care Services	753	860	746	875
Mental Health	5,301	5,548	5,512	5,739
Prevention and Disease Control	625	700	350	367
Developmental Disabilities	4,993	5,175	5,382	5,517
<b>Total</b>	<b>\$16,272</b>	<b>\$17,003</b>	<b>\$16,500</b>	<b>\$16,837</b>
<b><u>Social Services</u></b>				
Homeless Services	101	98	77	77
Women's Services	130	124	124	84
Adult Services	312	385	230	196
Child Welfare Services	2,284	2,363	1,946	1,898
<b>Total</b>	<b>\$2,827</b>	<b>\$2,970</b>	<b>\$2,377</b>	<b>\$2,255</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	321	317	271	274
Community Services	168	160	155	155
<b>Total</b>	<b>\$489</b>	<b>\$477</b>	<b>\$426</b>	<b>\$429</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Frost Elementary School – renovations (mechanical)	\$412,000
South Penn Elementary School – kindergarten/pre-k addition	842,000
	<b>\$1,254,000</b>

**Allegany Community College**

Automotive Technology and Physical Plant Building – renovate	\$1,286,000
Library – renovation	3,799,000
	<b>\$5,085,000</b>

**Senior Centers Grant Program**

Cumberland Senior Center	\$4560,000
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**Partnership Rental Housing Program**

Frederick Street	\$2,125,000
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**Community Parks and Playgrounds**

Baker Park	\$134,000
Barton Little League Complex	15,000
Barton Meadow Park	25,000
Constitution Park	125,159
Frostburg Community Park Playground	75,900
Frostburg Recreation Complex	102,000
Hot Stove Park	74,000
Lonaconing Little League Park	82,000
Lonaconing Recreation Area	143,000
	<b>\$776,059</b>



**Chesapeake Bay Water Quality Projects**

Braddock Run – interceptor improvements	\$650,000
Cumberland Combined Sewer – overflow improvements	1,550,000
Frostburg – stormwater retrofit	188,000
Frostburg Combined Sewer – overflow improvements	1,550,000
George’s Creek Wastewater Treatment Plant (WWTP) – nutrient removal	759,000
Westernport Combined Sewer – overflow improvements	1,860,000
	<b>\$6,557,000</b>

**Chesapeake Bay Restoration Fund**

Cumberland – sewer rehabilitation	\$450,000
Cumberland WWTP – enhanced nutrient removal	28,564,000
Frostburg – sewer rehabilitation	700,000
George’s Creek WWTP – enhanced nutrient removal	5,800,000
Grahamtown – sewer rehabilitation	500,000
Westernport – sewer rehabilitation	200,000
	<b>\$36,214,000</b>

**Water Supply Financial Assistance Program**

Bowman’s Addition – water project	\$500,000
Clarysville – water project	300,000
Frostburg – water main improvements	500,000
Frostburg – water treatment plant filter upgrades	100,000
Lonaconing – water improvements	1,150,000
Ridgedale – reservoir replacement	200,000
Ridgedale – storage tank replacement	100,000
Westernport – water treatment plant upgrade	300,000
	<b>\$3,150,000</b>

**Waterway Improvement**

Cumberland – boat ramp and related facilities location assessment	\$50,000
Mason Recreation Complex – ADA parking and access to boat ramp	10,000
Potomac River – improve boating access	95,000
	<b>\$155,000</b>

**Other Projects**

Allegany Museum	\$425,000
Greenway Avenue Stadium	50,000
Human Resources Development Commission Senior Center	100,000
Virginia Avenue Corridor Revitalization	200,000
Western Maryland Health System Regional Medical Center	1,000,000
	<b>\$1,775,000</b>

**D. Capital Projects for State Facilities in the County****Department of Natural Resources**

C&O Canal National Historical Park – boat ramp improvements	\$99,000
C&O Canal National Historical Park – boating facilities maintenance	99,000
Dan’s Mountain WMA – access road and storage building	1,600,000
Rocky Gap State Park – bathhouse and concession buildings	2,608,000
Rocky Gap State Park – water treatment plant upgrade	729,000
	<b>\$5,135,000</b>

**Department of Public Safety and Correctional Services**

North Branch Correctional Institution – upholstery plant	\$6,845,000
Western Correctional Institution – rubble landfill closure cap	1,815,000
Western Correctional Institution – vocational education building	12,586,000
	<b>\$21,246,000</b>

**Maryland Environmental Service**

Green Ridge Youth Center – wastewater treatment plant	\$1,056,000
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**Maryland Veterans Administration**

Rocky Gap Veterans Cemetery – install columbaria	\$25,000
Rocky Gap Veterans Cemetery – install columbaria (federal funds)	245,000
	<b>\$270,000</b>

**University System of Maryland**

Frostburg State – Center for Communications and Information Technology	\$2,681,000
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## Anne Arundel County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>	<b><u>% Diff.</u></b>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$174,966	\$182,020	\$173,028	\$183,003	4.6
Compensatory Education	37,356	39,904	41,572	48,050	28.6
Student Transportation	18,223	18,719	20,213	20,628	13.2
Special Education	27,558	28,248	25,072	24,818	-9.9
Limited English Proficiency Grants	3,934	4,460	5,363	6,615	68.1
Geographic Cost of Education Index	0	2,588	8,655	8,786	n/a
Adult Education	403	403	403	403	0.0
Aging Schools	989	920	506	506	-48.9
Other Education Aid	2,799	5,006	1,324	1,335	-52.3
<b><i>Subtotal</i></b>	<b>\$266,228</b>	<b>\$282,268</b>	<b>\$276,136</b>	<b>\$294,144</b>	<b>10.5</b>
<b><u>Other</u></b>					
Libraries	2,024	1,991	1,835	1,913	-5.5
Community Colleges	28,632	29,873	29,428	28,695	0.2
Health Formula Grant	5,649	4,836	3,142	3,142	-44.4
* Transportation	30,977	28,014	3,361	1,569	-94.9
* Police and Public Safety	9,389	7,466	4,497	4,497	-52.1
* Fire and Rescue Aid	808	762	806	806	-0.3
Recreation and Natural Resources	11,236	2,185	741	1,486	-86.8
Utility Property Tax Grants	7,565	0	0	0	-100.0
* Other Direct Aid	468	428	248	277	-40.8
<b>Total Direct Aid</b>	<b>\$362,976</b>	<b>\$357,823</b>	<b>\$320,194</b>	<b>\$336,529</b>	<b>-7.3</b>
Aid Per Capita (\$)	709	694	614	640	-9.8
Property Tax Equivalent (\$)	0.51	0.44	0.37	0.40	-20.8

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Anne Arundel County for teachers, librarians, community college faculty, and local officials are estimated to be \$247,759,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$3,348	\$3,462	\$3,269	\$3,063
Family Health and Primary Care	650	624	642	642
Medical Care Services	1,211	1,390	1,428	1,446
Mental Health	20,435	21,389	21,249	22,125
Prevention and Disease Control	1,746	1,660	830	832
Developmental Disabilities	35,298	36,736	38,204	39,163
<b>Total</b>	<b>\$62,688</b>	<b>\$65,261</b>	<b>\$65,622</b>	<b>\$67,271</b>
<b><u>Social Services</u></b>				
Homeless Services	206	203	174	174
Women's Services	394	241	233	184
Adult Services	181	199	182	180
Child Welfare Services	4,451	4,606	4,308	4,080
<b>Total</b>	<b>\$5,232</b>	<b>\$5,249</b>	<b>\$4,897</b>	<b>\$4,618</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	649	640	664	674
Community Services	158	155	150	150
<b>Total</b>	<b>\$807</b>	<b>\$795</b>	<b>\$814</b>	<b>\$824</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Anne Arundel Middle School – renovations (HVAC)	\$2,881,000
Arundel High School – science facilities	1,498,000
Bates Middle School – renovations (HVAC)	120,000
Belle Grove Elementary School – construction	2,768,000
Bodkin Elementary School – construction	727,000
Bodkin Elementary School – renovations (plumbing)	274,000
Broadneck Elementary School – kindergarten/pre-k addition	1,579,000
Brooklyn Park Elementary School – construction	1,387,000
Central Elementary School – construction	727,000
Central Elementary School – kindergarten/pre-k addition	1,684,000
Chesapeake High School – renovations (roof)	1,665,000
Corkran Middle School – renovations (HVAC)	2,071,000
Crofton Middle School – renovations (HVAC)	854,000
Crofton Woods Elementary School – construction	727,000
Crofton Woods Elementary School – kindergarten/pre-k addition	1,402,000
Eastport Elementary School – renovations (HVAC/electrical)	1,673,000
Freetown Elementary School – construction	6,690,000
Gambrills Elementary School – construction	5,810,000
George Fox Middle School – renovations (electrical)	747,000
Germantown Elementary School – construction	6,249,000
Glen Burnie High School – renovations (HVAC)	2,110,725
Glen Burnie Park Elementary School – renovations (HVAC/windows)	960,000
Hilltop Elementary School – construction	727,000
Hilltop Elementary School – kindergarten/pre-k addition	1,402,000
Lake Shore Elementary School – construction	5,773,000
Linthicum Elementary School – construction	1,156,000
Marley Glen Special Education School – renovations (electrical)	65,000
Meade High School – renovations (roof)	1,388,000
Millersville Elementary School – renovations (electrical/plumbing)	652,000
North Glen Elementary School – renovations (electrical)	406,000
Northeast High School – construction	2,900,000
Oak Hill Elementary School – construction	727,000
Oakwood Elementary School – kindergarten/pre-k addition	1,047,000
Oakwood Elementary School – renovations (HVAC/windows)	960,000
Odenton Elementary School – renovations (electrical)	66,000
Odenton Elementary School – renovations (HVAC)	1,174,000
Overlook Elementary School – construction	4,259,000

Pershing Hill Elementary School – construction	5,064,000
Quarterfield Elementary School – renovations (electrical)	664,000
Ridgeway Elementary School – kindergarten/pre-k addition	1,442,000
Ruth Eason Special Education School – renovations (electrical)	65,000
Severn Elementary School – kindergarten/pre-k addition	1,409,000
Severna Park Elementary School – renovations (HVAC)	603,000
Severna Park Middle School – construction	16,945,929
Shipley’s Choice Elementary School – renovations (HVAC)	1,174,000
Southern Middle School – renovations (plumbing)	217,000
Southgate Elementary School – construction	6,457,346
Sunset Elementary School – construction	1,156,000
Tyler Heights Elementary School – renovations (electrical)	66,000
Van Bokkelen Elementary School – renovations (electrical)	66,000
Waugh Chapel Elementary School – kindergarten/pre-k addition	1,794,000
Waugh Chapel Elementary School – renovations (electrical)	66,000
West Annapolis Elementary School – renovations (HVAC)	467,000
Windsor Farm Elementary School – kindergarten/pre-k addition	1,505,000
	<b>\$106,467,000</b>

**Public Libraries**

Brooklyn Park/Linthicum/Provinces Libraries – ADA compliance	\$112,000
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**Anne Arundel Community College**

Careers Building – renovation	\$10,000,000
Library – renovation and addition	5,716,000
	<b>\$15,716,000</b>

**Community Health Facilities Grant Program**

Main Street Housing, Inc.	\$588,000
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**Shelter and Transitional Facilities**

Light House Shelter	\$1,485,852
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**Community Parks and Playgrounds**

Bay Head Park	\$250,000
Chambers Park	61,000
Davis Park	26,000
Highland Beach Park	41,000
Old Mill High School Stadium	250,000
Turner Playground	56,000
	<b>\$684,000</b>

**Chesapeake Bay Water Quality Projects**

Back Creek Nature Park – stormwater management	\$445,000
Mayo WWTP – nutrient removal	1,000,000
North Cypress Branch – stream restoration	379,000
South Down Shores – stormwater management	280,000
	<b>\$2,104,000</b>

**Chesapeake Bay Restoration Fund**

Annapolis WWTP – enhanced nutrient removal	\$13,800,000
Broadneck WWTP – enhanced nutrient removal	13,000,000
Broadwater WWTP – enhanced nutrient removal	5,100,000
Cox Creek WWTP – enhanced nutrient removal	55,000,000
Dorsey Run WWTP – enhanced nutrient removal	400,000
Maryland City WWTP – enhanced nutrient removal	1,888,000
Mayo Large Communal WWTP – enhanced nutrient removal	2,400,000
Patuxent WWTP – enhanced nutrient removal	5,344,000
	<b>\$96,932,000</b>

**Waterway Improvement**

Annapolis – acquire equipment for fire/rescue boat	\$50,000
Annapolis – public boating facilities improvements	248,000
Annapolis City Dock – replace bulkheads, slips and walkway	1,800,000
Annapolis Maritime Museum – extend transient piers	198,000
Anne Arundel County Fire Department – purchase fire/rescue boat	50,000
Broadwater Creek – channel dredging	1,065,500
Carrs Creek – channel dredging	1,134,000
Dredging projects & submerged aquatic vegetation monitoring – countywide studies	250,000
Duvall Creek – dredging	500,000
Fort Smallwood Park – design boat launch ramp	99,000
Local dredge material placement sites – countywide	50,000

Locust Cove – channel dredging	112,500
Parish Creek – channel dredging	1,475,000
Parrish Creek – dredge material placement site	1,416,000
Rockhold Creek – federal channel dredging	599,000
Submerged aquatic vegetation monitoring – countywide	10,000
Truxton Park – public boat ramp, dock and pier improvements	198,000
Warehouse Creek – boating access improvements	20,000
	<b>\$9,275,000</b>

### Hazardous Substance Cleanup Program

Harundale Well Field	\$200,000
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### Other Projects

Aleph Bet Jewish Day School	\$45,000
Annapolis – underground utility wiring	1,200,000
Annapolis High School Booster Club – concession stand	75,000
Annapolis Summer Garden Theatre	100,000
Anne Arundel Community College – turf field	1,000,000
Bates Middle School – track	100,000
Benson-Hammond House	60,000
Children’s Theatre of Annapolis	225,000
Coordinating Center for Home and Community Care	230,000
Deale Elementary School Baseball Fields	125,000
Galesville Rosenwald School	200,000
Goshen House	150,000
Hammond-Harwood House	100,000
Historical Freetown Elementary – renovation	150,000
Homeport Farm Park	100,000
Hope House	200,000
Light House Shelter	622,000
Linthicum Veterans Memorial	185,000
Maryland Fire-Rescue Services Memorial	75,000
Maryland Hall for the Creative Arts	975,000
Maryland Therapeutic Riding – Education and Rehabilitation Center	25,000
Mount Olive Community Life Center	100,000
Old Mill High School – athletic field lights	200,000
Opportunity Builders, Inc.	165,000
Providence Center	200,000
Reece Road Community Health Center	250,000
South River High School – athletic field lights	200,000



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Southern and Broadneck High School – field lights	375,000
Southern High School – field house	50,000
St. John’s College – heating plant infrastructure	1,000,000
William Paca House	200,000
	<b>\$8,682,000</b>

**D. Capital Projects for State Facilities in the County**

**General Government**

Lowe House Office Building – renovations	\$4,701,000
State House – Old House of Delegates Chamber restoration	3,786,000
State House – replacement piping	3,550,000
	<b>\$12,037,000</b>

**Department of Natural Resources**

Annapolis Facility – bulkhead and dock improvements	\$1,700,000
Sandy Point State Park – police and communication center	2,420,000
Sandy Point State Park – repair boat ramps	75,000
Sandy Point State Park – replace bulkheads	1,600,000
Sandy Point State Park – stone jetty improvements	600,000
	<b>\$6,395,000</b>

**Department of Public Safety and Correctional Services**

Jessup Community Correctional Facility – minimum security complex (federal funds)	\$10,000,000
Jessup Community Correctional Facility – minimum security complex	13,224,000
	<b>\$23,224,000</b>

**Maryland Environmental Service**

Jessup Correctional Complex – Dorsey WWTP improvements	\$5,125,000
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## Baltimore City

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$399,500	\$406,512	\$399,608	\$394,028	-1.4
Compensatory Education	277,192	268,143	269,495	312,797	12.8
Student Transportation	17,084	17,241	18,335	18,251	6.8
Special Education	83,419	85,423	82,574	81,462	-2.3
Limited English Proficiency Grants	8,487	9,355	10,595	11,007	29.7
Guaranteed Tax Base	36,344	37,894	33,281	27,659	-23.9
Geographic Cost of Education Index	0	6,516	21,893	21,904	n/a
Adult Education	1,330	1,136	1,136	1,136	-14.5
Aging Schools	2,714	2,524	1,388	1,388	-48.9
Other Education Aid	8,641	15,170	2,443	2,443	-71.7
<b>Subtotal</b>	<b>\$834,711</b>	<b>\$849,914</b>	<b>\$840,748</b>	<b>\$872,075</b>	<b>4.5</b>
<b><u>Other</u></b>					
Libraries	6,864	6,586	6,548	6,461	-5.9
Community Colleges	0	0	0	0	0.0
Health Formula Grant	11,965	10,260	6,675	6,675	-44.2
Transportation	216,925	187,987	131,865	125,196	-42.3
Police and Public Safety	10,113	9,737	9,921	9,921	-1.9
Fire and Rescue Aid	944	943	930	930	-1.5
Recreation and Natural Resources	11,576	3,459	3,568	3,885	-66.4
Disparity Grant	78,161	75,524	79,052	79,052	1.1
Utility Property Tax Grants	439	0	0	0	-100.0
Other Direct Aid	3,935	4,417	3,783	1,255	-68.1
<b>Total Direct Aid</b>	<b>\$1,175,633</b>	<b>\$1,148,827</b>	<b>\$1,083,090</b>	<b>\$1,105,450</b>	<b>-6.0</b>
Aid Per Capita (\$)	1,836	1,800	1,699	1,729	-5.9
Property Tax Equivalent (\$)	4.05	3.42	2.84	2.85	-29.6

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Baltimore City for teachers, librarians, community college faculty, and local officials are estimated to be \$281,363,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$38,920	\$40,896	\$38,877	\$36,225
Family Health and Primary Care	4,112	4,010	4,134	4,661
Medical Care Services	7,095	5,541	6,530	7,739
Mental Health	117,798	123,298	122,494	127,540
Prevention and Disease Control	1,949	2,351	1,093	950
Developmental Disabilities	43,929	45,629	47,452	48,644
<b>Total</b>	<b>\$213,803</b>	<b>\$221,725</b>	<b>\$220,580</b>	<b>\$225,759</b>
<b><u>Social Services</u></b>				
Homeless Services	2,175	2,151	1,804	1,804
Women's Services	941	802	768	678
Adult Services	2,507	3,921	2,261	2,460
Child Welfare Services	35,430	37,349	30,688	30,895
<b>Total</b>	<b>\$41,053</b>	<b>\$44,223</b>	<b>\$35,521</b>	<b>\$35,837</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	1,907	1,885	1,917	1,938
Community Services	941	929	940	940
<b>Total</b>	<b>\$2,848</b>	<b>\$2,814</b>	<b>\$2,857</b>	<b>\$2,878</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Arundel Elementary/Middle School #164 – renovations (fire safety)	\$210,000
Baltimore City College High School #480 – renovations (boilers)	431,000
Baltimore Polytechnic Institute #403 – renovations (boilers)	1,087,000
Baltimore Talent Development High School #428 – science facilities	745,000
Barclay Elementary/Middle School #54 – renovations (HVAC)	1,544,000
Bay Brook Elementary/Middle School #124 – renovations (HVAC)	436,000
Bay Brook Elementary/Middle School #124 – renovations (windows)	536,000
Bentalou Elementary School #150 – renovations (HVAC)	2,120,000
Carver Vocational-Technical High School #454 – construction	27,384,795
Charles C. Barrister Elementary School #34 – renovations (roof/elevator)	867,000
Cherry Hill Elementary/Middle School #159 – renovations (roof)	598,000
Chinquapin Middle School #46 – renovations (HVAC)	3,661,000
City Springs Elementary School #8 – renovations (boilers)	547,000
Claremont School #307 – renovations (roof)	373,000
Coldstream Park Elementary/Middle School #31 – renovations (mechanical)	1,541,000
Dickey Hill Elementary/Middle School #201 – renovations (windows)	720,000
Dr. Martin Luther King, Jr. Elementary/Middle School #254 – renovations (fire safety)	244,000
Dr. Rayner Browne Elementary/Middle School #25 – renovations (HVAC)	340,000
Edgewood Elementary School #67 – renovations (roof/boiler/electrical)	2,397,000
Edmondson High School #400 – renovations (fire safety/boiler)	1,466,000
Francis S. Key Elementary/Middle School #76 – renovations (roof)	897,000
Franklin Square Elementary/Middle School #95 – renovations (boiler)	284,000
Frederick Douglass High School #450 – renovations (windows)	3,929,000
Grove Park Elementary/Middle School #224 – renovations (windows/doors)	2,216,000
Grove Park Elementary/Middle School #224 – renovations (HVAC)	984,000
Harford Heights Elementary School #36 – renovations (boilers)	580,000
Harlem Park Elementary/Middle School #35 – renovations (roof)	3,870,000
Hazelwood Elementary/Middle School #210 – renovations (HVAC)	1,640,000
Highlandtown Elementary/Middle School #215 – renovations (fire safety)	994,000
Highlandtown Elementary/Middle School #215 – renovations (boilers)	820,000
Hilton Elementary School #21 – renovations (boilers)	1,785,000
Leith Walk Elementary School #245 – construction	10,003,000
Lombard Building #57 – renovations (boilers)	944,000
Margaret Brent Elementary/Middle School #53 – renovations (chiller)	240,000
Moravia Park Middle School #105B – renovations (mechanical)	227,000
Mt. Washington Elementary School #221 – renovations (windows)	1,119,000
Northwestern High School #401 – renovations (fire safety)	795,000

Patapsco Elementary/Middle School #163 – renovations (fire safety)	214,000
Paul L. Dunbar High School #414 – construction	26,304,000
Paul L. Dunbar Middle School #133 – renovations (HVAC/window)	6,208,000
Pimlico Elementary/Middle School #223 – renovations (windows/doors)	1,781,000
Professional Development Center #93 – renovations (HVAC)	1,359,000
Reginald F. Lewis High School #419 – science facilities	1,435,000
Rognel Heights Elementary/Middle School #89 – renovations (boilers)	476,000
Roland Park Elementary/Middle School #233 – renovations (HVAC)	1,413,759
Samuel L. Banks Middle School #420 – science facilities	709,000
Southside Academy High School #181 – science facilities	648,000
Steuart Hill Academy #4 – renovations (windows)	546,000
T.G. Hayes Elementary School #102 – renovations (fire safety)	254,000
Tench Tilghman Elementary School #13 – renovations (doors/elevator)	477,000
Thomas Johnson Elementary/Middle School #84 – renovations (roof/chiller)	1,044,000
Thurgood Marshall Middle/High School #424 – renovations (fire safety)	711,000
Thurgood Marshall Middle/High School #424 – science facilities	1,392,000
Violetville Elementary/Middle School #226 – construction	13,559,000
W.H. Lemmel Building #79 – renovations (roof/windows/fire safety)	4,890,000
W.H. Lemmel Building #79 – renovations (HVAC)	5,004,000
Walbrook High School #411 – science facilities	810,000
Westside Elementary School #24 – renovations (boiler/chiller)	944,000
Westside Skill Center #400B – renovations (chiller)	567,000
William S. Baer School #301 – renovations (plumbing)	200,000
Windsor Hills Elementary/Middle School #87 – renovations (chiller/HVAC)	436,000
	<b>\$149,956,554</b>

**Public Libraries**

Canton Library – renovation	\$400,000
Edmondson Avenue Branch Library – renovation	264,000
Reisterstown Road Branch Library – repair and renovation	480,000
	<b>\$1,144,000</b>

**Community Health Facilities Grant Program**

Community Housing Associates, Inc.	\$6,790,000
Glenwood Life Counseling Center, Inc.	1,600,000
Project PLASE, Inc.	400,000
The Baltimore Station	1,000,000
Tuerk House, Inc.	1,500,000
Valley House, Inc.	259,000
	<b>\$11,549,000</b>

**Federally Qualified Health Centers Grant Program**

Baltimore Medical System, Inc.	\$2,200,000
Chase Brexton Health Services, Inc.	248,000
Total Health Care, Inc.	128,000
	<b>\$2,576,000</b>

**Shelter and Transitional Facilities**

Carrington House	\$50,000
Dayspring Programs	1,000,000
Healthy Start Transitional Housing	60,000
House of Freedom II	614,148
People's Homesteading	50,000
Project PLASE Vets Transitional	100,000
Susannah Wesley House	50,000
	<b>\$1,924,148</b>

**Partnership Rental Housing Program**

Bailey Disability Units	\$2,580,619
Disability Units – Poppleton II	525,000
Orchard Ridge Phase III	2,980,000
Thompson 22	2,511,329
	<b>\$8,596,948</b>

**Community Parks and Playgrounds**

Andover and North Hill Park Playground	\$65,000
Burdick Park	140,000
Druid Hill Park	230,000
Easterwood Park	130,000
Federal Hill Park	240,000
George Washington Elementary School Playground	120,000

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Joseph Lee Park	200,000
Northwestern High School	75,000
William McAbee Park Playground	110,000
Windsor Hills Park	110,000
Woodberry Park	200,000
Woodbourne Park	200,000
	<b>\$1,820,000</b>

**Chesapeake Bay Water Quality Projects**

Patapsco WWTP – nutrient removal	\$47,190,000
Urban Stormwater Management – demonstration projects	25,000
	<b>\$47,215,000</b>

**Chesapeake Bay Restoration Fund**

Back River WWTP – enhanced nutrient removal	\$27,790,000
Baltimore City – sewer rehabilitation	2,000,000
Patapsco WWTP – enhanced nutrient removal	76,492,000
	<b>\$106,282,000</b>

**Waterway Improvement**

Boat ramps and parking areas – citywide renovations	\$50,000
City Fire Department – purchase dive team and fire boat equipment	105,000
Downtown Sailing Center – miscellaneous improvements	198,000
Finger Pier – information center improvements	30,000
Fort Armistead Park – replace breakwater	500,000
Inner Harbor – camera/security management system at public boating facilities	25,000
Inner Harbor – purchase patrol vessel	25,000
Inner Harbor Marina – purchase wind mill generators for boat slips	31,950
	<b>\$964,950</b>

**Hazardous Substance Cleanup Program**

Chemical Metals Site – remediation	\$300,000
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**Other Projects**

2101-2111 Pennsylvania Avenue Development Project	\$35,000
Academy of Success Community Empowerment Center	150,000
Alpha Phi Alpha Fraternity – Corporate Headquarters	100,000
American Visionary Art Museum	150,000
Archbishop Curley High School – Fine Arts Center	300,000

Baltimore International College – Culinary Arts Center	3,000,000
Baltimore Leadership School for Young Women	135,000
Baltimore Museum of Art	2,500,000
Baltimore Museum of Industry	430,000
Baltimore Station, Inc. – substance abuse treatment facility	100,000
Baltimore Zoo – facilities renewal	2,000,000
Baltimore Zoo – infrastructure improvements	7,000,000
Beans and Bread	300,000
Bon Secours Hospital	1,000,000
Center for Urban Families	125,000
Chimes School	250,000
Clarence H. “Du” Burns Memorial	100,000
College of Notre Dame – Knott Science Center	3,500,000
Collington Square Community Kitchen	100,000
Community Mediation Program	175,000
Comprehensive Housing Assistance, Inc.	2,500,000
Creative Alliance	50,000
Dayspring Square	400,000
Dorothy M. Higgins Community Center	100,000
Druid Hill Family Center Y	65,000
East Baltimore Biotechnology Park	20,000,000
East Baltimore Housing Community	100,000
Eastside Youth Center	75,000
Edward A. Myerberg Senior Center	125,000
Everyman Theatre	100,000
Family Cultural Enrichment Community Center	225,000
Flag House and Star Spangled Banner Museum	125,000
Fort McHenry Visitors Center	100,000
Franklin Entrepreneurial and Apprenticeship Center	120,000
Garrett-Jacobs Mansion	200,000
Gaudenzia at Park Heights	50,000
Girl Scout Urban Program and Training Center	350,000
Glen Avenue Firehouse	75,000
GREEN HOUSE at Stadium Place	4,500,000
Greenmount West Community Resource Center	100,000
Health Care for the Homeless	10,000
Healthy Start Client Service Center	150,000
Helping Up Mission	200,000
Hispanic Apostolate and Immigration Legal Services	253,000
Historic East Baltimore Community Action Coalition	350,000
Housing and Resource Center	4,000,000



Howard “Pete” Rawlings Hearing and Speech Facility	25,000
Iota Phi Theta Love/Action Center	15,000
Johns Hopkins Bayview Medical Center	560,000
Johns Hopkins Health System – Cardiovascular and Critical Care Tower	22,000,000
Johns Hopkins Health System – Pediatric Trauma Center	30,000,000
Johns Hopkins University – Gilman Hall renovation	3,250,000
Junior League of Baltimore Thrift Store	400,000
Kennedy Krieger Institute	6,600,000
L.A.M.B. Community Resource Center	100,000
Learning, Inc.	175,000
Library Square Revitalization	225,000
Long Term Care at Stadium Place	100,000
Loyola College – Donnelly Science Center	3,250,000
Lyndhurst Recreation Center	125,000
Lyric Opera House	3,300,000
Mary Harvin Transformation Center	150,000
Maryland General Hospital	875,000
Maryland Institute College of Art – The Gateway Facility	3,000,000
Maryland School for the Blind	1,100,000
Maryland Science Center	200,000
Maryland Science Center – green roof	400,000
Maryland SPCA Adoption Center	100,000
Maryland State Boychoir Facility	150,000
Museum of Industry	250,000
Museum of the Maryland Historical Society	150,000
NACA Education and Community Center	200,000
National Aquarium in Baltimore	3,500,000
Newborn Community Center	350,000
Park Heights Revitalization	4,500,000
Parks and People Headquarters at Auchentoroly Terrace	150,000
Port Discovery	750,000
Restoration Gardens – youth supportive housing facility	150,000
Roberta’s House	300,000
Roland Park Fire Station – rehabilitation	110,000
Sandi’s Learning Center	225,000
School 33 Art Center	200,000
Sinai Hospital	3,505,000
Sinai Hospital – Samuelson Children’s Hospital	2,500,000
Sojourner-Douglass College – Science and Allied Health Facility	3,250,000
Southeast Neighborhood Development Center	300,000
Southwest Senior and Community Multipurpose Center	240,000

St. Agnes HealthCare	560,000
Stadium Place	300,000
Swann Avenue Firehouse	75,000
The Mount	100,000
The Trinity Family Life Center	100,000
Therapeutic Pool for People with Disabilities	350,000
University Specialty Hospital	455,000
Walters Art Museum	125,000
WestSide Revitalization Project	12,000,000
Women's Industrial Exchange	125,000
Women's Veteran's Center	50,000
WYPR – digital conversion	375,000
Youth Sports Program, Inc.	100,000
Zion Christian Middle School	100,000
	<b>\$167,318,000</b>

#### D. Capital Projects for State Facilities in the City

##### General Government

2100 Guilford Avenue – addition	\$3,000,000
Saratoga State Center – garage improvements	350,000
	<b>\$3,350,000</b>

##### Baltimore City Community College

Liberty Campus – renovate main building	\$3,214,000
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##### Department of Health and Mental Hygiene

Forensic Medical Center – construction	\$52,568,000
Public Health Laboratory – construction	6,450,000
	<b>\$59,018,000</b>

##### Department of Juvenile Services

Baltimore City Juvenile Treatment Center – construction	\$4,000,000
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**Department of Public Safety and Correctional Services**

Baltimore City Detention Center – property acquisition	\$1,100,000
Baltimore City Detention Center – Women’s Center	11,459,000
Baltimore City Detention Center – Youth Facility	32,720,000
Correctional Complex Site – utilities upgrade	840,000
	<b>\$46,119,000</b>

**Department of Education**

State Library Resource Center	\$1,550,000
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**Morgan State University**

Banneker Hall – renovation and telecommunications infrastructure	\$4,333,000
Campuswide – site improvements	11,094,000
Campuswide – utility upgrades	12,987,000
Center for the Built Environment and Infrastructure Studies	58,254,000
Lillie Carroll Jackson Museum – renovation	2,763,000
Montebello Complex and Northwood Shopping Center – demolition	2,185,000
School of Business and Management – new complex	4,292,794
	<b>\$95,908,794</b>

**University System of Maryland**

Baltimore – Pharmacy Hall addition and renovation	\$78,589,305
Coppin State – data center expansion	2,371,000
Coppin State – Health and Human Services Building	10,752,000
Coppin State – Physical Education Complex	118,645,000
Coppin State – Science and Technology Center	22,533,000
Coppin State – utilities and security systems improvements	7,548,000
University of Baltimore – 1300 N. Charles Street renovation	1,211,000
University of Baltimore – Law School	46,749,000
	<b>\$288,398,305</b>

**Other**

University of Maryland Medical System – ambulatory care center	\$15,000,000
University of Maryland Medical System – diagnostic and treatment facilities	7,500,000
University of Maryland Medical System – shock trauma center	52,000,000
	<b>\$74,500,000</b>

## Baltimore County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$334,624	\$338,819	\$323,556	\$328,787	-1.7
Compensatory Education	86,201	88,843	93,820	102,676	19.1
Student Transportation	23,845	24,519	26,278	26,649	11.8
Special Education	43,964	45,606	44,214	44,658	1.6
Limited English Proficiency Grants	9,731	10,344	11,026	11,204	15.1
Geographic Cost of Education Index	0	1,607	5,317	5,329	n/a
Adult Education	307	795	795	795	159.1
Aging Schools	2,073	1,590	874	874	-57.8
Other Education Aid	7,169	7,859	4,796	4,868	-32.1
<b><i>Subtotal</i></b>	<b><i>\$507,914</i></b>	<b><i>\$519,982</i></b>	<b><i>\$510,676</i></b>	<b><i>\$525,840</i></b>	<b><i>3.5</i></b>
<b><u>Other</u></b>					
Libraries	5,357	5,422	5,246	5,249	-2.0
Community Colleges	38,522	38,748	37,009	36,335	-5.7
Health Formula Grant	7,751	6,622	4,302	4,302	-44.5
Transportation	41,696	36,926	3,888	1,599	-96.2
Police and Public Safety	10,623	10,329	6,317	6,317	-40.5
Fire and Rescue Aid	1,175	1,176	1,161	1,161	-1.2
Recreation and Natural Resources	12,710	2,471	836	1,680	-86.8
Utility Property Tax Grants	1,736	0	0	0	-100.0
<b>Total Direct Aid</b>	<b>\$627,534</b>	<b>\$621,726</b>	<b>\$569,460</b>	<b>\$582,512</b>	<b>-7.2</b>
Aid Per Capita (\$)	797	789	721	732	-8.2
Property Tax Equivalent (\$)	0.87	0.76	0.64	0.65	-25.2

2. Retirement Payments

County teachers and librarians are members of either the teachers’ retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State’s attorneys. Fiscal 2008-2011 State payments for Baltimore County for teachers, librarians, community college faculty, and local officials are estimated to be \$339,449,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county’s share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$5,402	\$5,657	\$5,215	\$4,779
Family Health and Primary Care	355	372	324	338
Medical Care Services	2,466	1,695	2,568	2,779
Mental Health	49,185	51,482	51,146	53,253
Prevention and Disease Control	2,854	2,713	1,400	1,378
Developmental Disabilities	54,340	56,281	58,531	60,000
<b>Total</b>	<b>\$114,602</b>	<b>\$118,200</b>	<b>\$119,184</b>	<b>\$122,527</b>
<b><u>Social Services</u></b>				
Homeless Services	245	243	189	189
Women’s Services	601	455	482	351
Adult Services	831	1,122	624	705
Child Welfare Services	4,943	5,758	5,739	5,629
<b>Total</b>	<b>\$6,620</b>	<b>\$7,578</b>	<b>\$7,034</b>	<b>\$6,874</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	1,463	1,446	1,397	1,417
Community Services	250	244	232	232
<b>Total</b>	<b>\$1,713</b>	<b>\$1,690</b>	<b>\$1,629</b>	<b>\$1,649</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Arbutus Elementary School – renovations (roof)	\$355,000
Battle Grove Elementary School – renovations (roof)	961,000
Bear Creek Elementary School – renovations (roof)	925,000
Bedford Elementary School – renovations (windows/doors)	804,000
Carney Elementary School – renovations (roof)	809,000
Catonsville Center for Alternative Studies – renovations (boilers)	256,000
Catonsville High School – construction	6,901,380
Catonsville High School – renovations (roof)	898,000
Cedarmere Elementary School – kindergarten/pre-k addition	963,000
Chapel Hill Elementary School – renovations (windows/doors)	543,000
Chesapeake High School – renovations (HVAC)	776,000
Chesapeake Terrace Elementary School – renovations (windows/doors)	256,000
Cockeysville Middle School – construction	6,826,000
Colgate Elementary School – renovations (roof)	400,000
Cromwell Valley Magnet Elementary School – renovations (windows/doors)	563,000
Deep Creek Middle School – construction	3,134,000
Deep Creek Middle School – renovations (roof)	1,091,000
Deer Park Middle School – construction	5,695,000
Dundalk and Sollers Point High Schools – construction	6,555,956
Dundalk Elementary School – renovations (boilers)	256,000
Eastern Technical High School – renovations (roof)	1,695,000
Fifth District Elementary School – renovations (chiller)	261,000
G.W. Carver Center for Arts and Technology – construction	22,092,759
General John Strickler Middle School – construction	6,708,000
Glyndon Elementary School – renovations (boilers)	256,000
Halstead Academy – renovations (roof)	828,000
Hebbville Elementary School – renovations (windows/doors)	529,000
Hereford High School – renovations (water tank)	564,000
Hereford Middle School – construction	5,175,000
Hillcrest Elementary School – construction	1,789,000
Joppa View Elementary School – renovations (roof)	623,000
Kingsville Elementary School – renovations (roof)	514,000
Lansdowne Middle School – construction	5,929,000
Loch Raven High School – renovations (HVAC)	1,925,000
Maiden Choice School – renovations (roof)	532,000
Milford Mill Academy – construction	2,168,905
Norwood Elementary School – renovations (roof)	735,000

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Old Court Middle School – construction	9,563,684
Old Court Middle School – renovations (chiller)	410,000
Oliver Beach Elementary School – renovations (boilers)	256,000
Parkville Middle School – renovations (roof)	1,002,000
Perry Hall Middle School – construction	7,866,000
Perry Hall Middle School – renovations (roof)	1,340,000
Pikesville Middle School – construction	6,121,000
Pine Grove Middle School – construction	4,307,000
Pine Grove Middle School – renovations (wall repair)	1,025,000
Pot Spring Elementary School – renovations (roof)	773,000
Randallstown High School – renovations (HVAC)	3,075,000
Red House Run Elementary School – renovations (windows)	125,000
Riderwood Elementary School – renovations (roof/windows)	451,000
Riverview Elementary School – renovations (HVAC/chiller)	308,000
Sandalwood Elementary School – renovations (HVAC)	815,000
Sandy Plains Elementary School – renovations (windows)	167,000
Seventh District Elementary School – renovations (roof/windows/doors)	821,000
Shady Spring Elementary School – renovations (windows/doors)	230,000
Stemmers Run Middle School – renovations (boilers)	308,000
Towson West Elementary School – construction	4,025,620
Vincent Farm Elementary School – construction	8,170,000
Wellwood International Elementary School – renovations (roof)	753,000
West Towson Elementary School – construction	3,031,380
Western School of Technology – renovations (roof)	860,000
White Oak Special Education – renovations (windows/door)	307,000
Winand Elementary School – renovations (windows)	233,000
Winfield Elementary School – renovations (windows)	118,000
Woodbridge Elementary School – renovations (roof)	517,000
Woodlawn High School – construction	1,627,000
	<b>\$149,898,684</b>

**Public Libraries**

Cockeysville Library – addition and renovation	\$520,000
Perry Hall Library – library replacement	188,000
Randallstown Library – renovation	255,000
Sollers Point Library – construction	500,000
Towson Library – renovation	110,000
	<b>\$1,573,000</b>

**Baltimore Community College**

Catonsville – F Building renovation and expansion	\$2,452,000
Catonsville – new library	13,613,000
Essex – F Building renovation	7,377,000
Owings Mills Education Center	6,634,000
Systemwide – roof replacements	1,689,000
	<b>\$31,765,000</b>

**Community Health Facilities Grant Program**

Prologue, Inc.	\$252,000
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**Senior Centers Grant Program**

Arbutus Senior Center	\$500,000
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**Shelter and Transitional Facilities**

Nehemiah House	\$59,730
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**Community Parks and Playgrounds**

Athletic Artificial Turf Fields	\$250,000
Athletic Fields – lighting renovations	250,000
Catonsville Community Park Trail	100,000
Hawthorne Community Trail and Park	150,000
Millford Mill and Randallstown High School Stadiums	250,000
	<b>\$1,000,000</b>

**Chesapeake Bay Water Quality Projects**

Lower Spring Branch – stream restoration	\$270,000
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**Chesapeake Bay Restoration Fund**

Back River WWTP – enhanced nutrient removal	\$27,790,000
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**Waterway Improvement**

Arbutus Volunteer Fire Department – purchase water rescue equipment	\$10,500
Bear Creek – maintenance dredging	380,000
Bowley’s Quarter Volunteer Fire Department – fire/rescue boat improvements	67,500
Channel marker improvements – countywide	273,000
Chesterwood Park – derelict boat ramp and storage	99,000
Clement Cove – construct new pier	99,000
Cockeysville Volunteer Fire Department – purchase fire/rescue equipment	5,300
County Fire Department – acquire cold water suits	4,800
County Fire Department – purchase swift water rescue equipment	15,000
County Police Department – purchase patrol boat and equipment	50,000
Duck Creek and Deep Creek – dredging	110,000
Fort Howard Park – repair pier and moorings	25,000
Hart Miller Island – construct fueling station at Bills Boats	100,000
Inverness Park – boat ramp signage and paving	47,000
Jones Creek/North Point Creek – channel dredging	2,880,000
Kingsville Volunteer Fire Department – purchase water rescue equipment	9,000
Loch Raven Reservoir – overlay parking lot and road	60,000
Middle River – maintenance dredging	900,000
Middle River Volunteer Ambulance – acquire water rescue equipment	25,000
North Point/Edgemere Volunteer Fire Department – replace fire/rescue boat	50,000
Pleasure Island – maintenance dredging	1,000,000
Seneca Creek – channel dredging	200,000
Shallow Creek – maintenance dredging	515,000
Southwest Area Park – parking lot improvements	25,000
Southwest Area Park – resurface boat ramp entry road	99,000
Submerged aquatic vegetation monitoring – countywide	194,000
White Marsh Volunteer Fire Department – purchase fire/rescue equipment	14,100
White Marsh Volunteer Fire Department – purchase water rescue equipment	4,158
	<b>\$7,261,358</b>

**Hazardous Substance Cleanup Program**

Blenheim Road – site assessment	\$200,000
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**Other Projects**

Arbutus Volunteer Fire Department	\$100,000
Augsburg Lutheran Home of Maryland	300,000
Automotive Vocational Training Center	325,000

Baltimore County Center for Maryland Agriculture	1,000,000
Baltimore County Humane Society	150,000
Catonsville YMCA	325,000
Community Post – Dundalk	300,000
Family Life Intergenerational Center	250,000
Forbush School	5,150,000
Franklin Square Hospital Center	1,130,000
Good Shepherd Center	75,000
Goucher College – Julia Rogers Library	3,000,000
Heritage Trail and Saint Helena Park	175,000
HopeWell Cancer Support Facility	525,000
Irvine Nature Center	575,000
Leadership Through Athletics Facility	35,000
Little Sisters of the Poor	500,000
Maryland Food Bank	650,000
Milford Mill Academy	40,000
North County Park	100,000
Northeast Skate Park	100,000
Owings Mills High School – stadium	100,000
Owings Mills Jewish Community Center	275,000
Randallstown High School – dark room	40,000
Robert E. Lee Park	3,000,000
Slave Church	300,000
St. Joseph Medical Center	450,000
Stevenson University – School of Design	3,000,000
Storyville Children’s Learning Center	500,000
The Emmart-Pierpoint Safe House	100,000
Todd’s Inheritance	50,000
United Cerebral Palsy Facility	200,000
Weinberg Village V Senior Apartment Building	250,000
Westchester Community Center	150,000
Woodlawn High School	40,000
	<b>\$23,260,000</b>

#### **D. Capital Projects for State Facilities in the County**

##### **General Government**

Catonsville District Court – property acquisition	\$2,850,000
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**Maryland State Police**

Headquarters Building K – renovation \$1,665,000

**Department of Natural Resources**

Gunpowder Falls State Park – shoreline stabilization, replace dock and dredging \$50,000

Gunpowder Falls State Park – Dundee Creek Marina 66,000

Hart Miller Island State Park – ranger and comfort station improvements 60,000

Mill Pond – dam replacement 230,000

North Point State Park – Bayshore pier restoration 98,000

Patapsco Valley State Park – Greenway Trail project 400,000

Patapsco Valley State Park – Union Mill dam removal 300,000

**\$1,204,000**

**Maryland Veterans Administration**

Garrison Forest Veterans Cemetery – addition \$2,020,000

Garrison Forest Veterans Cemetery – expansion (federal funds) 6,912,000

**\$8,932,000**

**University System of Maryland**

Baltimore County – Performing Arts and Humanities Facility \$40,125,000

Towson University – College of Liberal Arts Complex 97,219,000

Towson University – safety and circulation improvements 18,274,000

**\$155,618,000**

## Calvert County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$64,326	\$65,070	\$63,227	\$62,705	-2.5
Compensatory Education	6,882	7,326	7,925	9,188	33.5
Student Transportation	4,840	4,994	5,384	5,441	12.4
Special Education	6,102	6,046	5,897	5,715	-6.3
Limited English Proficiency Grants	518	618	761	668	28.9
Geographic Cost of Education Index	0	715	2,342	2,337	n/a
Adult Education	200	200	200	200	0.0
Aging Schools	75	70	38	38	-48.9
Other Education Aid	460	1,140	609	609	32.4
<b><i>Subtotal</i></b>	<b>\$83,403</b>	<b>\$86,179</b>	<b>\$86,383</b>	<b>\$86,901</b>	<b>4.2</b>
<b><u>Other</u></b>					
Libraries	423	446	398	402	-5.0
Community Colleges	2,283	2,221	2,194	2,206	-3.4
Health Formula Grant	669	570	370	370	-44.7
* Transportation	6,433	6,272	808	405	-93.7
* Police and Public Safety	800	1,113	514	514	-35.8
* Fire and Rescue Aid	201	201	200	200	-0.3
Recreation and Natural Resources	1,113	216	74	149	-86.6
Utility Property Tax Grants	5,897	0	0	0	-100.0
<b>Total Direct Aid</b>	<b>\$101,222</b>	<b>\$97,218</b>	<b>\$90,941</b>	<b>\$91,147</b>	<b>-10.0</b>
Aid Per Capita (\$)	1,149	1,098	1,019	1,009	-12.2
Property Tax Equivalent (\$)	0.87	0.75	0.65	0.65	-25.6

\* Municipal governments within the county receive a share of these funds.

2. Retirement Payments

County teachers and librarians are members of either the teachers’ retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State’s attorneys. Fiscal 2008-2011 State payments for Calvert County for teachers, librarians, community college faculty, and local officials are estimated to be \$58,026,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county’s share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u><b>FY 2008</b></u>	<u><b>FY 2009</b></u>	<u><b>FY 2010</b></u>	<u><b>FY 2011</b></u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$634	\$669	\$631	\$604
Family Health and Primary Care	148	135	134	134
Medical Care Services	351	405	347	361
Mental Health	2,553	2,672	2,655	2,764
Prevention and Disease Control	564	690	413	437
Developmental Disabilities	6,077	6,354	6,608	6,774
<b>Total</b>	<b>\$10,327</b>	<b>\$10,925</b>	<b>\$10,788</b>	<b>\$11,074</b>
<b><u>Social Services</u></b>				
Homeless Services	33	33	30	30
Women’s Services	242	175	170	136
Adult Services	60	106	74	86
Child Welfare Services	638	816	779	762
<b>Total</b>	<b>\$973</b>	<b>\$1,130</b>	<b>\$1,053</b>	<b>\$1,014</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	126	124	127	129
Community Services	25	19	19	19
<b>Total</b>	<b>\$151</b>	<b>\$143</b>	<b>\$146</b>	<b>\$148</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Barstow Elementary School – construction	\$12,232,632
Beach Elementary School – renovations (roof)	239,000
Calvert County Special School – renovations (roof)	290,000
Calvert High School – construction	10,757,063
Calvert Middle School – construction	12,382,083
Huntingtown Elementary School – renovations (roof)	313,000
Mt. Harmony Elementary School – renovations (HVAC)	98,000
Mutual Elementary School – renovations (HVAC)	787,000
	<b>\$37,098,778</b>

**College of Southern Maryland**

La Plata – Business Classroom Building renovation and expansion	\$5,856,000
La Plata – Science and Technology Building	844,000
Leonardtown – Wellness Center	11,712,000
Prince Frederick – campus development	5,806,000
	<b>\$24,218,000</b>

**Community Health Facilities Grant Program**

Calvert County Government	\$1,150,000
The Arc of Southern Maryland	1,500,000
	<b>\$2,650,000</b>

**Shelter and Transitional Facilities**

Project Echo	\$502,390
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**Community Parks and Playgrounds**

Dowell Elementary School Playground	\$108,000
North Beach Bay Overlook	21,000
North Beach Wetland Overlook	58,000
Solomons Town Center Playground	200,000
	<b>\$387,000</b>

**Chesapeake Bay Restoration Fund**

Chesapeake Beach WWTP – enhanced nutrient removal	\$16,700,000
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**Water Supply Financial Assistance Program**

Dares Beach/Chesapeake Heights – new well	\$100,000
East Prince Frederick – new tower, well and arsenic treatment system	400,000
	<b>\$500,000</b>

**Waterway Improvement**

Chesapeake Beach – replace bulkhead	\$99,000
Chesapeake Beach – shore stabilization and boat ramp repair	95,000
North Beach – pier dredging	199,000
	<b>\$393,000</b>

**Other Projects**

Annmarie Garden	\$100,000
ARC of Southern Maryland Community Resource Center	150,000
Bayside History Museum – Captain John Smith Exhibit	50,000
Calvert Memorial Hospital	800,000
Chesapeake Beach – Kellam’s Field	250,000
Chesapeake Cares Food Pantry	75,000
North Beach – boardwalk	250,000
North Beach Town Hall – construction	250,000
Project ECHO Homeless Shelter	250,000
	<b>\$2,175,000</b>

**D. Capital Projects for State Facilities in the County**

**Maryland Office of Planning**

Jefferson Patterson Park and Museum – Patterson Center	\$554,000
Jefferson Patterson Park and Museum – Riverside Stations	1,876,000
	<b>\$2,430,000</b>

## Caroline County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$25,177	\$25,612	\$25,508	\$25,003	-0.7
Compensatory Education	9,832	10,215	10,454	11,204	14.0
Student Transportation	2,212	2,264	2,421	2,441	10.4
Special Education	2,694	2,560	2,237	2,233	-17.1
Limited English Proficiency Grants	676	861	854	933	38.0
Guaranteed Tax Base	554	832	563	339	-38.8
Aging Schools	98	91	50	50	-48.9
Other Education Aid	646	516	415	415	-35.8
<b><i>Subtotal</i></b>	<b><i>\$41,889</i></b>	<b><i>\$42,951</i></b>	<b><i>\$42,502</i></b>	<b><i>\$42,618</i></b>	<b><i>1.7</i></b>
<b><u>Other</u></b>					
Libraries	357	280	273	273	-23.4
Community Colleges	1,339	1,424	1,394	1,434	7.1
Health Formula Grant	962	828	538	538	-44.0
* Transportation	5,041	4,544	615	307	-93.9
* Police and Public Safety	348	796	223	223	-35.9
* Fire and Rescue Aid	205	205	209	209	2.0
Recreation and Natural Resources	494	96	33	65	-86.9
Disparity Grant	1,913	2,253	2,132	2,132	11.4
<b>Total Direct Aid</b>	<b>\$52,548</b>	<b>\$53,377</b>	<b>\$47,919</b>	<b>\$47,799</b>	<b>-9.0</b>
Aid Per Capita (\$)	1,594	1,604	1,436	1,419	-11.0
Property Tax Equivalent (\$)	2.13	1.86	1.50	1.52	-28.8

\* Municipal governments within the county receive a share of these funds.



2. Retirement Payments

County teachers and librarians are members of either the teachers’ retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State’s attorneys. Fiscal 2008-2011 State payments for Caroline County for teachers, librarians, community college faculty, and local officials are estimated to be \$17,524,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county’s share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$429	\$476	\$357	\$411
Family Health and Primary Care	237	237	265	265
Medical Care Services	466	483	492	474
Mental Health	2,853	2,987	3,079	3,089
Prevention and Disease Control	465	503	279	256
Developmental Disabilities	2,284	2,374	2,469	2,531
<b>Total</b>	<b>\$6,734</b>	<b>\$7,060</b>	<b>\$6,941</b>	<b>\$7,026</b>
<b><u>Social Services</u></b>				
Homeless Services	90	88	39	39
Women’s Services	149	80	80	63
Adult Services	64	102	98	111
Child Welfare Services	784	771	633	659
<b>Total</b>	<b>\$1,087</b>	<b>\$1,041</b>	<b>\$850</b>	<b>\$872</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	542	535	519	517
Community Services	137	136	106	106
<b>Total</b>	<b>\$679</b>	<b>\$671</b>	<b>\$625</b>	<b>\$623</b>

Note: A portion of women’s services funding supports services in Caroline, Dorchester, Kent, Queen Anne’s, and Talbot counties. Senior citizen services funding supports services in Caroline, Kent, and Talbot counties.

**C. Selected State Grants for Capital Projects****Public Schools**

Colonel Richardson High School – construction	\$17,867,061
Colonel Richardson Middle School – construction	2,187,000
Greensboro Elementary School – relocatable classrooms	102,236
Preston Elementary School – renovations (roof)	137,000
	<b>\$20,293,297</b>

**Public Libraries**

Denton Library – renovation	\$50,000
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**Chesapeake College**

Kent Humanities Building – renovation	\$6,776,000
Talbot Science Building – renovation	2,629,000
	<b>\$9,405,000</b>

**Federally Qualified Health Centers Grant Program**

Choptank Community Health System, Inc.	\$440,000
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**Community Parks and Playgrounds**

Chambers Park	\$171,000
Denton Elementary School	281,000
Goldsboro Children's Playground and Picnic Area	158,000
Hillsboro Playground	70,000
Marina Park	58,368
Ridgely Railroad Building	75,000
	<b>\$813,368</b>

**Chesapeake Bay Water Quality Projects**

Feddersburg – Maple Avenue/South Main Street inflow and infiltration correction	\$300,000
Feddersburg WWTP – nutrient removal	685,000
	<b>\$985,000</b>

**Chesapeake Bay Restoration Fund**

Federalsburg – sewer rehabilitation \$600,000

**Water Supply Financial Assistance Program**

Federalsburg – water main improvements \$160,000

Greensboro – water line replacement 455,000

Nelphine Heights/Jonestown – water distribution 300,000

**\$915,000**

**Waterway Improvement**

Boat ramp facility ADA access and ramp/pier maintenance – countywide \$50,000

Choptank Marina – construct ADA-accessible pier and floating dock 25,000

Choptank Marina – service pier improvements and maintenance dredging 399,000

Denton – Crouse Park boat landing and wharf replacement 106,000

Denton – Crouse Park bulkhead replacement 99,000

Federalsburg – install solar powered lighting at VFW boat ramp 12,000

Federalsburg Marina Park – construct boat dock 26,000

Ganey’s Wharf – replace pier/bulkhead and make ADA improvements 129,000

Hillsboro – boat ramp ADA modifications and replace bulkhead 99,000

Public boating facilities – countywide maintenance 50,000

Smithville Lake – boating facility improvements 75,000

**\$1,070,000**

**Other Projects**

Adkins Arboretum – Native Garden Gateway \$125,000

Caroline Hospice 150,000

Old Caroline High School 50,000

The Benedictine School 250,000

**\$575,000**

**D. Capital Projects for State Facilities in the County**

**Department of Natural Resources**

Martinak State Park – ADA access improvements	\$60,000
Martinak State Park – pier replacement	50,000
Tuckahoe State Park – Upper Chesapeake rail/trail connector	1,490,000
	<b>\$1,600,000</b>

## Carroll County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$109,302	\$109,705	\$105,445	\$103,313	-5.5
Compensatory Education	8,927	9,559	10,359	11,680	30.8
Student Transportation	8,360	8,633	9,289	9,370	12.1
Special Education	12,232	12,669	12,391	12,412	1.5
Limited English Proficiency Grants	623	772	682	645	3.5
Geographic Cost of Education Index	0	787	2,589	2,570	n/a
Adult Education	50	50	50	50	0.0
Aging Schools	306	250	137	137	-55.2
Other Education Aid	736	1,601	621	622	-15.5
<b><i>Subtotal</i></b>	<b><i>\$140,536</i></b>	<b><i>\$144,026</i></b>	<b><i>\$141,563</i></b>	<b><i>\$140,799</i></b>	<b><i>0.2</i></b>
<b><u>Other</u></b>					
Libraries	1,116	1,038	982	982	-12.0
Community Colleges	7,193	7,414	7,587	7,409	3.0
Health Formula Grant	2,210	1,896	1,232	1,232	-44.3
* Transportation	13,962	12,225	1,460	571	-95.9
* Police and Public Safety	1,793	1,684	1,044	1,044	-41.8
* Fire and Rescue Aid	262	263	264	264	0.7
Recreation and Natural Resources	2,523	491	166	333	-86.8
<b>Total Direct Aid</b>	<b>\$169,595</b>	<b>\$169,037</b>	<b>\$154,298</b>	<b>\$152,634</b>	<b>-10.0</b>
Aid Per Capita (\$)	1,001	996	907	885	-11.6
Property Tax Equivalent (\$)	0.95	0.83	0.70	0.73	-22.9

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Carroll County for teachers, librarians, community college faculty, and local officials are estimated to be \$90,232,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$2,850	\$2,545	\$2,434	\$2,349
Family Health and Primary Care	215	194	183	183
Medical Care Services	562	587	753	631
Mental Health	6,956	7,280	7,233	7,531
Prevention and Disease Control	787	893	499	455
Developmental Disabilities	11,650	12,132	12,617	12,934
<b>Total</b>	<b>\$23,020</b>	<b>\$23,631</b>	<b>\$23,719</b>	<b>\$24,083</b>
<b><u>Social Services</u></b>				
Homeless Services	60	57	68	68
Women's Services	414	309	298	267
Adult Services	47	41	100	72
Child Welfare Services	1,426	1,276	1,427	1,354
<b>Total</b>	<b>\$1,947</b>	<b>\$1,683</b>	<b>\$1,893</b>	<b>\$1,761</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	321	318	304	308
Community Services	66	56	54	54
<b>Total</b>	<b>\$387</b>	<b>\$374</b>	<b>\$358</b>	<b>\$362</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Carrolltowne Elementary School – construction	\$501,000
Ebb Valley Elementary School – construction	6,030,046
Freedom Elementary School – kindergarten/pre-k addition	1,479,000
Hampstead Elementary School – renovations (HVAC)	1,536,000
Mt. Airy Elementary School – renovations (roof)	502,000
Mt. Airy Middle School – renovations (roof)	439,000
Robert Moton Elementary School – kindergarten/pre-k addition	1,908,000
South Carroll High School – construction	10,081,000
Westminster High School – renovations (HVAC)	13,190,524
William Winchester Elementary School – kindergarten/pre-k addition	1,889,000
Winfield Elementary School – kindergarten/pre-k addition	1,097,000
	<b>\$38,652,570</b>

**Public Libraries**

Eldersburg Library – renovation	\$209,000
North Carroll Library – renovation	125,000
Westminster Library – renovation	620,000
	<b>\$954,000</b>

**Carroll Community College**

Classroom Building No. 4	\$19,601,000
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**Juvenile Justice Bond Program**

Carroll County Youth Services Bureau, Inc.	\$3,669,000
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**Community Health Facilities Grant Program**

Main Street Housing, Inc.	\$345,000
Prologue	118,000
	<b>\$463,000</b>

**Community Parks and Playgrounds**

Bennett Cerf Park	\$65,000
Christmas Tree Park	42,550
Green's Playground	140,000
Jones Park	100,000
Lexington Run Park	126,400
Memorial Park	120,000
Mount Airy Rails-to-Trails – pathway lighting	82,000
Robert Mill Park	90,000
Union Bridge Community Park	17,000
Westminster – citywide park upgrades	50,000
	<b>\$832,950</b>

**Chesapeake Bay Water Quality Projects**

Hampstead WWTP – nutrient removal	\$50,000
Taneytown – Baltimore Street sanitary sewer replacement	300,000
	<b>\$350,000</b>

**Chesapeake Bay Restoration Fund**

Freedom District WWTP – enhanced nutrient removal	\$13,100,000
Hampstead WWTP – enhanced nutrient removal	150,000
Taneytown – sewer rehabilitation	200,000
Taneytown WWTP – enhanced nutrient removal	3,000,000
Westminster WWTP – enhanced nutrient removal	6,450,000
	<b>\$22,900,000</b>

**Water Supply Financial Assistance Program**

Union Bridge – well rehabilitation	\$48,000
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**Waterway Improvement**

Double Pipe Creek Water Trail – install two kiosks	\$8,000
Piney Run Park – acquire patrol boat motor	4,000
	<b>\$12,000</b>



**Other Projects**

Carroll County Agriculture Center	\$250,000
Carroll Hospital Center	700,000
Danele Shipley Memorial Arena	100,000
Friendship School	20,000
Marlin K. Hoff Memorial Barn	100,000
Sykesville – South Branch Park	100,000
	<b>\$1,270,000</b>

**D. Capital Projects for State Facilities in the County**

**Department of Public Safety and Correctional Services**

Public Safety Training Center – rifle range	\$1,172,000
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**Maryland Environmental Service**

Springfield Hospital Center – water tower improvements	\$320,000
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## Cecil County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$67,046	\$67,197	\$64,888	\$65,163	-2.8
Compensatory Education	13,877	14,746	16,505	19,252	38.7
Student Transportation	4,339	4,432	4,772	4,822	11.1
Special Education	8,176	8,420	7,718	7,756	-5.1
Limited English Proficiency Grants	459	546	545	563	22.6
Guaranteed Tax Base	2,047	2,626	2,009	1,744	-14.8
Adult Education	104	104	104	104	0.0
Aging Schools	236	175	96	96	-59.3
Other Education Aid	925	1,076	688	688	-25.6
<b><i>Subtotal</i></b>	<b><i>\$97,209</i></b>	<b><i>\$99,322</i></b>	<b><i>\$97,325</i></b>	<b><i>\$100,188</i></b>	<b><i>3.1</i></b>
<b><u>Other</u></b>					
Libraries	785	732	704	717	-8.7
Community Colleges	5,052	5,143	5,211	5,252	4.0
Health Formula Grant	1,449	1,241	806	806	-44.4
* Transportation	7,809	6,892	848	366	-95.3
* Police and Public Safety	2,202	1,072	635	635	-71.2
* Fire and Rescue Aid	207	207	206	206	-0.7
Recreation and Natural Resources	1,301	253	86	173	-86.7
<b>Total Direct Aid</b>	<b>\$116,014</b>	<b>\$114,862</b>	<b>\$105,821</b>	<b>\$108,343</b>	<b>-6.6</b>
Aid Per Capita (\$)	1,167	1,149	1,050	1,056	-9.6
Property Tax Equivalent (\$)	1.26	1.10	0.95	0.98	-22.6

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Cecil County for teachers, librarians, community college faculty, and local officials are estimated to be \$51,771,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$1,123	\$1,214	\$1,137	\$1,084
Family Health and Primary Care	190	178	182	182
Medical Care Services	504	530	563	564
Mental Health	6,261	6,554	6,511	6,779
Prevention and Disease Control	629	742	441	438
Developmental Disabilities	6,851	7,159	7,445	7,632
<b>Total</b>	<b>\$15,558</b>	<b>\$16,377</b>	<b>\$16,279</b>	<b>\$16,679</b>
<b><u>Social Services</u></b>				
Homeless Services	40	40	36	36
Women's Services	223	159	157	113
Adult Services	98	193	130	127
Child Welfare Services	1,422	1,459	1,547	1,514
<b>Total</b>	<b>\$1,783</b>	<b>\$1,851</b>	<b>\$1,870</b>	<b>\$1,790</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	126	124	146	148
Community Services	47	40	39	39
<b>Total</b>	<b>\$173</b>	<b>\$164</b>	<b>\$185</b>	<b>\$187</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Calvert Elementary School – construction	\$7,174,000
Leeds Elementary School – renovations (HVAC)	1,538,000
North East High School – renovations (windows/doors)	964,023
Perryville High School – renovations (HVAC/roof)	3,588,000
Perryville Middle School – construction	1,445,000
Thomson Estates Elementary School – renovations (HVAC/roof)	779,513
	<b>\$15,488,536</b>

**Public Libraries**

North East Library – site acquisition	\$800,000
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**Cecil Community College**

Bainbridge Center	\$1,084,000
Physical Education Building – renovation and addition	13,521,000
	<b>\$14,605,000</b>

**Local Jail Loan**

County Correctional Facility – renovations and additions	\$10,645,000
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**Community Health Facilities Grant Program**

Community Coalition for Affordable Housing	\$300,000
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**Community Parks and Playgrounds**

Chesapeake City Park	\$33,000
Daydream Park	142,000
Ferry Slip Park	91,000
Marina Park Playground	154,000
Meadow Park – playground and rock walls	60,000
Perryville Community Park	20,625
Perryville Youth Park	2,000
Port Deposit Marina Park	120,000
Rising Sun Veterans Memorial Park	156,000
Trinity Woods Park	118,000
	<b>\$896,625</b>

**Chesapeake Bay Water Quality Projects**

Elkton WWTP – nutrient removal	\$2,000,000
Perryville WWTP – nutrient removal	3,998,000
Rising Sun WWTP – plant upgrade	700,000
	<b>\$6,698,000</b>

**Chesapeake Bay Restoration Fund**

Perryville WWTP – enhanced nutrient removal	\$1,000,000
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**Water Supply Financial Assistance Program**

North East – water distribution system	\$140,000
Port Deposit – water treatment and intake upgrades	425,000
Whitaker Woods – water system	300,000
	<b>\$865,000</b>

**Waterway Improvement**

Charlestown – boat ramp dredging	\$250,000
Charlestown – public boating facilities general maintenance	50,000
Charlestown – town pier dredging	30,000
Charlestown Fire Boat Pier – channel dredging	235,000
Chesapeake City – public boating facilities general maintenance	5,800
Chesapeake City Volunteer Fire Company – acquire fire/rescue equipment	25,000
Elk River Park – boat ramp, pier and parking improvements	99,000
Elk River Park – construct marina services building	50,000

Elk River Park – develop new public boating site	124,000
North East – ADA and miscellaneous pier improvements	83,250
Perryville – install floating pier with transient slips	500,000
Port Deposit – Marina Park bulkhead and dock replacement	10,000
Port Deposit – Marina Park relocate floating docks	50,000
Port Deposit – public boating facilities general maintenance	50,000
	<b>\$1,562,050</b>

**Hazardous Substance Cleanup Program**

Dwyer Site – remediation	\$1,150,000
Mill Creek – groundwater and perchlorate	200,000
Montgomery Brothers – site improvements	200,000
	<b>\$1,550,000</b>

**Other Projects**

4-H Animal Display Barn	\$350,000
Cecil County Breeder's Fair	50,000
Lower Susquehanna Heritage Greenway	150,000
Mount Harmon Plantation Education and Discovery Center	40,000
Stone House	100,000
Union Hospital	2,110,000
	<b>\$2,800,000</b>

**D. Capital Projects for State Facilities in the County**

**Department of Natural Resources**

Elk Neck State Park – Rogues Harbor repair breakwater	\$75,000
Elk Neck State Park – Rogues Harbor replace boat launch catwalks and decking	150,000
Elk Neck State Park – Rogues Harbor replace decking and install lighting	38,000
Stemmers Run – dredging, breakwater and boat ramp repairs	75,000
	<b>\$338,000</b>

**Maryland Environmental Service**

Elk Neck State Park – wastewater treatment plant upgrade	\$1,151,000
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## Charles County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$106,743	\$107,562	\$103,232	\$104,218	-2.4
Compensatory Education	16,930	19,544	21,116	22,849	35.0
Student Transportation	8,734	8,989	9,706	9,814	12.4
Special Education	7,794	7,798	7,714	7,829	0.4
Limited English Proficiency Grants	704	776	818	731	3.8
Guaranteed Tax Base	2,758	4,052	2,213	228	-91.7
Geographic Cost of Education Index	0	1,038	3,462	3,467	n/a
Adult Education	338	335	335	335	-0.9
Aging Schools	98	91	50	50	-48.9
Other Education Aid	944	2,158	971	972	2.9
<b>Subtotal</b>	<b>\$145,043</b>	<b>\$152,343</b>	<b>\$149,617</b>	<b>\$150,493</b>	<b>3.8</b>
<b><u>Other</u></b>					
Libraries	839	853	795	791	-5.7
Community Colleges	6,863	7,179	7,003	7,042	2.6
Health Formula Grant	1,789	1,531	995	995	-44.4
* Transportation	10,017	9,154	1,192	608	-93.9
* Police and Public Safety	1,329	3,657	801	801	-39.7
* Fire and Rescue Aid	238	243	242	242	1.4
Recreation and Natural Resources	2,289	445	152	305	-86.7
Utility Property Tax Grants	2,440	0	0	0	-100.0
<b>Total Direct Aid</b>	<b>\$170,847</b>	<b>\$175,405</b>	<b>\$160,797</b>	<b>\$161,277</b>	<b>-5.6</b>
Aid Per Capita (\$)	1,215	1,240	1,131	1,119	-7.8
Property Tax Equivalent (\$)	1.07	0.94	0.81	0.86	-19.5

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Charles County for teachers, librarians, community college faculty, and local officials are estimated to be \$83,393,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$2,010	\$2,070	\$1,984	\$1,922
Family Health and Primary Care	369	329	337	337
Medical Care Services	462	505	497	527
Mental Health	4,685	4,904	4,872	5,072
Prevention and Disease Control	939	853	488	554
Developmental Disabilities	9,676	10,084	10,487	10,751
<b>Total</b>	<b>\$18,141</b>	<b>\$18,745</b>	<b>\$18,665</b>	<b>\$19,163</b>
<b><u>Social Services</u></b>				
Homeless Services	80	80	72	72
Women's Services	109	107	107	71
Adult Services	116	183	133	125
Child Welfare Services	1,576	2,174	1,987	1,974
<b>Total</b>	<b>\$1,881</b>	<b>\$2,544</b>	<b>\$2,299</b>	<b>\$2,242</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	209	207	199	202
Community Services	24	17	16	16
<b>Total</b>	<b>\$233</b>	<b>\$224</b>	<b>\$215</b>	<b>\$218</b>



**C. Selected State Grants for Capital Projects****Public Schools**

Arthur Middleton Elementary School – kindergarten/pre-k addition	\$644,000
Arthur Middleton Elementary School – renovations (HVAC/boiler)	1,556,000
Dr. Craik Elementary School – renovations (HVAC)	1,829,000
Dr. Gustavus Brown Elementary School – kindergarten/pre-k addition	2,344,000
Eva Turner Elementary School – kindergarten/pre-k addition	1,646,000
Gale-Bailey Elementary School – kindergarten/pre-k addition	2,549,000
Indian Head Elementary School – kindergarten/pre-k addition	915,000
John Hanson Middle School – renovations (HVAC/boiler)	2,036,000
Mary Burgess Neal Elementary School – construction	8,522,828
Mt. Hope/Nanjemoy Elementary School – kindergarten/pre-k addition	2,588,000
New High School 2013 – construction	3,443,172
Somers Middle School – renovations (HVAC/roof)	1,216,000
T.C. Martin Elementary School – kindergarten/pre-k addition	3,843,000
T.C. Martin Elementary School – renovations (boiler)	166,000
Theodore G. Davis Middle School – construction	8,808,976
	<b>\$42,106,976</b>

**College of Southern Maryland**

La Plata – Business Classroom Building renovation and expansion	\$5,856,000
La Plata – Science and Technology Building	844,000
Leonardtown – Wellness Center	11,712,000
Prince Frederick – campus development	5,806,000
	<b>\$24,218,000</b>

**Senior Centers Grant Program**

Richard Clark Senior Center	\$120,000
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**Community Parks and Playgrounds**

La Plata – parks, playgrounds and tennis courts	\$114,000
Tilghman Lake	100,000
	<b>\$214,000</b>

**Chesapeake Bay Water Quality Projects**

Benedict Central Sewer – collection and treatment system	\$1,500,000
Indian Head WWTP – nutrient removal	381,000
Mattawoman WWTP – nutrient removal	444,000
	<b>\$2,325,000</b>

**Chesapeake Bay Restoration Fund**

La Plata WWTP – enhanced nutrient removal	\$8,390,000
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**Water Supply Financial Assistance Program**

Lower Patapsco Aquifer – well construction/development/testing	\$1,000,000
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**Waterway Improvement**

Mallows Bay/Wilson Farm – construct boat ramp, pier, access road and parking lot	\$198,000
Marbury – replace fire/rescue boat and equipment	50,000
Mattingly Park/Slavins Landing – construct additional parking	99,000
Nanjemoy Creek – channel dredging	401,000
Nanjemoy Volunteer Fire Department – acquire fire/rescue boat	50,000
Newburg Volunteer Rescue/Fire Department – acquire marine fire/rescue equipment	50,000
Tenth District Volunteer Fire Department – replace fire/rescue boat	100,000
	<b>\$948,000</b>

**Other Projects**

Charles County Humane Society	\$150,000
Civista Medical Center	630,000
Hospice House	545,000
Indian Head Center for the Arts	57,500
Jaycees Field of Dreams	30,000
Lions Camp Merrick	300,500
Mattawoman Creek Art Center	15,000
Melwood Recreation Center – Kamp A-Kom-Plish	80,000
Old Waldorf School Community Center	100,000
Potomac Heights Housing Complex	75,000
Southern Maryland Stadium	6,033,000
	<b>\$8,016,000</b>

**D. Capital Projects for State Facilities in the County**

**Department of Natural Resources**

Cedarville Fish Hatchery – replace pipe and reline pond	\$198,000
Cedarville State Park – dam repair	150,000
Myrtle Grove WMA – new maintenance shop	800,000
Smallwood State Park – replace floating dock and other miscellaneous improvements	130,000
Smallwood State Park – Sweden Point Marina resurface parking lot and access road	350,000
	<b>\$1,628,000</b>

**Maryland Environmental Service**

Southern Maryland Pre-Release Unit – WWTP upgrade	\$198,000
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## Dorchester County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$18,460	\$18,437	\$18,699	\$19,104	3.5
Compensatory Education	6,749	7,376	6,963	8,094	19.9
Student Transportation	2,009	2,066	2,229	2,263	12.6
Special Education	1,499	1,525	1,422	1,362	-9.1
Limited English Proficiency Grants	350	370	273	335	-4.5
Guaranteed Tax Base	242	300	8	28	-88.5
Adult Education	148	148	148	148	0.0
Aging Schools	75	70	38	38	-48.9
Other Education Aid	1,223	1,154	472	472	-61.4
<b><i>Subtotal</i></b>	<b>\$30,755</b>	<b>\$31,446</b>	<b>\$30,252</b>	<b>\$31,844</b>	<b>3.5</b>
<b><u>Other</u></b>					
Libraries	245	248	242	244	-0.6
Community Colleges	1,186	1,285	1,257	1,293	9.0
Health Formula Grant	767	660	429	429	-44.1
* Transportation	5,589	4,967	680	336	-94.0
* Police and Public Safety	403	1,586	249	249	-38.3
* Fire and Rescue Aid	220	227	217	217	-1.1
Recreation and Natural Resources	422	82	28	56	-86.7
Disparity Grant	2,089	2,131	2,023	2,023	-3.2
Utility Property Tax Grants	181	0	0	0	-100.0
<b>Total Direct Aid</b>	<b>\$41,857</b>	<b>\$42,632</b>	<b>\$35,377</b>	<b>\$36,691</b>	<b>-12.3</b>
Aid Per Capita (\$)	1,318	1,331	1,104	1,142	-13.4
Property Tax Equivalent (\$)	1.48	1.32	1.00	1.03	-30.3

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Dorchester County for teachers, librarians, community college faculty, and local officials are estimated to be \$15,197,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$1,755	\$1,777	\$1,691	\$1,632
Family Health and Primary Care	187	162	175	175
Medical Care Services	432	453	474	474
Mental Health	4,426	4,633	4,710	4,792
Prevention and Disease Control	574	636	458	314
Developmental Disabilities	2,206	2,292	2,384	2,444
<b>Total</b>	<b>\$9,580</b>	<b>\$9,953</b>	<b>\$9,892</b>	<b>\$9,831</b>
<b><u>Social Services</u></b>				
Homeless Services	39	39	35	35
Women's Services	99	30	30	22
Adult Services	142	156	142	129
Child Welfare Services	770	851	765	797
<b>Total</b>	<b>\$1,050</b>	<b>\$1,076</b>	<b>\$972</b>	<b>\$983</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	636	628	585	569
Community Services	444	441	302	302
<b>Total</b>	<b>\$1,080</b>	<b>\$1,069</b>	<b>\$887</b>	<b>\$871</b>

Note: A portion of women's services funding supports services in Caroline, Dorchester, Kent, Queen Anne's, and Talbot counties. Senior citizen services funding supports services in Dorchester, Somerset, Wicomico, and Worcester counties.

**Public Schools**

Cambridge-South Dorchester High School – renovations (electrical)	\$79,000
Dorchester Career and Technology Center – construction	11,436,000
Dorchester Career and Technology Center – renovations (electrical)	79,000
Maple Elementary School – renovations (electrical)	79,000
North Dorchester Middle School – construction	16,769,000
	<b>\$28,442,000</b>

**Chesapeake College**

Kent Humanities Building – renovation	\$6,776,000
Talbot Science Building – renovation	2,629,000
	<b>\$9,405,000</b>

**Federally Qualified Health Centers Grant Program**

Choptank Community Health System, Inc.	\$1,600,000
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**Community Parks and Playgrounds**

East New Market – tennis courts	\$40,000
Hurlock Main Street Playground	84,000
Meadow Avenue Park	84,000
Riverfront Park	162,000
Vienna Community Park	60,223
	<b>\$430,223</b>

**Chesapeake Bay Water Quality Projects**

Cambridge Combined Sewer – overflow improvements	\$1,250,000
Christ Rock – public sewer service extension	500,000
Hurlock WWTP – nutrient removal	700,000
Susquehanna Point/Madison/Woolford – sewer collection system installation	1,200,000
	<b>\$3,650,000</b>

**Chesapeake Bay Restoration Fund**

Cambridge WWTP – enhanced nutrient removal	\$9,600,000
Gordon Street Lift Station – sewer rehabilitation	150,000
	<b>\$9,750,000</b>

**Water Supply Financial Assistance Program**

Christ Rock – public water system connection	\$295,000
East New Market – new wells	70,000
	<b>\$365,000</b>

**Waterway Improvement**

Cambridge Municipal Marina – construct platform	\$100,000
Cambridge Municipal Marina – design and construct restroom	50,000
Chapel Cove – channel dredging	75,000
Elliott Island – repair jetty	95,000
Elliott Island and Chapel Cove – navigation improvements	100,000
Great Marsh Park – replace boat ramp, pier and wing wall	198,000
Hoopers Island – dredging and miscellaneous repairs	50,000
Hoopers Island – rebuild dock, bulkhead and pier facility	95,000
Neck District Volunteer Fire Company – acquire fire/rescue boat and equipment	21,000
Public boating facilities – countywide general maintenance	248,000
Rescue Fire Company – acquire new fire/rescue boat	50,000
Smithville – replace bulkhead and resurface parking lot/ramp	75,000
Trenton Street – construct additional boat slips and related amenities	50,000
Vienna – construct Water Street bulkhead	99,000
Vienna – waterfront park shoreline stabilization	50,000
	<b>\$1,356,000</b>

**Other Projects**

Dorchester Center for the Arts Performance Hall	\$10,000
Dorchester County Family YMCA	295,000
Dorchester County Historical Society	50,000
Dorchester General Hospital	500,000
Galestown Community Center	50,000
Richardson Maritime Heritage Center	50,000
WaterLand Fisheries	175,000
	<b>\$1,130,000</b>

**D. Capital Projects for State Facilities in the County****Department of Natural Resources**

Cambridge Marine Terminal – construct marine railway	\$425,000
Harriet Tubman Underground Railroad State Park – improvements	7,575,419
Harriet Tubman Underground Railroad State Park – improvements (federal funds)	8,984,000
Langralls Creek – construct boat ramp and dredge entrance channel	100,000
	<b>\$17,084,419</b>

**Maryland Veterans Administration**

Eastern Shore Veterans Cemetery – install columbaria (federal funds)	\$431,000
Eastern Shore Veterans Cemetery – install columbaria	35,000
	<b>\$466,000</b>

**University System of Maryland**

Center for Environmental Science – Horn Point Oyster Production Facility	\$10,543,000
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## Frederick County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$149,660	\$151,165	\$145,613	\$146,856	-1.9
Compensatory Education	17,433	19,681	20,776	23,999	37.7
Student Transportation	10,238	10,582	11,316	11,408	11.4
Special Education	14,035	14,717	14,270	14,233	1.4
Limited English Proficiency Grants	4,288	4,658	5,181	5,020	17.0
Geographic Cost of Education Index	0	1,899	6,280	6,276	n/a
Adult Education	350	310	310	310	-11.3
Aging Schools	357	332	183	183	-48.9
Other Education Aid	1,023	2,750	717	717	-29.9
<b><i>Subtotal</i></b>	<b><i>\$197,384</i></b>	<b><i>\$206,094</i></b>	<b><i>\$204,646</i></b>	<b><i>\$209,002</i></b>	<b><i>5.9</i></b>
<b><u>Other</u></b>					
Libraries	1,249	1,135	1,099	1,140	-8.7
Community Colleges	8,074	8,621	8,583	8,667	7.3
Health Formula Grant	2,716	2,328	1,512	1,512	-44.3
* Transportation	18,856	16,755	2,424	1,183	-93.7
* Police and Public Safety	3,982	3,644	1,491	1,491	-62.5
* Fire and Rescue Aid	363	365	363	363	0.0
Recreation and Natural Resources	2,610	507	175	352	-86.5
<b>Total Direct Aid</b>	<b>\$235,234</b>	<b>\$239,449</b>	<b>\$220,293</b>	<b>\$223,710</b>	<b>-4.9</b>
Aid Per Capita (\$)	1,046	1,057	966	967	-7.5
Property Tax Equivalent (\$)	0.89	0.79	0.69	0.75	-15.4

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Frederick County for teachers, librarians, community college faculty, and local officials are estimated to be \$127,422,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$1,898	\$2,018	\$1,829	\$1,741
Family Health and Primary Care	210	214	237	237
Medical Care Services	606	652	616	713
Mental Health	12,633	13,223	13,137	13,678
Prevention and Disease Control	926	942	481	492
Developmental Disabilities	15,482	16,171	16,817	17,239
<b>Total</b>	<b>\$31,755</b>	<b>\$33,220</b>	<b>\$33,117</b>	<b>\$34,100</b>
<b><u>Social Services</u></b>				
Homeless Services	210	202	144	145
Women's Services	188	187	187	139
Adult Services	159	172	159	156
Child Welfare Services	2,206	2,058	2,273	2,104
<b>Total</b>	<b>\$2,763</b>	<b>\$2,619</b>	<b>\$2,763</b>	<b>\$2,544</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	238	235	233	236
Community Services	80	72	70	70
<b>Total</b>	<b>\$318</b>	<b>\$307</b>	<b>\$303</b>	<b>\$306</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Brunswick High School – renovations (chiller)	\$387,000
Brunswick High School – renovations (HVAC piping)	679,000
Brunswick Middle School – construction	1,489,000
Career and Technology Center – renovations (roof/chiller)	540,000
Carroll Manor Elementary School – renovations (roof)	414,000
Earth and Space Science Lab – construction	525,000
Heather Ridge School – renovations (chiller/HVAC)	209,000
Heather Ridge School – science facilities	459,000
Linganore High School – construction	9,426,524
Middletown High School – renovations (plumbing)	342,000
Middletown Middle School – renovations (storage tank)	150,000
Monocacy Middle School – renovations (HVAC)	559,000
New Market Elementary School – construction	1,931,000
New Market Middle School – renovations (roof)	595,000
Oakdale High School – construction	19,507,576
Rock Creek School – renovations (roof)	318,000
Sabillasville Elementary School – renovations (HVAC)	399,000
Sabillasville Elementary School – renovations (roof)	162,000
Thurmont Elementary School – renovations (HVAC)	708,000
Thurmont Primary School – construction	699,000
Urbana Middle School – construction	7,131,000
Walkersville High School – renovations (boiler)	450,000
West Frederick Middle School – construction	16,633,294
	<b>\$63,713,394</b>

**Public Libraries**

Brunswick Community Library – expansion	\$398,000
Walkersville Library – construction	450,000
	<b>\$848,000</b>

**Frederick Community College**

Building F – vacant space conversion	\$1,760,000
Classroom and Student Center Building	13,854,000
Fine Arts and Library Buildings – interior space conversion	664,000
Science/Technology Hall – renovation and addition	462,000
	<b>\$16,740,000</b>

**Local Jail Loan**

County Detention Center – expansion	\$7,401,000
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**Community Health Facilities Grant Program**

Sheppard Pratt Health System, Inc. – Jefferson School	\$591,000
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**Shelter and Transitional Facilities**

Jefferson School	\$102,880
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**Community Parks and Playgrounds**

Amber Meadows Park	\$27,000
Baker Park	26,000
Brunswick Park	54,000
Canada Hill Playground	20,000
Carrollton Park	28,000
Doub's Meadow Park	154,800
Emmitsburg Community Park	41,000
Eyler Park	142,000
Harry Pfeifer Park	37,000
Lions Merryland Park	45,000
Prospect Park	50,000
Woodsboro Regional Park	213,000
	<b>\$837,800</b>

**Chesapeake Bay Water Quality Projects**

Brunswick WWTP – nutrient removal	\$253,000
Emmitsburg WWTP – nutrient removal	4,148,000
Thurmont – sewer line rehabilitation and replacement	400,000
	<b>\$4,801,000</b>

**Chesapeake Bay Restoration Fund**

Ballenger WWTP – enhanced nutrient removal	\$10,480,000
Emmitsburg WWTP – enhanced nutrient removal	10,210,000
Frederick WWTP – enhanced nutrient removal	21,000,000
Thurmont – sewer rehabilitation	1,000,000
Thurmont WWTP – enhanced nutrient removal	6,310,000
	<b>\$49,000,000</b>

**Water Supply Financial Assistance Program**

New Market – water line extension	\$100,000
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**Waterway Improvement**

Brunswick – ADA and other boat ramp improvements	\$290,396
Brunswick – construct jetty	50,000
	<b>\$340,396</b>

**Other Projects**

Agriculture and Education Complex	\$200,000
C&O Canal National Historic Catoctin Aqueduct	200,000
Hood College – heating infrastructure replacement	2,000,000
John Hanson Memorial	50,000
Mental Health Association Building	250,000
Montevue Home	200,000
Mount St. Mary’s University – Performing Arts Academic Center	3,250,000
Way Station	550,000
Weinberg Center for the Arts	105,000
YMCA	50,000
	<b>\$6,855,000</b>

**D. Capital Projects for State Facilities in the County****Department of Natural Resources**

C&O Canal National Historical Park – boat ramp improvements	\$99,000
C&O Canal National Historical Park – boating facilities maintenance	99,000
Cunningham Falls State Park – install boat ramp lights	30,000
	<b>\$228,000</b>

**Other**

School for the Deaf – bus loop and parking lot	\$1,811,000
School for the Deaf – cafeteria and student center	5,731,000
School for the Deaf – elementary/family education/support services complex	1,250,000
	<b>\$8,792,000</b>

## Garrett County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$15,735	\$15,796	\$15,647	\$14,559	-7.5
Compensatory Education	4,735	4,806	4,850	5,058	6.8
Student Transportation	2,500	2,573	2,776	2,803	12.1
Special Education	1,585	1,596	1,455	1,320	-16.7
Limited English Proficiency Grants	0	3	10	10	n/a
Adult Education	39	39	39	39	0.0
Aging Schools	75	70	38	38	-48.9
Other Education Aid	531	537	550	550	3.7
<b><i>Subtotal</i></b>	<b>\$25,200</b>	<b>\$25,420</b>	<b>\$25,365</b>	<b>\$24,377</b>	<b>-3.3</b>
<b><u>Other</u></b>					
Libraries	160	164	155	155	-3.2
Community Colleges	3,106	3,374	3,426	3,343	7.6
Health Formula Grant	781	673	437	437	-44.0
* Transportation	6,232	5,541	673	301	-95.2
* Police and Public Safety	283	257	155	155	-45.4
* Fire and Rescue Aid	201	201	200	200	-0.3
Recreation and Natural Resources	520	101	35	70	-86.6
Disparity Grant	2,089	2,012	2,131	2,131	2.0
Utility Property Tax Grants	12	0	0	0	-100.0
<b>Total Direct Aid</b>	<b>\$38,584</b>	<b>\$37,743</b>	<b>\$32,577</b>	<b>\$31,169</b>	<b>-19.2</b>
Aid Per Capita (\$)	1,301	1,273	1,102	1,055	-19.0
Property Tax Equivalent (\$)	1.00	0.87	0.69	0.63	-36.7

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Garrett County for teachers, librarians, community college faculty, and local officials are estimated to be \$15,557,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$602	\$630	\$586	\$553
Family Health and Primary Care	177	136	144	144
Medical Care Services	622	673	680	743
Mental Health	2,298	2,405	2,389	2,488
Prevention and Disease Control	471	509	334	341
Developmental Disabilities	2,051	2,128	2,213	2,268
<b>Total</b>	<b>\$6,221</b>	<b>\$6,481</b>	<b>\$6,346</b>	<b>\$6,537</b>
<b><u>Social Services</u></b>				
Homeless Services	79	74	47	47
Women's Services	146	143	141	102
Adult Services	20	37	38	37
Child Welfare Services	756	936	796	751
<b>Total</b>	<b>\$1,001</b>	<b>\$1,190</b>	<b>\$1,022</b>	<b>\$ 937</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	183	181	168	171
Community Services	73	67	66	66
<b>Total</b>	<b>\$256</b>	<b>\$248</b>	<b>\$234</b>	<b>\$237</b>



**C. Selected State Grants for Capital Projects**

**Public Schools**

Grantsville Elementary School – construction	\$364,573
Grantsville Elementary School – kindergarten/pre-k addition	800,000
Northern High School – renovations (roof)	666,000
Northern Middle School – construction	8,098,000
	<b>\$9,928,573</b>

**Local Jail Loan**

County Detention Center – new facility	\$4,800,000
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**Community Parks and Playgrounds**

Broadford Lake Park	\$118,000
Crystal Spring Boardwalk Trail	188,000
Deer Park	75,000
Friendsville Community Park	177,100
Grantsville Community Park	8,000
Observatory Boardwalk Loop Trail	283,000
Rotary Park	26,000
	<b>\$875,100</b>

**Chesapeake Bay Restoration Fund**

Mountain Lake Park – sewer rehabilitation	\$750,000
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**Water Supply Financial Assistance Program**

Grantsville – water line extension	\$500,000
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**Waterway Improvement**

Broadford Lake – boat access dock replacement	\$15,000
Friendsville Community Park – comfort station upgrade	26,000
Friendsville Community Park – park improvements	75,000
Savage River Reservoir – Dry Run boat ramp improvements	99,000
	<b>\$215,000</b>

**Other Projects**

Adventure Sports Center International	\$225,000
Garrett College – Athletic and Community Recreation Center	15,451,000
Garrett Performing Arts Center	50,000
Oakland B&O Museum	200,000
	<b>\$15,926,000</b>

**D. Capital Projects for State Facilities in the County****Department of Natural Resources**

Deep Creek Lake State Park – bathhouse replacement	\$114,000
Deep Creek Lake State Park – improve small boat launch area	55,000
Herrington Manor State Park – Herrington Creek dam repair	200,000
Jennings Randolph Lake – repair boat launch lighting	250,000
	<b>\$619,000</b>

## Harford County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$152,089	\$152,882	\$147,616	\$146,430	-3.7
Compensatory Education	22,632	24,815	26,666	30,023	32.7
Student Transportation	10,525	10,816	11,607	11,734	11.5
Special Education	19,667	19,061	18,902	18,694	-4.9
Limited English Proficiency Grants	1,603	2,040	1,942	1,788	11.5
Adult Education	172	172	172	172	0.0
Aging Schools	425	395	217	217	-48.9
Other Education Aid	1,156	1,131	547	550	-52.4
<b><i>Subtotal</i></b>	<b>\$208,269</b>	<b>\$211,312</b>	<b>\$207,669</b>	<b>\$209,608</b>	<b>0.6</b>
<b><u>Other</u></b>					
Libraries	1,544	1,627	1,549	1,548	0.3
Community Colleges	9,976	10,580	10,525	10,240	2.6
Health Formula Grant	3,120	2,674	1,737	1,737	-44.3
* Transportation	16,250	15,388	1,684	693	-95.7
* Police and Public Safety	2,752	2,814	1,786	1,786	-35.1
* Fire and Rescue Aid	377	379	376	376	-0.1
Recreation and Natural Resources	3,739	727	247	495	-86.8
Utility Property Tax Grants	833	0	0	0	-100.0
<b>Total Direct Aid</b>	<b>\$246,860</b>	<b>\$245,501</b>	<b>\$225,573</b>	<b>\$226,483</b>	<b>-8.3</b>
Aid Per Capita (\$)	1,027	1,017	930	921	-10.3
Property Tax Equivalent (\$)	1.07	0.94	0.79	0.79	-26.4

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Harford County for teachers, librarians, community college faculty, and local officials are estimated to be \$125,249,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$1,698	\$1,814	\$1,705	\$1,604
Family Health and Primary Care	253	217	237	237
Medical Care Services	803	800	884	885
Mental Health	10,423	10,910	10,839	11,285
Prevention and Disease Control	1,098	942	537	544
Developmental Disabilities	16,527	17,219	17,907	18,356
<b>Total</b>	<b>\$30,802</b>	<b>\$31,902</b>	<b>\$32,109</b>	<b>\$32,911</b>
<b><u>Social Services</u></b>				
Homeless Services	111	109	79	79
Women's Services	307	263	257	188
Adult Services	219	299	148	150
Child Welfare Services	1,883	2,207	2,091	1,991
<b>Total</b>	<b>\$2,520</b>	<b>\$2,878</b>	<b>\$2,575</b>	<b>\$2,408</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	346	341	366	372
Community Services	72	72	70	70
<b>Total</b>	<b>\$418</b>	<b>\$413</b>	<b>\$436</b>	<b>\$442</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Bel Air High School – construction	\$27,095,683
Deerfield Elementary School – construction	9,249,290
Fallston High School – renovations (roof)	927,000
Jarrettsville Elementary School – renovations (HVAC)	179,000
Joppatowne Elementary School – construction	7,984,059
Patterson Mill Middle/High School – construction	14,788,000
Southampton Middle School – renovations (roof)	853,000
	<b>\$61,076,032</b>

**Public Libraries**

Churchville Library – construction	\$500,000
Whiteford Library – expansion	373,000
	<b>\$873,000</b>

**Harford Community College**

Aberdeen Hall – addition and renovations	\$453,000
Susquehanna Center – renovation and expansion	9,123,000
	<b>\$9,576,000</b>

**Local Jail Loan**

County Detention Center – housing unit expansion	\$12,151,000
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**Community Health Facilities Grant Program**

Harford Habitat for Humanity	\$230,000
Key Point Health Services	128,000
	<b>\$358,000</b>

**Senior Centers Grant Program**

Fallston Senior Center	\$800,000
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**Community Parks and Playgrounds**

Bel Air Reckord Armory Park	\$329,000
Nuttal Avenue Park	200,000
Plater Street Park	74,000
Todd Field Playground	48,413
	<b>\$651,413</b>

**Chesapeake Bay Water Quality Projects**

Havre de Grace WWTP – nutrient removal	\$3,817,000
Oaklyn Manor – sewer system installation	595,000
Plumtree Run at Tollgate Road – stream restoration	215,000
Sod Run WWTP – nutrient removal	1,341,000
	<b>\$5,968,000</b>

**Chesapeake Bay Restoration Fund**

Aberdeen WWTP – enhanced nutrient removal	\$16,100,000
Havre de Grace – sewer rehabilitation	200,000
Havre de Grace WWTP – enhanced nutrient removal	2,600,000
Joppatowne WWTP – enhanced nutrient removal	8,451,000
Sod Run WWTP – enhanced nutrient removal	26,477,000
	<b>\$53,828,000</b>

**Water Supply Financial Assistance Program**

Glen Heights – public water system connection	\$1,000,000
Havre de Grace – water main improvements	750,000
	<b>\$1,750,000</b>

**Waterway Improvement**

Broad Creek Landing – boat ramp renovation	\$50,000
Darlington Volunteer Fire Company – acquire fire/rescue boat	50,000
Foster Branch – maintenance dredging	187,500
Havre de Grace – Concord Point Lighthouse pier replacement	99,000
Havre de Grace – develop new floating transient pier at Green Street	50,000
Havre de Grace Marina – maintenance dredging	50,000
Havre de Grace Marina – renovate boat ramp and access piers to add ADA parking	25,000
Havre de Grace Yacht Basin – ADA pier/ramp and parking improvements	198,000
Havre de Grace Yacht Basin – replace piers, pilings, boat slips and utilities	99,000
Havre de Grace Yacht Basin – replace boat ramp and boarding dock	45,000
Joppatowne – dredging	105,000

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Swan Creek – channel dredging	190,000
Swan Harbor Farm – pier lighting	90,000
Swan Harbor Farm – shoreline protection	140,000
Tydings Island – renovate dredge material placement site	800,000
Willoughby Beach – renovate piers, boat ramp, bulkhead	99,000
	<b>\$2,277,500</b>

**Other Projects**

Churchville Library Green Building and Science Center	\$100,000
Citizens Care and Rehabilitation Center	300,000
Harford County 4-H Club Camp	100,000
Harford Memorial Hospital	1,015,000
Havre de Grace Maritime Museum	300,000
Lower Susquehanna Greenway Trail Development	250,000
Nuttal Avenue Park	100,000
Upper Chesapeake Health System	600,000
	<b>\$2,765,000</b>

**D. Capital Projects for State Facilities in the County**

**Department of Natural Resources**

Friends Pond – dam repair	\$620,000
Susquehanna State Park – bathhouse and campground renovations	82,000
Susquehanna State Park – Lapidum boating facility miscellaneous repairs	270,000
	<b>\$972,000</b>

**Military**

Edgewood Readiness Center – HVAC replacement (federal funds)	\$4,100,000
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**University System of Maryland**

College Park – Maryland Fire/Rescue Institute Northeast Regional Training Center	\$8,681,000
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## Howard County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$137,132	\$145,325	\$141,811	\$150,701	9.9
Compensatory Education	13,991	14,869	16,186	18,570	32.7
Student Transportation	13,001	13,506	14,681	15,077	16.0
Special Education	13,194	13,089	12,713	12,635	-4.2
Limited English Proficiency Grants	4,641	5,666	5,720	6,425	38.4
Geographic Cost of Education Index	0	1,462	4,903	4,984	n/a
Adult Education	438	438	438	438	0.0
Aging Schools	172	160	88	88	-48.9
Other Education Aid	1,429	3,064	1,267	1,279	-10.5
<b><i>Subtotal</i></b>	<b><i>\$183,998</i></b>	<b><i>\$197,579</i></b>	<b><i>\$197,807</i></b>	<b><i>\$210,197</i></b>	<b><i>14.2</i></b>
<b><u>Other</u></b>					
Libraries	844	763	766	770	-8.8
Community Colleges	12,893	13,822	13,928	13,901	7.8
Health Formula Grant	2,190	1,870	1,215	1,215	-44.5
Transportation	15,959	13,498	1,884	1,037	-93.5
Police and Public Safety	4,948	4,377	2,256	2,256	-54.4
Fire and Rescue Aid	388	393	392	392	1.2
Recreation and Natural Resources	6,628	1,289	438	880	-86.7
Other Direct Aid	98	88	43	50	-48.6
<b>Total Direct Aid</b>	<b>\$227,946</b>	<b>\$233,679</b>	<b>\$218,729</b>	<b>\$230,698</b>	<b>1.2</b>
Aid Per Capita (\$)	832	843	776	806	-3.1
Property Tax Equivalent (\$)	0.54	0.49	0.44	0.50	-7.5



## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Howard County for teachers, librarians, community college faculty, and local officials are estimated to be \$202,103,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$1,587	\$1,626	\$1,536	\$1,483
Family Health and Primary Care	146	153	160	160
Medical Care Services	546	584	565	621
Mental Health	7,566	7,919	7,867	8,191
Prevention and Disease Control	928	915	538	496
Developmental Disabilities	18,849	19,700	20,488	21,002
<b>Total</b>	<b>\$29,622</b>	<b>\$30,897</b>	<b>\$31,154</b>	<b>\$31,953</b>
<b><u>Social Services</u></b>				
Homeless Services	116	114	91	91
Women's Services	170	170	170	121
Adult Services	15	24	56	51
Child Welfare Services	1,565	1,999	1,828	1,873
<b>Total</b>	<b>\$1,866</b>	<b>\$2,307</b>	<b>\$2,145</b>	<b>\$2,136</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	274	270	312	294
Community Services	21	21	19	19
<b>Total</b>	<b>\$295</b>	<b>\$291</b>	<b>\$331</b>	<b>\$313</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Atholton High School – renovations (roof)	\$1,309,000
Bellows Spring Elementary School – kindergarten/pre-k addition	488,000
Bushy Park Elementary School – construction	7,337,700
Centennial Lane Elementary School – construction	5,942,000
Clarksville Middle School – construction	6,144,000
Clemens Crossing Elementary School – construction	4,831,000
Deep Run Elementary School – kindergarten/pre-k addition	349,000
Elkridge Elementary School – construction	579,237
Elkridge Elementary School – kindergarten/pre-k addition	1,490,482
Forest Ridge Elementary School – kindergarten/pre-k addition	743,000
Guilford Elementary School – construction	2,600,000
Hammond Elementary School – construction	4,657,925
Hammond Middle School – construction	1,421,312
Hollifield Station Elementary School – kindergarten/pre-k addition	488,000
Laurel Wood Elementary School – kindergarten/pre-k addition	1,070,000
Lisbon Elementary School – construction	3,378,000
Longfellow Elementary School – kindergarten/pre-k addition	713,000
Mt. Hebron High School – construction	13,238,497
Northfield Elementary School – construction	7,595,000
Pointers Run Elementary School – kindergarten/pre-k addition	357,000
Running Brook Elementary School – construction	2,377,797
St. John’s Lane Elementary School – kindergarten/pre-k addition	515,000
Swansfield Elementary School – kindergarten/pre-k addition	1,070,000
Swansfield Elementary School – renovations (roof)	340,000
Talbot Springs Elementary School – kindergarten/pre-k addition	357,000
Thunder Hill Elementary School – kindergarten/pre-k addition	357,000
Waterloo Elementary School – construction	3,434,043
West Friendship Elementary School – kindergarten/pre-k addition	239,000
Worthington Elementary School – construction	4,601,000
	<b>\$78,022,993</b>

**Public Libraries**

Miller Branch Library – new branch/historical center	\$1,620,000
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**Howard Community College**

Administration Building/Smith Theatre – renovation	\$790,000
Allied Health Building – construction	11,469,000
Clark Library Building – renovation	7,889,000
	<b>\$20,148,000</b>

**Community Health Facilities Grant Program**

Humanim	\$295,000
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**Senior Centers Grant Program**

North Laurel Park Community Center	\$800,000
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**Shelter and Transitional Facilities**

Grassroots Shelter	\$600,000
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**Partnership Rental Housing Program**

Guilford Gardens	\$3,500,000
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**Community Parks and Playgrounds**

Blandair Regional Park	\$250,000
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**Chesapeake Bay Water Quality Projects**

Brampton Hills – stormwater retrofit	\$150,000
Brampton Hills – stream stabilization	500,000
Cherry Creek – stream restoration	163,000
	<b>\$813,000</b>

**Chesapeake Bay Restoration Fund**

Little Patuxent WWTP – enhanced nutrient removal	\$23,870,000
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**Waterway Improvement**

Centennial Lake – complete boat launch and pier	\$99,000
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**Other Projects**

Alpha Ridge Park	\$75,000
Blandair Regional Park	425,000
Carroll Baldwin Hall	50,000
Ellicott City Post Office	150,000
Howard County General Hospital	250,000
Linwood Center	650,000
Living Farm Heritage Museum	35,000
Norbel School	50,000
North Laurel Community Center	500,000
Robinson Nature Center	800,000
Symphony Woods Park	250,000
Troy Regional Park	605,000
Watson Telescope Observatory	25,000
	<b>\$3,865,000</b>

**D. Capital Projects for State Facilities in the County****Department of Health and Mental Hygiene**

Perkins Hospital – new maximum security wing	\$17,637,000
Secure Evaluation and Therapeutic Treatment Center	1,150,000
	<b>\$18,787,000</b>

**Maryland State Police**

Tactical Services Facility – garage	\$2,498,000
Waterloo Barrack Complex – garage and storage building	275,000
	<b>\$2,773,000</b>

**Department of Natural Resources**

Union Dam – restoration (federal funds)	\$1,400,000
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**Department of Public Safety and Correctional Services**

Patuxent Institution – fire safety improvements/windows \$11,881,000

**Other**

School for the Deaf – parking lot and athletic field \$1,609,000

## Kent County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$4,876	\$4,939	\$4,738	\$4,378	-10.2
Compensatory Education	2,286	2,192	2,179	2,382	4.2
Student Transportation	1,326	1,367	1,463	1,485	12.0
Special Education	758	808	911	913	20.6
Limited English Proficiency Grants	167	170	172	156	-6.3
Geographic Cost of Education Index	0	43	139	138	n/a
Adult Education	79	79	79	79	0.0
Aging Schools	75	70	38	38	-48.9
Other Education Aid	530	642	441	442	-16.6
<b><i>Subtotal</i></b>	<b><i>\$10,097</i></b>	<b><i>\$10,310</i></b>	<b><i>\$10,160</i></b>	<b><i>\$10,011</i></b>	<b><i>-0.9</i></b>
<b><u>Other</u></b>					
Libraries	299	104	94	96	-68.0
Community Colleges	508	585	573	589	16.1
Health Formula Grant	600	517	336	336	-44.0
* Transportation	2,863	2,608	377	203	-92.9
* Police and Public Safety	364	594	131	131	-64.0
* Fire and Rescue Aid	206	215	204	204	-0.8
Recreation and Natural Resources	314	61	21	42	-86.7
<b>Total Direct Aid</b>	<b>\$15,251</b>	<b>\$14,994</b>	<b>\$11,896</b>	<b>\$11,612</b>	<b>-23.9</b>
Aid Per Capita (\$)	767	740	588	570	-25.7
Property Tax Equivalent (\$)	0.60	0.51	0.37	0.37	-38.0

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Kent County for teachers, librarians, community college faculty, and local officials are estimated to be \$8,276,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$1,800	\$1,850	\$1,785	\$1,720
Family Health and Primary Care	128	115	128	128
Medical Care Services	390	402	381	409
Mental Health	1,221	1,278	1,337	1,322
Prevention and Disease Control	437	703	487	470
Developmental Disabilities	1,393	1,444	1,501	1,539
<b>Total</b>	<b>\$5,369</b>	<b>\$5,792</b>	<b>\$5,619</b>	<b>\$5,588</b>
<b><u>Social Services</u></b>				
Homeless Services	2	2	2	2
Women's Services	87	19	19	15
Adult Services	44	79	51	62
Child Welfare Services	394	401	396	401
<b>Total</b>	<b>\$527</b>	<b>\$501</b>	<b>\$468</b>	<b>\$480</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	542	535	519	517
Community Services	137	136	106	106
<b>Total</b>	<b>\$679</b>	<b>\$671</b>	<b>\$625</b>	<b>\$623</b>

Note: A portion of women's services funding supports services in Caroline, Dorchester, Kent, Queen Anne's, and Talbot counties. Senior citizen services funding supports services in Caroline, Kent, and Talbot counties.

**C. Selected State Grants for Capital Projects****Public Schools**

Chestertown Middle School – renovations (elevator)	\$197,000
Garnett Elementary School – renovations (elevator)	191,000
Rock Hall Elementary School – renovations (windows/doors/HVAC)	1,087,000
	<b>\$1,475,000</b>

**Public Libraries**

Chestertown Library – roof/window/door replacement	\$191,000
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**Chesapeake College**

Kent Humanities Building – renovation	\$6,776,000
Talbot Science Building – renovation	2,629,000
	<b>\$9,405,000</b>

**Community Parks and Playgrounds**

Betterton Ark Park	\$126,000
Chestertown Community Park	144,000
Gateway Park	37,000
	<b>\$307,000</b>

**Chesapeake Bay Water Quality Projects**

Chestertown WWTP – nutrient removal	\$1,015,000
Chesterville – wastewater collection and treatment system	500,000
Edesville/Lover's Lane – wastewater collection system	450,000
	<b>\$1,965,000</b>

**Water Supply Financial Assistance Program**

Edesville/Lover's Lane – water line extension	\$300,000
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**Waterway Improvement**

Allen’s Lane Ramp – stabilize shoreline at boat ramp	\$50,000
Chestertown – replace Cannon Street bulkhead and parking lot	50,000
Cliff City – replace wing wall of boat ramp	50,000
Galena Volunteer Fire Company – acquire fire/rescue boat and equipment	21,500
Green Lane Boat Ramp – replace bulkhead	50,000
Long Cove Pier – replace decking	99,000
Rock Hall – Bayside Landing Park install parking lot fence	50,000
Rock Hall – Bayside Landing Park pave parking area and improve pier/wing wall	149,000
Rock Hall – Bayside Landing Park replace electrical service at boat slips	99,000
Shipyard Public Landing – pave parking and ramp area	99,000
Turner’s Creek – construct boating access pier	99,000
Turner’s Creek – replace bulkhead	95,000
Wilmer Park – replace bulkhead	50,000
	<b>\$961,500</b>

**Other Projects**

Camp Fairlee Manor	\$150,000
Chester River Hospital Center	330,000
Prince Theatre	40,000
	<b>\$520,000</b>

## Montgomery County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$193,324	\$200,273	\$223,604	\$264,653	36.9
Compensatory Education	82,534	85,773	90,997	100,688	22.0
Student Transportation	30,678	31,482	33,554	34,336	11.9
Special Education	48,295	48,874	46,749	47,565	-1.5
Limited English Proficiency Grants	38,024	42,610	44,132	43,827	15.3
Geographic Cost of Education Index	0	9,187	30,946	31,440	n/a
Adult Education	562	465	465	465	-17.2
Aging Schools	1,178	1,096	603	603	-48.9
Other Education Aid	5,049	13,775	2,519	2,531	-49.9
<b><i>Subtotal</i></b>	<b>\$399,644</b>	<b>\$433,535</b>	<b>\$473,569</b>	<b>\$526,108</b>	<b>31.6</b>
<b><u>Other</u></b>					
Libraries	2,818	2,610	2,606	2,662	-5.5
Community Colleges	40,298	43,263	42,355	40,821	1.3
Health Formula Grant	5,454	4,637	3,015	3,015	-44.7
* Transportation	43,363	39,311	4,429	1,691	-96.1
* Police and Public Safety	15,363	19,811	9,847	9,847	-35.9
* Fire and Rescue Aid	1,304	1,316	1,283	1,283	-1.6
Recreation and Natural Resources	16,694	3,246	1,109	2,238	-86.6
Utility Property Tax Grants	2,675	0	0	0	-100.0
<b>Total Direct Aid</b>	<b>\$527,613</b>	<b>\$547,729</b>	<b>\$538,213</b>	<b>\$587,665</b>	<b>11.4</b>
Aid Per Capita (\$)	560	574	554	598	6.6
Property Tax Equivalent (\$)	0.29	0.29	0.29	0.33	14.1

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Montgomery County for teachers, librarians, community college faculty, and local officials are estimated to be \$594,889,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$3,752	\$3,795	\$3,450	\$3,253
Family Health and Primary Care	579	623	553	559
Medical Care Services	2,788	2,239	2,973	3,002
Mental Health	30,524	31,950	31,741	33,049
Prevention and Disease Control	2,477	2,452	1,444	1,283
Developmental Disabilities	64,132	68,106	70,828	72,606
<b>Total</b>	<b>\$104,252</b>	<b>\$109,165</b>	<b>\$110,989</b>	<b>\$113,752</b>
<b><u>Social Services</u></b>				
Homeless Services	381	376	305	305
Women's Services	374	285	280	189
Adult Services	846	909	757	757
Child Welfare Services	5,440	5,060	4,436	4,493
<b>Total</b>	<b>\$7,041</b>	<b>\$6,630</b>	<b>\$5,778</b>	<b>\$5,744</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	981	971	901	914
Community Services	213	208	200	200
<b>Total</b>	<b>\$1,194</b>	<b>\$1,179</b>	<b>\$1,101</b>	<b>\$1,114</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Albert Einstein High School – construction	\$1,330,000
Arcola Elementary School – construction	6,075,000
Argyle Middle School – renovations (HVAC)	843,000
Ashburton Elementary School – construction	786,000
Bannockburn Elementary School – renovations (roof)	558,000
Beall Elementary School – renovations (roof)	313,000
Bells Mill Elementary School – construction	7,460,000
Belmont Elementary School – renovations (HVAC)	735,000
Benjamin Banneker Middle School – renovations (HVAC)	306,000
Burning Tree Elementary School – renovations (roof)	267,000
Burnt Mills Elementary School – renovations (roof)	132,000
Candlewood Elementary School – renovations (roof)	200,000
Captain James Daly Elementary School – renovations (roof)	330,000
Carderock Springs Elementary School – construction	3,117,000
Cashell Elementary School – construction	4,967,000
Cedar Grove Elementary School – renovations (chiller)	113,000
Cedar Grove Elementary School – renovations (HVAC)	392,000
Clarksburg Area High School – construction	3,948,140
Clarksburg/Damascus Elementary School – construction	3,092,097
Clearspring Elementary School – renovation (roof)	390,000
Clopper Mill Elementary School – renovations (HVAC)	171,000
Cloverly Elementary School – renovations (roof)	377,000
Cold Spring Elementary School – renovations (roof)	384,000
College Gardens Elementary School – construction	8,398,000
Colonel Z. Magruder High School – renovations (HVAC)	730,000
Cresthaven Elementary School – construction	6,565,000
DuFief Elementary School – renovations (HVAC)	245,000
Eastern Middle School – renovations (HVAC)	556,000
Fallsmead Elementary School – construction	1,674,000
Farmland Elementary School – construction	1,740,000
Fields Road Elementary School – construction	2,263,000
Fox Chapel Elementary School – renovations (HVAC)	389,000
Francis Scott Key Middle School – construction	6,289,405
Gaithersburg Elementary School – renovations (HVAC)	269,000
Gaithersburg High School – construction	2,552,000
Galway Elementary School – construction	4,795,204
Garrett Park Elementary School – construction	1,111,000

Germantown Elementary School – renovations (HVAC)	144,000
Great Seneca Creek Elementary School – construction	6,302,000
Greencastle Elementary School – renovations (roof)	273,000
Jones Lane Elementary School – renovations (roof)	345,000
Laytonsville Elementary School – renovations (chiller)	125,000
Laytonsville Elementary School – renovations (roof)	379,000
Little Bennett Elementary School – construction	6,365,000
Luxmanor Elementary School – construction	1,327,000
Maryvale Elementary School – renovations (HVAC)	269,000
Montgomery Knolls Elementary School – renovations (roof)	335,000
New Hampshire Estates Elementary School – renovations (roof)	220,000
Northwest High School – construction	4,605,000
Oakview Elementary School – renovations (chiller)	111,000
Parkland Middle School – construction	9,126,000
Poolesville Elementary School – renovations (HVAC)	232,000
Poolesville High School – renovations (HVAC)	343,000
Quince Orchard High School – renovations (roof)	475,000
Quince Orchard High School – renovations (skylights)	100,000
Redland Middle School – renovations (roof)	500,000
Ritchie Park Elementary School – renovations (roof)	166,000
Robert Frost Middle School – renovations (HVAC)	503,000
Rock Terrace Special Education – renovations (roof)	340,000
Rolling Terrace Elementary School – renovations (roof)	201,000
Ronald McNair Elementary School – renovations (roof)	273,000
Roscoe R. Nix Elementary School – construction	4,702,000
S. Christa McAuliffe Elementary School – renovations (skylights)	196,000
S. Christa McAuliffe Elementary School – renovations (roof)	136,000
Sherwood High School – construction	926,000
Sherwood High School – renovations (roof)	972,000
South Lake Elementary School – construction	2,309,000
Stone Mill Elementary School – renovations (roof)	401,000
Strathmore Elementary School – renovations (HVAC)	520,000
Summit Hall Elementary School – renovations (roof)	205,000
Takoma Park Elementary School – construction	600,993
Thomas S. Wootton High School – renovations (roof)	550,000
Thomas W. Pyle Middle School – construction	1,993,000
Tilden Center Alternative School – renovations (HVAC)	430,000
Walter Johnson High School – construction	27,302,000
Washington Grove Elementary School – construction	1,795,000
Waters Landing Elementary School – renovations (roof)	330,000
Watkins Mill Elementary School – construction	2,241,000

Watkins Mill High School – renovations (roof)	710,000
Wayside Elementary School – construction	2,670,000
Weller Road Elementary School – construction	908,000
Westbrook Elementary School – renovations (HVAC)	335,000
	<b>\$157,153,839</b>

### **Public Libraries**

Gaithersburg Library – addition and renovation	\$920,000
Silver Spring Library – construction	585,000
	<b>\$1,505,000</b>

### **Montgomery College**

Germantown – Bioscience Education Center	\$32,163,500
Rockville – Science Center	34,664,000
Takoma Park – Cultural Arts Center equipment	1,275,000
	<b>\$68,102,500</b>

### **Community Health Facilities Grant Program**

Community Services for Autistic Adults and Children, Inc.	\$1,275,000
Community Support Services, Inc.	1,250,000
Housing Opportunities Commission of Montgomery County	1,492,000
Housing Unlimited, Inc.	1,408,000
	<b>\$5,425,000</b>

### **Senior Centers Grant Program**

Rockville Senior Center	\$700,000
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### **Shelter and Transitional Facilities**

Chase Partnership Project	\$300,000
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### **Community Parks and Playgrounds**

Gaithersburg International Latitude Observatory Park	\$100,000
Poolesville Tot Lot	60,000
Rockville Civic Center Park	153,000
Rockville Senior Center Park	112,000
South Germantown Recreation Park	44,000
Washington Woods Park Playground	76,000

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Woodley Gardens Park	160,000
Woodstock Equestrian Park	250,000
Wootons Mill Park	76,000
	<b>\$1,031,000</b>

**Chesapeake Bay Water Quality Projects**

Blue Plains WWTP – nutrient removal	\$6,000,000
Booze Creek – stream restoration	440,000
Germantown Estates – stormwater retrofit	306,000
Stoney Creek – stormwater management/pond retrofit	500,000
	<b>\$7,246,000</b>

**Chesapeake Bay Restoration Fund**

Blue Plains WWTP – enhanced nutrient removal	\$23,200,000
Damascus WWTP – enhanced nutrient removal	725,000
Seneca WWTP – enhanced nutrient removal	7,889,000
	<b>\$31,814,000</b>

**Waterway Improvement**

Lake Needwood and Little Seneca Lake – repair and upgrade docks	\$174,000
Pennyfield Lock Boat – reconstruct boat ramp	99,000
	<b>\$273,000</b>

**Other Projects**

Adventist HealthCare	\$430,000
Agricultural History Farm Park – Activity Center	200,000
Birchmere Music Hall	2,000,000
BlackRock Center for the Arts	50,000
Button Farm	300,000
Cabin John Park Tai Chi Court	40,000
Camp Bennett	125,000
Camp Brighton Woods	140,000
Centro Familia Child Care and Training Center	175,000
CentroNia Facility	200,000
Charles E. Smith Life Communities	1,410,000
Cinnamon Woods – environmental and safety lighting upgrade	100,000
Damascus Heritage Museum	200,000
Dance Exchange	50,000
Easter Seals Inter-Generational Center	820,000

Gaithersburg Community Museum	250,000
Gaithersburg Regional Aquatic Recreation Center	100,000
Gaithersburg Upcounty Senior Center	200,000
Garrett Park Community Center	100,000
Germantown Boys and Girls Club – gymnasium	550,000
Germantown Life Sciences Incubator	1,000,000
Glen Echo Park	225,000
Identity House	130,000
Imagination Stage	625,000
Ivymount School – Annex Building	175,000
Jewish Council for the Aging	1,275,000
Jewish Foundation for Group Homes, Inc.	475,000
Katherine Thomas High School	50,000
Lake Whetstone – boat house, dock and related facilities	80,000
Lake Whetstone – hillside stabilization	20,000
Latino Economic Development Corporation	175,000
Live Nation	2,000,000
MacDonald Knolls Center	775,000
Mansfield Kaseman Health Center	250,000
Maryland Youth Ballet	200,000
Maydale Nature Center	55,000
Metropolitan Washington Ear Facility	75,000
Miracle League Baseball Field	250,000
Montgomery General Hospital	900,000
Montgomery Village – Martin Roy Park Pavilion	30,000
National Labor College – Academic Services Building	250,000
National Center for Children and Families – Youth Activities Center	500,000
Nonprofit Village Center	250,000
Northgate Homes – lighting upgrade	40,000
Oakley Cabin – restoration	15,000
Olney Boys and Girls Club Community Park	150,000
Olney Theatre	150,000
Plum Gar Neighborhood Recreation Center	250,000
Poolesville Skate Park	175,000
Public Safety Memorial	150,000
Residential Continuum, Inc. – group home renovations	130,000
Rockville Fitness Center and Exercise Room	120,000
Rockville Historic Post Office – renovation	100,000
Rockville Senior Center	100,000
Sandy Spring Museum	100,000
Shady Grove Adventist Hospital	120,000



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Sharp Street United Methodist Church	100,000
Suburban Hospital	410,000
The Arc of Montgomery County Group Homes	250,000
The Muslim Community Center Medical Clinic	150,000
Threshold Services – group home renovations	50,000
Warner Manor	275,000
Warren Historical Site – Loving Charity Hall	175,000
Waters Barn	250,000
Wheaton Multi-Service Youth Facility	200,000
Woodstock Equestrian Park	250,000
YMCA Youth and Family Services Center	200,000
	<b>\$21,115,000</b>

**D. Capital Projects for State Facilities in the County**

**General Government**

Rockville District Court – construction	\$65,525,000
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**Department of Natural Resources**

C&O Canal National Historical Park – boat ramp improvements	\$99,000
C&O Canal National Historical Park – boating facilities maintenance	99,000
	<b>\$198,000</b>

**University System of Maryland**

Shady Grove Educational Center – construct facility III	\$1,200,000
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## Prince George's County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$525,710	\$516,271	\$515,894	\$488,759	-7.0
Compensatory Education	195,229	189,185	186,308	196,457	0.6
Student Transportation	33,443	34,197	36,619	36,613	9.5
Special Education	72,602	70,104	66,333	64,154	-11.6
Limited English Proficiency Grants	46,810	55,113	54,098	55,203	17.9
Guaranteed Tax Base	23,539	24,868	6,796	0	-100.0
Geographic Cost of Education Index	0	11,809	39,048	38,612	n/a
Adult Education	931	771	771	771	-17.2
Aging Schools	2,365	2,199	1,209	1,209	-48.9
Other Education Aid	10,171	20,364	2,470	2,474	-75.7
<b>Subtotal</b>	<b>\$910,800</b>	<b>\$924,881</b>	<b>\$909,546</b>	<b>\$884,252</b>	<b>-2.9</b>
<b><u>Other</u></b>					
Libraries	6,668	6,522	5,962	5,648	-15.3
Community Colleges	22,494	23,679	23,661	22,412	-0.4
Health Formula Grant	8,999	7,697	5,007	5,007	-44.4
* Transportation	38,292	34,092	4,436	1,931	-95.0
* Police and Public Safety	21,509	19,525	15,504	15,456	-28.1
* Fire and Rescue Aid	1,123	1,141	1,132	1,132	0.8
Recreation and Natural Resources	14,364	2,793	946	1,904	-86.7
Disparity Grant	19,110	21,714	21,695	21,695	13.5
Utility Property Tax Grants	7,492	0	0	0	-100.0
* Other Direct Aid	177	171	85	99	-43.9
<b>Total Direct Aid</b>	<b>\$1,051,028</b>	<b>\$1,042,215</b>	<b>\$987,974</b>	<b>\$959,536</b>	<b>-8.7</b>
Aid Per Capita (\$)	1,262	1,255	1,184	1,149	-8.9
Property Tax Equivalent (\$)	1.41	1.18	1.00	0.96	-31.7

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers’ retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State’s attorneys. Fiscal 2008-2011 State payments for Prince George’s County for teachers, librarians, community college faculty, and local officials are estimated to be \$436,226,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county’s share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$9,084	\$9,776	\$9,281	\$8,983
Family Health and Primary Care	1,140	1,125	1,442	1,622
Medical Care Services	3,698	3,863	3,993	4,050
Mental Health	33,127	34,673	34,447	35,866
Prevention and Disease Control	2,381	2,854	1,602	1,183
Developmental Disabilities	57,088	58,805	61,156	62,691
<b>Total</b>	<b>\$106,518</b>	<b>\$111,096</b>	<b>\$111,921</b>	<b>\$114,395</b>
<b><u>Social Services</u></b>				
Homeless Services	810	797	626	626
Women’s Services	605	444	430	326
Adult Services	494	907	521	627
Child Welfare Services	5,449	6,774	6,493	6,532
<b>Total</b>	<b>\$7,358</b>	<b>\$8,922</b>	<b>\$8,070</b>	<b>\$8,111</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	822	812	821	833
Community Services	205	202	196	196
<b>Total</b>	<b>\$1,027</b>	<b>\$1,014</b>	<b>\$1,017</b>	<b>\$1,029</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Adelphi Elementary School – construction	\$1,603,000
Avalon Elementary School – construction	1,000,000
Barack Obama Elementary School – construction	9,490,000
Benjamin Tasker Middle School – renovations (HVAC)	1,315,000
Bladensburg High School – construction	2,898,000
Bond Mill Elementary School – renovations (chiller)	426,000
Bowie High School – science facilities	2,724,000
Calverton Elementary School – renovations (roof)	364,000
Central High School – science facilities	939,000
Charles Carroll Middle School – renovations (ventilators)	562,000
Clinton Grove Elementary School – renovations (HVAC)	196,000
Crossland High School – construction	500,000
Doswell E. Brooks Elementary School – renovations (roof/boilers)	1,150,000
Doswell E. Brooks Elementary School – construction	3,388,175
Dr. Henry A. Wise, Jr. High School – construction	25,599,000
DuVal High School – construction	7,793,000
DuVal High School – science facilities	577,000
Eugene Burroughs Middle School – renovations (roof/HVAC)	1,804,000
Fairwood Elementary School – construction	2,000,000
Francis T. Evans Elementary School – renovations (roof)	850,000
Frederick Douglass High School – renovations (roof)	1,722,000
Friendly High School – science facilities	1,028,000
G. Gardner Shugart Middle School – renovations (roof)	494,000
Glenarden Woods Elementary School – renovations (roof/boilers)	946,000
Greenbelt Middle School – construction	15,902,000
H. Winship Wheatley Special Center – renovations (roof)	1,205,000
Henry Ferguson Elementary School – construction	1,000,000
Henry Ferguson Elementary School – renovations (boilers)	394,000
Hyattsville Elementary School – construction	1,266,000
Hyattsville Middle School – renovations (roof)	1,135,000
Indian Queen Elementary School – renovations (chiller)	491,000
John E. Howard Elementary School – construction	867,000
Kenmoor Middle School – renovations (roof)	1,101,000
Langley Park Elementary School – renovations (chiller)	259,000
Laurel Elementary School – renovations (HVAC)	729,000
Laurel High School – construction	6,446,000
Laurel High School – science facilities	1,838,000

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Laurel-Beltsville Elementary School – construction	9,954,662
Marlton Elementary School – construction	770,000
Marlton Elementary School – renovations (HVAC)	655,000
Martin Luther King, Jr. Middle School – construction	1,774,000
Mary Harris “Mother” Jones Elementary School – construction	2,374,000
Matthew Henson Elementary School – renovations (roof/HVAC)	1,276,000
New Hyattsville Area Elementary School – construction	1,300,000
Northview Elementary School – construction	3,576,000
Oxon Hill Elementary School – construction	2,167,000
Oxon Hill High School – construction	7,515,000
Oxon Hill Middle School – renovations (roof)	724,000
P. E. Williams Elementary School – renovations (HVAC)	554,000
Panorama Elementary School – construction	1,081,000
Parkdale High School – science facilities	861,000
Ridgecrest Elementary School – renovations (roof)	529,000
Rosa L. Parks Elementary School – construction	6,274,163
Springhill Lake Elementary School – renovations (roof/HVAC)	475,000
Stephen Decatur Middle School – construction	927,000
Suitland High School – renovations (roof)	2,128,000
Suitland High School Annex – renovations (roof)	1,062,000
Tall Oaks Vocational School – renovations (HVAC)	202,000
Tanglewood Regional Center – renovations (roof)	522,000
Tayac Elementary School – renovations (boilers)	356,000
Tulip Grove Elementary School – renovations (HVAC)	487,000
William Beanes Elementary School – construction	1,405,000
	<b>\$150,950,000</b>

**Public Libraries**

Greenbelt Library – renovation	\$320,000
Spauldings Library – renovation	400,000
	<b>\$720,000</b>

**Prince George’s Community College**

Campuswide – circulation and roadway modifications	\$2,944,000
Campuswide – upgrade electrical and communication systems	4,892,000
Center for Health Studies	24,577,000
Marlboro and Queen Anne’s Halls and Pedestrian Bridge – renovations	971,000
	<b>\$33,384,000</b>

**Local Jail Loan**

County Detention Center – expansion	\$7,635,000
County Detention Center – renovate housing unit	358,000
	<b>\$7,993,000</b>

**Community Health Facilities Grant Program**

Ardmore Enterprises, Inc.	\$1,350,000
Family Service Foundation, Inc.	1,220,000
GUIDE Nashville, Inc.	276,000
Vesta, Inc.	115,000
	<b>\$2,961,000</b>

**Federally Qualified Health Centers Grant Program**

Greater Baden Medical Services, Inc.	\$1,700,000
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**Senior Centers Grant Program**

Laurel-Beltsville Senior Center	\$415,000
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**Shelter and Transitional Facilities**

Family Crisis Center	\$125,000
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**Community Parks and Playgrounds**

Bartlett Park	\$195,000
Brandywine North Keys Community Park	250,000
Discovery Park	150,000
Goodwin Park	80,000
Greenwood Village Playground	22,000
Heurich Park	110,000
Jericho Park	77,000
Magruder Park	111,000
Orca Glen Court Playground	31,000
Roland B. Sweitzer Community Park	100,000
Snowden Park Playground	80,000
	<b>\$1,206,000</b>

**Chesapeake Bay Water Quality Projects**

Beaverdam Creek – stormwater retrofit	\$225,000
Blue Plains WWTP – nutrient removal	6,000,000
	<b>\$6,225,000</b>

**Chesapeake Bay Restoration Fund**

Blue Plains WWTP – enhanced nutrient removal	\$23,200,000
Bowie WWTP – enhanced nutrient removal	8,000,000
Parkway WWTP – enhanced nutrient removal	14,840,000
Piscataway WWTP – enhanced nutrient removal	3,820,000
Western Branch WWTP – enhanced nutrient removal	26,192,000
	<b>\$76,052,000</b>

**Waterway Improvement**

Laurel Volunteer Fire Department – purchase marine fire/rescue equipment	\$3,800
Laurel Volunteer Rescue Squad – purchase water rescue equipment	3,480
Potomac River – purchase water rescue equipment	20,000
Prince George’s County Fire/EMS Department – purchase side scan sonar equipment	20,000
Prince George’s County Fire/EMS Department – replace fire/rescue boat	50,000
Prince George’s Volunteer Marine Rescue – purchase fire/rescue boat	50,000
Public boating facilities – countywide general maintenance	50,000
	<b>\$197,280</b>

**Other Projects**

African-American History Museum	\$50,000
Allen Pond Park	80,000
Aquaculture and Seafood Retail and Distribution Market	100,000
Belair Bath and Tennis Club	20,000
Belair Swim and Racquet Club	20,000
Bladensburg Market Square	120,000
Bowie – Police Dispatch Center	25,000
Bowie Boys and Girls Club – Whitmarsh Turf Field	25,000
Bowie Lions Club	10,000
Capitol College – Innovation and Leadership Institute	2,500,000
Capitol Heights Municipal Building	250,000
CASA Multi-Cultural Service Center	1,200,000
Children’s Guild – multipurpose room and playfield	250,000
Chosen Youth Group – basketball court	25,000
College Park Aviation Museum	75,000

College Park Boys and Girls Club – Duvall Field	75,000
Community Forklift Facility	200,000
Concord Historic Site – Capitol Heights	100,000
Cornerstone Assembly Gymnasium	20,000
Cosca Regional Skate Park	250,000
Daughter for the Day	65,000
Delta Alumnae Community Development Center	250,000
District Heights – infrastructure improvements	200,000
District Heights – recreational field renovations	200,000
Elizabeth Seton High School – sports facilities	50,000
Ernest Everett Just Monument	150,000
Evangel Assembly Family Life Center	65,000
Forest Heights – municipal building	200,000
Forestville Military Academy	180,000
Fort Washington Medical Center	560,000
Fraternal Order of Police – Fallen Hero Memorial	250,000
Glenarden Senior Center	50,000
Greenbelt Consumer Cooperative	100,000
Hard Bargain Farm Environmental Center	250,000
Harmony Hall Manor	100,000
Henson Valley Montessori School	200,000
Historic Greenbelt Theater	300,000
Historic Laurel Mill Ruins	275,000
John E. Feggans Center	205,000
Kappa Alpha Psi – playground equipment	10,000
Knights of St. John Hall	225,000
La Vida Sana – Healthy Living Farm	75,000
Lanham Boys and Girls Club Sports Park	250,000
Largo High School – track renovation	180,000
Laurel Advocacy Referral Services – facility renovation	200,000
Laurel Armory Anderson Murphy Community Center	175,000
Laurel Boys and Girls Club	200,000
Laurel Police Department – community space facility	150,000
Lincoln Vista Neighborhood Park Recreation Building	15,000
Marlboro Meadows Senior Center	50,000
Marleigh Community Safety and Surveillance System	20,000
Marlton Gazebo	100,000
Maryland Crime Victims’ Resource Center	100,000
Maryland Multicultural Youth Center Multi-Purpose Room	100,000
Mission of Love	150,000
National Children’s Museum	12,000,000



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National Philippine Cultural Center	100,000
New Carrollton Recreation Center	150,000
Olde Mill Community and Teaching Center	25,000
Palmer Park Boys and Girls Club	475,000
Pointer Ridge Swim and Racquet Club	20,000
Poplar Hill on His Lordship’s Kindness	100,000
Prince George’s Volunteer Fire Department	250,000
Reid Community Business Development Center	300,000
Riverdale – Multicultural Use Center	300,000
Rosaryville Conservancy Tack House and Stables	100,000
Safe Passage Emergency Shelter	350,000
SEED Recreation Center	50,000
Shabach Adult Day Care and Senior Center	25,000
Sheriff Road Village Center	100,000
South Bowie Boys and Girls Club – concession stand	50,000
South County Community Center	300,000
South County Sports and Technology Learning Complex	100,000
St. Ann’s Infant and Maternity Home	1,500,000
St. Mary’s School – gymnasium and multi-purpose room	25,000
Suitland Technology Center	300,000
Thomas Johnson Middle School – sign board	25,000
United Communities Against Poverty	200,000
Walker Mill Daycare and Training Center	400,000
Whitehall Pool and Tennis, Inc.	15,000
World Arts Focus Performance Theatre	100,000
YMCA Potomac Overlook	100,000
Youth Fitness Facility	20,000
	<b>\$28,525,000</b>

**D. Capital Projects for State Facilities in the County**

**Department of Juvenile Services**

Cheltenham Youth Facility – new detention center	\$4,208,000
Cheltenham Youth Facility – new treatment center	4,074,000
	<b>\$8,282,000</b>

**Department of Natural Resources**

Fort Washington Marina – general maintenance and improvements	\$50,000
Fort Washington Marina – replace docks and other improvements	1,950,000
	<b>\$2,000,000</b>

**Maryland Environmental Service**

Cheltenham Youth Facility – water tower improvements	\$337,000
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**University System of Maryland**

Bowie State – campuswide site improvements	\$3,437,000
Bowie State – Fine and Performing Arts Building	66,081,000
Bowie State – turf field	1,000,000
College Park – Biology-Psychology Building	1,500,000
College Park – East Campus redevelopment	10,000,000
College Park – Physical Sciences Complex	49,718,000
College Park – School of Journalism Building	6,000,000
College Park – School of Public Health	7,500,000
College Park – Shipley Field	100,000
College Park – Tawes Building conversion	31,250,000
University College – Academic Technology Support Building	1,185,000
	<b>\$177,771,000</b>

## Queen Anne’s County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$20,725	\$21,176	\$20,622	\$20,248	-2.3
Compensatory Education	2,829	2,956	3,231	3,961	40.0
Student Transportation	2,767	2,859	3,094	3,134	13.3
Special Education	2,317	2,337	2,164	2,198	-5.1
Limited English Proficiency Grants	284	371	398	360	26.9
Geographic Cost of Education Index	0	165	554	551	n/a
Adult Education	88	88	88	88	0.0
Aging Schools	98	91	50	50	-48.9
Other Education Aid	593	998	543	543	-8.3
<b><i>Subtotal</i></b>	<b><i>\$29,701</i></b>	<b><i>\$31,041</i></b>	<b><i>\$30,744</i></b>	<b><i>\$31,133</i></b>	<b><i>4.8</i></b>
<b><u>Other</u></b>					
Libraries	128	133	127	132	3.2
Community Colleges	1,659	1,671	1,635	1,682	1.4
Health Formula Grant	749	643	418	418	-44.2
* Transportation	5,757	5,133	612	287	-95.0
* Police and Public Safety	504	476	266	266	-47.2
* Fire and Rescue Aid	201	201	200	200	-0.3
Recreation and Natural Resources	672	131	45	90	-86.6
<b>Total Direct Aid</b>	<b>\$39,371</b>	<b>\$39,429</b>	<b>\$34,047</b>	<b>\$34,208</b>	<b>-13.1</b>
Aid Per Capita (\$)	841	831	710	699	-16.8
Property Tax Equivalent (\$)	0.53	0.47	0.38	0.39	-27.8

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Queen Anne's County for teachers, librarians, community college faculty, and local officials are estimated to be \$22,590,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$584	\$651	\$561	\$537
Family Health and Primary Care	181	223	203	204
Medical Care Services	483	518	494	598
Mental Health	1,481	1,550	1,701	1,603
Prevention and Disease Control	465	488	282	282
Developmental Disabilities	3,212	3,374	3,508	3,596
<b>Total</b>	<b>\$6,406</b>	<b>\$6,804</b>	<b>\$6,749</b>	<b>\$6,820</b>
<b><u>Social Services</u></b>				
Homeless Services	14	14	13	13
Women's Services	98	25	29	19
Adult Services	30	58	43	43
Child Welfare Services	669	549	532	488
<b>Total</b>	<b>\$811</b>	<b>\$646</b>	<b>\$617</b>	<b>\$563</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	115	113	112	114
Community Services	52	45	42	42
<b>Total</b>	<b>\$167</b>	<b>\$158</b>	<b>\$154</b>	<b>\$156</b>

Note: A portion of women's services funding supports services in Caroline, Dorchester, Kent, Queen Anne's, and Talbot counties.

**C. Selected State Grants for Capital Projects****Public Schools**

Bayside Elementary School – renovations (HVAC)	\$433,000
Bayside Elementary School – renovations (roof)	881,000
Centreville Elementary School – kindergarten/pre-K addition	490,000
Centreville Middle School – renovations (boiler)	133,000
Kennard Elementary School – construction	600,000
Kent Island Elementary School – construction	6,829,000
Matapeake Middle School – construction	1,157,000
Sudlersville Middle School – construction	8,050,000
	<b>\$18,573,000</b>

**Chesapeake College**

Kent Humanities Building – renovation	\$6,776,000
Talbot Science Building – renovation	2,629,000
	<b>\$9,405,000</b>

**Community Health Facilities Grant Program**

Banjo Lane Apartments	\$250,000
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**Shelter and Transitional Facilities**

Queen Anne’s County Coalition Emergency Services	\$10,000
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**Community Parks and Playgrounds**

Church Hill Elementary School Playground	\$89,000
Grasonville Pond Park	75,000
Kent Island Elementary School Playground	20,950
Mill Stream Park	221,000
Queenstown Playground	99,000
	<b>\$504,950</b>

**Chesapeake Bay Water Quality Projects**

Centreville WWTP – nutrient removal	\$426,000
Little Creek – protection project	121,000
Northwest Creek – restoration	29,000
	<b>\$576,000</b>

**Waterway Improvement**

Centreville Wharf – ADA improvements	\$99,000
Centreville Wharf – expansion	99,000
Centreville Wharf – shoreline stabilization and boat slips	99,000
Centreville Wharf – shoreline stabilization and boardwalk project	30,000
Corsica River – dredging	50,000
Corsica River – reclaim dredge material site	175,000
Dominion and Centreville – marina maintenance dredging	72,000
Grasonville – replace fire/rescue boat	50,000
Kent Island – purchase marine fire/rescue equipment	7,500
Kent Island Volunteer Fire Department – purchase fire/rescue boat	50,000
Kent Narrows – replace boat ramp and dredge channel	699,000
Queen Anne’s Waterman’s Boat Basin – dredging	95,000
Queen Anne’s Waterman’s Boat Basin – rehabilitation	420,000
Queenstown – First Avenue Dock replace bulkhead and decking	50,000
Shipping Creek – bulkhead and boat ramp reconstruction	225,000
Thompson Creek – replace boat ramp and protect shoreline	150,000
United Communities Volunteer Fire Department – purchase fire/rescue boat	68,000
	<b>\$2,438,500</b>

**Other Projects**

Chesterwye Center	\$240,000
Hospice of Queen Anne’s, Inc.	65,000
Kennard High School – restoration	275,000
Queen Anne’s County YMCA	50,000
	<b>\$630,000</b>

**D. Capital Projects for State Facilities in the County****General Government**

Centreville District Court – parking lot	\$1,500,000
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*Aid to Local Government – Queen Anne’s County*

**A-171**

**Maryland Environmental Service**

Eastern Pre-release Facility – WWTP improvements

\$440,000

## St. Mary's County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$63,966	\$65,654	\$66,595	\$67,156	5.0
Compensatory Education	11,160	13,701	12,317	13,521	21.2
Student Transportation	5,471	5,701	6,129	6,294	15.0
Special Education	6,842	6,886	6,581	6,189	-9.5
Limited English Proficiency Grants	447	598	501	562	25.8
Guaranteed Tax Base	239	1,075	0	0	-100.0
Geographic Cost of Education Index	0	64	214	219	n/a
Adult Education	181	181	181	181	0.0
Aging Schools	98	91	50	50	-48.9
Other Education Aid	1,058	1,160	858	858	-18.9
<b>Subtotal</b>	<b>\$89,462</b>	<b>\$95,111</b>	<b>\$93,426</b>	<b>\$95,030</b>	<b>6.2</b>
<b><u>Other</u></b>					
Libraries	626	659	629	624	-0.4
Community Colleges	2,260	2,325	2,297	2,310	2.2
Health Formula Grant	1,453	1,247	809	809	-44.4
* Transportation	7,786	7,054	919	489	-93.7
* Police and Public Safety	1,328	860	559	559	-57.9
* Fire and Rescue Aid	201	201	200	200	-0.3
Recreation and Natural Resources	1,266	246	84	169	-86.6
<b>Total Direct Aid</b>	<b>\$104,382</b>	<b>\$107,703</b>	<b>\$98,923</b>	<b>\$100,190</b>	<b>-4.0</b>
Aid Per Capita (\$)	1,040	1,059	960	958	-7.9
Property Tax Equivalent (\$)	1.07	0.93	0.77	0.77	-27.9

\* Municipal governments within the county receive a share of these funds.



## 2. Retirement Payments

County teachers and librarians are members of either the teachers’ retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State’s attorneys. Fiscal 2008-2011 State payments for St. Mary’s County for teachers, librarians, community college faculty, and local officials are estimated to be \$50,242,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county’s share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$2,548	\$2,845	\$2,746	\$2,677
Family Health and Primary Care	128	126	132	132
Medical Care Services	524	515	519	545
Mental Health	3,955	4,139	4,112	4,282
Prevention and Disease Control	521	559	290	324
Developmental Disabilities	6,889	7,277	7,568	7,758
<b>Total</b>	<b>\$14,565</b>	<b>\$15,461</b>	<b>\$15,367</b>	<b>\$15,718</b>
<b><u>Social Services</u></b>				
Homeless Services	69	69	63	63
Women’s Services	200	157	150	122
Adult Services	51	51	102	96
Child Welfare Services	1,389	1,488	1,252	1,228
<b>Total</b>	<b>\$1,709</b>	<b>\$1,765</b>	<b>\$1,567</b>	<b>\$1,509</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	133	131	149	151
Community Services	60	59	58	58
<b>Total</b>	<b>\$193</b>	<b>\$190</b>	<b>\$207</b>	<b>\$209</b>

**C. Selected State Grants for Capital Projects****Public Schools**

Benjamin Banneker Elementary School – renovations (roof/HVAC)	\$743,000
Benjamin Banneker Elementary School – renovations (HVAC)	312,000
Evergreen Elementary School – construction	6,253,000
Greenview Knolls Elementary School – renovations (HVAC)	1,765,000
Leonardtown Elementary School – construction	3,661,000
Leonardtown Middle School – construction	7,600,000
New Elementary School – construction	6,145,000
Oakville Elementary School – renovations (HVAC)	1,221,000
	<b>\$27,700,000</b>

**Public Libraries**

Leonardtown Library – construction	\$765,000
Leonardtown Library/Administrative Offices – renovate and expand	72,000
	<b>\$837,000</b>

**College of Southern Maryland**

La Plata – Business Classroom Building renovation and expansion	\$5,856,000
La Plata – Science and Technology Building	844,000
Leonardtown – Wellness Center	11,712,000
Prince Frederick – campus development	5,806,000
	<b>\$24,218,000</b>

**Local Jail Loan**

County Detention Center – minimum security addition	\$6,211,000
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**Community Health Facilities Grant Program**

Pathways, Inc.	\$318,000
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**Partnership Rental Housing Program**

Greenview Village	\$2,893,052
Indian Bridge	30,000
	<b>\$2,923,052</b>

**Community Parks and Playgrounds**

Chancellor’s Run Regional Park and Playground	\$225,000
John G. Lancaster Park	125,000
Leonardtwn Wharf Public Waterfront Park	200,000
Port of Leonardtown Public Park	200,000
	<b>\$750,000</b>

**Chesapeake Bay Restoration Fund**

Leonardtwn WWTP – enhanced nutrient removal	\$2,918,000
Marlay-Taylor WWTP – enhanced nutrient removal	6,000,000
Piney Point – sewer rehabilitation	500,000
	<b>\$9,418,000</b>

**Water Supply Financial Assistance Program**

Hollywood – arsenic wells mitigation	\$100,000
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**Waterway Improvement**

Bushwood Wharf Landing – parking improvements	\$99,000
Golden Beach Fire Station – acquire fire/rescue boat	4,500
Kingston Creek – repair jetties and dredge channel	440,220
Leonardtwn Wharf – construct piers, tie-ups and transient slips	200,000
Leonardtwn Wharf – replace bulkhead and construct piers/docking facilities	300,000
Piney Point Landing – pave parking lot and replace bulkhead	198,000
Public boat ramps and landings – countywide maintenance	99,000
Public boating facilities – countywide maintenance	248,000
Ridge Volunteer Fire Department – purchase marine fire/rescue equipment	10,000
St. George’s Island – construct replacement pier	56,720
St. Inigoes Landing – resurface road and parking areas	99,000
St. Jerome Creek – jetty feasibility study	100,000
	<b>\$1,854,440</b>

**Other Projects**

Cedar Lane Apartments – renovations	\$125,000
Hospice House	150,000
Leah’s House, Inc.	145,000
Pathway’s Inc. – facility renovation	175,000
SMARTCO’s Computer Technology Learning Center	50,000

St. Clement's Island Lighthouse	100,000
St. Mary's Agricultural Service Center	225,000
St. Mary's College Amphitheater	375,000
St. Mary's County Fairgrounds	60,000
St. Mary's Hospital	1,800,000
Tudor Hall	80,000
United States Colored Troops Memorial Monument	150,000
	<b>\$3,435,000</b>

#### **D. Capital Projects for State Facilities in the County**

##### **Department of Natural Resources**

Colton Point Pier – redeck pier	\$50,000
Greenwell State Park – improve pier and install buoys	80,000
Piney Point Natural Resources Police Facility – miscellaneous improvements	80,000
Point Lookout State Park – boating facility improvements	125,000
Point Lookout State Park – renovate administration building	1,541,000
St. Mary's River State Park – pave parking lot and construct storage shed	200,000
	<b>\$2,076,000</b>

##### **Historic St. Mary's City Commission**

Maryland Heritage Interpretive Center	\$1,681,000
St. John's Archaeological Site	650,000
	<b>\$2,331,000</b>

##### **Maryland Environmental Service**

Charlotte Hall Veterans Home – WWTP improvements	\$210,000
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##### **Maryland Veterans Administration**

Charlotte Hall Veterans Home – generator (federal funds)	\$3,700,000
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##### **St. Mary's College**

Academic Building – construction	\$1,077,000
Anne Arundel Hall – reconstruction	2,735,000
Bruce Davis Theater – renovation	2,402,000
Student Services Building – construction	1,195,000
	<b>\$7,409,000</b>

## Somerset County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$12,770	\$13,074	\$12,315	\$12,171	-4.7
Compensatory Education	6,148	5,899	6,603	7,093	15.4
Student Transportation	1,560	1,617	1,741	1,743	11.7
Special Education	1,255	1,331	1,321	1,371	9.3
Limited English Proficiency Grants	412	454	640	417	1.4
Guaranteed Tax Base	961	892	760	629	-34.6
Adult Education	132	132	132	132	0.0
Aging Schools	75	70	38	38	-48.9
Other Education Aid	201	263	130	130	-35.4
<b><i>Subtotal</i></b>	<b>\$23,514</b>	<b>\$23,732</b>	<b>\$23,680</b>	<b>\$23,724</b>	<b>0.9</b>
<b><u>Other</u></b>					
Libraries	287	263	261	263	-8.4
Community Colleges	750	805	807	808	7.8
Health Formula Grant	765	658	429	429	-43.8
* Transportation	3,465	3,131	506	310	-91.0
* Police and Public Safety	1,125	361	162	162	-85.6
* Fire and Rescue Aid	214	216	216	216	0.9
Recreation and Natural Resources	304	59	20	40	-86.9
Disparity Grant	4,451	4,371	4,908	4,908	10.3
<b>Total Direct Aid</b>	<b>\$34,875</b>	<b>\$33,596</b>	<b>\$30,989</b>	<b>\$30,860</b>	<b>-11.5</b>
Aid Per Capita (\$)	1,330	1,286	1,194	1,182	-11.1
Property Tax Equivalent (\$)	2.49	2.06	1.76	1.73	-30.7

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Somerset County for teachers, librarians, community college faculty, and local officials are estimated to be \$10,528,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$934	\$996	\$950	\$918
Family Health and Primary Care	175	198	204	204
Medical Care Services	414	442	455	455
Mental Health	2,900	3,035	3,102	3,139
Prevention and Disease Control	633	662	361	328
Developmental Disabilities	1,780	1,871	1,946	1,995
<b>Total</b>	<b>\$6,836</b>	<b>\$7,204</b>	<b>\$7,018</b>	<b>\$7,039</b>
<b><u>Social Services</u></b>				
Homeless Services	8	8	8	8
Women's Services	127	35	33	27
Adult Services	59	90	73	70
Child Welfare Services	791	863	821	780
<b>Total</b>	<b>\$985</b>	<b>\$996</b>	<b>\$935</b>	<b>\$885</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	636	628	585	569
Community Services	444	441	279	279
<b>Total</b>	<b>\$1,080</b>	<b>\$1,069</b>	<b>\$864</b>	<b>\$848</b>

Note: A portion of women's services funding supports services in Somerset, Wicomico, and Worcester counties. Senior citizen services funding supports services in Dorchester, Somerset, Wicomico, and Worcester counties.

**C. Selected State Grants for Capital Projects**

**Public Schools**

Deal Island Elementary School – renovations (roof/HVAC)	\$1,576,000
Somerset Intermediate School at Tawes – construction	3,480,000
Washington High School – construction	12,000,000
Washington High School – relocatable classrooms	97,000
	<b>\$17,153,000</b>

**Public Libraries**

Crisfield Branch Library – site acquisition	\$160,000
Princess Anne Library – facilities upgrade	19,000
	<b>\$179,000</b>

**Local Jail Loan**

County Detention Center – work release unit	\$536,000
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**Community Health Facilities Grant Program**

Somerset County Health Department	\$1,600,000
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**Community Parks and Playgrounds**

Crisfield Municipal Park	\$332,000
Mt. Vernon Park	60,000
Princess Anne Recreation Area	314,000
	<b>\$706,000</b>

**Chesapeake Bay Water Quality Projects**

Crisfield – sewer collection system rehabilitation	\$200,000
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**Water Supply Financial Assistance Program**

Mariners Water Association – water line replacement	\$100,000
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**Waterway Improvement**

Collins Street Pier – construct new boating pier	\$25,000
Crisfield – Lorie Quinn Drive Pier addition	99,000
Crisfield – public boating facilities maintenance	50,000
Deal Island/Chance Volunteer Fire Department – rehabilitate fire/rescue boat	15,200
Jenkins Creek – replace dock	248,000
Mount Vernon Volunteer Fire Department – acquire fire/rescue boat equipment	11,500
Public boating facilities – countywide maintenance	189,000
Rumbley Harbor – replace bulkhead	99,000
Smith Island – dredging for transient boat slips	40,000
Tylerton Marina – construct bulkhead	198,000
Webster’s Cove – provide shoreline protection	400,000
Wenona Harbor – replace boat ramp, bulkhead, and boat slips	198,000
	<b>\$1,572,700</b>

**Other Projects**

Alice Byrd Tawes Nursing and Rehabilitation Center	\$250,000
Bending Water Park	200,000
Teackle Mansion	100,000
	<b>\$550,000</b>

**D. Capital Projects for State Facilities in the County****Department of Natural Resources**

Crisfield Marine Terminal – replace decking on Natural Resources Police pier	\$75,000
Janes Island State Park – marina facility improvements	200,000
Janes Island State Park – nature center improvements	1,777,000
Little Deal Island WMA – stabilize shoreline	350,000
Somers Cove Marina – replace transformers/electric wiring and install new fence	238,550
Somers Cove Marina – renovate fuel dock	250,000
Somers Cove Marina – repair and redeck piers	525,000
	<b>\$3,415,550</b>

**Maryland Environmental Service**

Eastern Correctional Institution – wastewater treatment plant	\$7,230,000
Eastern Correctional Institution – water treatment plant	3,609,000
	<b>\$10,839,000</b>



*Aid to Local Government – Somerset County*

**A-181**

**University System of Maryland**

Eastern Shore – Engineering and Aviation Science Building

\$3,000,000

## Talbot County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$4,241	\$4,249	\$4,277	\$4,291	1.2
Compensatory Education	2,889	3,112	3,372	3,673	27.2
Student Transportation	1,302	1,345	1,458	1,475	13.3
Special Education	841	832	801	811	-3.6
Limited English Proficiency Grants	437	429	512	429	-1.8
Aging Schools	98	70	38	38	-60.9
Other Education Aid	604	601	477	477	-21.1
<b><i>Subtotal</i></b>	<b><i>\$10,412</i></b>	<b><i>\$10,638</i></b>	<b><i>\$10,935</i></b>	<b><i>\$11,194</i></b>	<b><i>7.5</i></b>
<b><u>Other</u></b>					
Libraries	100	101	101	101	1.5
Community Colleges	1,245	1,300	1,272	1,308	5.1
Health Formula Grant	589	506	329	329	-44.2
* Transportation	4,580	4,162	564	259	-94.3
* Police and Public Safety	1,123	550	264	264	-76.5
* Fire and Rescue Aid	199	218	239	239	19.7
Recreation and Natural Resources	705	137	48	95	-86.5
<b>Total Direct Aid</b>	<b>\$18,953</b>	<b>\$17,612</b>	<b>\$13,752</b>	<b>\$13,789</b>	<b>-27.2</b>
Aid Per Capita (\$)	525	488	379	377	-28.2
Property Tax Equivalent (\$)	0.24	0.19	0.14	0.14	-43.2

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Talbot County for teachers, librarians, community college faculty, and local officials are estimated to be \$13,369,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$679	\$726	\$672	\$643
Family Health and Primary Care	164	137	142	142
Medical Care Services	359	317	306	312
Mental Health	2,489	2,605	2,710	2,695
Prevention and Disease Control	484	527	294	270
Developmental Disabilities	2,477	2,594	2,698	2,766
<b>Total</b>	<b>\$6,652</b>	<b>\$6,906</b>	<b>\$6,822</b>	<b>\$6,828</b>
<b><u>Social Services</u></b>				
Homeless Services	36	36	32	32
Women's Services	128	58	58	35
Adult Services	66	59	45	45
Child Welfare Services	896	771	769	767
<b>Total</b>	<b>\$1,126</b>	<b>\$924</b>	<b>\$904</b>	<b>\$879</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	542	535	519	517
Community Services	137	136	108	108
<b>Total</b>	<b>\$679</b>	<b>\$671</b>	<b>\$627</b>	<b>\$625</b>

Note: A portion of women's services funding supports services in Caroline, Dorchester, Kent, Queen Anne's, and Talbot counties. Senior citizen services funding supports services in Caroline, Kent, and Talbot counties.

**C. Selected State Grants for Capital Projects****Public Schools**

Easton Elementary School – renovations (roof)	\$436,000
Easton Elementary/Dobson Head Start – construction	344,000
St. Michaels Elementary/Middle School – construction	1,050,000
St. Michaels High School – construction	988,000
	<b>\$2,818,000</b>

**Public Libraries**

Talbot County Free Library – renovation and expansion	\$765,000
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**Chesapeake College**

Kent Humanities Building – renovation	\$6,776,000
Talbot Science Building – renovation	2,629,000
	<b>\$9,405,000</b>

**Community Health Facilities Grant Program**

Main Street Housing, Inc.	\$483,000
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**Senior Centers Grant Program**

Talbot County Senior Center	\$600,000
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**Community Parks and Playgrounds**

Idlewild Park	\$147,110
Lakeview Community Playground	99,942
Muskrat Park	98,800
Neavitt/Bellevue Community Park	200,000
RTC Park	283,000
Waylands Park	69,000
	<b>\$897,852</b>

**Chesapeake Bay Water Quality Projects**

St. Michaels – Carpenter Street sewer improvements	\$305,000
St. Michaels – Mill Street sewer replacement	300,000
Talbot County/Martingham Co-op WWTP – improvements	100,000
	<b>\$705,000</b>

**Chesapeake Bay Restoration Fund**

St. Michaels – Carpenter Street sewer rehabilitation	\$200,000
St. Michaels – Mill Street sewer rehabilitation	150,000
St. Michaels – sewer rehabilitation	400,000
	<b>\$750,000</b>

**Water Supply Financial Assistance Program**

Oxford – arsenic removal project	\$125,000
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**Waterway Improvement**

Bellevue Landing – parking lot improvements	\$50,000
Chesapeake Bay Maritime Museum – replace bulkhead	297,000
Claiborne Landing – parking lot improvements	50,000
Dogwood Harbor – construct public landing	50,000
Hollis Park – replace bulkhead	20,000
Neavitt Landing – parking lot improvements	75,000
Oak Creek Landing – replace boat ramp	25,000
Oxford – public boating facilities maintenance	99,000
Oxford – repair Tilghman Street boat ramp	25,000
Oxford Ferry Dock – rebuild transient boating dock	25,000
Public boating facilities – countywide bulkhead repairs	99,000
Public boating facilities – countywide maintenance	239,000
St. Michaels – repair Cherry Street and Honeymoon Bridge	195,000
St. Michaels – replace Mulberry Street bulkhead	107,000
St. Michaels – replace Mill Street dingy docks	67,000
St. Michaels – replace West Harbor Road boat ramp	99,000
Tilghman Island Volunteer Fire Department – provide boat slip and electrical service	15,000
Windy Hill Landing – replace boat ramp and improve shoreline	75,000
	<b>\$1,612,000</b>

**Other Projects**

Easton Memorial Walk	\$47,000
Family Support Center	10,000
Oxford Community Center	125,000
Talbot Agricultural Service Center	100,000
YMCA – fire safety system upgrade	125,000
	<b>\$407,000</b>

**D. Capital Projects for State Facilities in the County****Department of Natural Resources**

Black Walnut Point NRMA – replace bulkhead	\$300,000
Black Walnut Point NRMA – shore erosion control	1,742,877
	<b>\$2,042,877</b>

## Washington County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$88,731	\$90,407	\$88,158	\$90,285	1.8
Compensatory Education	25,753	27,793	30,613	32,520	26.3
Student Transportation	5,761	5,979	6,478	6,537	13.5
Special Education	9,333	9,934	9,106	8,815	-5.5
Limited English Proficiency Grants	1,609	1,555	1,901	1,776	10.4
Guaranteed Tax Base	2,447	3,527	3,137	3,058	25.0
Adult Education	152	152	152	152	0.0
Aging Schools	264	245	135	135	-48.9
Other Education Aid	1,402	1,503	1,174	1,174	-16.2
<b><i>Subtotal</i></b>	<b><i>\$135,452</i></b>	<b><i>\$141,095</i></b>	<b><i>\$140,854</i></b>	<b><i>\$144,452</i></b>	<b><i>6.6</i></b>
<b><u>Other</u></b>					
Libraries	1,373	1,135	1,117	1,128	-17.9
Community Colleges	7,479	7,785	7,882	7,857	5.1
Health Formula Grant	2,477	2,127	1,381	1,381	-44.2
* Transportation	11,983	10,736	1,493	698	-94.2
* Police and Public Safety	3,946	2,211	960	960	-75.7
* Fire and Rescue Aid	233	234	230	230	-1.1
Recreation and Natural Resources	1,988	387	131	262	-86.8
Utility Property Tax Grants	345	0	0	0	-100.0
<b>Total Direct Aid</b>	<b>\$165,276</b>	<b>\$165,710</b>	<b>\$154,048</b>	<b>\$156,968</b>	<b>-5.0</b>
Aid Per Capita (\$)	1,140	1,139	1,056	1,070	-6.1
Property Tax Equivalent (\$)	1.38	1.20	1.04	1.11	-19.7

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Washington County for teachers, librarians, community college faculty, and local officials are estimated to be \$65,486,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$2,935	\$2,860	\$2,593	\$2,328
Family Health and Primary Care	190	163	148	148
Medical Care Services	643	727	650	748
Mental Health	7,410	7,755	7,705	8,022
Prevention and Disease Control	890	747	421	382
Developmental Disabilities	9,986	10,415	10,832	11,103
<b>Total</b>	<b>\$22,054</b>	<b>\$22,667</b>	<b>\$22,349</b>	<b>\$22,731</b>
<b><u>Social Services</u></b>				
Homeless Services	236	231	176	176
Women's Services	166	138	138	94
Adult Services	316	408	259	288
Child Welfare Services	2,656	3,071	2,672	2,674
<b>Total</b>	<b>\$3,374</b>	<b>\$3,848</b>	<b>\$3,245</b>	<b>\$3,232</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	357	352	369	374
Community Services	120	118	109	109
<b>Total</b>	<b>\$477</b>	<b>\$470</b>	<b>\$478</b>	<b>\$483</b>



**C. Selected State Grants for Capital Projects****Public Schools**

Antietam Academy – construction	\$5,186,000
Barbara Ingram School for the Arts – construction	620,000
Eastern Elementary School – construction	7,322,000
Greenbrier Elementary School – renovations (roof/HVAC)	716,000
Hancock Middle/High School – renovations (roof)	1,171,000
Maugansville Elementary School – construction	370,640
Old Forge Elementary School – renovations (HVAC)	200,000
Pangborn Elementary School – construction	7,955,000
Rockland Woods Elementary School – construction	7,962,000
Westfields Elementary School – construction	2,770,000
	<b>\$34,272,640</b>

**Public Libraries**

Boonsboro Branch Library – replacement library	\$184,000
Washington County Free Library – renovation and expansion	1,300,000
	<b>\$1,484,000</b>

**Hagerstown College**

Arts and Sciences Complex	\$13,572,000
Career Programs Building – renovation	317,000
Performing and Visual Arts Education Center	5,276,000
	<b>\$19,165,000</b>

**Local Jail Loan**

County Detention Center – central booking	\$1,400,000
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**Community Health Facilities Grant Program**

The “W” House of Hagerstown, Inc.	\$225,000
Way Station, Inc.	1,600,000
	<b>\$1,825,000</b>

**Federally Qualified Health Centers Grant Program**

Walnut Street Community Health Center, Inc.	\$75,000
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**Shelter and Transitional Facilities**

Way Station Homeless Vets	\$890,000
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**Community Parks and Playgrounds**

Byron Memorial Park	\$154,000
Fairgrounds Park	30,400
Funkhouser Park	35,000
Hager Park	35,000
Hagerstown City Park	30,000
Hancock Community Center Playground	24,000
Hellane Park	30,000
Shafer Memorial Park	77,760
Taylor Park	82,000
Veterans Park	76,000
Widmeyer Park	43,000
	<b>\$617,160</b>

**Chesapeake Bay Water Quality Projects**

Kemps Mill – sewage collection system	\$240,000
Rolling Hills – sewage collection system	300,000
Winebrenner WWTP – nutrient removal	1,100,000
	<b>\$1,640,000</b>

**Chesapeake Bay Restoration Fund**

Conococheague WWTP – enhanced nutrient removal	\$9,200,000
Hagerstown – sewer rehabilitation	800,000
Hagerstown WWTP – enhanced nutrient removal	8,070,000
Williamsport – sewer rehabilitation	400,000
Winebrenner WWTP – enhanced nutrient removal	3,450,000
	<b>\$21,920,000</b>

**Water Supply Financial Assistance Program**

Highfield and Sharpsburg – water treatment and storage tanks	\$237,000
Mt. Aetna – new water source for water treatment plant	215,000
	<b>\$452,000</b>

**Waterway Improvement**

Williamsport – River Bottom Park replace boat ramp and parking area \$199,000

**Other Projects**

Barbara Ingram School for the Arts	\$300,000
C&O Canal National Historical Park – Big Slackwater Towpath	100,000
C&O Canal National Historical Park – Conococheague Aqueduct	50,000
Deafnet Building	100,000
Devil’s Backbone Dam	550,000
Doleman Black Heritage Museum	25,000
Maryland Theatre	125,000
Museum of Fine Arts	500,000
Rural Heritage Transportation Museum	75,000
Springfield Barn	100,000
	<b>\$1,925,000</b>

**D. Capital Projects for State Facilities in the County**

**Maryland State Police**

Hagerstown Barrack/Garage/Communications Building – construction \$12,575,000

**Department of Natural Resources**

C&O Canal National Historical Park – boat ramp improvements	\$99,000
C&O Canal National Historical Park – boating facilities maintenance	99,000
Greenbriar State Park – boat ramp improvements	60,000
	<b>\$258,000</b>

**Department of Public Safety and Correctional Services**

Correctional Training Center – 192-cell medium security unit	\$35,141,000
Correctional Training Center – replace utilities, windows, and heating systems	9,836,000
	<b>\$44,977,000</b>

**Maryland Environmental Service**

Maryland Correctional Institution – WWTP improvements \$438,000

**Department of Education**

Western Maryland Regional Library

\$7,500,000

## Wicomico County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$62,575	\$64,102	\$63,977	\$64,967	3.8
Compensatory Education	24,334	26,676	30,097	29,107	19.6
Student Transportation	4,363	4,565	4,908	4,904	12.4
Special Education	6,042	6,189	6,279	6,362	5.3
Limited English Proficiency Grants	1,411	1,512	1,853	1,986	40.7
Guaranteed Tax Base	4,251	6,135	6,759	6,954	63.6
Adult Education	277	277	277	277	0.0
Aging Schools	252	194	107	107	-57.8
Other Education Aid	997	947	664	664	-33.4
<b><i>Subtotal</i></b>	<b><i>\$104,502</i></b>	<b><i>\$110,597</i></b>	<b><i>\$114,921</i></b>	<b><i>\$115,328</i></b>	<b><i>10.4</i></b>
<b><u>Other</u></b>					
Libraries	815	811	822	838	2.8
Community Colleges	4,485	4,568	4,578	4,587	2.3
Health Formula Grant	1,699	1,459	947	947	-44.2
* Transportation	9,184	8,437	1,118	512	-94.4
* Police and Public Safety	1,317	1,013	665	665	-49.5
* Fire and Rescue Aid	233	222	230	230	-1.1
Recreation and Natural Resources	1,328	258	87	175	-86.8
Disparity Grant	0	742	2,197	2,197	n/a
<b>Total Direct Aid</b>	<b>\$123,563</b>	<b>\$128,107</b>	<b>\$125,565</b>	<b>\$125,479</b>	<b>1.6</b>
Aid Per Capita (\$)	1,324	1,365	1,333	1,312	-0.9
Property Tax Equivalent (\$)	1.94	1.78	1.62	1.65	-15.0

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Wicomico County for teachers, librarians, community college faculty, and local officials are estimated to be \$48,218,000.

### B. Estimated State Spending on Selected Health and Social Services

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
	(\$ in Thousands)			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$1,696	\$1,821	\$1,577	\$1,504
Family Health and Primary Care	586	453	424	424
Medical Care Services	881	894	881	935
Mental Health	7,182	7,517	7,784	7,776
Prevention and Disease Control	717	839	361	390
Developmental Disabilities	6,464	6,737	7,007	7,183
<b>Total</b>	<b>\$17,526</b>	<b>\$18,261</b>	<b>\$18,034</b>	<b>\$18,212</b>
<b><u>Social Services</u></b>				
Homeless Services	33	33	30	30
Women's Services	234	135	133	94
Adult Services	45	27	43	37
Child Welfare Services	973	1,600	1,480	1,433
<b>Total</b>	<b>\$1,285</b>	<b>\$1,795</b>	<b>\$1,686</b>	<b>\$1,594</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	636	628	585	569
Community Services	444	441	330	330
<b>Total</b>	<b>\$1,080</b>	<b>\$1,069</b>	<b>\$915</b>	<b>\$899</b>

Note: A portion of women's services funding supports services in Somerset, Wicomico, and Worcester counties. Senior citizen services funding supports services in Dorchester, Somerset, Wicomico, and Worcester counties.

**C. Selected State Grants for Capital Projects**

**Public Schools**

J.M. Bennett High School – construction	\$43,990,000
Prince Street Elementary School – construction	259,000
	<b>\$44,249,000</b>

**Public Libraries**

Pittsville Library – replacement	\$20,000
Salisbury Main Library – site acquisition	375,000
	<b>\$395,000</b>

**Wor-Wic Community College**

Allied Health Building	\$17,797,500
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**Federally Qualified Health Centers Grant Program**

Three Lower Counties Community Services, Inc.	\$639,000
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**Senior Centers Grant Program**

Salisbury-Wicomico Senior Center	\$800,000
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**Partnership Rental Housing Program**

County Housing Authority	\$855,000
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**Community Parks and Playgrounds**

Doverdale Park	\$100,000
Doverdale Playground	192,000
Fruitland Playground	35,000
Gordy Park	210,000
	<b>\$537,000</b>

**Chesapeake Bay Water Quality Projects**

Delmar WWTP – nutrient removal	\$2,600,000
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**Chesapeake Bay Restoration Fund**

Delmar WWTP – enhanced nutrient removal	\$1,000,000
Fruitland – sewer rehabilitation	600,000
Fruitland WWTP – enhanced nutrient removal	2,800,000
	<b>\$4,400,000</b>

**Water Supply Financial Assistance Program**

Pittsville – water supply system improvements	\$650,000
Salisbury – elevated water tower	930,000
Willards – drinking water facility project	450,000
	<b>\$2,030,000</b>

**Waterway Improvement**

Cherry Beach – expand and improve boat ramp parking lot	\$99,000
Nanticoke Harbor – pave parking lots and ramp	45,000
Nanticoke Harbor – replace jetty and dredge harbor	750,000
Pirate’s Wharf Park – develop plan for new boating facility	99,000
Public boating facilities – countywide maintenance	298,000
Salisbury – purchase marine fire/rescue boat and equipment	50,000
Salisbury – public marina maintenance	99,000
	<b>\$1,440,000</b>

**Other Projects**

Epilepsy Association of the Eastern Shore	\$320,000
Maryland Food Bank	250,000
Parsonsburg Volunteer Fire Company Community Center	500,000
Peninsula Regional Medical Center	240,000
Salisbury Zoological Park – Animal Health Clinic	260,000
Senior Training Center for the Blind	150,000
Wicomico Youth and Civic Center	2,500,000
	<b>\$4,220,000</b>



**D. Capital Projects for State Facilities in the County**

**Department of Health and Mental Hygiene**

Deer’s Head Center – new kidney dialysis unit \$608,000

**Department of Labor, Licensing, and Regulation**

Eastern Shore Regional Claims Center – construction \$1,092,000

**Military**

Salisbury Armory – addition and renovation \$5,701,000

Salisbury Armory – addition and renovation (federal funds) 9,800,000

**\$15,501,000**

**University System of Maryland**

Salisbury University – Perdue School of Business \$40,796,000

Salisbury University – teacher education and technology complex 9,582,000

**\$50,378,000**

## Worcester County

### A. Direct Aid and Retirement Payments

#### 1. Direct Aid

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>% Diff.</u>
	(\$ in Thousands)				
<b><u>Primary &amp; Secondary Education</u></b>					
Foundation Aid	\$6,513	\$6,402	\$6,344	\$6,290	-3.4
Compensatory Education	5,419	5,616	5,819	6,442	18.9
Student Transportation	2,504	2,581	2,785	2,822	12.7
Special Education	1,394	1,420	1,357	1,446	3.7
Limited English Proficiency Grants	464	496	504	374	-19.4
Adult Education	90	90	90	90	0.0
Aging Schools	75	70	38	38	-48.9
Other Education Aid	655	603	466	466	-28.9
<b><i>Subtotal</i></b>	<b><i>\$17,114</i></b>	<b><i>\$17,278</i></b>	<b><i>\$17,403</i></b>	<b><i>\$17,968</i></b>	<b><i>5.0</i></b>
<b><u>Other</u></b>					
Libraries	204	137	138	138	-32.4
Community Colleges	1,830	1,842	1,846	1,849	1.0
Health Formula Grant	563	482	313	313	-44.4
* Transportation	7,074	6,431	988	545	-92.3
* Police and Public Safety	888	1,254	458	458	-48.5
* Fire and Rescue Aid	260	264	261	261	0.4
Recreation and Natural Resources	1,254	244	85	170	-86.4
<b>Total Direct Aid</b>	<b>\$29,187</b>	<b>\$27,932</b>	<b>\$21,492</b>	<b>\$21,702</b>	<b>-25.6</b>
Aid Per Capita (\$)	593	568	437	436	-26.4
Property Tax Equivalent (\$)	0.17	0.14	0.11	0.12	-26.7

\* Municipal governments within the county receive a share of these funds.

## 2. Retirement Payments

County teachers and librarians are members of either the teachers' retirement or pension systems maintained and operated by the State. Community college faculty may also be members of these systems. The State pays the employer share on behalf of the subdivisions for these local employees. In fiscal 2008 and 2009, the State also paid the employer share for certain elected local officials such as sheriffs and State's attorneys. Fiscal 2008-2011 State payments for Worcester County for teachers, librarians, community college faculty, and local officials are estimated to be \$27,711,000.

**B. Estimated State Spending on Selected Health and Social Services**

The Departments of Aging, Human Resources, and Health and Mental Hygiene fund the provision of health and social services in the counties either through the local government, private providers, or State agencies in the counties. Note that for many programs, the amounts shown for fiscal 2011 are based on the county's share of prior year funding (fiscal 2010) and may change. See the discussion at the beginning of this section for more detail on the types of services funded by the State.

	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2011</u></b>
	<b>(\$ in Thousands)</b>			
<b><u>Health Services</u></b>				
Alcohol and Drug Abuse	\$2,460	\$2,449	\$2,330	\$2,227
Family Health and Primary Care	233	292	236	236
Medical Care Services	546	578	553	599
Mental Health	2,573	2,693	2,840	2,785
Prevention and Disease Control	588	839	518	509
Developmental Disabilities	3,406	3,530	3,671	3,763
<b>Total</b>	<b>\$9,806</b>	<b>\$10,381</b>	<b>\$10,148</b>	<b>\$10,119</b>
<b><u>Social Services</u></b>				
Homeless Services	33	33	30	30
Women's Services	160	69	63	55
Adult Services	38	72	53	50
Child Welfare Services	829	704	817	819
<b>Total</b>	<b>\$1,060</b>	<b>\$878</b>	<b>\$963</b>	<b>\$954</b>
<b><u>Senior Citizen Services</u></b>				
Long-term Care	636	628	585	569
Community Services	444	441	284	284
<b>Total</b>	<b>\$1,080</b>	<b>\$1,069</b>	<b>\$869</b>	<b>\$853</b>

Note: A portion of women's services funding supports services in Somerset, Wicomico, and Worcester counties. Senior citizen services funding supports services in Dorchester, Somerset, Wicomico, and Worcester counties.

**C. Selected State Grants for Capital Projects****Public Schools**

Pocomoke High School – construction	\$7,229,000
Worcester Career and Technology Center – construction	6,870,000
	<b>\$14,099,000</b>

**Wor-Wic Community College**

Allied Health Building	\$17,797,500
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**Local Jail Loan**

County Jail – expansion and renovation	\$4,606,000
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**Community Health Facilities Grant Program**

Worcester County Developmental Center, Inc.	\$1,600,000
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**Community Parks and Playgrounds**

Cypress Park	\$75,000
Fiesta Park	154,000
North Surf Park	80,000
Robin Park	75,000
Whaleyville Park Playground	90,500
	<b>\$474,500</b>

**Chesapeake Bay Water Quality Projects**

Pocomoke City – sewer system installation	\$65,000
Snow Hill WWTP – nutrient removal	2,900,000
	<b>\$2,965,000</b>

**Chesapeake Bay Restoration Fund**

Pocomoke City – sewer rehabilitation	\$200,000
Pocomoke City WWTP – enhanced nutrient removal	2,450,000
Snow Hill WWTP – enhanced nutrient removal	2,980,000
	<b>\$5,630,000</b>

**Water Supply Financial Assistance Program**

Newark – new water tower	\$200,000
Snow Hill – water main improvements	150,000
	<b>\$350,000</b>

**Waterway Improvement**

Byrd Park South – replace boat ramp	\$99,000
George Island Landing – parking lot ADA improvements	50,000
Ocean City – acquire fire/rescue boat and equipment	150,000
Pocomoke City – upgrade boating facilities	99,000
Public boating facilities – countywide maintenance	100,000
Public Landing – construct finger piers with water and sewer connections	99,000
Public Landing – shoreline stabilization	99,000
Snow Hill – general maintenance and improvements at Byrd Park	50,000
Snow Hill – improvements at Byrd and Gateway Parks	99,000
South Point – relocate boat ramp	50,000
Taylor Landing – parking lot ADA improvements	50,000
Taylor Landing – shoreline stabilization	99,000
West Ocean City – design new ramp and repair finger piers	57,000
West Ocean City – replace boat ramp and add floating docks	50,000
	<b>\$1,151,000</b>

**Other Projects**

Atlantic General Hospital	\$970,000
Delmarva Discovery Center on the Pocomoke River	150,000
Mar-Va Theater Performing Arts Center	100,000
Ocean City Convention Center – expansion	4,300,000
Pocomoke City Volunteer Fire Company – Community Center	250,000
Rackliffe House	250,000
	<b>\$6,020,000</b>

**D. Capital Projects for State Facilities in the County****Department of Natural Resources**

Assateague State Park – acquire patrol boat	\$20,000
Assateague State Park – replace nature center	300,000
Natural Resources Police – Ocean City boat house repairs and channel dredging	85,000
Ocean City – beach replenishment	6,000,000

Pocomoke River State Park – channel dredging	100,000
Pocomoke River State Park – Milburn Landing bathhouse	129,000
Pocomoke River State Park – Milburn Landing pave parking lot and access road	100,000
Pocomoke River State Park – Shad Landing design concession building	200,000
Pocomoke River State Park – Shad Landing pave parking lots	150,000
Pocomoke River State Park – Shad Landing sewer improvements	3,950,000
	<b>\$11,034,000</b>

## **Part B**

### **Taxes**

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#### **Property Tax**

##### **Homestead Property Tax Credit**

###### **Application Process**

The Homestead Tax Credit Program provides tax credits against State, county, and municipal real property taxes for owner-occupied residential properties for the amount of real property taxes resulting from an annual assessment increase that exceeds a certain percentage or “cap” in any given year. The State requires the cap on assessment increases to be set at 10% for State property tax purposes; however, local governments have the authority to set lower rates.

Despite restrictions on eligibility, State law before 2007 did not provide for a method of accurately verifying eligibility for the credit. In fact, the homestead tax credit was one of the few available tax credits for which recipients were not required to provide any information to an administering agency that could be used to verify eligibility.

As property assessments increased over the past decade, there was a significant increase in the number of properties receiving the credit and the average amount of each credit granted. The increasing number of recipients and the inability to verify eligibility prompted concerns over potential credit abuses or fraud.

*Chapters 564 and 565 of 2007* required homeowners to file a specified application with the State Department of Assessments and Taxation (SDAT) to qualify for the homestead tax credit. SDAT was prohibited from authorizing the credit, and the State, county, and municipal governments were prohibited from granting the credit unless the application is filed (1) within 180 days following the date a dwelling is transferred for consideration to new ownership, for a dwelling that transfers to new ownership after December 31, 2007; or (2) on or before December 31, 2012, for a dwelling that was last transferred to new ownership on or before December 31, 2007. SDAT was required to provide homeowners the option of submitting the required application electronically on its web site.

*Chapter 362 of 2009* extended to September 1 the deadline for filing an application for the homestead property tax credit program when a property transfers to a new owner between January 1 and July 1 and the deed is not recorded until after July 1. In addition, *Chapter 362* authorized SDAT to reinstate the homestead property tax credit to a homeowner who fails to file the required application for the tax credit by a specified deadline.

### **Federal Employees Stationed Out of State**

*Chapters 571 and 572 of 2010* enabled homeowners employed by the federal government who are stationed out of state for not more than six consecutive years to be eligible to continue to receive the homestead tax credit in the taxable year following their resumption of living in the residence, provided they are otherwise eligible for the tax credit. The tax credit will be calculated on the prior year's taxable assessment determined as if the tax credit had not been lost while the homeowner was stationed outside of Maryland.

### **Bi-county Commissions**

Prior to July 1, 2010, Prince George's County did not apply the homestead property tax credit on county tax rates imposed for the Maryland-National Capital Park and Planning Commission (M-NCPPC), the Washington Suburban Transit Commission (WSTC), and the Washington Suburban Sanitary Commission (WSSC). As such, these rates were not subject to the county's homestead cap, which was 5% for fiscal 2010 and 0% for fiscal 2011. This means that these tax rates were applied to each homeowner's phased-in assessment, rather than their taxable assessment after the homestead tax credit is applied.

*Chapter 336 of 2010* specified that the homestead property tax credit applies to any State, county, or municipal property tax, including a tax imposed by a bi-county commission. Bi-county commission includes M-NCPPC, WSTC, and WSSC. The homestead tax credit percentage that will be used for taxes imposed for a bi-county commission is 10%.

## **Property Tax Administration**

### **Revaluation of Home Improvements**

Real property is valued and assessed once every three years. No adjustments are made in the interim, except in the case of (1) a zoning change; (2) a substantial change in property use; (3) substantially completed improvements which add a specified amount of value to the property; or (4) a prior erroneous assessment.

*Chapter 274 of 2009* altered one of the property revaluation criteria by specifying that substantially completed improvements to real property that add at least \$100,000 (increased from \$50,000) in value to a dwelling will trigger a real property revaluation.



### **Semiannual Payments for Small Business Property**

Property taxes for owner-occupied residential property are due under a semiannual schedule. The first installment is due on July 1 and may be paid without interest on or before September 30. The second installment is due on December 1 and may be paid without interest on or before December 31. Local governments are authorized to impose a service charge to cover lost interest for the three-month delay in taxes collected and associated administrative fees. However, homeowners may elect to pay the full year's property tax on or before September 30 to avoid the service charge or interest. Property taxes for property other than owner-occupied residential property are due on July 1 and may be paid without interest on or before September 30.

*Chapter 680 of 2010* required county and municipal governments to establish a semiannual payment schedule for State, county, municipal, and special taxing district property taxes for small business property with a total property tax bill of \$50,000 or less.

### **Property Tax Exemptions**

#### **Solar and Geothermal Tax Incentive and Grant Program**

Legislation in 2004 created a Solar Energy Grant Program administered by the Maryland Energy Administration (MEA) which provides funding for up to 20% of the costs for installing certain qualifying solar energy systems, subject to certain limitations. *Chapter 615 of 2007* provided a State property tax exemption for solar energy devices installed to heat or cool a dwelling, generate electricity used in the dwelling, or to provide hot water used in the dwelling. *Chapter 615* also provided an income tax subtraction modification for grants received under the Solar Energy Grant Program beginning in tax year 2007.

*Chapter 132 of 2008* exempted specified solar energy property from State and local real property taxes and specified that a geothermal heating and cooling system, either as a standalone system or as a combined geothermal and conventional system, is not to be assessed at more than the value of a conventional system for property tax purposes.

#### **Alternative Energy Incentive Act of 2009**

*Chapter 444 of 2009* exempted from State and local real property taxes residential wind energy property used to generate electricity for a residential structure on the property. *Chapter 444* also clarified that solar energy property, for property tax exemption purposes, includes equipment that uses solar thermal electric energy.

#### **Solar Energy Property**

*Chapter 574 of 2009* extended the existing property tax exemption for specified solar energy property to include solar energy property used to generate electricity supplied to the electric grid. *Chapter 574* is intended to account for solar energy property that is purchased and which may send electricity back to the grid via net metering.

For a discussion of the sales tax provisions of *Chapters 444 and 574*, see subpart “Sales Tax” within this Part B.

## **Local Option Property Tax Credits**

### **Replacement Homes Purchased after Eminent Domain**

*Chapters 558 and 559 of 2007* authorized local governments to grant a property tax credit for a property that is purchased as a replacement for a principal residence which was acquired either through condemnation or negotiation under the threat of condemnation for public use by the State, a political subdivision, or instrumentality of the State. The credit lasts for five years and may not exceed 100% of the property tax attributable to the eligible homestead assessment granted on the acquired dwelling in the first taxable year, reduced by 20% in each subsequent year over the five-year life of the credit.

*Chapter 291 of 2010* altered the property tax credit for a replacement home purchased after a homeowner is displaced through eminent domain by repealing the five-year phase-out of the tax credit.

### **Publicly Sponsored Business Incubators**

*Chapters 572 and 573 of 2007* authorized local governments to provide a property tax credit for property that is used as a “business incubator” if the State, a county, a municipality, a specified tax-exempt organization, a public institution of higher education, or an agency or instrumentality of the same (1) owns, controls, or leases the space that is used as a business incubator; (2) provides at least 50% of the funding received by the business incubator from all sources, not including rents received from incubator tenant firms; or (3) is represented on the governance board that authorizes the annual budget of the business incubator.

### **Commercial Waterfront/Marine Trade Property**

*Chapter 281 of 2008* authorized counties and municipalities to provide a property tax credit for “commercial waterfront property.” Commercial waterfront property is real property that is adjacent to the tidal waters of the State; used primarily for a commercial fish operation or as a commercial marina or commercial marine repair facility; and has produced an average annual gross income of at least \$1,000 in the most recent three-year period.

*Chapter 297 of 2009* authorized local governments to grant a property tax credit for “marine trade waterfront property.” Marine trade waterfront property is real property that (1) is adjacent to the tidal waters of the State; (2) is used primarily for an activity or business that requires direct access to, or location in, marine waters due to the nature of the activity or business; and (3) for the most recent three-year period, has produced an average annual gross income of at least \$1,000.

### **Public Safety and Rescue Workers**

*Chapters 585 and 586 of 2008* expanded the eligibility criteria for a local property tax credit for the dwelling of a surviving spouse of a fallen law enforcement officer who has not remarried by authorizing local governments to grant a property tax credit for a dwelling owned by a disabled law enforcement officer, rescue worker, or correctional officer.

### **Accessibility Features**

*Chapter 645 of 2008* authorized local governments to grant a property tax credit for residential real property equipped with an accessibility feature. Accessibility feature means (1) a no-step entrance allowing access into a residence; (2) interior passage doors providing at least a 32-inch-wide clear opening; (3) grab bars around a toilet, tub, or shower installed to support at least 250 pounds; (4) light switches, outlets, and thermostats placed in wheelchair-accessible locations; (5) lever handles on doors; and (6) universal design features or any accessibility enhancing design feature as prescribed by the Department of Housing and Community Development.

### **Family Assistance Dwelling**

*Chapter 210 of 2008* authorized local governments to grant a property tax credit against the county or municipal property tax imposed on a family assistance dwelling. A family assistance dwelling is defined as a house, and the lot or curtilage on which the house is erected, if the house is used as the only residence for certain low-income relatives of the homeowner. The relative's rental payments to the homeowner must be less than 90% of the fair rental price paid for a similar dwelling in the same area. The relative must also be entitled to federal or State low-income assistance benefits. The house cannot be a vacation home or a nonresidence that is used by the homeowner for personal use.

### **Senior Citizens**

Legislation in 2006 authorized Baltimore City, counties, and municipalities to grant a tax credit against the county or municipal property tax imposed on real property that is owned and used as the principal residence of an individual who is at least 70 years old and of limited income. *Chapter 416 of 2009* lowered the minimum age requirement from 70 to 65 years of age for this property tax credit.

### **Urban Agricultural Property**

*Chapter 721 of 2010* authorized local governments to grant a five-year property tax credit for urban agricultural property. Urban agricultural property is defined as real property that is at least one-eighth of an acre and not more than two acres in size; located in a priority funding area; and used exclusively for urban agricultural purposes. Urban agricultural purposes is defined as (1) crop production activities, including the use of mulch or cover crops to ensure maximum productivity and minimize runoff and weed production; (2) environmental mitigation activities, including stormwater abatement and groundwater protection; (3) community

development activities, including recreational activities, food donations, and food preparation and canning classes; (4) economic development activities, including employment and training opportunities, and direct sales to restaurants and institutions; and (5) temporary produce stands used for the sale of produce raised on the premises.

### **Grocery Stores in Low-income Areas**

*Chapter 724 of 2010* authorized a local government to grant a property tax credit for real property that is used for a grocery store located in a low-income area. A grocery store is defined as an establishment whose primary business is selling food at retail to the general public for off-premises consumption and at least 20% of the gross receipts of which are derived from the retail sale of fresh produce, meats, and dairy products.

### **Habitat for Humanity**

*Chapters 328 and 329 of 2010* authorized local governments to grant a property tax credit against the county or municipal property tax for real property owned by Habitat for Humanity that is used exclusively for the purpose of rehabilitation and transfer to a private owner and is not occupied by administrative or warehouse buildings owned by Habitat for Humanity.

### **Tax Sales**

Generally, when a property is purchased at tax sale, the purchaser of a tax sale certificate must pay the tax collector any delinquent taxes, penalties, sale expenses, and under certain conditions, a high bid premium. The remainder of the purchase price is not paid to the collector until the purchaser forecloses on the property. The property owner has the right to redeem the property within six months from the date of tax sale by paying the delinquent taxes, penalties, interest, and certain expenses of the purchaser. If the owner redeems the certificate, the purchaser is refunded the amounts paid to the collector plus the interest and expenses. If the owner does not redeem the certificate, the purchaser has the right to foreclose on the property after the six-month right of redemption period has passed.

### **Tax Sale Process**

*Chapters 333 and 334 of 2008* altered the tax sale process in the State. The major provisions of the Acts included:

- increasing the minimum amount of taxes due on a property from \$100 to \$250 by which a tax collector may withhold the property from a tax sale;
- allowing the taxing jurisdiction to determine the manner and terms by which a holder of a certificate of sale is to be paid for expenses and fees incurred;

- providing for additional notice requirements from the tax collector and the holder of a tax sale certificate to the property owner before a right of redemption may be foreclosed;
- placing caps on the amount of attorney’s fees that a certificate holder may charge a property owner upon redemption, with the amount varying slightly depending on whether an affidavit of compliance has been filed; and
- itemization and caps on various expenses that a tax sale certificate holder may charge a property owner upon receiving a certificate of sale and the redemption of that certificate.

### **Fees for Reimbursement**

*Chapter 246 of 2009* clarified the types of expenses for which a holder of a certificate of sale from a tax sale may be reimbursed. If an action to foreclose the right of redemption has not been filed, and the property is redeemed more than four months after the date of the tax sale, the holder of a certificate of sale may be reimbursed for costs for recording the certificate of sale, a title search fee up to \$250, and reasonable attorney’s fees up to \$500.

### **Foreclosure of Right of Redemption**

*Chapter 65 of 2010* authorized the mayor and city council of Baltimore City to file a complaint to foreclose all rights of redemption in specified abandoned property at any time after the city becomes the purchaser by operation of law. *Chapter 65* also exempted the mayor and city council of Baltimore City from issuing specified required notices for such property.

*Chapter 549 of 2010* altered the existing notice procedures a certificate of sale purchaser must follow prior to filing a complaint to foreclose the right of redemption. *Chapter 549* required the second of two notices to be sent by first-class certified mail, postage prepaid, return receipt requested, and bearing a postmark from the U.S. Postal Service. The envelope must also be prominently marked “Notice of Delinquent Property Tax.” If an affidavit filed prior to a final judgment foreclosing the right of redemption provides evidence that the affidavit was sent by certified mail in compliance with the Act’s provisions, then the notice provisions are deemed satisfied and the failure of the tax-delinquent owner to receive the required notice does not invalidate the proceeding.

### **BRAC Community Enhancement Act**

*Chapter 338 of 2008* established a process for the creation of Base Realignment and Closure (BRAC) Revitalization and Incentive Zones in the State. The benefits of a BRAC Zone designation are primarily State financial incentives provided to local jurisdictions related to property taxes generated on improvements to qualified properties within BRAC Zones. *Chapter 338* also authorized payment in lieu of tax agreements that may be entered into by the State, local jurisdictions, and private developers for developments on federal enclave property.

For a more detailed discussion of other provisions of *Chapter 338*, see the subpart “Economic Development” within Part H – Business and Economic Issues of this *Major Issues Review*.

## Income Tax

### Personal Income Tax Restructuring

As part of a package of measures to address the State’s pre-recession structural budget deficit, legislation was enacted during the 2007 special session to significantly revise several major State taxes, including the State personal income tax, and provide substantial additional State tax revenues for both the general fund and the Transportation Trust Fund.

#### 2007 Special Session

*Chapter 3 of the 2007 special session* established new individual income tax brackets and rates beginning in tax year 2008, with the top rate set at 5.5%, as shown in Exhibit B-1.

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### Exhibit B-1 State Individual Income Tax Rates, as Enacted by Chapter 3 Of the 2007 Special Session

Single, Dependent Filer, Married Filing Separate		Joint Returns, Head of Household, or Surviving Spouse	
<u>Rate</u>	<u>Maryland Taxable Income</u>	<u>Rate</u>	<u>Maryland Taxable Income</u>
2.0%	\$1 – \$1,000	2.0%	\$1 – \$1,000
3.0%	\$1,001 – \$2,000	3.0%	\$1,001 – \$2,000
4.0%	\$2,001 – \$3,000	4.0%	\$2,001 – \$3,000
4.75%	\$3,001 – \$150,000	4.75%	\$3,001 – \$200,000
5.0%	\$150,001 – \$300,000	5.0%	\$200,001 – \$350,000
5.25%	\$300,001 – \$500,000	5.25%	\$350,001 – \$500,000
5.5%	Excess of \$500,000	5.5%	Excess of \$500,000

Source: Department of Legislative Services

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*Chapter 3* also altered the personal exemption amount provided under the individual income tax, increasing the amount allowed for each exemption from \$2,400 to \$3,200 for individuals having federal adjusted gross income of up to \$100,000 (\$150,000 for joint filers), but gradually phasing down the amount allowed for each exemption for individuals with higher incomes, to \$600 for taxpayers with incomes above \$200,000 (\$250,000 for joint filers).

In addition, *Chapter 3* increased the percentage used to calculate the refundable earned income credit (EIC) for qualified low-income individuals from 20% to 25% and expanded eligibility for the refundable EIC to qualifying individuals without dependents.

At the time of enactment, the various personal income tax changes were estimated to generate \$157 million in general fund revenues for fiscal 2009.

### **2008 Session**

Included in the 2007 special session legislation adopted to address the State's structural budget deficit was an expansion of the sales and use tax to certain computer services for a five-year period beginning July 1, 2008. In response to significant controversy related to the enactment of the computer services sales tax, the General Assembly considered several bills in the 2008 session to repeal or significantly alter the computer services sales tax.

*Chapter 10 of 2008* repealed the sales tax on computer services and increased the State's top marginal income tax rate from 5.5% to 6.25% for tax years 2008 through 2010, applicable to annual taxable income in excess of \$1 million. At the time of enactment, the new 6.25% rate was estimated to generate \$155 million in general fund revenues for fiscal 2009, \$113 million in fiscal 2010, and \$61 million in fiscal 2011.

For a more detailed discussion of the computer services sales tax, see the discussion under the subpart "Sales and Use Tax" within this Part B.

## **Corporate Income Tax**

### **Rate Increase**

As part of the package of measures adopted during the 2007 special session to address the State's structural budget deficit, *Chapter 3* increased the income tax rate for corporations from 7.0% to 8.25%. At the time of enactment, this was estimated to generate \$137 million in general fund and Higher Education Investment Fund revenues for fiscal 2009.

### **Reform Measures**

Although legislation adopted in the 2004 session limited the ability of companies to use Delaware Holding Companies and related techniques to avoid State corporate income taxes, corporate income tax reform remained of significant interest during the 2007-2010 legislative term. The General Assembly considered a variety of corporate income tax reform proposals during the term, including bills to require combined reporting under the income tax for multistate

corporations, bills to impose an alternative minimum assessment on corporations, and bills attempting to address the use of offshore “tax havens” to shelter income from taxes. While major corporate income tax reform was not enacted, the General Assembly did pass legislation addressing one particular tax avoidance technique, provided for additional corporate reporting requirements, and established a commission to study corporate income tax reform issues.

***Captive Real Estate Investment Trusts:*** Prior to the 2007 regular session, press accounts and actions undertaken by tax authorities and legislatures in other states focused attention on a method employed by some corporations to avoid state income taxes involving the use of a captive Real Estate Investment Trust (REIT). ***Chapter 583 of 2007*** limited a company’s ability to avoid the Maryland corporate income tax by shifting income away from the State through the use of a “captive REIT,” which was defined, with certain exceptions, as a REIT primarily owned by a single corporation. Under ***Chapter 583***, the dividends-paid deduction allowed under federal law is required to be added back to federal taxable income to determine the taxable income of a captive REIT for Maryland income tax purposes.

***Reporting of Corporate Data and the Business Tax Reform Commission:*** Legislation was proposed in the 2007 special session to reform the corporate income tax by requiring multistate corporate groups to use the combined reporting method to determine Maryland taxable income, taking into account the income and apportionment factors of all members of the corporate group engaged in a unitary business. In lieu of requiring combined reporting for multistate corporate groups, ***Chapter 3*** provided for enhanced reporting of corporate data to the Comptroller and also established the Maryland Business Tax Reform Commission (BTRC) to review and evaluate combined reporting for multistate corporations and other issues relating to the State’s business tax structure.

In response to concerns from the business community that the reporting requirements enacted under ***Chapter 3*** would be administratively burdensome, those requirements were replaced by a streamlined version of the reporting requirements under ***Chapter 177 of 2008***. ***Chapter 177*** also terminated the corporate reporting requirements after tax year 2010. ***Chapter 543 of 2010*** accelerated the due date for BTRC’s final report from December 15, 2011, to December 15, 2010.

### **Heritage Structure Rehabilitation Tax Credit**

Established in 1996, the Heritage Structure Rehabilitation Tax Credit program provides, subject to certain limitations, a credit for a portion of the qualified expenditures for rehabilitating a certified historic structure. During the 2003-2006 legislative term, the General Assembly substantially altered the tax credit program, including imposing aggregate and per-project caps on the program and converting the commercial rehabilitation portion of the program from a traditional tax credit to a program subject to an annual budgetary appropriation. During the 2007-2010 legislative term, the General Assembly again made significant changes to the Heritage Structure Rehabilitation Tax Credit program.



**2007 Session:** *Chapter 566 of 2007* extended the tax credit's termination date through fiscal 2010 for both commercial rehabilitations and owner-occupied residential property rehabilitations. *Chapter 566* also altered several aspects of the program, including:

- increasing from 50% to 75% the maximum amount of total initial credit certificates issued in a fiscal year that may be allocated for commercial projects located in one county or Baltimore City;
- requiring that credits be awarded in a manner that favored projects located in jurisdictions that have been historically underrepresented in the awarding of tax credits, instead of the previous requirement that credits be awarded in a manner that reflected the geographic diversity of the State;
- increasing from 24 to 30 months the time for a commercial project to be completed from the time an initial tax credit certificate is awarded; and
- extending the fee charged to certify the rehabilitation of commercial projects to residential rehabilitations and repealing the requirement that at least 10% of all commercial credits be awarded to nonprofit organizations.

**2009 Session:** Legislation proposed by the Governor (*Senate Bill 258/House Bill 309, both failed*) would have extended the Maryland Heritage Structure Rehabilitation Tax Credit Program through June 30, 2014, and made several changes to the program, including converting the commercial program to a conventional tax credit program not subject to an annual appropriation and eliminating the competitive awarding of commercial credits. The bills would have authorized the Maryland Historic Trust (MHT) to award a total of \$100 million in commercial credits to applicants on a first-come, first-served basis.

**2010 Session:** Legislation proposed by the Governor would have reestablished the Heritage Structure Rehabilitation Tax Credit as the Sustainable Communities Tax Credit, transforming the tax credit into a traditional tax credit not subject to an annual appropriation. As introduced, the legislation also would have increased funding for the program by authorizing the MHT to award a total of \$50 million in commercial credits between fiscal 2011 through 2013, as well as expanding eligibility requirements for the program to include certain non-historic residential and commercial properties.

As passed by the General Assembly, *Chapter 487 of 2010* extended and altered the existing Heritage Structure Rehabilitation Tax Credit to be the Sustainable Communities Tax Credit but retained the commercial credit as a budgeted tax credit. *Chapter 487* also made several changes to the credit, as discussed below.

Under the expiring program, the credit was equal to 20% of qualified rehabilitation expenditures, not to exceed \$3 million for a commercial rehabilitation and \$50,000 for a single-family, owner-occupied residence. *Chapter 487* retained those credit values and

increased the value of the credit to 25% for a commercial rehabilitation that meets specified energy efficiency standards. Eligibility for the credit was also expanded to qualified rehabilitated nonhistoric commercial buildings located in a Main Street Maryland Community or, beginning in fiscal 2012, a sustainable community as defined by the Act. The credit for these nonhistoric structures is equal to 10% of qualified rehabilitation expenses, and no more than 10% of total commercial credits awarded in a fiscal year may be awarded to these qualified rehabilitated structures.

In addition to expanding eligibility under the commercial program to qualified rehabilitated nonhistoric structures, *Chapter 487* altered the criteria by which the MHT awards commercial credits. The Governor is required to provide an appropriation for the commercial credit through fiscal 2014 – for fiscal 2011, the State budget as passed by the General Assembly included \$10 million for the Sustainable Communities Tax Credit. The MHT's authority to award an unlimited amount of residential credits under the program was also extended to applications received through June 30, 2014.

### **Biotechnology Investment Tax Credit**

Chapter 99 of 2005 established the biotechnology investment tax credit, providing an income tax credit equal to 50% of an eligible investment made in a qualified biotechnology company during the taxable year. *Chapter 518 of 2008* made several changes to this credit relating to eligibility, the maximum value of the credit, procedures for claiming the credit, and administration of the credit.

### **Job Creation and Recovery Tax Credit**

*Chapter 1 of 2010* created a State income tax credit for employers who hire qualified individuals between the effective date of the Act (March 25, 2010) and December 31, 2010. The amount of the credit is \$5,000 per eligible employee hired, not to exceed a total of \$250,000 per taxpayer. The Department of Labor, Licensing, and Regulation is authorized to award \$20 million in credits on a first-come, first-served basis.

A qualified employee is an individual who at the time of hiring (1) is a State resident; (2) is receiving unemployment insurance benefits or has exhausted unemployment insurance benefits within the past 12 months; and (3) is not employed full time. *Chapter 1* also establishes the tax credit application and certification process and specifies the circumstances under which the credit may be claimed. If the maximum amount of credits is awarded, credits could be claimed for about 4,000 individuals who were receiving or had exhausted unemployment insurance benefits.

## Other Tax Credit Legislation

### New Credits

The General Assembly passed three new income tax credits in the 2008 session – two related to the environment and one reestablishing a previously terminated job training credit for younger individuals.

***Cellulosic Ethanol Technology: Chapter 139 of 2008*** created a State income tax credit for cellulosic ethanol technology research and development conducted in the State. The amount of the tax credit is equal to 10% of the eligible expenses incurred and cannot exceed the tax liability for that taxable year. The maximum amount available for credits in each year is limited to \$250,000. The credit is available for expenses incurred before January 1, 2017.

***Purchase of Bio-heating Oil for Space or Water Heating: Chapter 140 of 2008*** created a State income tax credit for individuals or corporations who purchase heating oil containing at least 5% biodiesel for space or water heating. The amount of the credit is equal to 3 cents per gallon purchased, not to exceed \$500 or the tax liability in that year, and is available through tax year 2012.

***Approved Work-based Learning Programs: Chapter 571 of 2008*** reestablished the tax credit program for approved work-based learning programs for students, which was established in 1998 and terminated in 2004. The program allows an employer to claim a tax credit for 15% of the wages paid to secondary or postsecondary students between 16 and 23 years of age who participate in an approved work-based learning program, subject to certain limitations.

### Extension and Termination of Existing Tax Credits

During the 2007-2010 legislative term, the General Assembly extended the termination dates of several tax credits and allowed another tax credit to terminate, as discussed below.

***Work Opportunity Employees and Employees with Disabilities:*** These tax credits were first enacted by Chapter 492 of 1995, which allowed a credit for an employer hiring a qualified employment opportunity employee, and Chapters 112 and 113 of 1997, which established a similar credit for an employer hiring an individual with a disability. In addition, credits were allowed for a portion of (1) the child care expenses incurred by a business entity to enable qualified employees to be gainfully employed; and (2) the transportation expenses paid on behalf of the qualified employee.

***Chapter 370 of 2007*** extended the termination date of these credits from June 30, 2007, to June 30, 2008. In each of the 2008, 2009, and 2010 sessions, the General Assembly passed legislation that extended by one year the credit for hiring an individual with a disability (***Chapter 658 of 2008, Chapter 290 of 2009, and Chapter 252 of 2010***). As a result of these extensions, this credit is scheduled to terminate June 30, 2011, and may be claimed on behalf of individuals hired through that date.

The General Assembly also passed legislation (*Chapter 391 of 2008*) extending the termination date of the Work Opportunity credit by one year to June 30, 2009. However, that credit was allowed to terminate as of June 30, 2009.

**Job Creation: Chapter 517 of 2008** extended from 2010 to 2014 the termination date of the Job Creation Tax Credit provided to a business that expands or establishes a facility in Maryland that results in the creation of new jobs.

**Research and Development: Chapter 20 of 2010** extended from June 30, 2012, to June 30, 2021, the termination date for income tax credits awarded to businesses for qualified Maryland research and development expenses. The time period in which tax credits may be earned is extended through tax year 2019.

**Clean Energy Incentive: Chapter 493 of 2010** extended from December 31, 2012, to December 31, 2015, the termination date of the income tax credit provided to producers of energy from qualified energy resources. **Chapter 493** also made the credit refundable if the credit allowed exceeds the State income tax otherwise payable for the taxable year.

### **Federal Decoupling**

Under Maryland income tax law, the calculation of the federal income tax generally flows through to the calculation of the Maryland income tax, because federal adjusted gross income is the starting point for calculating the Maryland income tax. In response to concerns over the potential impact of federal tax law changes on State revenues, Chapter 440 of 2002 provided that the State is automatically “decoupled” for one year from any amendment to the Internal Revenue Code if the fiscal impact of the amendment to the State in the fiscal year that begins in the year the amendment is enacted is greater than \$5 million. Other provisions of Chapter 440, as well as the provisions of Chapter 430 of 2004 and Chapter 444 of 2005, also permanently “decoupled” the State income tax from several specific federal tax changes.

The federal American Recovery and Reinvestment Act (ARRA), which was enacted in 2009 in response to the national economic downturn, included a number of federal tax provisions that could have potentially impacted the calculation of Maryland income tax liability. Provisions affecting individual taxpayers included an exclusion from income for up to \$2,400 of unemployment compensation in tax year 2009, an income tax deduction for qualified motor vehicle excise taxes paid on vehicle purchases made between November 12, 2008, and January 1, 2010, and a temporary expansion of the earned income credit.

Under the existing automatic “decoupling” law, the State would have been decoupled from the federal tax changes listed above. As such, **Chapter 487 of 2009**, the Budget Reconciliation and Financing Act (BRFA), included a provision exempting from the “automatic decoupling provision” any amendment of the Internal Revenue Code enacted under the ARRA. As a result, the State income tax was not decoupled from the temporary expansion of the earned income credit or from the deductions for unemployment compensation and motor vehicle excise taxes paid provided under the ARRA.

The ARRA also included several significant business tax incentives, including three provisions from which the State had previously permanently decoupled: (1) Section 179 expensing; (2) bonus depreciation; and (3) a five-year carryback election of net operating losses for losses incurred by eligible small businesses. Based on the language in the ARRA related to the carryback of net operating losses, **Chapter 487** contained language clarifying that the State is permanently decoupled from the carryback of qualifying net operating losses.

Under federal law, taxpayers must generally recognize income when the taxpayer cancels or repurchases its debt for an amount less than its adjusted issue price. ARRA allowed certain businesses to delay recognition of this income under specified circumstances in tax year 2009 and 2010. In response to concerns that this provision could significantly decrease State revenues, **Chapter 487** permanently decoupled the State from the cancellation of debt income provisions enacted by ARRA.

## **Subtraction Modifications**

### **Solar Energy Grant Program**

**Chapter 615 of 2007** created an income tax subtraction modification beginning in tax year 2007 for grants received under the Solar Energy Grant Program.

### **Septic System Upgrade Costs**

**Chapter 280 of 2009** prohibited a person from installing or replacing an on-site sewage disposal system on property in the Chesapeake and Atlantic Coastal Bays Critical Area unless the system utilizes the best available nitrogen removal technology. **Chapter 280** also created a subtraction modification under the individual income tax for certain costs of upgrading a septic system.

For a more detailed discussion of the substantive provisions of **Chapter 280**, see the subpart “Environment” within Part K – Natural Resources, Environment, and Agriculture of this *Major Issues Review*.

## **Income Tax Checkoffs**

### **Developmental Disabilities Waiting List Equity Fund**

**Chapters 499 and 500 of 2010** established a new income tax checkoff on the individual income tax return for contributions to the Developmental Disabilities Waiting List Equity Fund, to provide services to individuals with developmental disabilities.

### **Fair Campaign Financing Fund**

**Chapter 484 of 2010**, the Budget Reconciliation and Financing Act, included a provision repealing the income tax checkoff on the individual income tax return for contributions to the Fair Campaign Financing Fund.

For a further discussion of the repeal of the checkoff and other provisions in the BRFA relating to the Fair Campaign Financing Fund, see the heading “Campaign Finance” under the subpart “Elections” within Part C – State Government of this *Major Issues Review*.

## Sales and Use Tax

### 2007 Special Session

As part of a package of measures to address the State’s pre-recession structural budget deficit, legislation was adopted during the 2007 special session to significantly revise several major State taxes, including the sales and use tax to provide substantial additional revenues for the general fund and the Transportation Trust Fund.

#### Rate Increase

*Chapter 6 of the 2007 special session* increased the sales tax rate from 5% to 6%, which was estimated to generate almost \$700 million in additional revenues in fiscal 2009 and over \$800 million by fiscal 2012. *Chapter 6* also provided for a portion of sales and use tax revenues to be distributed to the Transportation Trust Fund.

#### Tax on Computer Services

As the State sales and use tax base has eroded over time and the growth in sales tax revenues has failed to keep pace with the growth in personal income, at least in part due to a greater consumption of nontaxable services, Maryland has looked more closely at the taxation of various services. During the 2007 special session, the General Assembly considered extending the sales and use tax to a variety of additional services, including real property management services, landscaping services, certain personal services, and certain repair services.

Included in *Chapter 3 of the 2007 special session* was an extension of the sales and use tax to computer services, which was estimated to generate over \$200 million annually in additional revenues. As enacted by *Chapter 3*, the computer services tax was scheduled to be in effect from July 1, 2008, to June 30, 2013.

Computer services were defined as computer facilities management and operation; custom computer programming; computer system planning and design that integrate computer hardware, software, and communication technologies; computer disaster recovery; data processing, storage, and recovery; and hardware or software installation, maintenance, and repair. The definition specifically excluded (1) certain types of services such as Internet access, typing or data entry, and computer training; (2) the installation, maintenance, or repair of tangible personal property that included computer hardware or software as a component part; and (3) computer services provided in connection with other specified types of services, such as banking and financial related services, business management or other administrative services, various professional services, and telecommunications services. As discussed below, the tax was repealed before it took effect.

## **Vendor Credit**

*Chapter 3* also limited the vendor credit under the sales and use tax to a maximum of \$500 for any return filed through June 30, 2011.

## **Tax-free Periods**

*Chapter 6* provided for an annual tax-free week for clothing and footwear costing not more than \$100 beginning in August 2010 and an annual tax-free weekend for the purchase of energy-efficient appliances beginning in February 2011.

## **Tax on Computer Services – Repeal**

As noted above, *Chapter 3* imposed the State sales and use tax on specified computer services. The anticipated revenues provided a key component of the General Assembly's special session plan for addressing the State's structural budget deficit.

The enactment of the computer services sales tax led to immediate objections from the business community in the State, particularly from the "high tech" industry. Numerous proposals were introduced in the 2008 session to repeal the computer services tax or to alter the imposition of the tax. While a consensus developed that the tax should be repealed, obtaining agreement on how to replace the approximately \$200 million in annual revenues was difficult.

To compensate for the lost revenues, a compromise was reached involving a combination of budget reductions and new revenues. *Chapter 10 of 2008* repealed the sales tax on computer services and imposed a new 6.25% income tax rate on the net taxable income of individuals in excess of \$1 million, effective for tax years 2008 through 2010 (thus providing a partial revenue recoupment). *Chapter 10* also provided additional revenues for the general fund through fiscal 2013 by reducing the percentage of sales and use tax revenues distributed to the Transportation Trust Fund from 6.5% to 5.3%.

## **Sales to Veterans' Organizations**

Chapters 217 and 218 of 2006 provided for a State sales and use tax exemption for sales made to a bona fide nationally organized and recognized veterans' organization or auxiliary of an organization or its units if the organization is qualified as tax exempt under Section 501(c)(19) of the Internal Revenue Code (IRC). Chapters 217 and 218 were subject to termination on June 30, 2009; *Chapter 506 of 2009* extended the termination date for this sales and use tax exemption to June 30, 2012.

*Chapters 509 and 510 of 2010* provided a similar State sales and use tax exemption for sales made to veterans' organizations that are organized under § 501(c)(4) of the IRC. Veterans' organizations were originally tax exempt under IRC § 501(c)(4) as social welfare organizations. The IRC was amended in 1972 to include a category of tax exempt organizations specifically for veterans' organizations, and many veterans organizations in Maryland reclassified under § 501(c)(19). However, some of the smaller organizations remained classified under § 501(c)(4)

while providing similar services as those organizations classified under § 501(c)(19). Therefore, *Chapters 509 and 510* apply only to veterans' organizations that did not reclassify under IRC § 501(c)(19), such as the Jewish War Veterans and the Military Order of the Purple Heart.

## **Alternative Energy Incentives**

### **Solar Energy Equipment**

*Chapter 574 of 2009* extended an existing sales and use tax exemption for solar energy equipment to include solar energy equipment used to generate electricity supplied to the electric grid. The intent of *Chapter 574* was to account for solar energy equipment used to send electricity back to the grid via net-metering. *Chapter 574* also provided a property tax exemption for solar energy property installed to generate electricity to be supplied to the electric grid.

### **Wind Energy Equipment**

*Chapter 444 of 2009* provided a sales and use tax exemption for the purchase of equipment installed on residential property that uses wind energy to generate electricity for a residential structure on the property. *Chapter 444* also provided a property tax exemption for residential wind energy equipment.

## **Miscellaneous Taxes**

### **Motor Vehicle Excise Tax**

#### **Rate Increase and Trade-in Allowance**

As part of a package of measures to address the State's structural budget deficit, *Chapter 6 of the 2007 special session* increased the motor vehicle excise tax rate from 5% to 6% of the vehicle's purchase price or fair market value, while also allowing for a reduction in the amount subject to the tax by 100% of the value of a trade-in. At the time of enactment, it was estimated that the rate increase would generate approximately \$145 million in fiscal 2009, growing to almost \$170 million in fiscal 2012. The trade-in allowance was estimated to reduce revenues by over \$80 million in fiscal 2009, with the loss growing to over \$100 million in fiscal 2012.

#### **Credit for Plug-in Electric Vehicles**

*Chapter 490 of 2010* established a tax credit against the motor vehicle excise tax in an amount equal to 100% of the tax imposed for the purchase of qualified plug-in electric vehicles, not to exceed \$2,000. The credit is limited to 1 vehicle per individual and 10 vehicles per business entity. The credit is available for the purchase of a qualifying vehicle between October 1, 2010, and June 30, 2013.



## **Recordation and Transfer Taxes**

### **Controlling Interest Transfers**

*Chapter 3 of the 2007 special session* imposed recordation and transfer taxes on the transfer of real property with a value of \$1 million or more when the transfer is achieved through the sale of a “controlling interest” in a specified corporation, partnership, limited liability company, limited liability partnership, or other form of unincorporated business. Controlling interest is defined as more than 80% of the total value of the stock or the interest in capital and profits. Certain transfers such as mergers and dissolutions are exempt from the tax.

The tax is imposed on the consideration payable for the transfer of controlling interest in the real property entity reduced by the amount allocable to assets other than the real property. Consideration includes any mortgage, deed of trust, or other lien on the real property directly or beneficially owned by the real property entity and any other debt or encumbrance of the real property entity.

### **Domestic Partner Exemption**

Property subject to a mortgage or deed of trust that is transferred between a spouse, former spouse, son, daughter, stepson, stepdaughter, parent, stepparent, son-in-law, daughter-in-law, stepson-in-law, stepdaughter-in-law, parent-in-law, stepparent-in-law, grandchild, or stepgrandchild is exempt from recordation and State and county transfer taxes. *Chapter 599 of 2008* exempted the transfer of residential property between domestic partners and former domestic partners from these taxes.

### **Agricultural Land Transfer Tax Surcharge**

*Chapter 610 of 2008* imposed a 25% surcharge on an instrument of writing that transfers title to agricultural land, in addition to the current agricultural land transfer tax. The surcharge does not apply to transfers of two acres or less to a child or grandchild of the owner.

*Chapter 610* also altered the distribution of agricultural land transfer tax revenues. For a more detailed discussion of the revenue distribution provisions of the bill, see the subpart “Agriculture” within Part K – Natural Resources, Environment, and Agriculture of this *Major Issues Review*.

### **Debt Forgiven in “Short Sale”**

*Chapters 589 and 590 of 2010* clarified that, for purposes of recordation taxes and State and county transfer taxes, the consideration payable for an instrument of writing to which the taxes apply includes only the amount paid or delivered in return for the sale of the property and does not include any debt forgiven or no longer secured by a mortgage or deed of trust on the property.

## **State Admissions and Amusement Tax**

### **Electronic Bingo and Electronic Tip Jars**

*Chapter 6 of the 2007 special session* imposed a 20% State admissions and amusement tax on the net receipts generated from specified electronic bingo machines and electronic tip jars. *Chapter 661 of 2009* increased the tax rate to 30% and dedicated certain revenues to a special fund for the preservation of the cultural arts.

For a more detailed discussion of these bills, see the subpart “Horse Racing and Gaming” within Part H – Business and Economic Issues of this *Major Issues Review*.

## **Hotel Rental Tax**

### **Municipal Corporations**

*Chapter 149 of 2008* authorized municipal corporations to impose a hotel rental tax at a rate not to exceed 2%, under specified circumstances. The tax may not be imposed by a municipal corporation that has a hotel rental tax revenue sharing agreement with the county it is located in, is located in a county that does not impose a hotel rental tax, or is located in a county that distributes at least 50% of hotel rental taxes collected to promote tourism in the county.

## **Inheritance Tax**

### **Domestic Partner Exemption**

*Chapter 602 of 2009* exempted from the State inheritance tax the receipt by a decedent’s domestic partner of an interest in a joint primary residence that at the time of the death was held in joint tenancy by the decedent and the domestic partner.

## **Estate Tax**

### **Payment Deferral for Qualified Agricultural Property**

*Chapter 554 of 2010* requires the Comptroller to allow a payment deferral for up to three years for the Maryland estate tax imposed on qualified agricultural property that passes from a decedent to or for the use of a qualified recipient. Qualified agricultural property is real or personal property that is used primarily for farming purposes. A qualified recipient is an individual who enters into an agreement to use qualified agricultural property for farming purposes after the decedent’s death.

The amount of tax eligible for deferral is the amount, up to a maximum of \$375,000, equal to the Maryland estate tax owed multiplied by the percentage resulting from dividing the value of the qualified agricultural property that passes from the decedent to or for the use of a qualified recipient by the value of the gross estate of the decedent. Any deferred tax is due immediately if the qualified agricultural property ceases to be used for farming purposes.

## **Tax Amnesty Program**

*Chapter 277 of 2009* required the Comptroller to declare an amnesty period for delinquent taxpayers from September 1, 2009, through October 30, 2009, for civil penalties and one-half of the interest due and attributable to the nonpayment, nonreporting, or underreporting of income taxes, withholding taxes, sales and use taxes, or admissions and amusement taxes. Taxpayers could qualify for the amnesty if the delinquent tax and required interest due was paid during the amnesty period or if the taxpayer during the amnesty period entered into a payment agreement with the Comptroller to pay the full amount due before January 1, 2011.

The amnesty program did not apply to (1) any business that, as of September 1, 2009, had more than 500 employees in the United States or was a member of a corporate group that had more than 500 employees in the United States; (2) any tax for which a taxpayer was granted amnesty under the Maryland Tax Amnesty Program in 2001; or (3) any taxpayer that was eligible to participate in the July 1 through November 1, 2004 settlement period relating to the use of Delaware Holding Companies by corporate taxpayers.

## **Tobacco Tax**

*Chapter 6 of the 2007 special session* increased the State tobacco tax from \$1 to \$2 per pack of cigarettes beginning January 1, 2008. The rate increase was estimated to result in a general fund revenue increase of approximately \$162 million in fiscal 2009.

## **Maryland-mined Coal Credit**

Chapters 247 and 248 of 2006 imposed a cap on the total amount of Maryland-mined coal credits that may be claimed against the public service company franchise tax or income tax each year, phasing out the credit completely over a 15-year period. *Chapter 487 of 2009*, the Budget Reconciliation and Financing Act, reduced the annual cap to \$4.5 million for calendar 2009 through 2012. Under *Chapter 487*, the annual cap is scheduled to return to \$6 million for 2013 and 2014, and then fall to \$3 million for 2015 through 2020, before the credit is phased out completely in 2021.

## **Gross Receipts Tax**

### **Heavy Equipment Rental Property**

*Chapter 337 of 2010* replaced the local personal property tax on certain heavy equipment rental property with a 2% tax on the gross receipts from the short-term lease or rental of heavy equipment property by a person whose principal business is the short-term lease or rental of heavy equipment property at retail. The gross receipts tax does not apply to a business located in a county or municipality that does not impose a personal property tax.



## Part C

### State Government

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#### State Agencies, Offices, and Officials

##### State Officials

##### Salaries of Governor and Constitutional Officers

In the last year of each election cycle, the Governor's Salary Commission makes recommendations to the General Assembly on salaries for the Governor and Lieutenant Governor for the following four-year term. In 2010, the Governor's Salary Commission recommended that the salaries for the Governor and Lieutenant Governor remain the same for the first two years of the new term and then increase for each of the last two years of the term. *Joint Resolution 1 of 2010* rejected the salary recommendations of the commission. Thus, the salaries of the Governor and Lieutenant Governor will remain \$150,000 and \$125,000, respectively, the same for the next four-year term of office.

In addition to making salary recommendations for the Governor and Lieutenant Governor, the Governor's Salary Commission makes recommendations regarding the salaries of the Attorney General, Comptroller, Secretary of State, and Treasurer for the next four-year term of office. *Senate Bill 143/House Bill 184 of 2010 (both failed)* would have implemented recommended salary increases for these constitutional officers for the last two years of the next four-year term of office. Because the bills failed, the salaries for those offices will remain the same for the next four-year term. The Attorney General, Comptroller, and Treasurer will each be paid \$125,000 per year, while the Secretary of State will be paid \$87,500 annually.

##### Executive Branch Appointments

For purposes of the State's personnel law, "appointing authority" means an individual or unit of government that has the power to make appointments and terminate employment. *Chapter 516 of 2007* prohibited the Governor's Appointments Office from directing or overruling an appointing authority, the Secretary of Budget and Management, or any unit in that department regarding a decision to appoint, promote, transfer, reassign, discipline, or terminate

an employee under the appointing authority's jurisdiction. The Act specified that only an appointing authority may delegate authority to act on its behalf to an employee or officer under the appointing authority's jurisdiction. An appointing authority, however, may not delegate the authority to make the final decision on the termination of an employee.

## **Reorganization of State Government**

### **Base Realignment and Closure Subcabinet**

In 1990, Congress created a process known as Base Realignment and Closure (BRAC) to address an excess capacity of military facilities. BRAC allows for the appointment of an independent commission that evaluates the military's needs and offers recommendations. In response to recommendations adopted by the 2005 BRAC Commission that will bring many new military-base jobs into the State, *Chapter 6 of 2007* created a 10-member Base Realignment and Closure subcabinet in State government. The subcabinet includes the Lieutenant Governor, who serves as the chair, the State Superintendent of Schools, and the secretaries of Budget and Management; Business and Economic Development; Environment; Higher Education; Housing and Community Development; Labor, Licensing, and Regulation; Planning; and Transportation. It is primarily staffed by the Department of Business and Economic Development, but the chair may call on any of the members to provide additional staff assistance as needed. The subcabinet is required to report to the Governor and the General Assembly annually on State action to support the mission of military installations.

The subcabinet is charged with several tasks, including:

- coordinating and overseeing the implementation of all State action to support the mission of military installations affected by BRAC, including working with Maryland's congressional delegation to obtain federal funds;
- coordinating and overseeing the development of BRAC-related initiatives in areas such as education, workforce readiness, and transportation;
- working with local jurisdictions affected by BRAC to facilitate planning, coordination, and cooperation with the State; and
- making policy and budget recommendations to the Governor and the General Assembly to strengthen State support of military installations.

### **Department of Information Technology**

The Department of Information Technology was established by *Chapter 9 of 2008*. The department was designated as a primary procurement unit for the purpose of controlling procurement of information processing equipment and associated services and telecommunication equipment, systems, and services. The Act also transferred from the Department of Budget and Management to the new department primary responsibility for

coordinating all aspects of the State’s telecommunications policy, procurement, and management. This includes improving and expanding access to telecommunications and computer networks in rural areas and by people with disabilities. All existing duties, powers, and staff of the Office of Information Technology in the Department of Budget and Management and its chief were granted to the new department and its secretary. No additional powers, staff, or resources were granted to the new department or its secretary.

Each year, the department is required to report to the Department of Legislative Services regarding the project status of each major IT project under development or receiving operations and maintenance funding. The report is to provide the most up-to-date information regarding (1) changes in the project’s schedule, cost, or scope; (2) the project’s risk assessment; and (3) any change in the project’s monitoring or oversight status.

*Chapter 9* also repealed the State Information Technology Board.

### **Department of Human Resources**

*Chapter 116 of 2008* reorganized the Department of Human Resources by (1) repealing the Community Services Administration; (2) transferring the Energy Assistance Program to the Family Investment Administration; (3) providing for the management of the Maryland Emergency Food Program by the department; and (4) locating the Commission on Responsible Fatherhood in the department for budgetary and administrative purposes.

The reorganization was intended to eliminate redundancy in the department and improve service delivery. Under the reorganization, the Office of Home Energy Programs and the Office for New Americans were transferred to Family Investment Administration; the Office of Adult Services was transferred to the Social Services Administration; the Maryland Legal Services Program was transferred to the Office of the Secretary; and the Office of Victim Assistance, the Office of Transitional Services, and the Office of Community Initiatives were consolidated in a new Office of Grants Management.

### **Governor’s Office of Community Initiatives**

The Governor’s Office of Community Initiatives, which was established by executive order in 2007, was codified into statute by *Chapter 521 of 2008*. The Act also transferred to the office the Commission on Indian Affairs from the Department of Human Resources and the Commission on African American History and Culture from the Maryland Department of Planning. *Chapter 521* codified placement of the Governor’s Office on Service and Volunteerism within the Office of Community Initiatives and transferred oversight of the two commissions from the Secretary of Human Resources and the Secretary of Planning, respectively, to the Governor.

### **Governor’s Office of the Deaf and Hard of Hearing**

The scope of the Governor’s Office of the Deaf and Hard of Hearing was expanded by *Chapter 216 of 2010* to include individuals who are deaf-blind. Deaf-blind individuals have a

combination of hearing and visual losses that cause difficulties in communicating, especially for children. Although the office was not required to do so by law, the office served the deaf-blind community prior to the enactment of the legislation. The Act also added two members to the Maryland Advisory Council for the Deaf and Hard of Hearing. The two members were the Secretary of Aging, or the Secretary's designee, and an individual with knowledge or expertise relating to the deaf-blind.

### **Transfer of Adult Education and Literacy Services**

*Chapter 134 of 2008* moved adult education, literacy services, and correctional institutions' education programs from the Maryland State Department of Education (MSDE) to the Department of Labor, Licensing, and Regulation (DLLR). The Adult Education and Literacy Services Office in the Division of Workforce Development administers the transferred programs. For a more detailed discussion of this bill, see the subpart "Primary and Secondary Education" of Part L – Education and the subpart "Labor and Industry" of Part H – Business and Economic Issues of this *Major Issues Review*.

*Chapter 134* also expanded the purview of the Education Coordinating Council for Correctional Institutions to include workforce development, renamed the council to reflect the change, and added two members to the council. The council's jurisdiction was transferred from MSDE to DLLR and the Department of Public Safety and Correctional Services. DLLR is required to provide education and workforce skills training programs in the State's adult correctional institutions.

### **Commissions, Councils, and Committees**

#### **Joint Committee on Base Realignment and Closure**

The Joint Committee on Base Realignment and Closure was created by *Chapter 469 of 2007*. The committee is comprised of six members of the House of Delegates and six members of the Senate. In order to accelerate planning and development so that the State is prepared for the influx of jobs and personnel associated with BRAC, the committee is required to provide continuing legislative oversight of the State's response to BRAC-related opportunities and changes. It must also oversee and participate, in cooperation with local and State units, in developing systems and processes that fast track the approval of transportation infrastructure, water and sewer infrastructure, State and local planning processes, affordable housing options, education facilities, and health care facilities and infrastructure.

#### **Commission on Civic Literacy**

*Chapter 160 of 2007* established a Commission on Civic Literacy to promote civic education. The commission is required to meet at least twice annually, with additional meetings subject to the approval of a majority of commission members. The commission will:

- develop programs to educate students in civic discourse;



- identify and support existing civic education programs in Maryland;
- build professional civic education networks; and
- establish an Internet-based clearinghouse of civic education resources.

The Act also authorized the commission to seek, accept, and use funds or resources from any source. The commission must report annually on its activities to the Governor and the General Assembly. The Act terminates in 2012.

### **Baby Boomer Initiative Council**

Individuals born between 1946 and 1964 are generally referred to as the baby boomer generation. The U.S. Census Bureau estimates that there were 78 million baby boomers in the United States as of July 1, 2005. According to the Census Bureau, an estimated 7,918 people turned 60 years old each day in 2006, equivalent to 330 people each hour. *Chapters 506 and 507 of 2007* established a Baby Boomer Initiative Council consisting of representatives of State government and appointed members of the business, education, and aging communities. The council is charged with making recommendations for addressing the needs of the baby boomer population, utilizing baby boomers as a source of social capital, promoting multigenerational civic activities for baby boomers following their exit from career-track work, and studying and documenting health benefits derived from baby boomers' active engagement in multigenerational civic activities. The Act requires the University of Maryland representative on the council to initiate a study documenting the economic and social impact of older workers. Beginning in December 2008, and each year thereafter, the council is required to report its findings to the Governor and the General Assembly. The council terminates in 2011.

### **Maryland Youth Advisory Council**

*Chapter 559 of 2008* established the Maryland Youth Advisory Council to inform the Governor and the General Assembly of issues concerning youth. It consists of 55 young people, appointed by the President of the Senate, the Speaker of the House of Delegates, and the Governor. One senator and one delegate also serve on the council. The council is charged with (1) recommending one legislative proposal each year for possible introduction; (2) conducting public hearings on issues of importance to youth; (3) conducting a public awareness campaign; and (4) submitting a report on its activities to the Governor and General Assembly each year. The Maryland State Department of Education (MSDE) may elect to allow student members to earn school credit for their service on the council.

The terms of the youth members of the council were expanded from nine months to one year under *Chapters 69 and 70 of 2009*. The change was made in order to encompass the period of summer vacation. The Act also required MSDE to allow a youth member up to four lawful absences from school per school year if the youth member is attending to council business.

## **Military and Veterans**

### **Militia**

**Organization and Membership:** *Chapter 735 of 2009* clarified, reorganized, and updated various provisions of law related to the State's organized militia. Changes related to the Maryland Defense Force (MDDF) pertained to the powers of the Adjutant General, the mission of MDDF, the qualifications for membership, and the oaths taken by members. Among the revisions, *Chapter 735* clarified that the Adjutant General is responsible for appointing and removing officers and generally overseeing MDDF. The Act also specified that MDDF may only be drafted into the military service of the United States by the President of the United States and specified the circumstances under which the enlistment period may be extended.

The Maryland militia, with certain exceptions, consists of citizens of Maryland or individuals who are foreign born but are residents of Maryland and have declared an intention to become citizens of the United States. *Chapter 23 of 2010* expanded the pool of eligible individuals to those who are citizens of the United States and who take an oath of allegiance to Maryland.

**Workers' Compensation:** During peace time, enlisted members of the State's organized militia are considered to be covered employees under the State's workers' compensation law, with the State being considered the employer. If an enlisted member is injured during training as part of the Maryland State Guard or on active duty under order of the Governor in time of civil disorder, labor disorder, natural disaster, or other event that requires the support of the State militia, the employee is entitled to receive wage replacement benefits. The amount of the wage replacement benefits are based on the soldier's average weekly wage. To determine the average weekly wage, either the wage provided for active duty under the Public Safety Article or the actual wages earned by the soldier in employment in the National Guard may be used. *Chapter 208 of 2010* added the actual wages earned by the soldier in the soldier's civilian employment at the time of entry into State active duty as a third type of compensation that may be used. The average weekly wage is based on the greatest of those three types of compensation.

### **Veterans**

*Chapter 742 of 2009* established the Maryland Veterans Trust Fund as a special nonlapsing fund which is administered by the Secretary of Veterans Affairs. The money in the fund is used to make grants and loans to veterans and their families, public and private programs that support veterans and their families, and to any other programs that the Secretary considers appropriate. The money is also used to pay the costs of administering the fund. The fund consists of gifts and grants that are given to the Department of Veteran Affairs.

### **Center for Military History**

*Chapter 482 of 2007* established the Center for Military History, consisting of the Maryland Museum of Military History and the Maryland Military Historical Research Center,

within the Maryland Military Department. The center is authorized to assume title to abandoned property in its possession under specified circumstances.

The mission of the Maryland Museum of Military History is to:

- collect, preserve, interpret, and present significant artifacts and artwork relating to military history, including all armed services and the State’s military heritage; and
- convey an awareness, through exhibits, programs, and outreach, of the military service of Marylanders and how that service has helped to preserve freedoms.

The mission of the Maryland Military Historical Research Center is to:

- collect, interpret, preserve, and present documents, photographs, electronic media, and other materials containing information or imagery relating to military history, including all armed services and the State’s military heritage;
- educate the public regarding the military history of the State by providing bona fide researchers with access to its collections; and
- advise the Adjutant General and the Maryland Military Department on matters relating to heraldry, honors, lineage, and the history of organized militia units in the State.

The Military Department provides staff for the center and the Adjutant General will designate its executive director. The Act also authorized the Maryland Military Historical Society, Inc. to engage in fundraising activities on behalf of the center and provide volunteers to support center activities. The volunteers are eligible for workers’ compensation benefits for injuries suffered in the course of their volunteer work for the center, as if they were paid State employees.

## **Immigration**

### **Commission to Study the Impact of Immigrants in Maryland**

Maryland continues to be a major destination for immigrants, with over 20,000 legal immigrants coming to the State each year. In addition, a significant portion of Maryland’s immigrants are undocumented, according to estimates made by private research organizations. *Chapter 553 of 2008* established the Commission to Study the Impact of Immigrants in Maryland. The commission, staffed with experts from the University of Maryland, College Park, is tasked with studying the impact of immigrants of lawful status as well as undocumented immigrants and reporting its findings to the Governor and the General Assembly by January 1, 2011.

## **Task Force on the Preservation of Heritage Language Skills in Maryland**

Legislation was enacted to establish the Task Force on the Preservation of Heritage Language Skills in Maryland and to consider innovative and cost-effective ways to facilitate heritage language learning while encouraging new United States citizens to learn and master English. The preamble to *Chapters 411 and 412 of 2008* noted that public school students in Maryland speak at least 150 different languages, and that the ability to speak and understand foreign languages has become increasingly important for national security and in the global economy. The final report of the task force, comprised of its findings and recommendations, was submitted in January 2009.

## **Miscellaneous**

### **StateStat**

As part of the Managing for Results process, each Executive Branch agency is required to submit a strategic plan to the Secretary of Budget and Management in conjunction with its budget submission. The plan must include a description of the agency's goals and objectives and contain statistics documenting the agency's progress toward meeting them. The Secretary of Budget and Management reviews each agency's strategic plan annually and may recommend appropriate changes to an agency's budget.

*Chapter 7 of 2007* established another management accountability process for State agencies that relies on databases to track agency performance and redirect resources to areas in need. The program, known as StateStat, is expected to facilitate and accelerate the achievement of the Managing for Results goals and objectives. The Act authorized the Governor to direct a State agency to participate in the StateStat process. Each agency selected to participate in StateStat must:

- regularly and frequently submit timely and accurate data, review and analyze its submitted data, and attend accountability meetings to assess its performance;
- continuously review its strategies and tactics to meet its goals; and
- continuously assess its progress toward meeting its goals.

Also, in conducting its audits of Executive Branch agencies, the Office of Legislative Audits is authorized to determine the reliability of an agency's performance measures identified in its strategic plan.

### **State Spending Database**

The Federal Funding and Accountability Act of 2006 required the federal government to establish a searchable web site for all federal grants, contracts, and other funding awarded to public and private organizations. Similarly, as required by *Chapter 659 of 2008* – the Maryland

Funding Accountability and Transparency Act of 2008 – the Department of Budget and Management has developed a free, public, searchable web-based database which includes detailed information on State payments of at least \$25,000. Payments to State employees and retirees as compensation or retirement allowance are not included in the database. The Act also required the Chief of Information Technology, by June 30, 2010, to conduct a study of the feasibility and cost of expanding the web site to search by different elements and include information on other forms of assistance in the amount of \$25,000 or more.

### **State Grantee Database**

Information concerning for-profit or nonprofit entities and associations that are grantees of at least \$50,000 in State aid must be reported by the State agencies providing the grants to the Department of Budget and Management under *Chapters 558 and 559 of 2009*. A report must provide:

- the name, address, and zip code of each grantee that received State aid from the grantor during the previous fiscal year;
- the amount of any State aid provided to the grantee; and
- a description of the State aid provided to the grantee.

The information is available to the public on a web site operated by the Department of Information Technology. The web site must allow an individual to search the information by name of grantee, the name of grantor, and the zip code of any grantee that received State aid. The Acts also authorized the Office of Legislative Audits to conduct an audit or review of a grantee.

## **Elections**

### **Expansion of Voter Access and Voting Rights**

During the 2007-2010 term, the General Assembly passed legislation to make voting more accessible and convenient and to expand voting rights to individuals who were previously disenfranchised.

#### **Early Voting**

The most significant change to the State's election procedures in recent years is the initiation of early voting, an option that will be available to voters for the first time in the 2010 primary and general elections. The General Assembly's efforts to implement early voting began in 2005 when legislation passed establishing a five-day early voting period prior to primary and general elections and specifying the number of early voting polling sites in each county. The Governor's veto of this legislation was overridden by the General Assembly and

became Chapter 5 of 2006. Separate legislation also passed in 2005, vetoed, and overridden to become Chapter 61 of 2006 specified the locations of early voting polling sites in the State's largest counties.

These early voting laws were invalidated by the Maryland Court of Appeals in the case of *Lamone v. Capozzi*, 396 Md. 53 (2006). The court held that the laws were inconsistent with, and in derogation of, certain provisions of the Maryland Constitution, in particular the provisions that specify the date of general elections and that indicate a person is entitled to vote only in the ward or election district in which the person resides.

In response to the court's decision, the General Assembly passed legislation proposing to amend the Maryland Constitution to allow for early voting. **Chapter 513 of 2007**, which was submitted to the voters and approved at the November 2008 General Election, gave the General Assembly the power to pass legislation allowing voters to vote early at polling places in or outside of their election districts or wards or, during the two weeks immediately preceding an election, on not more than 10 days prior to election day. The amendment also clarified the General Assembly's power to provide for absentee voting by voters who are not absent at the time of an election or otherwise unable to vote personally but nevertheless choose to vote by absentee ballot. **Chapter 513** also specified that the previous enactments concerning early voting would not take effect if this amendment were approved, and repealed provisions of the Maryland Code containing those enactments.

Following approval of the constitutional amendment by the voters, the General Assembly passed new legislation in 2009 to institute early voting. **Chapter 445 of 2009** established an early voting period for the 2010 gubernatorial primary and general elections from the second Friday before the primary and general elections through the Thursday before the election, excluding Sunday. On each day, early voting centers are to be open between 10 a.m. and 8 p.m. **Chapter 445** specified a different early voting period for the 2012 primary and general elections from the second Saturday before the primary and general election through the Thursday before the election, including Sunday. For the 2012 elections, early voting centers are to be open from 12 noon to 6 p.m. on the Sunday during the early voting period and from 10 a.m. to 8 p.m. on all other early voting days.

**Chapter 445** required that the number of early voting centers in a county be determined according to the number of registered voters in that county. A county with fewer than 150,000 registered voters will have one early voting center; a county with more than 150,000, but fewer than 300,000 registered voters will have three early voting centers; and a county with more than 300,000 registered voters will have five early voting centers. A voter will be able to vote at any early voting center in a voter's county of residence. The State Board of Elections (SBE), in collaboration with the local board of elections in each county, will designate each early voting center, and SBE and each local board must, beginning 30 days prior to each early voting period, undertake steps to inform the public about early voting and the location of early voting centers in each county.

## **Voter Registration**

Under the Maryland Constitution, generally every citizen of the United States, age 18 or older, who is a resident of the State as of the close of registration prior to an election is entitled to vote. Qualifications to register to vote are set out in the Election Law Article and are similar to the voter eligibility requirements in the constitution, though certain individuals are not qualified to be registered voters. Several bills passed during the 2007-2010 term that altered the statutory qualifications for registration and voting.

***Restoration of Voting Rights for Felons: Chapter 159 of 2007*** allowed an individual convicted of any crime, with the exception of buying or selling votes, to register to vote if not actually serving a court-ordered sentence of imprisonment, including any term of parole or probation, for a felony conviction. Under the previous law, an individual convicted for a second or subsequent time of theft or another “infamous crime” was prohibited from voting for three years after completion of the sentence, and an individual convicted of a second or subsequent crime of violence was permanently prohibited from voting.

***Voting Rights of Individuals with Mental Disabilities:*** In Maryland, a guardian is generally appointed for an individual when a circuit court determines that the individual cannot make or communicate responsible decisions concerning his or her person or cannot manage his or her property and affairs effectively for reasons including mental disability. ***Chapters 203 and 204 of 2010*** altered a former prohibition on registering to vote by all individuals under guardianship for mental disability. The new law provided that an individual under guardianship for mental disability is prohibited from registering to vote only if a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process. The legislation was intended to address concerns that by prohibiting all individuals under guardianship for mental disability from registering, the prior law denied individuals who are competent to vote the right to do so.

***Registration and Voting by Individuals Under 18:*** Maryland law has long allowed an individual under the age of 18 to register to vote if the individual will be 18 by the time of the next succeeding general election. Individuals under 18 are generally not permitted to vote, but 17-year-olds who will be 18 by the time of the general election may vote in the preceding primary election.

***Chapters 270 and 271 of 2010*** amended the law to allow an individual who is at least age 16 to register to vote. Several other states, including Florida, Hawaii, and Oregon, have similar laws that allow individuals under age 18 to “pre-register.” This policy is intended to encourage young people to become engaged in the voting process at an early age and thereby become more involved citizens.

The 2010 enactments also codified the State’s current policy of allowing an individual under age 18 to vote only in a primary election in which candidates are nominated for a general or special election that will occur when the individual is at least age 18. The right of an individual under age 18 to vote in a primary election came into question after the issuance of the

Court of Appeals opinion in *Lamone v. Capozzi*, 396 Md. 53 (2006), which strictly interpreted certain election-related provisions of the Maryland Constitution. However, the Court of Appeals subsequently issued an order in February 2008 that affirmed the constitutionality of allowing 17-year-olds to vote in primary elections.

**Change of Party Affiliation:** Finally, *Chapters 270 and 271 of 2010* eliminated a restriction under which a voter could not change party affiliation during an extended period prior to a primary election and a specified period prior to a special congressional election. The new law instead allowed a voter to change party affiliation at any time that registration is open.

## Voting System

Concerns about the accuracy and security of the State's Direct Recording Electronic (DRE) touch screen voting machines led to enactment of legislation in 2007 mandating a new voting system. The DRE machines do not provide a voter-verifiable paper record of votes cast that would allow the results reported by the machines to be verified. *Chapters 547 and 548 of 2007* required SBE to certify a voting system that provides a voter-verifiable paper record for use in each election beginning in 2010. A "voter-verifiable paper record" includes a paper ballot to be read by an optical scan voting machine. *Chapters 547 and 548* also required a certified voting system to provide access to voters with disabilities in accordance with the federal Voluntary Voting System Guidelines (VVSG) adopted under the Help America Vote Act.

*Chapter 428 of 2009* amended the requirements of *Chapters 547 and 548* by allowing the State's current DRE touch screen voting machines to continue to be used temporarily to provide access to voters with disabilities. Passage of this legislation was necessary because at the time of the 2009 session of the General Assembly, the federal Election Assistance Commission had not yet certified an optical scan voting system as compliant with the VVSG. *Chapter 428* provided that at least one DRE machine would be available in each polling place in addition to the new optical scan machines. The DRE machine would provide access to voters with disabilities but also be available for use by all voters. *Chapter 428* also required that when a suitable voting machine became available that complied with the accessibility requirements of VVSG and provided a voter-verifiable paper record, that machine would be deployed and the DREs could no longer be used.

SBE moved forward with procurement of an optical scan voting system in 2009 in accordance with these statutory requirements, but before a contract could be awarded, funding for the new system was not included in the fiscal 2011 budget. As a result, the 2010 gubernatorial elections will instead be conducted using the State's current DRE touch screen voting system. It is not clear when an optical scan voting system will be procured.

The Attorney General's Office advised that, despite the statutory requirement that an optical scan voting system be used in each election beginning with the 2010 primary election, the Governor acted within his constitutional budgetary powers in not including funding for a new voting system in the fiscal 2011 budget. Absent this funding, SBE is not legally obligated to purchase a new voting system. The Attorney General's Office also advised that the State may



continue to use the current DRE touch screen voting system, which has not been decertified, until the Governor provides funding for a new system.

*Chapter 487 of 2009*, that session’s Budget Reconciliation and Financing Act (BRFA), allowed for the transfer of up to \$2 million from the Fair Campaign Financing Fund to the Maryland Information Technology Development Project Fund for the purpose of purchasing a new optical scan voting system. (For additional information about the Fair Campaign Financing Fund, see the discussion below under “Campaign Finance.”) If the funds are not used for that purpose, the BRFA of 2009 required that they be transferred to the Maryland Election Modernization Fund, which may be used for a variety of purposes to improve the electoral process.

However, a provision of *Chapter 484 of 2010*, that session’s Budget Reconciliation and Financing Act, contained a provision that repealed the language in the BRFA of 2009 requiring the transfer of funds not used for a new voting system to the Election Modernization Fund, and instead required that they revert to the Fair Campaign Financing Fund. This provision ensured the continued availability of \$2 million from the Fair Campaign Financing Fund to subsidize the purchase of an optical scan voting system in the future.

The BRFA of 2010 also required the Department of Legislative Services to hire a consultant to study issues relating to the State’s voting system. The department is authorized to spend up to \$150,000 from the Fair Campaign Financing Fund for the study. The consultant is required to study several issues concerning the cost of continuing to use the State’s current voting system as compared to the cost of obtaining a new optical scan voting system. The consultant is also required to estimate the life span of the State’s current voting system and make recommendations for procuring and implementing an optical scan voting system in a cost effective manner. In making its findings and recommendations, the consultant is required to consult with voting system experts and review the voting system contracts and policies of other jurisdictions. The report of the consultant is due to the Governor and the General Assembly by December 1, 2010.

## **Presidential Elections**

### **National Popular Vote Agreement**

An agreement that would award member states’ electoral votes for the election of the President of the United States to the national popular vote winner was enacted by the General Assembly as *Chapters 43 and 44 of 2007*, thereby entering Maryland into the agreement. The agreement will take effect when a sufficient number of states possessing a majority of the electoral votes nationwide have joined the agreement by enacting the proposal into their state law, thus resulting in the national popular vote winner to be the Electoral College winner in subsequent elections.

National Popular Vote, Inc., a nonprofit organization that has proposed the agreement, indicates that in addition to Maryland four other states (Hawaii, Illinois, New Jersey, and Washington) have enacted the agreement as of May 2010, making up 23% (61) of the 270

electoral votes needed for the agreement to take effect. National Popular Vote, Inc. cites the concentration of presidential campaigning in a minority of closely divided states and the ability of a candidate to win the presidency without winning the national popular vote as shortcomings of the existing Electoral College system.

### **Presidential Primary Date**

At the time of the 2007 General Assembly session, the dates of presidential primaries and caucuses in various states already had been, or were under consideration to be, moved forward in anticipation of the 2008 presidential election. The efforts were intended to gain greater exposure to presidential campaigns and greater relevance in the nomination of party candidates for voters in those states. February 5, 2008, was a heavily targeted date, and a number of primaries and caucuses were held earlier than that. *Chapter 219 of 2007* moved Maryland's presidential primary date from the first Tuesday in March to the second Tuesday in February, which fell on February 12 in 2008.

### **Special Congressional Election**

An anticipated vacancy in the office of Representative for the Fourth Congressional District (Montgomery and Prince George's counties) in 2008 led to the introduction of emergency legislation late in the 2008 session to allow for a single, special general election to be held to fill the vacancy without a preceding special primary election. It was estimated at the time that the cost of each primary or general election would be at least \$50,000 for the State Board of Elections, as much as \$600,000 for Montgomery County, and approximately \$700,000 for Prince George's County. Under existing State law, because the regular primary election had already occurred, the Governor would have had the option of calling a special primary election and a special general election to fill the vacancy or allowing the office to remain vacant for the remainder of the term.

*Chapter 118 of 2008* temporarily authorized the Governor, in the event of a congressional vacancy occurring after the date of the regular primary election, to call a special general election to fill the vacancy, without a preceding special primary election. A special congressional election in the Fourth Congressional District was held on June 17, 2008, and *Chapter 118* terminated on December 31, 2008.

### **Redistricting – Counting of Prison Inmates**

During the 2010 session, with congressional and legislative redistricting approaching, the General Assembly passed legislation (*Chapters 66 and 67 of 2010*) that required population counts used after each decennial census to create congressional districts, legislative districts of the General Assembly, and county and municipal legislative districts to exclude individuals who, as determined by the decennial census, were incarcerated in State or federal correctional facilities and were not State residents prior to their incarceration. *Chapters 66 and 67* also required that individuals incarcerated in State or federal correctional facilities who were residents of the State

before their incarceration be counted at their last known residence before incarceration. For an additional discussion of the new law, see the subpart “General Assembly” within this Part C.

## **Election of Circuit Court Judges**

Circuit court judgeships differ from those of the District Court and appellate courts in that they are filled by contested elections. Candidates are typically nominated for the general election by the Democratic and Republican parties in the primary election and will “cross-file,” appearing on both the Democratic and Republican primary election ballots, needing to win on only one. Because the Democratic and Republican parties do not allow voters who are not affiliated with their parties to participate in their parties primary, unaffiliated voters are not able to participate in the nomination of circuit court judge candidates in the primary election.

Attempts have been made in the past to change the system of selecting circuit court judges and changes were again proposed during the 2007-2010 term. *Senate Bill 46 of 2007 (failed)* would have allowed any registered voter in a county, regardless of party affiliation or lack of party affiliation, to vote in the primary election to nominate circuit court judge candidates. *House Bills 290 and 1363 of 2007, House Bill 1275 of 2008, and Senate Bill 833/House Bill 1385 of 2010 (all failed)* proposed constitutional amendments that would have altered the method of selection of circuit court judges to, in some manner, include retention elections (approval or rejection of incumbent judges) rather than contested elections.

For an additional discussion of this issue, see the subpart “Judges and Court Administration” of Part F – Courts and Civil Proceedings of this *Major Issues Review*.

## **Campaign Finance**

### **Public Financing**

**General Assembly Campaigns:** The General Assembly created a Study Commission on Public Funding of Campaigns in Maryland in 2002 to, among other things, make recommendations for implementing a system of public funding of statewide and legislative election campaigns in the State. The commission made recommendations in 2004 for such a system, and legislation proposing public campaign financing systems (for the most part only for legislative campaigns) had been introduced in each year since. No proposals, however, have passed to date.

*Senate Bill 546 of 2007 (failed)* proposed a voluntary system that would have provided full public funding for interested General Assembly candidates. The system was substantially similar in structure to the system originally proposed by the study commission in 2004 for General Assembly campaigns (the commission’s proposal would have also provided matching funding for statewide candidates) and the systems proposed in much of the legislation introduced from 2004 through 2008. An interested candidate would have been required to collect a certain amount of private contributions from registered voters in the candidate’s legislative district or subdistrict to qualify for public financing. Qualifying candidates would have received specified

amounts of funding based on the office being sought, whether or not a candidate was opposed, and the level of any opposition spending.

The system under *Senate Bill 546 of 2007* would have been administered by a newly created commission and first implemented for the 2010 elections. Funding sources for the public campaign financing system would have included a tax check-off system, in which taxpayers would have had the option of directing \$5 of their individual income tax liability towards the public campaign financing system; abandoned property revenue; and a transfer of the balance of money in the Fair Campaign Financing Fund (discussed below). Both the tax check-off system and the use of abandoned property revenue would have utilized existing revenue that otherwise is directed to the State's general fund.

The Fair Campaign Financing Fund – first established under Chapter 729 of 1974 – contains funding for an existing public campaign financing system for gubernatorial tickets that has not been utilized in a number of years and that the Study Commission on Public Funding of Campaigns in Maryland determined more than likely does not allow for a gubernatorial ticket to launch a credible campaign effort. The fund generated revenue from a tax add-on system in which taxpayers had the option of contributing money towards the public campaign financing system on their individual income tax return. As of May 27, 2010, the fund contained \$5.5 million and since fiscal 2005 had received in the range of \$100,000 - \$125,000 each year from the tax add-on system. As discussed below, however, the tax add-on system was repealed during the 2010 session.

*Senate Bill 663 of 2009 (failed)* represented somewhat of a departure from bills introduced in previous years. While proposing a similar basic structure for a voluntary, full public campaign financing system for General Assembly campaigns as had been included in previous legislation, *Senate Bill 663* would have also, among other things, increased existing limits on private campaign contributions and authorized county governments to enact laws to regulate public finance activity for county elective offices. A number of the specific requirements and aspects of the public campaign financing system for General Assembly candidates under *Senate Bill 663*, as amended, were also different than proposals in previous years, including a requirement that the State Board of Elections would have administered the system rather than a newly created commission. The system would have first been implemented for the 2014 elections.

Similar to *Senate Bill 546 of 2007*, funding sources for the system under *Senate Bill 663* would have included a tax check-off system (allowing \$5 of individuals' State income tax liability to be directed to public campaign financing) and a transfer of the balance of the Fair Campaign Financing Fund, though not the abandoned property revenue. The bill would have repealed the existing public financing system for gubernatorial tickets, including the Fair Campaign Financing Fund and the tax add-on system.

***Elimination of Tax Add-on for Gubernatorial Campaigns:*** As discussed under the Voting System and Campaign Finance Reports subheadings in this Part, the BRFA's of 2009 and 2010 contain certain authorizations to transfer funding from the Fair Campaign Financing Fund

(FCFF) to be used for other elections-related purposes. The Attorney General’s Office indicated during the 2009 session that money in the fund, while contributed by taxpayers for public financing of gubernatorial campaigns, could be transferred from the fund if the legislature found that the fund could not operate as originally intended and the transfer was made for a purpose that would fulfill the general intent of the contributors. The transfer authorizations in the BRFAs of 2009 and 2010 are preceded by a statement that the General Assembly finds that FCFF “cannot operate as originally contemplated.” The BRFA of 2010 eliminated the tax add-on system generating funding for FCFF, preventing taxpayers from making further contributions to the fund for public financing of gubernatorial campaigns.

### **Campaign Finance Reports**

***Video Lottery Terminal Gaming Referendum – Campaign Finance Reports: Chapter 5 of the 2007 special session*** proposed a constitutional amendment to authorize the issuance of a limited number of video lottery operation licenses in the State, subject to specified requirements and conditions, and was submitted to Maryland voters’ for approval or rejection at the 2008 general election. ***Chapter 4 of the 2007 special session*** required a ballot issue committee that is formed to promote the success or defeat of the constitutional amendment proposed by ***Chapter 5*** to file an additional campaign finance report before the 2008 general election and required a corporation that cumulatively spent more than \$10,000 on campaign material to promote the success or defeat of the constitutional amendment to file campaign finance reports on the same dates on which a ballot issue committee was required to file reports. ***Chapter 4*** also required a corporation to include on all campaign material published or distributed by the corporation to promote the success or defeat of the constitutional amendment specified information identifying those responsible for the campaign material.

***Chapter 620 of 2008*** amended the requirements of ***Chapter 4*** to require any *person* (including a corporation) that made cumulative expenditures of more than \$10,000 to promote the success or defeat of the constitutional amendment proposed by ***Chapter 5*** to report specific information to SBE within seven days of making cumulative expenditures of more than \$10,000 and to subsequently file campaign finance reports on the same dates, in the same manner, and subject to the same sanctions as a ballot issue committee. In addition, any person, other than an individual who used personal funds and acted independently of others in making expenditures, was required to include on all campaign material published or distributed by the person to promote the success or defeat of the constitutional amendment specified information identifying the person responsible for the campaign material.

***Online Campaign Finance Reporting System:*** The BRFA of 2010 (***Chapter 484***) authorized the transfer of up to \$500,000 from the Fair Campaign Financing Fund to SBE for the purpose of implementing an online campaign finance reporting system. An online system will allow for reporting from any computer with an Internet connection and is expected to result in reduced costs of system maintenance and modifications, in comparison to the current software-based electronic filing system.

***Additional Campaign Finance Report for Ballot Issue Committees:*** In addition to campaign finance reports filed on or before the second Friday before a general election and on or before the third Tuesday after a general election, ***Chapter 409 of 2010*** required ballot issue committees to also file a report on or before the fourth Friday before a general election.

## **Ethics**

There were no major Maryland Public Ethics Law initiatives during the 2007 to 2010 legislative term. Instead, the focus of legislative action in this area was on individual bills that made selective modifications to the existing law.

### **In General**

***Chapter 200 of 2007*** made two changes to the Maryland Public Ethics Law. The first provision amended the definition of “interest” under the ethics law to expand the exemption for various kinds of retirement trusts and added as another exemption college savings trusts. Until the enactment of ***Chapter 200***, the law exempted only those retirement trusts provided under Sections 401 and 501 of the federal Internal Revenue Code. This had a bearing primarily on the requirement of officials to report interests on their annual financial disclosure statements. The bill also increased the lobbyist registration fee from \$50 to \$100. The fees are deposited in the Lobbyist Registration Fund, which is used to offset the expenses of the lobbying regulation function of the State Ethics Commission.

### **Liquor Control Boards**

Somerset and Worcester counties are two of only five counties in the State that regulate alcoholic beverages by means of a liquor control board. A liquor control board is authorized by statute to operate county liquor dispensaries that make wholesale or retail “package” sales of certain types of alcoholic beverages to regulate price and competition within the county. In 2009, the State Ethics Commission sought an opinion of the Attorney General as to whether liquor control boards are State or local entities for the purpose of applying the Maryland Public Ethics Laws. In response to the Attorney General’s determination that a liquor control board is a State entity, ***Chapter 170 of 2010*** added the liquor control boards for Somerset and Worcester counties to the definition of “executive unit” for purposes of governance by the Maryland Public Ethics Laws.

### **Financial Disclosure and Conflict of Interest**

#### **Local Jurisdictions and Boards of Education**

***Chapter 277 of 2010*** required county and municipal corporation conflict of interest and financial disclosure provisions for elected local officials and school board members to be equivalent to or exceed State conflict of interest and financial disclosure requirements, subject to local modifications if necessary. The provisions or regulations must require an elected local official or school board member to file a financial disclosure statement on or before April 30 of

each year. The local ethics commission or the appropriate entity of each county and municipal corporation is required to certify to the State Ethics Commission on or before October 1 of each year that the county or municipal corporation is in compliance with the requirements for elected local officials. A candidate for election to an office that is classified as an “elected local official” is also required to comply with the financial disclosure requirements of the Maryland Public Ethics Laws.

### **Financial Disclosure – Electronic Filing**

State officials, candidates for State office, and mid-to-high-level State employees (termed “public officials” in the Maryland Public Ethics Law) are required to file, under oath, annual financial disclosure statements with the State Ethics Commission. In addition, regulated lobbyists must file, under oath, various reports with the commission, detailing information such as their income derived and expenses incurred from lobbying activities and their campaign contributions for elective offices. *Chapter 24 of 2008* required the oath or affirmation accompanying a mandated disclosure that is filed electronically by a State official, public official, candidate for State office, or regulated lobbyist to be made by an “electronic signature” made expressly under the penalties for perjury, rather than by a signed statement on paper. If a financial disclosure statement is filed in paper format, the oath or affirmation continues to be a signed statement on paper.

### **Conflicts of Interest – Department of Agriculture**

The Maryland Public Ethics Law imposes conflict of interest standards on officials and employees in the Executive Branch agencies that perform a regulatory function so that officials and employees will not have financial interests in entities that are subject to their agency’s authority. This may sometimes result in agencies having difficulty employing qualified individuals with needed expertise. *Chapter 414 of 2007* provided an exemption from certain conflict of interest provisions for employees of the Maryland Department of Agriculture who own or operate farms. However, the employee is prohibited from exercising any regulatory or supervisory authority over farming activities of the individual’s own farm.

Effective in March 2010, the Department of Agriculture, in consultation with the State Ethics Commission, adopted regulations relating to the affected employees. Additionally, both agencies are required to jointly report, on or before December 31, 2010, on the number of employees hired after October 1, 2007, who own or operate a farm, the positions for which those employees were hired, and how the department addressed any conflicts of interest.

### **Conflicts of Interest – Procurement**

*Chapter 283 of 2008* removed termination dates for several exemptions from the conflict of interest provisions codified in the Maryland Public Ethics Law that relate to procurement contracts for architectural and engineering (A&E) services.

In general, individuals or firms that assist in drafting specifications for a procurement contract may not submit a bid or proposal for that procurement, subject to certain exemptions. A

variety of exemptions have been made for architectural and engineering services and several were scheduled to terminate in 2008.

An enactment in 2004 that established an exemption for A&E services if the value of a construction project subject to the exemption was no more than \$40 million, increased to \$100 million in 2006. The provision also required the Maryland Department of Transportation to issue annual reports on the implementation of the law's provisions, including the impact on small businesses and minority business enterprises. The provisions were scheduled to terminate September 30, 2008, but **Chapter 283** made the exemption permanent.

A 2006 enactment allowed A&E firms to bid on a construction contract if the design services did not involve lead or prime design responsibilities or construction phase responsibilities on behalf of the State and (1) the construction contract was valued at not less than \$2.5 million and not more than \$100.0 million; or (2) the payment for the A&E services was \$500,000 or less, regardless of the amount of the procurement contract. The provision was scheduled to terminate on June 30, 2008, and **Chapter 283** made the exemption permanent.

### **Conflicts of Interest – WSSC and M-NCPPC – Appointments**

**Chapter 527 of 2008** required closer scrutiny of possible conflicts of interest during the appointment process for members of the Washington Suburban Sanitary Commission (WSSC) and the Maryland-National Capital Park and Planning Commission (M-NCPPC).

The enactment provided that the county executive of Montgomery or Prince George's counties (or the county executive's designee) is required to interview applicants who are selected for appointment to WSSC concerning the applicants' possible conflicts of interest. Furthermore, the enactment authorized a designee of the Montgomery County Executive to request documents from Montgomery County applicants. The Act also changed the period covered by financial disclosure statements for applicants for appointment to WSSC and M-NCPPC and changed the deadline for submission of the statements by M-NCPPC applicants. Finally, **Chapter 527** requires the county executive of Prince George's County (or the county executive's designee) to inform the Prince George's County Council, before appointment, of possible or potential conflicts of interest of applicants who are selected for appointment to WSSC.

## **Planning and Zoning**

### **Frederick County**

The Maryland Public Ethics Law contains special ethics requirements that apply to land use and zoning and planning matters in Montgomery, Prince George's, and Howard counties, respectively. Under **Chapter 474 of 2007** a similar provision was added for Frederick County. The enactment:

- prohibits applicants for certain changes in zoning regulations and land use plans from making campaign contributions to Frederick County commissioners within two years of



filing the application or within 30 days from the date either final action is taken on the application or it is withdrawn – whichever is earlier;

- mandates that a Frederick County commissioner abstain from voting on or otherwise participating in proceedings for the application if the commissioner received campaign contributions from the applicant during that period;
- requires disclosure of *ex parte* communications between a Frederick County commissioner and an applicant while an application is pending;
- requires the county manager to prepare summary reports of all affidavits and disclosures that have been filed in the application case files at least twice each year;
- authorizes the Frederick County Ethics Commission or another aggrieved party of record to assert a violation of the provisions of the enactment as a procedural error in an action for judicial review of the application, and provide that if the court determines that a violation has occurred, it must remand the case back to the Board of County Commissioners for reconsideration of the application; and
- provides that knowing and willful violations of the provisions are misdemeanor crimes and subjects those who are convicted of those violations to up to six months imprisonment or a fine of up to \$1,000 or both.

### **Howard County**

*Chapter 138 of 2010* specified that, for purposes of the Maryland Public Ethics Law’s disclosure provisions specific to Howard County, the definition of “applicant” includes, as to an application for a zoning regulation, any person authorized to sign the application. The enactment also requires the administrative assistant to the zoning board and the administrator of the county council to prepare a summary report compiling all affidavits and disclosures filed under the Howard County specific disclosure provisions promptly on receipt, instead of at least twice each calendar year. This summary report must be available for immediate inspection by the general public upon written request.

### **Procurement**

The 2007-2010 legislative terms resulted in the enactment of several landmark pieces of procurement legislation, highlighted by the first statewide living wage law in the country. Procurement legislation enacted during the term also reauthorized, expanded, and streamlined programs to benefit small and minority-owned businesses that seek to do business with the State; made State construction projects and purchasing practices more “green”; and enhanced the transparency of State procurement practices for vendors and citizens.

## Living Wage

*Chapter 284 of 2007* made Maryland the first state in the nation to require eligible service contractors to pay a living wage to employees who perform work under State service contracts. For fiscal 2008, the living wage was originally set at \$11.30 per hour for Tier 1 jurisdictions (Baltimore City and five counties in the Baltimore-Washington corridor), and \$8.50 for Tier 2 jurisdictions (*i.e.*, all other areas of the State). The two-tier system was established to account for disparities in the cost of living across the State. The Tier 1 rate applies to eligible contracts in which contract services valued at 50% or more of the total value of the contract will be performed in the six jurisdictions subject to the higher rate, as determined by the contracting agency. The Tier 2 rate applies to all other eligible contracts. The Commissioner of Labor and Industry must adjust these rates annually for inflation and as of September 2009, the inflation-adjusted living wage rates were \$12.25 for Tier 1 and \$9.21 for Tier 2. Additionally, every five years, the commissioner must evaluate the inflation-adjusted living wage rates and determine whether counties are appropriately placed in each of the tiers. State contractors who subsidize the cost of health insurance for their employees may reduce the wages they pay by all or part of the hourly cost of their share of the insurance premiums, and the commissioner may allow employers who contribute to employees' deferred compensation plans to reduce the wages they pay by up to \$.50 per hour.

*Chapter 284* exempted service contracts valued at less than \$100,000 from the living wage requirement, as well as contracts that provide emergency services to prevent or respond to imminent threats to public health or safety. The following employers are also exempt:

- employers with fewer than 10 employees and contracts valued at less than \$500,000;
- public service companies;
- nonprofit organizations;
- other State agencies; and
- county governments (including Baltimore City).

Contractors for any of the 19 State agencies that are exempt, in part or in full, from most of the State procurement law do not have to pay the living wage. The living wage legislation did not require employers to pay the living wage to employees who spend less than half of their time in any given week working on the contract, who are under the age of 17, or who work full-time for less than 13 consecutive weeks for the duration of the contract.

## Fiscal Effect

The Department of Legislative Services (DLS) was required by *Chapter 284* to complete a study of the fiscal and economic effects of the Act on the public and private sectors by

January 1, 2009. The study found that approximately two-thirds of service contracts were subject to the living wage mandate, with the remaining contracts falling under the legislation's various exemptions. Case studies of eight affected contracts found that wage rates for those contracts increased by between 13.0% and 25.6%; however, the findings could not be generalized to all service contracts. In 2010, the Department of General Services (DGS), which procures most of the service contracts affected by the law, estimates that the living wage has increased overall procurement costs by about \$500,000 annually, consistent with DLS's original projection. It reports that substantially more than half of its service contracts are now exempt from the living wage requirement for various reasons, including the nonprofit status of the contractor, size of the contract (less than \$500,000), or the size of the firms involved (fewer than 10 employees).

### **Minority Business Enterprises**

After reauthorizing the State's minority business enterprise (MBE) program in 2006, the General Assembly spent the 2007-2010 term expanding its scope and facilitating MBE participation. The MBE program establishes a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs, including 7% to African American-owned businesses and 10% to woman-owned businesses. The program applies to all State procurements for goods and services. Before a minority-owned business may participate in the program, the Maryland Department of Transportation (MDOT) must certify that the business meets statutory requirements regarding its legitimacy as a business enterprise as well as the minority status and personal net worth of its ownership.

*Chapters 267 and 268 of 2009* required that the personal net worth cap for business owners that determines eligibility for the State's MBE program, previously set at \$1.5 million, be adjusted annually according to the Consumer Price Index, and that retirement savings plan assets up to \$500,000 be exempt from the calculation of personal net worth. As of January 2010, the inflation-adjusted cap was \$1,504,585.

*Chapters 229 and 230 of 2010* required MDOT to promote and facilitate certification of MBEs that are already certified as minority-owned businesses by the U.S. Small Business Administration or by a county whose certification process is substantially similar to the State's process. *Chapters 231 and 232 of 2010* required MDOT to promote and facilitate the electronic submission of some or all of an application seeking certification as an MBE. Currently, applicants may complete a portion of the application online but must print out and mail the completed application and all supporting documentation. *Chapters 578 and 579 of 2010* required MDOT to complete its review of an application for MBE certification and notify an applicant of its decision within 90 days of receiving a complete application. After notifying the applicant in writing, MDOT may extend the notification requirement by no more than 60 days.

*Chapters 600 and 601 of 2008* required the State Treasurer, the Maryland Automobile Insurance Fund, the Injured Workers' Insurance Fund, and the State Retirement and Pension System to attempt to use MBE brokerage and investment management firms to the greatest extent feasible and consistent with their fiduciary responsibilities. Together, these four entities

manage and invest almost \$50 billion in State funds. They must work with the Governor's Office of Minority Affairs to develop guidelines to implement the provisions of *Chapters 600 and 601* and use a wide variety of media, including their web sites, to publicize the brokerage and investment management services needed.

*Chapter 398 of 2010* required that any hospital or institution of higher education that is not already subject to the MBE requirements (*i.e.*, private institutions and the University of Maryland Medical System) and that receives a grant of at least \$500,000 funded by State general obligation bonds must submit an annual report to the Governor's Office of Minority Affairs (GOMA) detailing the extent to which the recipient has contracted with, or intends to contract with, MBE firms to work on the funded project. The reporting requirement in *Chapter 398* extends through fiscal 2014 for grant recipients and fiscal 2015 for GOMA.

### **Small Business Enterprises**

The Small Business Reserve Program (SBR), established in 2004 and originally scheduled to terminate in 2007, requires most State procurement units to structure their procurements so that at least 10% of the total dollar value of their procurements is made directly to small businesses. Under regulations adopted by DGS, each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 10% of its forecasted spending to contracts for small businesses serving as prime contractors. Businesses must self-certify to DGS that they meet the statutory and regulatory criteria for small business enterprise status. The program was reauthorized twice during the 2007-2010 legislative term: *Chapter 514 of 2007* extended the SBR program until September 30, 2010, and *Chapter 22 of 2010* reauthorized it again until September 30, 2016.

*Chapters 388 and 389 of 2008* raised the average gross sales ceilings used to determine firms' eligibility for the Small Business Reserve Program, and established a new ceiling for architectural and engineering firms. As with the prior eligibility criteria, the new ceilings vary by industry. The laws also added the Maryland Transportation Authority and the Department of Information Technology to the list of agencies subject to the program. To monitor the impact of the new ceilings on current SBR participants, *Chapters 388 and 389* required DGS to prepare a report by October 2011 detailing any adverse effects on those firms.

### **“Green” Buildings and Purchasing**

Environmental protection was a major theme in the area of procurement law during the term, with several pieces of legislation aligning State procurement policies with environmental objectives.

#### **High-performance Buildings**

*Chapter 124 of 2008*, introduced on behalf of the Administration, required new and substantially renovated State buildings and new school buildings to be constructed as high-performance buildings. High-performance buildings are those that achieve at least a silver rating under the U.S. Green Building Council's Leadership in Energy and Environmental Design

(LEED) program or a comparable rating under any other nationally accepted standard. Unoccupied State buildings are exempt from the requirement, and other buildings may obtain waivers from this requirement, if necessary. *Chapters 527 and 528 of 2010* expanded the program to include community college capital projects that receive State funds.

As of January 2010, only three State-funded buildings have been built as high-performance buildings, and four public schools have achieved LEED gold certification. An additional 31 schools are seeking LEED silver or gold certification.

### **Green Maryland Act**

*Chapters 593 and 594 of 2010* promoted the use of environmentally preferable purchasing throughout State government through a variety of study and reporting requirements and the establishment of the Maryland Green Purchasing Committee. The committee must provide information and assistance regarding environmentally preferable purchasing to State agencies by, among other things, developing and implementing a strategy that may include statewide policies, guidelines, programs, and regulations, and developing a “best practices” manual. *Chapter 593 and 594* also required DGS to study and report on the use of compost as a fertilizer on State property and established a goal for DGS to compost all landscape waste on State property that it operates. The percentage of paper purchased by DGS that must be recycled increased from 40% to 90%.

### **Biofuel**

After requiring half of all diesel-powered vehicles in the State fleet to use a fuel blend consisting of 5% biodiesel during the 2006 session, through *Chapter 623 of 2007* the General Assembly extended the biodiesel requirement to half of all diesel-powered heavy equipment and heating equipment owned by the State. However, *Chapter 623* exempted any equipment whose manufacturer’s warranty would be voided if biodiesel fuel causes mechanical failure. Biodiesel fuel is made from renewable sources such as vegetable oils and animal fat, so it reduces harmful emissions and is less flammable than regular diesel fuel.

### **Preferences for Veteran-owned Businesses**

*Chapter 695 of 2008* added a 2% price preference for veteran-owned small businesses and a 3% price preference for disabled veteran-owned small businesses to the existing price preference for all small businesses under the State’s Small Business Preference (SBP) Program. *Chapter 695* also increased the maximum small business price preference for any procurement issued under the program from 5% to 8%. Four State agencies participate in the SBP program, and only a small fraction of their procurements are issued under the program’s authority.

*Chapters 507 and 508 of 2010* established a procurement preference program in which, beginning July 1, 2012, each State agency tries to award 0.5% of the value of its procurement contracts to small businesses owned and operated by veterans. To participate in the program, veteran-owned businesses must be verified by the Center for Veterans’ Enterprise within the U.S. Department of Veterans Affairs.

## Transparency and Cost-efficiency

The Maryland Funding Accountability and Transparency Act, *Chapter 659 of 2008*, required the Department of Budget and Management to develop a free, public, searchable web-based database by January 1, 2009, that includes detailed information on State payments of at least \$25,000. A more detailed discussion of this issue may be found under the subpart “State Agencies, Offices, and Officials” within Part C – State Government of this *Major Issues Review*. In an effort to centralize advertising for State and local government procurement opportunities, *Chapter 525 of 2008* required State agencies and local governments to publish procurement notices and awards on eMaryland Marketplace, the State’s web-based procurement portal. The requirement extended only to procurements issued as competitive sealed bids, competitive sealed proposals, or noncompetitive negotiations and applies only to procurements valued at \$25,000 or more. Most State agencies already were using eMaryland Marketplace, so the effect of *Chapter 525* was felt mostly by local governments. However, *Chapter 525* did not prevent local governments from operating their own procurement systems.

*Chapter 677 of 2009* required State Executive Branch agencies and local governments to facilitate participation by State and local agencies and nonprofit organizations in intergovernmental cooperative purchasing agreements for services and supplies. However, contracts for capital construction and improvements, as well as contracts valued at less than \$100,000 were exempted. Moreover, State and local governments may exempt any contract for which they determine that intergovernmental purchasing (1) is not in their best interest; (2) undermines the contract’s timing or effect; or (3) interferes with the ability to meet MBE or other related goals.

## Personnel

### State Employee Compensation

#### Impact of Budget Actions on State Employees

The impact of budget actions on State employee compensation and benefits became increasingly negative over the 2007-2010 term. In fiscal 2008, eligible regular State employees received State matches of \$600 for employee contributions to individual deferred compensation plans; merit increases worth between 1.7% to 3.9% of the standard salary schedule for employees who performed at or above established standards for their classification; and a cost-of-living increase of 2.0%, applied uniformly across all positions. While State employees received similar compensation enhancements in fiscal 2009 that they had received in fiscal 2008, a mid-year executive order implementing a furlough and temporary salary reduction plan reduced State employees’ salaries by around 1.5%. In fiscal 2010, however, State employees received no compensation enhancements, and the deferred compensation match was eliminated. Furthermore, a furlough and temporary salary reduction plan caused State employee salaries to fall by an average of 2.6% in 2010. State employees will again not receive cost-of-living

increases, merit increases, or deferred compensation matches in fiscal 2011, and furloughs and temporary salary reductions will continue into a third year.

The size of the regular Executive Branch State workforce also decreased as a result of budgetary actions over the four-year term. At the end of fiscal 2007, there were 53,364 positions in the Executive Branch, excluding higher education. The corresponding legislative appropriation for fiscal 2011 was for 51,344 positions, resulting in a reduction of 2,020 positions. In addition, the fiscal 2011 budget directs the Governor to eliminate an additional 500 positions from across the Executive Branch through attrition and gives the Governor the authority to use financial inducements to encourage the incumbents in those positions to leave State service.

### **Other Benefits for State Employees**

While employee compensation was negatively impacted by the State's fiscal situation, some new benefits were granted in fiscal 2009 and 2010. *Chapter 20 of 2008* increased the number of hours of unused annual leave an employee in the State Personnel Management System may carry over from one year to the next from 400 hours (50 days) to 600 hours (75 days). The Act did not, however, increase the amount of annual leave that may be reimbursed at the termination of State employment.

Also, under new regulations adopted just before the start of fiscal 2010, same-sex domestic partners of State employees and their dependents became eligible for coverage under the State's health insurance plan. As a result of the February 2010 opinion by the Attorney General regarding the recognition of same-sex marriages performed outside of the State, the Department of Budget and Management (DBM) updated its benefits program to include same-sex spouses as eligible dependents beginning in fiscal 2011.

### **Public Safety Employees**

#### **Benefits for Emergency Responders**

The General Assembly provided certain emergency responders with additional benefits in 2009. *Chapters 518 and 519 of 2009* provided hazardous material response team employees of the Maryland Department of the Environment with the same death benefit that other public safety employees qualify for in the event they are killed in the line of duty. The Acts defined hazardous material response team employees as individuals who are on call 24 hours a day to provide emergency response to a discharge of oil or a release of hazardous material or other emergency response activity.

*Chapter 307 of 2009* required the Secretary of Budget and Management to provide an option to purchase up to \$200,000 of additional life insurance coverage to State employees who fly in a helicopter or scuba dive in the course of their employment with the State or, as a result of their employment with the State, face a significant likelihood of receiving a less favorable life insurance rating than other State employees.

### **State Correctional Officers' Bill of Rights**

The Law Enforcement Officers' Bill of Rights was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. But while it extends to police officers of specified State and local agencies, it does not extend to any correctional officers in the State. *Chapter 194 of 2010* addressed this situation by granting employment, investigation, and discipline-related rights to State correctional officers who are employees of the Department of Public Safety and Correctional Services working in a State correctional facility whose duties relate to the investigation, care, custody, control, or supervision of inmates.

### **Employment Categories and Protections**

Continuing its work from the prior term, the General Assembly dedicated a significant amount of attention to employment categories and protections during the past four years. The Special Committee on State Employee Rights and Protections, which had been created by the Legislative Policy Committee in 2005, reported in 2006 that the Governor's Appointments Office under the Administration that took office in 2003, had directed an effort to replace at-will State employees and took action that was arbitrary and inconsistent with improving government. The report also found that portions of State law were ambiguous or inconsistent in establishing employee protections. For further information about the Special Committee on State Employees Rights and Protections, see the "General Assembly" subpart of this Part C.

Subsequently, the General Assembly passed *Chapter 516 of 2007*, which prohibited the Governor's Appointments Office from directing or overruling an appointing authority, the Secretary of Budget and Management, or any unit in DBM regarding a decision to appoint, promote, transfer, reassign, discipline, or terminate an employee under the appointing authority's jurisdiction. The Act allowed an appointing authority to delegate authority to act on its behalf, but only to an employee or officer under the appointing authority's jurisdiction. The Act also prohibited an appointing authority from delegating the final decision on whether to terminate an employee.

*Chapter 592 of 2007*, the State Employees' Rights and Protections Act of 2007, also addressed many of the special committee's recommendations. The legislation clarified State law, increased employee protections, and created a private right-of-action for political firings. The Act also required the Department of Legislative Services to study at-will employment and make recommendations for legislative and administrative changes to the State's personnel systems.

After the Department of Legislative Services completed the study required by *Chapter 592* and issued a report in 2008, the General Assembly implemented many of the department's recommendations via *Chapter 690 of 2009*. The Act repealed the automatic at-will status of a number of groups of employees throughout State government, including the Department of Business and Economic Development, the Maryland State Department of Education (MSDE), and several health-related commissions. The Act also limited the number of



special appointment positions in the Office of the Attorney General that may be filled with regard to political affiliation, belief, or opinion.

**Chapter 690** also allowed for flexibility in recruiting for certain skilled and professional service positions in the State Personnel Management System and replaced the Joint Committee of Fair Practices with the Joint Committee on Fair Practices and State Personnel Oversight. The Act required the Secretary of Budget and Management, on December 31 of each gubernatorial election year, to submit a report similar to the federal *Plum Book* to the Governor and the Presiding Officers of the General Assembly concerning individuals employed in the State with regard to political affiliation, belief, or opinion. The Act also required the Secretary of Budget and Management, in consultation with department secretaries and agency heads, to evaluate all skilled service and professional service positions considered special appointments to determine whether the positions should remain special appointments. The Secretary must report on the evaluation by January 1, 2012.

### **Maryland Whistleblower Law – Confidentiality**

The General Assembly further protected State employees in 2009 by passing **Chapter 359**, which required confidential treatment of information obtained in the course of an investigation of an alleged violation of the Maryland Whistleblower Law.

### **State Employee Appraisals**

In 2010, State employee performance appraisals were also changed upon the recommendations of the Performance Appraisal Task Force (task force), which was established in November 2008 as a result of collective bargaining negotiations between the State and the exclusive bargaining representatives of State employees. The task force was charged with reviewing employee performance appraisal procedures. **Chapter 142 of 2010** authorized employee performance appraisals to continue to be conducted semiannually but made one annual appraisal – the mid-year performance appraisal – an informal evaluation that is excluded from the grievance process. The Act also established that employees may only be given a rating of outstanding, satisfactory, or unsatisfactory in a performance appraisal and that employees do not have to prepare a self-assessment as part of the appraisal process. Finally, the new law allowed anonymous surveys to be used to evaluate the performance of managers or supervisors only if their supervisors requires them.

### **Collective Bargaining**

A significant number of collective bargaining measures passed over the four-year term, including several bills that provided specific collective bargaining rights to particular groups of State employees.

### **Revisions**

Chapter 62 of 2006, enacted by the General Assembly's override of the veto of Senate Bill 348 of 2006, amended a number of laws that govern collective bargaining for many State

employees. The changes constituted the first revisions to the collective bargaining process that was first codified in 1999. Generally, Chapter 62:

- expanded the definition of collective bargaining to include the administration of terms and conditions of employment and the voluntary adjustment of a dispute or disagreement between authorized representatives of employees and their employer that arises under a memorandum of understanding or other written understanding;
- made the State Labor Relations Board an independent unit of State government and altered the board's membership;
- codified those practices that constitute unfair labor practices by employers;
- required DBM to provide an exclusive representative with information regarding employees in a bargaining unit, specifically with respect to the employees' names, position classification, units, home addresses and telephone numbers, and worksite addresses and telephone numbers;
- authorized either party in the collective bargaining process to request that a neutral third-party fact finder be employed if negotiations for the next fiscal year do not conclude by October 25; and
- authorized the neutral fact finder to conduct hearings, administer oaths, and issue subpoenas.

*Chapter 634 of 2007* expanded the requirement for DBM to provide employee information to exclusive representatives to State higher education institutions. The Act also provided that if an Executive Branch employee or higher education employee notifies the employer that the employee does not want his or her contact information provided to the exclusive representative, the notification remains in effect until the employee indicates otherwise.

#### **Service Fees – “The Fair Share Act”**

*Chapter 187 of 2009* authorized the State to collectively bargain with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative. An employee who has religious objections to paying the service fee may instead pay an amount not to exceed the service fee to a charitable organization. The Act did not apply to the State's public four-year higher education institutions or Baltimore City Community College.

### **Family Child Care Providers**

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

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

### **Public School Teachers**

State public school teachers have collective bargaining rights throughout the State; the State Board of Education, however, has served as the ultimate arbiter of all disputes between local boards of education and the local employee organizations representing school system personnel. Local employee organizations viewed this bargaining process as unfair. As a result, *Chapters 324 and 325 of 2010* established a Public School Labor Relations Board (PSLRB) to administer and enforce the labor relations laws for local boards of education and their employees. The law authorized PSLRB to arbitrate impasses that cannot be resolved through mediation and makes any arbitration agreement reached binding on the parties. Under the Acts, the State Board of Education no longer has the power to decide public school labor relations disputes, and the authority of the State Superintendent of Schools to declare labor impasses is repealed. The law also established a new mediation process for resolving disputes and a new process for PSLRB to decide the negotiability of topics, and it repealed the authority of the local boards of education to make final determinations of matters that have been the subject of negotiation.

The Acts required the staff for the State Labor Relations Board and the Higher Education Labor Relations Board to also staff PSLRB. Prior decisions of the State Board of Education are

not binding on PSLRB but may be considered precedent. PSLRB must report on the implementation of the Acts by July 1, 2014, and the legislation terminates on June 30, 2015.

### **Maryland Transportation Authority Police Officers**

The Maryland Transportation Authority (MDTA) employs a police force that is responsible for security and law enforcement services at bridge and highway toll facilities, Baltimore/Washington International Thurgood Marshall Airport, the Port of Baltimore, and the Motor Vehicle Administration's headquarters. But while the MDTA Police Force is the seventh largest law enforcement agency in the State, it is not considered to be a unit of the Maryland Department of Transportation, and is not subject to the general State collective bargaining law.

*Chapter 704 of 2010* included in the general State collective bargaining law MDTA police officers at the rank of first sergeant and below. The collective bargaining rights and procedures in the Act do not apply to employees who are supervisory, managerial, or confidential employees, as defined in regulations adopted by the Secretary of Budget and Management. The Act also required that MDTA police officers have a separate bargaining unit.

## **Pensions and Retirement**

### **Reemployment of Retirees**

#### **Background**

Subject to limited exceptions, a retiree of a teachers' or employees' system who receives a retirement benefit from the State is subject to a dollar-for-dollar reduction in their retirement allowance if they are reemployed by the same employer for whom they worked at the time of their retirement. The reduction is equal to the amount by which the sum of the reemployed retiree's current annual compensation and initial retirement allowance exceeds the member's average final compensation 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.

Chapter 499 of 2005 reenacted provisions of law removing the reemployment earnings limitation for retired teachers and principals of the Teachers' Pension System (TPS) or the Teachers' Retirement System (TRS) who return to work in the same school system from which they retired under limited circumstances. In addition to the exemptions created for retired school personnel, Chapter 395 of 2005 enacted provisions exempting a retiree of the Employees' Pension System (EPS) or Employees' Retirement System (ERS) from the reemployment earnings limitation for a period of four years if the retiree is reemployed as a health care practitioner in a Department of Health and Mental Hygiene (DHMH) facility.

### **Reemployment for Teachers and Principals**

*Chapter 443 of 2007* expanded the conditions under which retirees of TPS or TRS may be rehired by their former employers without triggering a reduction of their pension benefit payments. These exemptions were expanded to help school districts meet federal requirements to place highly qualified teachers in disadvantaged schools. The legislation expanded the definition of low-performing schools to include schools in which at least 50% of students qualify for federally subsidized school lunches and increased the number of retired teachers that each school district may rehire in addition to those who work in a low-performing school teaching in an area of critical shortage.

In response to concerns regarding the types of compensation used to determine benefit reductions for retired teachers who are reemployed by their former employer, *Chapter 618 of 2010* excluded certain forms of compensation from the calculation of annual compensation used to determine a benefit reduction for certain retirees. This legislation applies to a retiree of TPS or TRS who is a college or university faculty member on a 10-month contract and who is reemployed by the retiree's former employer. Specifically, the legislation excludes bonuses, overtime, summer school salaries, and other forms of supplemental income from the determination of the retiree's annual compensation while reemployed.

In order to encourage timely reporting of reemployed retirees to the State Retirement and Pension System (SRPS) Board of Trustees, *Chapter 516 of 2008* required local school systems to reimburse SRPS for the offset of pension benefits for retired teachers rehired by their former employers that result from late or nonreporting of reemployed retirees who are exempt from the offset.

### **Additional Reemployment of Retirees Allowed**

During the 2007-2010 legislative term, the General Assembly passed additional exemptions from the earnings limitation for correctional officers, judges, and police officers.

*Chapter 465 of 2007* created an exemption for retirees of the Correctional Officers' Retirement System from retirement benefit reductions if they are reemployed as correctional officers by either the Division of Pretrial Detention and Services or the Patuxent Institution. This legislation was enacted to help the Department of Public Safety and Correctional Services fill persistently vacant correctional officer positions.

*Chapter 516 of 2008* addressed several issues related to the reemployment of SRPS retirees. First, the legislation allowed State judges receiving vested or normal service retirement benefits from either ERS or EPS to suspend those benefits and earn credit in the Judges' Retirement System (JRS). This allows a judge to earn credit in JRS while ensuring that the judge's spouse will receive survivor benefits from ERS/EPS should the judge die while serving on the bench. The legislation also exempted a JRS retiree who is also receiving a service retirement benefit from ERS/EPS from an earnings limitation if the JRS retiree is temporarily assigned to serve on a State court.

Additional measures taken to address reemployment of judges included *Chapter 250 of 2008*, which exempted a JRS retiree from an earnings limitation if the retiree is employed as a faculty member with a public institution of higher education in the State, and *Chapter 688 of 2010*, which allowed a retiree of JRS to be reemployed by any unit of State government without a reduction to the retiree's allowance. *Chapter 688* is set to terminate June 30, 2014.

*Chapters 643 and 644 of 2009* exempted a reemployed retiree of the State Police Retirement System (SPRS) from a retirement allowance reduction if the retiree is reemployed by the Department of State Police at a rank of trooper first class, is reemployed for no more than four years, is younger than age 60, and terminates participation in the Deferred Retirement Option Program. *Chapters 643 and 644* also provided a disability benefit to a reemployed SPRS retiree who is incapacitated while reemployed as either a trooper first class or as a helicopter pilot with the Maryland State Police Aviation Command. Finally, *Chapters 643 and 644* provided a death benefit to the surviving family members of an SPRS retiree who is killed while reemployed in either of the same two capacities.

*Chapter 473 of 2009* modified the exemption for retired health care practitioners reemployed by DHMH by repealing for two years the four-year limitation on contractual reemployment as health care practitioners during which retirees of ERS or EPS are exempt from a reduction to their retirement allowance.

## **Retiree Pension Benefits**

Each year, retirement allowances paid to retirees and beneficiaries of SRPS are adjusted automatically for inflation. All cost-of-living adjustments (COLAs) are based on average annual changes to the Consumer Price Index for all urban consumers (CPI-U) but vary in size by retirement or pension plan. Except in very limited circumstances, the various statutory COLA provisions do not prohibit a negative adjustment; however, prior to 2009, the CPI-U had not had a negative change since automatic COLAs were first instituted in the early 1970s. The CPI-U declined by 0.356% over the previous year as of December 31, 2009. Absent legislation, this decline would have resulted in a negative adjustment for fiscal 2011.

In response to the potential for a negative adjustment for fiscal 2011, *Chapters 56 and 57 of 2010* required that retirement allowances for most SRPS retirees not be subject to COLAs in fiscal 2011 if the average change in the CPI-U from 2008 to 2009 is negative. If COLAs are not applied in fiscal 2011, then fiscal 2012 retirement allowances must be reduced by the difference between fiscal 2010 allowances and the allowances that would have been paid in fiscal 2011 if COLAs had been applied. The legislation did not apply to retirees of the Legislative Pension Plan or JRS, whose benefits are linked to the salaries of active legislators and judges, respectively. The legislation also required the SRPS Board of Trustees to study options for addressing future situations in which the CPI-U is negative and report its findings and recommendations to the General Assembly.

Another issue dealing with potential adjustments to retiree allowances was addressed in *Chapter 435 of 2010*. This legislation was prompted by the discovery during summer 2009 that retirement benefits for approximately 50 retirees of EPS or ERS had been miscalculated based on erroneous compensation data provided by the Maryland School for the Deaf (MSD), resulting in overpayments to the retirees. The legislation temporarily froze, instead of reducing, the retirement allowances for EPS/ERS retirees who previously had worked for MSD and had their retirement benefits miscalculated. When the frozen allowances equal the allowances that the retirees should be receiving in the absence of the miscalculation, including annual COLAs, the retirees resume receiving annual COLAs.

## **Investment Policies**

### **Chief Investment Officer Compensation and Authority**

In 2006, the Department of Legislative Services (DLS) recommended enhancing compensation for investment division staff, allowing for performance-based bonuses based on meeting investment targets, and restructuring the investment committee, including transferring authority for the selection of external managers from the Board of Trustees to the Chief Investment Officer (CIO). The CIO position had been vacant for over a year because the board concluded that it could not find a qualified candidate at the compensation level it was offering. In addition, a compensation study commissioned by the board in 2006 concluded that the CIO's salary was 13% below the median for comparable public pension plans, and total compensation was 18% below the median.

As a result of the inability to find a new CIO and based on the findings of DLS and the compensation study, the General Assembly passed *Chapter 368 of 2007*, which gave the SRPS board independent authority to determine the compensation, including performance bonuses, for the system's CIO. It also gave the CIO sole authority to hire and fire external managers to manage the system's assets, a responsibility that previously rested with the board. These provisions were designed to bring the CIO's compensation and authority in line with that of comparable pension plans in an effort to attract top candidates to the CIO position. The legislation required that the CIO's base salary and leave must be based on the compensation and leave provided to CIOs by comparable pension systems. Criteria for determining performance bonuses, if any, for the CIO must be based on objective benchmarks of investment performance and criteria used by comparable public pension systems. The criteria were also subject to review and comment by the Joint Committee on Pensions.

### **Fee Caps and Investments**

*Chapter 506 of 2008* made several changes to State law governing the investment of assets in the State pension trust fund. First, the legislation repealed a 1.2% cap on fees paid to external managers who provide real estate and alternative investment management services. A 0.3% cap on fees paid to all other external asset managers remained in effect. Second, the legislation repealed a requirement that all real estate transactions carried out by the Board of Trustees be approved by the Board of Public Works. Instead, those transactions must be

approved by a majority of the Comptroller, Treasurer, and the Secretary of the Department of Budget and Management in their capacity as members of the board of trustees. Finally, the legislation repealed archaic language limiting the board's investments in nondividend paying common stocks to 25.0% of the system's assets. That limitation had been rendered obsolete by the board's adherence to modern portfolio theory and the prudent investor standard.

In an effort to prevent the board from potentially exceeding the only remaining fee cap, *Chapter 393 of 2009* raised the cap on management fees that the SRPS board may pay to external asset managers, not including managers of real estate and alternative assets, from 0.3% to 0.5% of the market value of managed assets. The legislation also clarified the CIO's authority to invest in alternative investment vehicles and select external investment managers.

### **Divestment**

*Chapters 39 and 40 of 2007* authorized the SRPS Board of Trustees to divest its holdings in companies that do business in Sudan after engaging those companies in an effort to encourage them to act responsibly and refrain from any activities that promote or enable abuses of human rights in the Darfur region of the country. With this legislation, Maryland joined a growing list of large public pension funds that have taken steps to divest from companies with economic ties to the Sudanese government. In deciding whether to divest from a particular company, the board must act in accordance with its fiduciary responsibilities.

Building on the divestment legislation in 2007, *Chapter 342 of 2008*, established conditions under which the SRPS Board of Trustees must divest from companies doing business in either Iran or Sudan. The legislation required the board to notify any company whose shares are held in an actively traded separate account and that meets the definition of doing business in Iran or Sudan that it is subject to divestment by the board. If, within 90 days after notice, a company does not provide evidence that it is no longer doing business in either country, or does not announce that it will release a plan within 60 days to cease doing business in those countries within a year, the board must divest its holdings in that company. However, the legislation exempted companies that are not subject to the United States government's sanctions against Iran and Sudan and whose divestment cannot be executed for fair market value or greater. The legislation required the board to act in good faith and in a manner consistent with its fiduciary responsibilities in implementing the bill's provisions. In addition, the legislation does not apply if the United States Congress or President makes specified declarations regarding Iran or Sudan.

### **Survivor Benefits**

*Chapter 519 of 2008* created a new death benefit for State employees and teachers who are killed while performing their duties. In addition to a lump sum payment equal to the member's accumulated pension contributions, which was already provided prior to this legislation, surviving spouses, minor children, or dependent parents will receive an annual allowance equal to two-thirds of the employee's or teacher's average final compensation. Also, the legislation entitled surviving minor children and dependent parents of State employees to join the State's subsidized health plan.



*Chapter 507 of 2008* repealed a supplemental survivor death benefit for spouses of retired State Police officers and replaced it with an increase in the standard survivor benefit. The repealed supplemental benefit was tied to Social Security survivor benefits, but the benefits paid had grown larger than expected and thus endangered the pension plan's tax-exempt status under federal law. Instead, the legislation increased the standard survivor benefit from 50% to 80% of the retiree's allowance.

## **Funding and Affordability Issues**

### **Corridor Funding**

Since the inception of corridor funding for ERS and TRS in 2002, the SRPS Board of Trustees has expressed its concern that this funding methodology does not adequately address the full funding needs of these systems. As a result, during the 2007 and 2008 interims, the board requested that the Joint Committee on Pensions sponsor legislation that would return SRPS to full actuarial funding as quickly as is practical.

In 2008, in response to the board's request to sponsor legislation to return to full actuarial funding, the joint committee expressed concern over the rate at which the system's funding status is declining under the corridor funding methodology. However, the joint committee recognized that the fiscal crisis that the State was facing at the time would not permit the joint committee to sponsor legislation to return to full actuarial funding and amend the current amortization schedule to a 30-year fixed period. Nevertheless, the joint committee acknowledged the funding problems the system will face in the future associated with the corridor funding methodology and supported returning to full actuarial funding as soon as the State is fiscally capable of doing so.

### **Benefit Sustainability Commission**

*Chapter 484 of 2010*, the Budget Reconciliation and Financing Act (BRFA), established a Public Employees' and Retirees' Benefit Sustainability Commission, which is charged with studying and making recommendations with respect to all aspects of State-funded benefits and pensions provided to State employees and public education employees. A specific charge is to evaluate a proposal included in the Senate version of the BRFA of 2010 to share a portion of teacher retirement costs with local school boards; the cost-sharing proposal was not included in the final version of the BRFA that passed both houses. The issue of cost-sharing of teacher retirement costs is not a new one. Bills introduced during the 2007 special session and the 2009 session would have required counties to pay a portion of the employer pension contribution for members of either TRS or TPS.

## **Other Post-employment Benefits**

### **Background**

In Maryland, post-employment benefits other than pensions consist primarily of partially subsidized medical, prescription, and dental insurance available to State retirees who meet

specified service thresholds. The State partially subsidizes the health insurance premiums for retired State employees, and like most states, Maryland has paid for these subsidies on an annual “pay-as-you-go” basis. Beginning in fiscal 2008, new accounting rules put forth by the Governmental Accounting Standards Board required states to recognize liabilities for the state’s retiree health care subsidy on its balance sheet unless the state began making annual payments to fund the liabilities similar to the manner in which pension liabilities are funded. In 2009, an actuarial valuation of the State’s retiree health liabilities revealed the liabilities to be approximately \$15.3 billion. To avoid showing additional liabilities on the State’s balance sheet, the State would be required to contribute an additional \$1.18 billion annually to fund estimated liabilities. Including those liabilities on its balance sheet raises continued concern for the State’s AAA bond rating, particularly if the State fails to materially address the problem.

The State has taken several steps to begin to address the increasing liabilities associated with these benefits. In 2004, the Post-Retirement Health Benefits Trust Fund was established to provide a vehicle for pre-funding the post-retirement health insurance subsidy paid by the State. The Blue Ribbon Commission to Study Retiree Health Care Funding Options was created in 2006 to study options for paying the State’s existing liabilities and reducing its future liabilities.

### **Post-Retirement Health Benefits Trust Fund**

*Chapter 355 of 2007* required the transfer to the trust fund of all future budgetary allocations for the purpose of reducing the State’s accrued liabilities associated with health benefits provided to State retirees. The legislation also authorized the transfer of funds allocated in the fiscal 2007 and 2008 budgets for retiree health liabilities to the trust fund and allowed payments from the trust fund in future years to pay the ongoing costs of providing health benefits to State retirees.

*Chapters 471 and 472 of 2008* authorized local governments to contract with external asset managers to manage or invest funds designated for post-employment benefits provided separately from a pension plan. The legislation further authorized local governments to create pooled investment funds with separate accounts for each participating local government, and to remit funds for post-employment benefits to the State Treasurer for investment in the Local Government Investment Pool.

### **Blue Ribbon Commission to Study Retiree Health Care Funding Options**

*Chapter 355 of 2007* altered the composition of the blue ribbon commission by requiring the legislative members to be appointed by the President of the Senate and the Speaker of the House and adding additional legislative members. *Chapters 228 and 229 of 2008* extended the blue ribbon commission’s termination date from June 2009 to June 2010 and required the commission to prepare an interim report by December 31, 2008. *Chapters 228 and 229* also extended the deadline for submission of the final report from December 31, 2008, to December 31, 2009.

Primarily as a result of the uncertainty of the outcome of the national health care reform debate and its potential impact on the State’s health benefits plan, the blue ribbon commission

was not able to complete its work on a plan to fully fund the State's liabilities stemming from subsidized health benefits provided to State retirees. Therefore, *Chapters 560 and 561 of 2010* further extended the termination date of the blue ribbon commission by two years, until June 30, 2012. It also extended the deadline for submission of a final report by two years and required the commission to submit an interim report by December 31, 2010.

## General Assembly

### Legislative Compensation

In accordance with the requirements of the Maryland Constitution, the General Assembly Compensation Commission convened in 2009 to determine whether the salaries and benefits paid to legislators should be increased during the 2011-2014 term of office. The commission report submitted at the beginning of the 2010 session recommended that salaries remain at current levels for the first two years of the next term of office – \$43,500 for members and \$56,500 for presiding officers. The commission also recommended that if the State's annual unemployment rate was 5% or lower for calendar 2012, the salary for members of the General Assembly would increase to \$45,500 on January 1, 2013, and remain at that level for calendar 2014. A similar \$2,000 increase would take effect for the Presiding Officers, to \$58,500. Under the commission's recommendation, if the State unemployment rate for calendar 2012 was greater than 5%, but 5% or lower for calendar 2013, the salary for members of the General Assembly would increase to \$45,500 only for calendar 2014. Compensation for Presiding Officers would also increase by \$2,000 under those conditions.

Pursuant to *Joint Resolution 4 of 2010*, the General Assembly rejected the salary recommendations of the General Assembly Compensation Commission and instead maintained the existing annual salaries, set in 2006, over the entirety of the next four-year term. The resolution also rejected the commission's recommendations to alter in-district and out-of-state travel, pension credits, and retirement allowances.

### Legislative Redistricting – Counting of Prison Inmates

After the completion of the national census that is taken every 10 years, Maryland redraws the boundaries of its legislative districts so that they will again be of substantially equal population. Under U.S. Census Bureau guidelines, inmates of a correctional facility at the time of the census are classified as residing in the correctional facility. Some of the State's largest prisons are located in low-population-density areas of the State, thereby skewing the numbers that are used to draw the new district lines. Prison inmates, almost without exception, have lost their right to vote while serving their sentences.

*Chapters 66 and 67 of 2010* required that population counts used to create the 47 legislative districts of the General Assembly (as well as for congressional districts, county governing bodies, and municipalities) exclude incarcerated individuals in either State or federal correctional facilities who were not State residents prior to their incarceration. The Acts also

required that inmates who were Maryland residents prior to incarceration be counted as residents at their last known address before their incarceration.

The average annual inmate population in State correctional facilities was approximately 27,000 in 2010. The federal Bureau of Prisons reported 1,503 prisoners in the State's only federal prison. In addition, there were approximately 9,300 individuals in local detention centers, but those facilities were not included in the Acts.

### **Legislative Inquiries – Termination of At-will Employees**

During the 2005 legislative interim, the Legislative Policy Committee (LPC) created a 12-member special committee composed of 6 senators and 6 delegates, all of whom were members of LPC, to examine a number of matters regarding the terminations and separations of at-will employees in the Executive Branch under prior administrations and the adequacy of protections in law for those employees. The special committee conducted hearings at which former State employees who had been terminated gave testimony about the circumstances of their terminations, and former administration officials testified about the manner in which decisions were made to hire and terminate employees in several of the major Executive Branch agencies. In October 2006, the special committee submitted its report to LPC.

The report of the special committee contained conclusions about (1) the functioning of the Governor's Appointments Office and its role in the previous administration in the hiring and termination of at-will employees in the Executive Branch of State government; (2) the need for clarification in the law as to the rights and protections of at-will employees; and (3) as to special appointees, the need for the identification of those who may not be hired or fired for political reasons and those who may. The recommendations also included a study of the number of at-will employees in the State both under the State Personnel Management System and the Maryland Department of Transportation personnel system. The recommendations of the special committee were included in *Chapters 592 and 516 of 2007*. For a further discussion of these bills, see the subpart "Personnel" within this Part C.

### **Legislative Inquiries – Compelling Testimony from Witnesses**

*Chapter 546 of 2007* established procedures through which a legislative committee may file a petition in the circuit court for an order directing compliance with a subpoena or compelling testimony from a witness. It applies to LPC; the Joint Committee on Administrative, Executive and Legislative Review; the Joint Committee on the Management of Public Funds; a legislative investigating committee; or a standing committee.

The Act stemmed from the experience of the Special Committee on State Employee Rights and Protections with respect to hearings it conducted in 2006 at which some witnesses refused or failed to answer questions posed to them by the special committee's attorney or by committee members.

*Chapter 546* outlined the process for responding to a petition for a court order directing compliance with a subpoena or compelling testimony from a witness. However, the respondent

may not file either a motion to quash or a petition for an injunction regarding the subpoena. Unless the court determines that there are cases requiring a higher priority, the petition must take precedence on the court's docket and be heard at the earliest practicable date.

The Act established that papers, books, accounts, documents, testimony, and records subpoenaed in connection with a lawfully authorized legislative inquiry or examination must be pertinent to the inquiry or examination. Under the new law, pertinence is considered to exist if the papers, books, accounts, testimony, and records (1) relate to the matters under inquiry or examination; (2) assist in assessing the credibility of a witness; (3) contradict or corroborate the testimony of a witness; or (4) demonstrate the existence of undue influence on a witness.

The Act clarified that LPC may delegate its authority to issue subpoenas, administer oaths, and take related actions to a special committee it creates.

*Chapter 546 of 2007* also provided the following:

- A legislative committee's petition to direct compliance with a subpoena or to compel testimony must be filed in the Anne Arundel County Circuit Court or, at the election of the petitioner, in any county where the respondent resides, is employed, habitually engages in a vocation, or carries on a regular business.
- Unless there was no response to a subpoena, the petition must contain the questions that were asked or requests made of the respondent, and the respondent's answers or objections (if provided). In any hearing on such a petition, the court may not allow additional evidence.
- A respondent may not file either a motion to quash the subpoena or petition for an injunction regarding the subpoena, and a response to a petition is the only pleading that an objecting party may file to object to a subpoena.
- Any response to the petition shall be filed by the party served with the petition within 15 days after being served, unless that time period is shortened by the court.
- A party to a proceeding under the Act may appeal the circuit court's decision only by a petition to the Court of Appeals for the issuance of a *writ of certiorari*.
- A legislative investigating committee's code of fair procedures, as established in statute, does not limit the authority of the committee or one of its subcommittees to administer oaths and subpoena witnesses and records as authorized by law.
- The prohibition on a legislative investigating committee's hearings from being filmed, televised, or broadcast is repealed.

- The applicability of the Act's provisions were prospective only and did not have an effect on any cause of action arising before October 1, 2007, which was the effective date of the Act.

## Legislative Oversight Powers

### Statutory Committees

From time to time, the General Assembly creates by statute joint legislative committees that are charged with overseeing, on an ongoing basis, specified activities, programs, and services provided or operated by various units of the Executive Branch of the State government.

During the 2007-2010 legislative term, a new statutory legislative committee was created and another was reestablished and then subsequently extended on a permanent basis.

**Joint Committee on Base Realignment and Closure:** In 1990, Congress created the Base Realignment and Closure (BRAC) process to address an excess capacity of military facilities. BRAC calls for the appointment of an independent commission that evaluates the military's needs and offers recommendations. In 2005, BRAC announced a plan under which Maryland will gain approximately 16,000 Department of Defense military and civilian jobs, phased in by 2011. The primary gains in jobs are at Aberdeen Proving Ground, Fort Meade, and the newly renamed Walter Reed National Military Medical Center, and most are expected to be highly skilled, well-paid jobs. In order to accelerate planning and development so that the State is prepared for the influx on jobs and personnel, **Chapter 469 of 2007** created the Joint Committee on Base Realignment and Closure.

The joint committee was originally composed of six senators and six delegates. The membership was raised to eight senators and eight delegates pursuant to **Chapters 339 and 340 of 2008**. The joint committee oversees and participates in the development of systems and processes that fast-track the approval of transportation infrastructure, water and sewer infrastructure, State and local planning processes, affordable housing options, education facilities, and health care facilities and infrastructure.

The Maryland Department of Planning anticipated 28,176 new households as a result of BRAC, with the majority concentrated in Harford (26%), Anne Arundel (18%), and Baltimore (14%) counties, followed by Baltimore City (10%), Montgomery (9%), Cecil and Prince George's (8% each), and Howard (7%) counties.

**Joint Committee on Oversight of Unemployment Insurance:** Created by law in 2005, the Committee on Unemployment Insurance Oversight was charged with studying the condition of the unemployment insurance system resulting from the effects of the enactment of legislation in that year that replaced the experienced tax rates and flat rate surcharges system with a single overall experienced tax rated system and increased the maximum weekly benefit amounts. The committee was authorized to examine the need for additional alterations to the system, including

the charging and taxation provision and the eligibility and benefit provisions, and was required to make its final recommendations and terminate by December 31, 2006.

*Chapters 50 and 51 of 2007* reestablished the committee as a part of the General Assembly's statutory committee structure and modified the name to the Joint Committee on Unemployment Insurance Oversight. The committee's charge remained essentially the same, but its membership was expanded to include representatives of the Executive Branch, the private business sector, organized labor, and the academic community. However, the committee was to terminate on December 31, 2010.

During the 2010 session, legislation was enacted to continue the oversight committee on an ongoing basis by repealing the termination date (*Chapters 515 and 516 of 2010*). The Acts also required the joint committee to conduct a study of how State and federal unemployment insurance laws relate to seasonal industries and to submit a report on the study by December 31, 2010.

### **Audits of Local School Systems**

*Chapters 58 and 59 of 2010* removed the termination date on the requirement that the General Assembly's Office of Legislative Audits (OLA) conduct an audit of each local system. The Act provided that such an audit is to be conducted once every six years on an ongoing basis to evaluate the effectiveness of the financial management practices of the local school systems.

A 2004 enactment established procedures to ensure fiscal accountability of local school systems by providing for a legislative audit of each system at least once during the six-year period ending June 30, 2010. These procedures were developed after it was revealed in 2004 that two local school systems had deficits in their operating budgets. OLA reported that as of January 2010, it had issued audit reports on 18 of the 24 local school systems. The audits contained over 300 recommendations addressing issues in 11 operational areas, such as procurement, information systems security, facility management, and transportation services.

### **Program Evaluation (“Sunset” Review) of Regulatory Boards and Commissions**

The Maryland Program Evaluation Act, enacted in 1978, has been utilized 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, on behalf of the General Assembly, the evaluations in accordance with a statutorily based schedule. These evaluations are more commonly known as “sunset review” because the agencies subject to review are also usually 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 the program evaluation law and addressing, through legislation, appropriate issues relating to the structure, performance, and practices of those entities.

During the 2007-2010 legislative term, program evaluation (“sunset” review) activities focused on the following regulatory agencies:

- State Board of Physicians;
- Health Services Cost Review Commission;
- Health Care Cost Commission;
- Office of Cemetery Oversight;
- State Board of Morticians;
- State Board of Professional Counselors and Therapists;
- State Board of Law Examiners;
- Maryland Board of Veterinary Medical Examiners;
- State Board of Well Drillers;
- State Athletic Commission;
- Maryland Racing Commission;
- State Board of Landscape Architects;
- State Board of Chiropractic and Massage Therapy Examiners;
- State Board of Examiners in Optometry;
- State Board of Physical Therapy Examiners;
- State Board for Professional Land Surveyors;
- State Board of Pilots (of Marine Vessels);
- State Board of Plumbing;
- State Board of Dental Examiners;
- State Board of Waterworks and Waste System Operators;
- State Board of Barbers;
- State Board of Cosmetologists;
- State Board of Architects;
- Banking Board/Division of Financial Regulation;
- Collection Agency Licensing Board;



- State Board of Master Electricians;
- Electrology Practice Committee;
- State Board of Heating, Ventilation, Air Conditioning, and Refrigeration (HVAC) Contractors;
- Maryland Home Improvement Commission;
- Maryland Insurance Administration;
- State Board of Nursing;
- State Board of Pharmacy;
- State Board for Professional Engineers;
- State Board of Examiners of Psychologists;
- State Commission of Real Estate Appraisal and Home Inspectors; and
- State Real Estate Commission.

### **Legislative Duties – Sense of Voters Legislation as to Whether to Convene a Constitutional Convention**

The Maryland Constitution provides that every 20 years the General Assembly must pass legislation that requires there be a statewide ballot question to “take the sense of the People in regard to calling a Convention for altering this Constitution.” The requirement applies to the November general election of 2010. The constitution further provides that if “a majority of voters at such election or elections” vote for the convention, the General Assembly must provide by law at its next session for the holding of the convention and the elections of convention delegates. This language has been interpreted to require a majority of the total number of voters in the election, not just those voting on the convention question, in order for a convention to be required. Any new constitution or amendment to the existing constitution adopted by a convention would be submitted to the voters of the State for ratification or rejection. **Chapter 9 of 2010** implemented this requirement, thus placing the question on the November 2010 ballot.

A constitutional convention has never been called in accordance with this provision of the Maryland Constitution, although Maryland has otherwise held five constitutional conventions in the State’s history, most recently in 1967-1968. While a new State constitution developed by that constitutional convention was ultimately rejected by the voters, a number of its proposed revisions have been subsequently adopted on a piecemeal basis over the intervening years.

## Legislative Revisions of the Annotated Code (Code Revision)

The General Assembly is nearing the completion of the long-term statutorily based project to revise Maryland's entire code of statutory laws. The purpose of the project, commonly known as Code Revision, is to reorganize statutory provisions and restate them in clear language and a modern format. There are no substantive changes made to the law being revised. The Code Revision process has been described as "the most thorough and highly respected process in the United States for the ongoing recodification, restatement, and revision of state laws." The project is staffed by DLS, and the work product is exhaustively reviewed by committees composed of prominent members of the legal and judicial communities prior to being introduced as legislative bills to be considered and passed by the General Assembly.

The following Code Revision projects were enacted during the 2007-2010 legislative term:

- **Chapter 3 of 2007** created a new Human Services Article of the Annotated Code. It revised and combined various laws relating primarily to programs and services in the departments of Human Resources, Disabilities, Aging, and Juvenile Services, as well as laws concerning children, youth, and families.
- **Chapter 306 of 2008** created a new Economic Development Article of the Annotated Code. It revised, restated, and recodified the various laws of the State that pertain to the Department of Business and Economic Development, its component parts and programs, and independent economic development units and programs.
- The Criminal Procedure Article was created through the Code Revision process in 2001. Subsequently, in allocating remaining unrevised provisions of the Annotated Code, a decision was made to assign additional areas to that existing revised article. **Chapter 15 of 2008** revised, restated, and recodified in the Criminal Procedure Article the statutory law applicable to the Office of the State Prosecutor, the Office of the State's Attorney, and the Office of the Public Defender.
- **Chapter 120 of 2009** revised, restated, and recodified the laws of the State relating to the Maryland Commission on Human Relations, prohibitions against discrimination, and remedies for discrimination. Instead of creating a new article of the Annotated Code, which is the norm for Code Revision bills, the Act added the new "Title 20 – Human Relations" to the existing State Government Article.
- **Chapter 37 of 2010** revised, restated, and recodified the laws of the State relating to the Washington Suburban Sanitary Commission (WSSC), which were previously codified in Article 29. Instead of creating a new article of the Annotated Code, the Act added a new "Division II" to the existing Public Utility Companies Article, and it also renamed the article to be the "Public Utilities Article." The decision to codify the nonsubstantive revision of the laws relating to WSSC was based on the fact that, as a State agency, it

functions as a public utility that provides water and sewer services to Montgomery and Prince George’s counties.

### **Legislative Scholarships**

*Chapter 339 of 2007* amended the Senatorial Scholarship law to raise the maximum amount that a recipient may receive. Previous law had capped an annual award at \$2,000. The Act provided that the maximum annual award amount may be as high as the cost of tuition and fees at the most expensive constituent institution of the University System of Maryland, other than the University of Maryland University College or the University of Maryland, Baltimore. As of 2010, the maximum scholarship award was \$9,000 per year, with the minimum being \$400. Each senator may award \$138,000 in scholarships each year. The Act additionally repealed a cap on the total cumulative amount a recipient may receive.



## **Part D**

### **Local Government**

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#### **Local Government – Generally**

##### **Affordable Housing**

The generally accepted definition of housing affordability is when a household pays no more than 30% of its annual income on housing. Families that pay more than 30% for housing are considered cost-burdened and may have difficulty affording necessities such as food, clothing, transportation, and medical care. The 2004 final report of the Governor's Commission on Housing Policy stated that as of 2000, one-third of Maryland households paid more than 30% of their income on rent. The report also stated that over the following 10 years there would be a shortage of 157,000 workforce/affordable rental units in the State. These issues were addressed in several instances during the 2007-2010 sessions.

*Chapters 299 and 300 of 2007* authorized counties and municipalities to support, foster, or promote an affordable housing program for individuals or families of low or moderate income by providing funding or property, supporting payment in lieu of taxes programs, or enacting legislation to restrict prices or require development of affordable housing as part of a subdivision in return for added density.

*Chapters 386 and 387 of 2008* authorized counties and municipalities to waive or modify building permit or development impact fees and charges that are not mandated under State law for the construction or rehabilitation of lower-income housing units that are financed in a certain manner in order to support, foster, or promote an affordable housing program. The fees are required to be waived or modified in proportion to the number of lower-income housing units in the development. The Department of Housing and Community Development must report to the General Assembly by October 1, 2010, on (1) the counties and municipalities that waived or modified permit or development fees; (2) the number and type of housing units for which fees were waived or modified; and (3) the amount of fees waived and collected in accordance with the Acts. The provisions of the Acts terminate at the end of September 2011.

## **Clean Energy and Environmental Health**

### **Clean Energy**

The Maryland Energy Administration administers several programs aimed at encouraging energy efficiency and renewable energy projects in the State. *Chapter 743 of 2009* authorized counties and municipalities to enact ordinances or resolutions establishing a Clean Energy Loan Program to provide loans to residential and commercial property owners for the financing of energy efficiency and certain renewable energy projects. A property owner repays a loan through a surcharge on the owner's property tax bill. To provide financing for loans made through the program, a county or municipality that establishes a Clean Energy Loan Program may issue bonds through competitive or negotiated sale, and the bonds may utilize fixed or variable interest rates.

### **Environmental Health Monitoring and Testing**

*Chapter 665 of 2009* required a person responsible for violations of certain provisions of the Environment Article to reimburse the Maryland Department of the Environment or a county for costs incurred in conducting certain environmental health monitoring or testing related to the release of a hazardous substance, discharge of oil, or discharge of a pollutant in the waters of the State. A person may not be required to reimburse a county if the person has entered into a consent order with the department. Also, reimbursement to a county is not allowed if the environmental health monitoring or testing by the county is duplicative of activities conducted by the State or was not reasonably necessary to protect human health and the environment.

### **Emerald Ash Borer**

The emerald ash borer is an exotic invasive pest responsible for the death of more than 25 million ash trees in Michigan, Indiana, and Ohio, and it has become a threat to Maryland's ash trees. *Chapter 421 of 2009* created an Emerald Ash Borer Grant Fund to help local governments, businesses, and organizations purchase authorized equipment to remove, dispose of, and replace trees infested by the emerald ash borer that are located within emerald ash borer quarantine areas. The Secretary of Agriculture is authorized to administer the fund and required to establish grant application procedures. Grants may not exceed the amount a specified entity has appropriated to finance purchases of equipment to remove, dispose of, and replace infested trees in specified areas.

## **Finances**

### **Deposits of Unexpended or Surplus Money**

The Federal Deposit Insurance Corporation (FDIC) insures deposits in most banks and savings and loan associations located in the United States. Depositors are protected against the loss of their deposits if a FDIC-insured bank or savings and loan association fails. *Chapters 84 and 85 of 2009* altered the maximum amount of unexpended or surplus funds that a local

government may deposit into a financial institution from \$100,000 to the amount equal to the applicable FDIC maximum insurance coverage limit.

### **Local Government Pension Liabilities**

Chapter 543 of 2006 allowed local governments to invest funds dedicated to paying Other Post Employee Benefits (OPEB) in the same manner as authorized for investments for prefunding pensions. OPEBs includes health insurance for retirees, as well as any life insurance or long-term care insurance paid by the employer, but did not authorize local governments to form OPEB investment pools. *Chapters 471 and 472 of 2008* authorized local governments to contract with external asset managers to manage or invest money designated for OPEB besides employee pensions. It further authorized local governments to create pooled OPEB investment funds with separate accounts for each local government that participates in the fund and to remit funds intended for OPEB to the Treasurer for investment in the Local Government Investment Pool. By allowing local governments to form OPEB investment pools and contract with external asset managers, local governments may take full advantage of the flexibility provided by Chapter 543 of 2006 to invest in equities and other high-yield, high-risk assets.

### **Local Debt Policies and Reporting**

*Chapter 693 of 2009* clarified the reporting requirements of local governments and public corporations and authorities that are authorized to issue debt. The Act also required local governments to adopt debt policies consistent with State and local laws, and constitutional requirements. Public corporations of the State include the Maryland Economic Development Corporation, Maryland Agricultural and Resource-Based Industry Development Corporation, and Maryland Technology Development Corporation. Some examples of authorities include the Maryland Transportation Authority, Maryland Stadium Authority, Maryland Food Center Authority, and Maryland Health and Higher Education Facilities Authority.

### **Annual Financial Reports**

Political subdivisions (counties, municipalities, and special taxing districts) must submit an annual audit and an annual financial report, commonly known as the *Uniform Financial Report* (UFR) to the Department of Legislative Services (DLS) by November 1 of each year. However, local governments with a population greater than 400,000 may take until January 1 to file the audit and annual financial report. In recent years, the General Assembly has altered the report filing deadlines for the audit and UFR in Howard County, Frederick County, and Wicomico County, all counties with a population under 400,000. Political subdivisions must also submit an annual comprehensive report on their financial condition to the State Treasurer and DLS.

*Chapter 547 of 2010* altered the timeframe in which a political subdivision must submit the annual comprehensive report to coincide with the date when the annual audit and the UFR must be submitted to DLS. *Chapter 642 of 2010* changed the filing due date for Queen Anne's County's annual financial report and annual audit from November 1 to January 1. Similarly,

*Chapter 682 of 2010* changed the filing due date for St. Mary's County's annual financial report and annual audit from November 1 to January 1.

### **Street Lighting Equipment**

For metered streetlights on metal poles without overhead high voltage lines attached, maintenance is competitive, and local governments have a choice of the maintenance service provider. This competition allows the local governments to save money on maintenance costs, select from a wide array of choices for lamps and luminaire, and facilitate potentially faster response to reports of streetlight outages. Because of statutory restrictions regarding lighting equipment maintenance near high voltage lines, this option was not available to local governments where streetlights are on wooden poles with overhead high voltage lines attached. The enactment of *Chapters 554 and 555 of 2007* allowed local governments to purchase this type of street lighting equipment at fair market value from electric companies and to either perform maintenance on the equipment or to hire a contractor to perform the maintenance.

### **Binding Arbitration**

Numerous counties and municipalities in Maryland have enacted local laws regarding the use of binding arbitration in collective bargaining disputes. Recent legal disputes have called into question the validity of these local laws. *Chapter 651 of 2010* retroactively authorized a county or municipality to adopt a local law that allows for binding arbitration to resolve collective bargaining disputes regarding negotiations for employee wages, benefits, or terms and conditions of employment if the county or municipality has already adopted such a local law.

### **Business Improvement Districts**

Business improvement districts (BIDs) in the United States have traditionally been established by groups of local businesses and property owners with the goal of attracting customers, clients, and shoppers to the district through coordinated improvements and shared marketing efforts. *Chapter 461 of 2010* established a process for the creation of BID. A district corporation may (1) receive money from its incorporating local government, the State, or nonprofit organizations; (2) charge fees for its services; (3) employ individuals and hire consultants; and (4) use the services of other governmental units. A local government establishing BID must provide for a tax within BID that is sufficient to support its operations, but the tax imposed may not count against a county or municipality tax cap. A district corporation is governed by a board of directors appointed by the members of the district.



## Counties

### Collective Bargaining

#### Organizations Representing Education Employees

In Maryland, certificated and noncertificated school employees generally bargain separately. However, in some counties, specific categories of noncertificated professionals are included with certificated employees for collective bargaining purposes. *Chapter 403 of 2009* included registered nurses employed by the Carroll County Public School System in one of the county's collective bargaining units established for certificated school employees.

A public school employee may refuse to join or participate in the activities of employee organizations. However, an employee organization designated as an exclusive representative of public school employees must represent all employees in the unit fairly and without discrimination, whether or not the school employees are members of the employee organization. Nonmember service or representation fees for certificated school employees are authorized in several counties. *Chapters 281 and 282 of 2009* authorized the Calvert County Board of Education and the employee organizations representing certificated public school employees to negotiate a reasonable service or representation fee to be charged to nonmembers.

*Chapter 457 of 2009* authorized a fourth bargaining unit to represent noncertificated employees of the Baltimore City Public School System. If the public school employer chooses to designate it, the additional unit would represent Baltimore City school police officers up through the rank of lieutenant.

#### Law Enforcement and Emergency Medical Services

Several counties in the State have collective bargaining for deputy sheriffs. *Chapter 600 of 2010* authorized the representatives of deputy sheriffs at the rank of sergeant and below in Cecil County to bargain collectively with the sheriff and the Cecil County Commissioners on specified wages, benefits, and working conditions. The Act provided for nonbinding mediation and requires Cecil County to enact a local ordinance authorizing nonbinding arbitration if mediation fails to result in an agreement.

Chapter 144 of 2005 authorized collective bargaining for wages and benefits for full-time Frederick County deputy sheriffs at or below the rank of sergeant. With the enactment of *Chapter 162 of 2007*, full-time correctional officers in the Frederick County Sheriff's Office, at or below the rank of sergeant, are authorized to form or join a labor organization, to select an organization as their exclusive representative, and to engage in collective bargaining for wages and benefits through this exclusive representative.

Several counties in the State have collective bargaining for emergency medical services (EMS) employees. *Chapter 602 of 2010* authorized Cecil County to enact an ordinance to allow collective bargaining between the county and specified EMS employees.

## Highway Solicitation

In Carroll, Charles, Frederick, Harford, and Washington counties, a person may not stand in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle. This ban also applies to children under age 18 in Montgomery County. *Chapter 537 of 2007* prohibited a person from standing in a highway in Anne Arundel County to solicit money or donations from an occupant of a vehicle or to advertise any message. The Act also repealed the Anne Arundel County Council's authority to adopt or regulate a permitting program for roadside solicitation.

*Chapters 436 and 437 of 2008* prohibited a person from standing in a highway to solicit money or donations of any kind from the occupant of a vehicle in Prince George's County. *Chapters 436 and 437* also required issuance of a warning for a first offense. Subsequent violations must be enforced as a misdemeanor under State motor vehicle laws.

## Compilation of Local Laws

Each charter and code home rule county must annually provide, without charge, a copy of a certain compilation of laws enacted during the year to the State Archives, the State Law Library, DLS, and each member of the county's legislative delegation. *Chapter 654 of 2010* allowed charter and code home rule counties to provide members of their legislative delegation an annual notice stating that a digital copy of the compilation of local laws is available on the Internet, as an alternative to furnishing each member with a printed copy of the compilation. The Acts also clarify that copies furnished to State agencies must be in printed form.

## Powers of Local Governments

Maryland counties operate under three forms of government: commission, code home rule, and charter home rule. As part of a nonsubstantive revision of the laws of Maryland relating to local governments that is overseen by DLS, ambiguities were uncovered as to the application of a number of provisions of Article 25 of the Code to the various forms of county government. *Chapter 699 of 2010* clarified that powers granted by State law under Article 25 are applicable to charter counties and code counties and clarifies how other provisions of Article 25 apply to charter counties, code counties, commission counties, and Baltimore City.

## Foreign Trade Zones

A foreign trade zone (FTZ) is a designated site at which special customs procedures may be used. These procedures allow domestic activity involving foreign items to take place prior to formal customs entry. Federal law specifies that a FTZ must be within or adjacent to a U.S. Customs and Border Protection port of entry. *Chapters 52 and 53 of 2009* amended the Baltimore City charter to conform the definition of a foreign trade zone with the legal boundary definition established by the U.S. Department of Commerce (Foreign Trade Zone Board). The Acts also implemented federal policy by requiring that a person that wishes to have a site in the

State designated as a FTZ apply to the grantee that is closest to the site before applying to another grantee for designation approval.

## **Animal Control**

County governments have varying degrees of responsibility for the licensing of animals, recording of licenses, and enforcement of licensing provisions. Several laws were enacted regarding animal control from 2007 through 2010.

### **Calvert County**

*Chapter 309 of 2008* authorized the Calvert County Commissioners to establish an Animal Matters Hearing Board to resolve disputes and controversies regarding animal control ordinances and repealed provisions relating to the appointment and powers of a dog warden and deputy dog wardens in Calvert County. *Chapter 309* required an officer of a humane society or an animal control officer in Calvert County who sees a person committing a misdemeanor that involves animal cruelty to arrest and bring before the District Court the person committing the misdemeanor. *Chapter 380 of 2009* required that any fine paid for violation of Calvert County ordinances regarding the regulation, humane treatment, and keeping of domestic animals be paid to the Calvert County Treasurer and also authorized the issuance of two- and three-year dog licenses in Calvert County.

### **Cecil County**

*Chapter 434 of 2009* decreased from two to one the number of persons in Cecil County who must make a sworn complaint in the District Court in Cecil County alleging that a domestic animal disturbs the peace and quiet of an inhabited neighborhood before a summons to the owner or keeper to appear before the court must be issued. The Act also increased the maximum penalty for failing to comply with county law or a court order related to domestic animals disturbing the peace of a neighborhood, or the keeping of a vicious dog, from \$25 to \$500. In 2010, *Chapter 601* authorized the Cecil County Commissioners to provide by ordinance for comprehensive regulation of domestic animals and wild animals held in captivity, including licensing and control.

### **Somerset County**

*Chapter 42 of 2008* authorized the Somerset County Commissioners to prosecute violations of animal control ordinances in the same manner as a municipal infraction and clarified that penalties enacted by the county may be civil or criminal.

## **Noise Control and Nuisances**

### **Noise Control**

*Chapter 639 of 2010* authorized Calvert County to adopt environmental noise standards, sound level limits, and noise controls as necessary to protect public health, welfare, and property,

provided that the requirements of the ordinance are not less stringent than or in conflict with State law.

*Chapter 521 of 2010* authorized the Secretary of the Environment to delegate enforcement of sound level limits and noise control rules for Harford County to the Sheriff of Harford County, except with regard to lawful hunting or specified trapshooting, skeetshooting, or other target shooting in the county.

### **Nuisances**

*Chapter 336 of 2007* authorized the State's Attorney for Harford County to bring an action in District Court to abate a nuisance after showing that the notice requirements have been satisfied and the nuisance has not been abated. The Act provided for notification requirements and stated that if the applicable code enforcement agency has filed an action for equitable relief, the State's Attorney may not bring an action under the Act.

*Chapter 271 of 2007* provided that in Carroll County, if both a property owner and occupant have been notified more than twice during a 12-month period of a specified nuisance violation (overgrowing weeds, the accumulation of refuse on the property, presence of stagnant water, or presence of combustible material), the nuisance is considered to be an ongoing violation and additional notification is not required before the county takes action to abate the nuisance.

### **Distribution of Tobacco to Minors**

It is a criminal offense for a person licensed in the State to distribute to a minor cigarettes or other tobacco products, cigarette rolling papers, or coupons redeemable for a tobacco product. From 2007 through 2010, legislation was passed for four counties providing that this offense is a civil infraction in the county. In each instance, violation has not occurred if the person examined specified identification and that identification identifies the recipient as being at least 18 years old. *Chapter 604 of 2007* provided that this offense is a civil infraction in St. Mary's County, subject to a civil penalty of \$300 for a first violation and \$500 for any subsequent violation within a 24-month period from the previous violation. *Chapter 221 of 2008* provided that this offense is a civil infraction in Carroll County subject to the same civil penalty as in St. Mary's County. *Chapter 254 of 2008* provided that this offense is a civil infraction in Garrett County and provides for a civil penalty not exceeding \$300. *Chapter 430 of 2009* provided that this offense is a civil infraction in Cecil County and provides for a civil penalty of \$300 for the first violation, \$500 for the second violation, and \$750 for each subsequent violation.

### **Regional and Tri-County Councils**

#### **Mid-Shore Regional Council**

The Mid-Shore Regional Council (MSRC) operates as a cooperative planning and development agency within Caroline, Dorchester, and Talbot counties. *Chapter 330 of 2007* codified certain bylaws of MSRC by (1) decreasing the number of county council members or

county commissioners that serve on the regional council from nine to six (two from each county); and (2) authorizing the regional council to provide for public membership in addition to the private citizens that the council may already add as members.

### **Tri-County Council for the Lower Eastern Shore of Maryland**

The Tri-County Council for the Lower Eastern Shore of Maryland (TCC) is a regional planning and development agency for an area comprised of Somerset, Wicomico, and Worcester counties. It is composed of municipal and county officials, county administrators, and members of the General Assembly. *Chapter 231 of 2007* altered the voting representation of the Wicomico County government on the TCC from five county council members to four county council members plus the county executive.

## **Municipalities**

From 2007 through 2010, the General Assembly legislated on a number of issues which affected some or all of the 156 municipalities in the State.

### **Land Annexations**

A December 2005 Maryland Department of Planning report indicated that, from 1997 through 2005, the acreage of municipalities in Maryland had grown by an estimated 11%, or 27,453 acres, as a result of annexation, with the greatest percentage increases occurring in Western Maryland and on the Eastern Shore. Chapter 381 of 2006 altered State law regarding municipal annexation by, among other things, requiring municipalities that exercise zoning authority to include a municipal growth element in their comprehensive plans and, for annexations on or after October 2009, requiring a municipal annexation plan that is consistent with the municipal growth element.

*Chapters 534 and 535 of 2009* exempted proposed municipal annexations of parcels of land that are five acres or less, and that are part of a lot containing at least one other parcel that has been part of the municipal corporate area for at least three years, from the requirements that consent be obtained from a specified percentage of area residents and property owners and that the proposed annexation be subject to a referendum. A municipality, however, may not annex a total of more than 25 acres under the exceptions of the Acts, and the Acts do not apply to land zoned for agricultural use. Provisions of the Acts terminate September 30, 2011.

### **Community Parks and Playgrounds Program**

*Chapters 247 and 248 of 2008* codified and amended the existing Community Parks and Playgrounds Program within the Department of Natural Resources to provide flexible grants to municipalities and Baltimore City to rehabilitate, expand, or improve existing parks; purchase land to create new parks; develop new parks; or purchase and install playground equipment in urban neighborhoods and rural areas throughout the State.

## Hagerstown Fire and Explosives Investigators

Fire and explosive investigators in the City of Annapolis and Anne Arundel, Montgomery, Prince George's, and Worcester counties are classified as "law enforcement officials" and currently have the same authority as the State Fire Marshal and assistants, including the authority to make a warrantless arrest under certain circumstances. A fire and explosive investigator must have successfully completed a training program from a police training school approved by the Police Training Commission. The authority of the fire and explosive investigator in each jurisdiction may be limited through written policy by the fire chief. *Chapters 428 and 429 of 2008* granted this same authority to certain fire and explosive investigators in the City of Hagerstown.

## Tax Increment Financing

Tax increment financing (TIF) is a method of public project financing whereby the increase in the property tax revenue generated by new commercial development in a specific area, the TIF district, pays for bonds issued to finance site improvements, infrastructure, and other project costs located on public property. *Chapter 191 of 2009* expanded the authority of a municipality to use TIF to encourage redevelopment in (1) revitalization areas; (2) mixed use centers; (3) blighted areas; and (4) developed areas and growth areas, as defined in a county or municipality land use plan, through the installation of specified infrastructure improvements (e.g., streets, utilities, and park facilities).

## Audit Requirements

Municipalities and State-created taxing districts must have an annual, independent audit conducted by a certified public accountant. However, municipalities and taxing districts with annual revenues below \$50,000 in the prior four fiscal years may petition the Office of Legislative Audits for a waiver allowing an audit to occur once every four years instead. State law requires a county-created special taxing district to conduct an annual audit unless annual expenditures are below \$50,000, in which case an audit may occur once every four years or more frequently if required by the county. *Chapters 32 and 33 of 2009* increased the eligibility threshold for a municipality or State-created special taxing district to receive an audit every four years to \$250,000 and similarly increased the threshold for a county-created special taxing district to be eligible for an audit every four years to \$250,000.

## Planning Commissions

The Maryland Department of Planning describes a planning commission as "an appointed body that advises the municipal or county governing body on all matters relating to the planning of growth and development, including the comprehensive plan, zoning, subdivision and other issues." *Chapter 462 of 2010* required a planning commission appointed by a municipality to hold meetings quarterly, instead of monthly, or more often as the planning commission's duties require and allowed the chairperson of a commission to cancel the quarterly meeting if there is no business before the planning commission.

## Land Bank Authorities

Land bank authorities are generally nonprofit or quasi-governmental entities formed for the purpose of transforming vacant, tax delinquent, and abandoned property for the benefit of the surrounding property and larger community. *Chapter 739 of 2010* allowed the governing body of each municipality to create a land bank authority. A land bank authority may acquire, rehabilitate, own, and sell or transfer properties. Though a land bank authority may establish a land acquisition fund and issue bonds for the purchase and rehabilitation of properties, it does not have power of eminent domain and cannot levy any tax or special assessment.

## Agreements among Municipalities

*Chapter 553 of 2010* expressly allowed municipalities to enter into agreements with other municipalities for purposes including joint administration of the municipalities, procurement activities, the provision of municipal services, and the joint funding and management of projects that are centrally located to the municipalities.

## Special Taxing Districts

Special taxing districts include entities created by the General Assembly and those created by a county or municipality, when authorized by the General Assembly. Some special taxing districts resemble municipalities and provide a range of public services; while others exist for a limited purpose, such as the financing of public drainage within a limited area or the creation and maintenance of street lighting in a particular neighborhood.

## Authority to Create

*Chapters 456 and 550 of 2008* and provisions contained in *Chapter 182 of 2009* authorized Harford, Cecil, and Baltimore counties, respectively, to create special taxing districts for developing and financing infrastructure improvements. The counties were authorized to impose *ad valorem* or special taxes and to issue bonds or other obligations to finance the projects as long as the special taxing districts are located in designated growth areas and, in Harford County, are not located in a rural village. With the passage of *Chapters 456, 550 and 182*, the General Assembly has granted 12 counties (Anne Arundel, Baltimore, Calvert, Cecil, Charles, Garrett, Harford, Howard, Prince George's, St. Mary's, Washington, and Wicomico) and Baltimore City broad authority to create special taxing districts and to levy *ad valorem* taxes and issue bonds and other obligations for purposes of financing infrastructure improvements.

## Tax Increment Financing and Special Taxing Districts

Tax increment financing is a method of public project financing whereby the increase in the property tax revenue generated by new commercial development in a specific area, the tax increment financing district, pays for bonds issued to finance site improvements, infrastructure, and other project costs located on public property.

**Chapter 544 of 2008** amended the Baltimore City Charter to allow tax proceeds from special taxing districts, including a tax increment financing development district, to be used to repay debt service on bonds and other debt instruments issued by the Maryland Economic Development Corporation; the State; or any agency, department, or political subdivision. The Act provided for the circumstances and uses of a special fund established with respect to a special taxing district in Baltimore City.

**Chapter 544** authorized Baltimore City to use funds remaining in the special funds, provided no payment on bonds is outstanding, for purposes specified by current law, accumulate for future debt service payments, or to pay debt service on other outstanding bonds. Baltimore City may enact an ordinance creating a special fund with respect to a special taxing district, even though no authorized bonds have been issued by the city with respect to that special taxing district. The taxes allocated to such special fund must thereafter be paid over to the special fund, as long as an ordinance remains in effect.

In Prince George's County, all proceeds received from any bonds issued and sold by the county may also be applied for convention centers, conference centers, and visitors' centers; maintenance of infrastructure improvements, convention centers, conference centers, and visitors' centers; and marketing the development district facilities and other improvements. **Chapter 470 of 2008** allowed proceeds received from bonds issued by Prince George's County or the county's revenue authority to be applied for installation of any infrastructure improvements, including streets, parking structures, utilities, street lights, stormwater management and storm drain facilities, fencing, noise walls, retaining walls, trails, sidewalks, pedestrian and vehicular bridges, and park facilities. The purpose of the infrastructure improvements is to encourage redevelopment in revitalization areas designated by the county; mixed use centers; blighted areas; and the developed tier, growth corridors, and growth centers, as defined in the county general plan.

### **Tax Limitation Exemption for Transportation Improvements**

Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico counties have amended their charters to limit property tax rates or revenues. **Chapter 617 of 2010** exempted certain financing costs for transportation improvements from a county tax limitation that would apply to *ad valorem* or special taxing districts. The Act authorized county governments to enact a law to provide for the issuance of tax exempt bonds to finance the costs of transportation improvements for which the principal, interest, and any premium must be paid from and secured by special taxes collected by the county in a special taxing district.

### **Termination of Special Taxing Districts**

In Calvert County, a special taxing district may not be created or special tax levied until a petition requesting a district is received from a homeowners' association. **Chapter 729 of 2010** ensured that any, or a portion of, funds remaining in a special taxing district established in Calvert County after its termination may be applied to a future special taxing district established for the same subdivision, applied to a special taxing district reserve fund as agreed to by the



county commissioners and the homeowners' association, or returned to owners of property in the district.

## **Bi-county Agencies**

### **Maryland-National Capital Park and Planning Commission**

The Maryland-National Capital Park and Planning Commission (M-NCPPC) is a bi-county agency empowered by the State in 1927 to acquire and administer a regional system of parks within the Maryland-Washington Regional District and administer a general plan for the physical development of the area. In 1970, M-NCPPC became responsible for managing the Prince George's County public recreation program. M-NCPPC is governed by a 10-member commission with 5 members appointed by the County Executive of Prince George's County and confirmed by the county council and 5 members appointed by the Montgomery County Council with the approval of the county executive.

#### **Service Contracts**

*Chapter 427 of 2007* required that before M-NCPPC may solicit certain service contracts as part of a management plan intended to adversely affect M-NCPPC employees who are represented by a certified representative and that exceed an annual cost of \$75,000, the Secretary-treasurer of M-NCPPC must provide certification that the commission has considered alternatives to a certain service contract, consulted with the certified representatives of any commission employees who will be adversely affected by the service contract, and demonstrated, based on a cost comparison analysis and good faith estimates, that the commission will save at least an amount equal to the lesser of \$200,000 or 20% or more of the estimated net present value of the cost of the service contract.

*Chapter 427* required the commission to provide not less than 60 days advanced notice and maintain a formal plan of outplacement assistance for each commission employee who is represented by a certified representative and who will be adversely affected by the service contract. An adversely affected employee's certified representative may submit a proposal for existing bargaining unit commission employees to continue to perform the services described in the solicitation while achieving the targeted results. An adversely affected employee's certified representative may also file an appeal on the record on behalf of the employee before the State Office of Administrative Hearings.

#### **Open Space Dedication – Monetary Fees**

M-NCPPC and the governing bodies of Montgomery and Prince George's counties may adopt regulations governing the subdivision of land within the Maryland-Washington Regional District. Among other things, these regulations may provide for adequate open spaces, by dedication or otherwise, and they may provide for the payment of a fee in lieu of open space dedication.

*Chapter 428 of 2007* removed a cap on a monetary fee to be paid in lieu of dedication of open spaces for public use or the conveyance of areas designated for dedication as open space under zoning and subdivision regulations and instead authorizes the fee to be based on the current market value of the land after it has been approved for development. The cap on the dedication fee had been 5% of the total new market value of the land, as stated on the final assessment notice issued by the State Department of Assessments and Taxation.

### **Maryland-Washington Regional District Boundaries**

For the purpose of administering Montgomery County's metropolitan district tax, the boundaries of the Maryland-Washington Regional District include all of Montgomery County, except the areas within the boundaries of cities of Rockville and Gaithersburg and the Town of Washington Grove, as those boundaries existed on a certain date. For example, areas within the municipal boundaries of Rockville as of July 1, 1961, are excluded from the metropolitan district.

As a result, any land annexed by the cities of Rockville and Gaithersburg and the Town of Washington Grove after the date specified in the original enactment remained in the Maryland-Washington Regional District and was subject to the metropolitan district tax. *Chapter 429 of 2007* modified the boundaries of the Maryland-Washington Regional District to exclude the areas within the municipalities as of October 1, 2007, and any area annexed into one of these municipalities in the future. In effect, *Chapter 429* excluded those properties that were located in one of these municipalities and the metropolitan district from having to pay the metropolitan district tax. Also, *Chapter 429* prohibited Montgomery County from collecting any delinquent metropolitan district taxes owed by any area of the county that were not levied prior to July 1, 2007.

*Chapter 303 of 2008* modified the boundaries of the Maryland-Washington Regional District to exclude the City of Laurel as its corporate boundaries were defined as of July 1, 2008, in order to exclude those parcels of land that the city had annexed since 1994.

### **Minority Business Enterprise Utilization Program – Extension**

*Chapter 100 of 2008* extended for five years the M-NCPPC's Minority Business Enterprise (MBE) Utilization Program for goods, services, and construction, from September 30, 2008, to September 30, 2013.

### **Commission Fund Balance – Transfer to Counties**

Prince George's County and Montgomery County levy taxes against property in each county on behalf of M-NCPPC and pay the aggregate amount collected from these taxes to M-NCPPC. State law specifies the specific purposes for which M-NCPPC may expend these tax proceeds in each county. These purposes include the acquisition, maintenance, development, and operation of the park system in the county; acquisition of park lands; recreational purposes; administrative purposes; and repayment of outstanding bonds or bonds issued in the future.

**Chapter 474 of 2009** transferred \$65 million total in unexpended local property tax revenues from the M-NCPPC to the two counties.

Specifically, **Chapter 474** directed M-NCPPC to make payments of \$15 million to Prince George’s County on December 1, 2009, March 1, 2010, December 1, 2010, and March 1, 2011 (\$60 million total). **Chapter 474** did not specify how these funds may be used by Prince George’s County. On or before October 1, 2009, M-NCPPC was required to have transferred \$5 million to Montgomery County. These funds may only be expended by Montgomery County for purchasing interests in real property to prevent nonagricultural uses of lands designated for agricultural preservation.

### **Montgomery County**

**Zoning Enforcement and Land Use Planning for the Town of Kensington:** The Town of Kensington lies within the Maryland-Washington Regional District. As a result, planning and zoning decisions are generally within the jurisdiction of the district council and the planning board for Montgomery County.

**Chapter 425 of 2007** authorized the Town of Kensington to have concurrent jurisdiction with Montgomery County to enforce county zoning ordinances within its corporate limits. **Chapter 425** also required a two-thirds majority vote of both the planning board and the district council of Montgomery County to take any action relating to zoning within the Town of Kensington. Finally, **Chapter 425** required a two-thirds majority vote of the planning board of Montgomery County to take any action relating to land use planning that is contrary to a resolution of the Mayor and Town Council of Kensington.

**Signs – Municipal Corporations:** **Chapter 442 of 2009** authorized municipalities located in Montgomery County to enact local laws imposing additional or stricter commercial sign regulations than are imposed by the State, M-NCPPC, or the county. In effect, **Chapter 442** clarified that municipalities located in Montgomery County have the same authority that municipalities have in the rest of the State.

**Park Closings – Commission Contracts:** **Chapter 476 of 2010** prohibited, in Montgomery County, a lease, contract, or agreement entered into by M-NCPPC from containing a provision that (1) authorizes a person other than M-NCPPC to close a park or park facility; or (2) grants a person other than M-NCPPC the authority to close or require the closing of an existing park or park facility under the jurisdiction of M-NCPPC to prevent competition.

### **Prince George’s County**

**Agricultural Land Preservation Easement Program:** **Chapter 366 of 2008** established a Prince George’s County Agricultural Preservation Easement Program to be administered by the Prince George’s County Soil Conservation District. **Chapter 366** established a Prince George’s County Agricultural Easement Fund to be used to purchase agricultural preservation easements. The fund is to be administered by the planning board which must deposit into the fund revenues from the Prince George’s County Metropolitan District taxes or the Prince George’s County

Regional District taxes authorized in M-NCPPC's annual budget to preserve, protect, and enhance agricultural properties and to implement the program's purposes.

**People's Zoning Counsel – Appeals: Chapter 302 of 2008** authorized the People's Zoning Counsel in Prince George's County, on a reasonable belief that a final action on an application for a subdivision of land, special exception, variance, or site plan is arbitrary and capricious, to appeal the final action on behalf of a bona fide citizens' association that is entitled to appeal the action.

**Expedited Development Permit Review: Chapter 424 of 2010** established an expedited approval process in Prince George's County for applications for development permits for qualifying redevelopment projects, so as to encourage environmentally responsible urban renewal and revitalization. Prince George's County is generally required to approve or disapprove applications for development permits for qualifying redevelopment projects and to provide applicants with written notice of the approval or disapproval within 90 days of receiving the application except under specified circumstances. A qualifying redevelopment project is defined as a development project to rehabilitate dilapidated real property through demolition, reconstruction, or reuse that incorporates specified environmentally responsible design elements.

### **Washington Suburban Sanitary Commission**

The Washington Suburban Sanitary Commission (WSSC) is the eighth largest water and wastewater utility in the country and provides water and sewer services to 1.8 million residents in Montgomery and Prince George's counties. WSSC has over 460,000 customer accounts, serves an area of around 1,000 square miles, and currently employs more than 1,500 people. The agency operates four reservoirs, two water filtration plants, and six wastewater treatment plants. Additionally, the Blue Plains Water Pollution Control Plant handles as much as 169.0 million gallons per day under a cost-sharing agreement with WSSC. The agency maintains nearly 5,500 miles of water main lines and over 5,300 miles of sewer main lines.

### **Minority and Local Small Business Enterprise Programs**

WSSC's minority business utilization program for construction contracts was first authorized by the General Assembly in 1979, and the goods and services program was added in 1992. **Chapter 621 of 2007** reauthorized these two minority business utilization programs. **Chapter 621** also codified the existing Office of Small, Local, and Minority Business Enterprise within WSSC, and charged it with administering programs that promote the growth or participation of MBEs in WSSC procurements. Additionally, **Chapter 621** provided that in order to be certified as a local small business under WSSC's optional Local Small Business Enterprise Program, a firm must have at least 25%, (decreased from 30%) of its employees living in either Montgomery or Prince George's counties.

WSSC is also authorized to operate a local small business enterprise program, which allows WSSC to establish sheltered market or other preferences and assistance for local small businesses. **Chapter 622 of 2007** altered the local small business eligibility criteria for the WSSC Local Small Business Enterprise Program to match the small business criteria in effect for

the State Small Business Preference Program under State law and regulations adopted by the Department of General Services.

### **Exemptions from System Development Charges**

WSSC is authorized to impose a system development charge on applicants for new service. However, State law provides for several exemptions to the system development charge. A full or partial exemption must be granted generally to public sponsored or affordable housing. A full or partial exemption may be granted for revitalization projects, certain retirement communities and other elderly housing, or properties used for biotechnology research and development or manufacturing.

*Chapter 423 of 2007* expanded the list of possible exemptions by authorizing a full or partial exemption for property owned by a community based § 501(c)(3) tax-exempt entity that has the mission and purpose of providing programs and services to youth, if the property is used exclusively for programs and services to youth. The exemption was capped at \$80,000 and was set to terminate June 30, 2009.

*Chapter 441 of 2009* extended the authorization to exempt nonprofit youth services organizations from system development charges imposed by WSSC until December 31, 2010. *Chapter 441* also expanded this exemption to include nonprofit organizations that primarily, rather than exclusively, provide recreational and educational programs and services to youth.

### **Whistleblower Employee Protections**

*Chapter 162 of 2009* required WSSC to implement whistleblower protection regulations by October 1, 2010. The regulations must be similar to existing protections for Executive Branch State employees, as provided in State law. Adopted whistleblower protections must prohibit a manager or supervisor from taking or refusing to take a personnel action as a reprisal against an employee who discloses information that the employee reasonably believes evidences (1) an abuse of authority, gross mismanagement, or gross waste of money; (2) a substantial and specific danger to public health or safety; or (3) a violation of law. WSSC must provide employees with written notice of the protections and remedies provided by the whistleblower regulations and must establish a system in which complaints or grievances may be filed and investigated. The regulations must also set forth remedial actions that may be taken by the WSSC if a violation is found to have occurred.

### **Financial Oversight**

*Chapter 439 of 2009* required specified financial reports to be filed with the Montgomery County Council and authorized the Montgomery County Council or its duly authorized agents, at any time, to audit and examine the books and records of WSSC provided that the audit or examination is without cost to WSSC.

Similarly, *Chapter 438 for 2009* required WSSC to file a certified copy of the annual audit and current financial statements with the Montgomery County and Prince George's County Senate and House Delegations to the Maryland General Assembly.

## **Legislation Effecting M-NCPPC and WSSC**

### **Appointments – Interviews and Financial Statements**

*Chapter 527 of 2008* provided that the county executive (or designee) of Montgomery County or Prince George's County is required to interview as to possible or potential conflicts of interest, in private and before appointment, the applicant who is selected for appointment to WSSC. The county executives (or their designees) otherwise may interview each applicant in private as to possible or potential conflicts of interest. *Chapter 527* also required the Prince George's County Executive (or designee) to inform the Prince George's County Council of possible or potential conflicts of interest of the applicant who is selected for appointment with WSSC before the appointment is made. Further, *Chapter 527* authorized a designee of the Montgomery County Executive to request documents from applicants.

*Chapter 527* also changed the period covered by financial disclosure statements for applicants for appointment to WSSC and M-NCPPC and the deadline for submission of the statements for applicants of M-NCPPC.

## **Planning and Land Use**

### **Smart, Green, and Growing**

The Task Force on the Future for Growth and Development in Maryland (established by Chapter 381 of 2006 and modified by *Chapter 626 of 2007*) was charged with studying a wide range of smart growth and land use issues impacting Maryland and is required to advise the Smart Growth Subcabinet until it terminates in December 2010. The task force released a report in January 2009 providing detailed recommendations for various actions by the State and local governments. Three measures based on the report's recommendations were introduced by the Administration and passed by the General Assembly in 2009.

### **Planning Visions and Local Government Planning Tools**

The Maryland Economic Growth, Resource Protection, and Planning Act of 1992 (the Planning Act), sought to organize and direct comprehensive planning, regulating, and funding by State, county, and municipal governments in furtherance of a specific economic growth and resource protection policy. The Planning Act is organized around eight statutory vision statements which must be pursued in county and municipal comprehensive plans, where priorities for land use, economic growth, and resource protection are established. The visions must also be followed by the State in undertaking its various programs. Both State and local funding decisions on public construction projects must adhere to the visions.

In 2009, the Administration advised that the State planning visions had never been modernized to reflect and keep pace with current growth and development patterns and trends or Maryland's commitment to smart growth. As a result, *Chapters 176 and 177 of 2009* implemented a key recommendation of the task force to modernize the visions by replacing the State's 8 existing planning visions with 12 new visions.

The 12 new visions address quality of life and sustainability; public participation; growth areas; community design; infrastructure; transportation; housing; economic development; environmental protection; resource conservation; stewardship; and implementation.

*Chapters 176 and 177* also addressed two local government planning tools: adequate public facilities ordinances (APFOs) and transfer of development rights (TDR) programs. As to the first tool, generally local governments enacted APFOs to ensure that infrastructure necessary to support proposed new development is built concurrently with, or prior to, that new development. APFOs are an effort to time the provision of public facilities (water, sewer, schools, roads, and emergency services) to be consistent with development demand and local comprehensive plans. While APFOs can be a strong tool to influence and guide growth, they are more frequently used when certain public facilities have already reached capacity. When communities have weak comprehensive plans or weak comprehensive plan implementation, APFOs may prompt sprawl development inadvertently.

*Chapters 176 and 177* required specified local jurisdictions to report to the Maryland Department of Planning (MDP) on APFOs restrictions in priority funding areas (PFAs) every two years. In addition, *Chapter 176 and 177* required MDP to report on the statewide impact of APFOs every two years.

As to the second planning tool, *Chapters 176 and 177* authorized local jurisdictions to establish TDR programs within PFAs to purchase land for the development and construction of public facilities. Generally, under TDR programs, residents who occupy certain areas in a county (sending areas) are precluded from selling their land to developers. In exchange, these landowners are awarded TDRs which may be sold on the open market to developers. These rights are applied by developers to designated receiving areas (areas where the county is attempting to foster development). Under *Chapters 176 and 177*, proceeds from the sale of development rights in PFAs must be used for site acquisition and facility construction in PFAs; however, if the public facility is a school or educational facility, the proceeds may be used only for land acquisition. In addition, *Chapter 176 and 177* prohibited development rights associated with land owned by a local jurisdiction on October 1, 2009, from being sold or transferred under the Acts after October 1, 2009.

### **Annual Reports – Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions**

*Chapters 178 and 179 of 2009* made several administrative and substantive changes to State law governing the annual report that local planning commissions are required to prepare. Specifically, *Chapters 178 and 179* made the annual report requirement applicable to charter counties and Baltimore City so that all local jurisdictions are expressly required to submit this

report. *Chapters 178 and 179* provided for a specific date, July 1, by when each planning commission must file the annual report with the local legislative body and require the annual report to state which ordinances or regulations have been adopted or changed to implement the planning visions.

The more substantive changes made by *Chapters 178 and 179* involved the establishment of land use goals and the inclusion in the annual report of measures and indicators to demonstrate compliance with the land use goals. As to the land use goals, the Acts stated that the statewide land use goal is to increase the current percentage of growth located within PFAs, and to decrease the percentage of growth located outside PFAs. A local jurisdiction is required to develop a percentage goal toward achieving the statewide goal. If all the land within the boundaries of a municipal corporation is a PFA, the municipality is not required to establish a local goal for achieving the statewide goal. Further, a county or municipal corporation that issues fewer than 50 building permits for new residential units per year is not required to include information in the annual report on measures and indicators.

In addition, *Chapters 178 and 179* authorized MDP to adopt regulations that detail the manner in which the measures and indicators are to be submitted and transmitted in the annual report. MDP was required to develop measures and indicators that will be collected by MDP and consider which measures and indicators can be collected by the National Center for Smart Growth Research and Education (National Center). On or before January 1 of each year, MDP, in consultation with the National Center, was required to submit a report to the Governor and the General Assembly on the measures and indicators collected. All of this information must be posted on the National Center's web site. Lastly, the Task Force on the Future for Growth and Development, in consultation with local governments, the National Center, and other stakeholders, was to recommend by July 1, 2009, additional measures and indicators to be collected by the State, the National Center, or a local jurisdiction in specified categories of information.

### **Comprehensive Plans – “Consistency” – Educational Courses**

The Maryland Court of Appeals ruled in *David Trail, et al. v. Terrapin Run, LLC et al.*, 403 Md. 523 (2008), that a special exception could be granted to a local comprehensive plan even if it did not strictly conform to the comprehensive plan. However, the broad language of the majority opinion was seen by many to mean that local land use ordinances and regulations need not be consistent with the locally adopted comprehensive plan. This ambiguity had the potential to undermine Article 66B and the central role that comprehensive plans play in State land use laws and associated decisions regarding specific development projects.

*Chapters 180 and 181 of 2009* expressly overturned the Court of Appeals ruling in *Terrapin Run* by requiring that specified actions taken by local governments, including the granting of a special exception, must be “consistent with” their local comprehensive plans. *Chapters 180 and 181* defined what is “consistent with,” or having “consistency with,” a comprehensive plan to mean generally that an action taken by a local government related to local planning, water and sewer plan review, annexation requirements, and critical area growth



allocations will “further, and not be contrary to” specified items in the plan. The specified items are policies, timing of the implementation of the plan, timing of development, timing of rezoning, development patterns, land uses, and densities or intensities. *Chapters 180 and 181* created a separate definition of “consistency” for ordinances and regulations applicable within PFAs that omits land uses and densities and intensities so that these items do not interfere with the ability of a local jurisdiction to enact ordinances related to planned unit developments, mixed uses, and density bonuses within a PFA.

In addition, *Chapters 180 and 181* expressly required local jurisdictions to enact, adopt, amend, and execute a comprehensive plan. Lastly, the Acts required members of local government planning commissions and boards of appeal to complete an educational course on the role of the comprehensive plan, proper standards for special exceptions and variances as applicable, and the jurisdiction’s own land use ordinances and regulations. The Task Force on the Future for Growth and Development was required to develop recommendations on the educational course for local jurisdictions and MDP is required to develop an online planning education course for local jurisdictions by January 1, 2010. Local jurisdictions were authorized to develop their own educational course in lieu of MDP’s education course.

### **The Sustainable Communities Act of 2010**

*Chapter 487 of 2010* was Administration legislation that reestablished the Heritage Structure Rehabilitation Tax Credit Program as the Sustainable Communities Tax Credit Program, extended the program’s termination date through fiscal 2014, and altered eligibility requirements for the program. For a detailed discussion on the Sustainable Communities Tax Credit Program as contained in this Act, see the subpart “Income Tax” within Part B – Taxes of this *Major Issues Review*.

*Chapter 487* also made several changes to other State programs, including the Community Legacy and Designated Neighborhood Programs, so as to streamline and better integrate these revitalization programs and enhance the State’s ability to obtain federal financial assistance. *Chapter 487* coordinated the review of the State’s revitalization programs through the Smart Growth Subcabinet and required the subcabinet to weigh in on Base Realignment and Closure (BRAC) and transit-oriented development zone designations.

#### **Smart Growth Cabinet**

*Chapter 487* increased membership of the Smart Growth Subcabinet by adding the Secretary of Health and Mental Hygiene; Secretary of Labor, Licensing, and Regulation; and Director of the Maryland Energy Administration. The subcabinet was required to work together to create, enhance, support, and revitalize sustainable communities and make recommendations to the Department of Business and Economic Development (DBED) on BRAC Zone designations, the Department of Housing and Community Development (DHCD) on sustainable community designations, MDP on the Sustainable Communities Tax Credit program, and the Maryland Department of Transportation (MDOT) on transit-oriented development (TOD) districts.

## **Community Legacy and Neighborhood Business Development Programs**

*Chapter 487* stated that it is the intent of the General Assembly that the community legacy and neighborhood business development programs be used to create and support sustainable communities. Accordingly, community legacy areas and community legacy plans are eliminated and replaced with sustainable communities and sustainable community plans. Under both the community legacy program and neighborhood business development program, designated neighborhoods are eliminated and replaced as sustainable community designations.

A sustainable community is the part of a priority funding area that is designated by the Smart Growth Subcabinet on the recommendation of the Secretary of Housing and Community Development, has been designated as a BRAC revitalization zone, or has been designated as a TOD district. A sustainable community plan is a plan consisting of one or more community legacy projects or other revitalization projects to prevent or reverse the decline or disinvestment in a sustainable community through improvements in residential, commercial, or other public or private properties. *Chapter 487* also eliminated the Community Legacy Board and the advisory board to the Community Legacy Board.

To maintain a sustainable community designation, an updated plan and application must be sent every five years to DHCD. *Chapter 487* also provided for the conversion of existing community legacy areas and designated neighborhoods to sustainable communities under specified circumstances.

### **BRAC Revitalization Zones**

Within 60 days after a submission date from an eligible local government, the Secretary of Business and Economic Development may designate one or more BRAC revitalization and incentive zones from among the areas described in the application. *Chapter 487* eliminated a requirement that the Secretary must consult with the cabinet Secretaries or designees of Transportation, Housing and Community Development, Environment, and Planning before designating a BRAC Revitalization and Incentive Zone. *Chapter 487* instead provided that the Secretary of Business and Economic Development may designate a zone after receiving a recommendation from the Smart Growth Subcabinet.

### **Maryland Department of Transportation**

*Chapter 487* contained intent language that required MDOT to consider sustainable communities as it considers annual revisions to the Consolidated Transportation Program. The department is also required to consult twice annually with the Smart Growth Subcabinet on how to work cooperatively to make mutual investments toward creating and supporting sustainable communities across the State.

*Chapter 487* altered how the Secretary of Transportation may designate a TOD district. The Act provided that the Secretary may designate a TOD district after considering a recommendation of the Smart Growth Subcabinet and repeals a requirement that the Secretary

first consult with the Secretaries of Business and Economic Development, General Services, Housing and Community Development, Environment, and Planning.

### **Maryland Sustainable Growth Commission**

*Chapters 488 and 489 of 2010* repealed the Task Force on the Future for Growth and Development in Maryland and established the Maryland Sustainable Growth Commission. The commission was required to provide the State with a broad representation of stakeholders who can continue to promote a smart and sustainable growth agenda and is intended to build on the task force’s work by providing a forum to analyze and advise on a myriad of planning issues.

The duties of the commission include:

- assessing and advising on the progress of State, regional, and local planning toward achieving the goals of the State economic growth, resource protection, and planning policy;
- making recommendations on the adequacy, coordination, and implementation of funding mechanisms and other State assistance for planning activities and infrastructure and land preservation needs;
- promoting planning coordination and interjurisdictional cooperation;
- advising on the content, preparation, and implementation of the State development, transportation, and housing plans;
- promoting and making recommendations regarding efficient and predictable model State and local government regulations to achieve the goals of the State economic growth, resource protection, and planning policy;
- evaluating the continuing viability and effectiveness of State and local government smart growth indicators and recommending changes to those indicators;
- reviewing reports on adequate public facilities submitted by local governments;
- developing and assisting with smart growth educational and outreach programs;
- periodically reviewing educational requirements for members of planning boards and commissions and boards of appeals;
- recommending changes in State law, regulations, policies, and procedures necessary to achieve State planning goals; and

- serving as an advisory board to the Smart Growth Subcabinet.

*Chapters 488 and 489* required that commission members who represent a region of the State must have knowledge of smart growth and planning issues. Members, excluding *ex officio* members or their designees, serve five-year terms. The commission was required to submit an annual report on its activities and recommendations to the Governor, the Presiding Officers, and specified committees of the General Assembly. The Acts terminate on December 31, 2020.

## **Part E**

### **Crimes, Corrections, and Public Safety**

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#### **Criminal Law**

##### **Gangs**

The proliferation of gangs and their migration from urban communities to suburban and rural locations is a significant law enforcement concern in most areas of the country, including Maryland. It is estimated that there are over 600 active gangs in Maryland, with over 11,000 members. During the 2007-2010 legislative term, legislation was enacted to remove jurisdictional obstacles to the prosecution of gang crimes and increase the penalties for gang-related offenses.

##### **Redefining Gangs and Their Activities**

*Chapter 496 of 2007*, an initiative of the Administration and the Attorney General, created new offenses regarding criminal gangs. *Chapter 496* prohibited a person from participating in a criminal gang knowing that the members of the gang engaged in an ongoing pattern of criminal gang activity and prohibited the knowing or willful directing or participating in the commission of an underlying crime committed for the benefit of, at the direction of, or in association with a criminal gang.

“Criminal gang” was defined as a group or ongoing association of three or more persons whose members (1) individually or collectively engaged in a pattern of criminal gang activity; (2) had as one of their primary objectives or activities the commission of one or more underlying crimes; and (3) had in common an identifying sign, symbol, name, leader, or purpose. “Pattern of criminal gang activity” was defined as the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes, provided the crimes were not part of the same incident. “Underlying crime” was defined as (1) a crime of violence; (2) felony second degree assault; (3) felony extortion; (4) the manufacture of or possession of a destructive device; (5) manufacturing or distributing a controlled dangerous substance; (6) second degree arson; (7) first, second, or third degree burglary; (8) felony theft; (9) auto theft; (10) felony witness intimidation; or (11) felony firearm possession.

A violator was guilty of a felony and subject to a maximum term of imprisonment for 10 years, or 20 years if the victim was killed, and/or a fine of \$100,000. A sentence imposed under the law could run consecutive to or concurrently with a sentence for any crime establishing a violation of the bill. A person could be charged with a violation only by indictment, criminal information, or petition alleging a delinquent act.

The Attorney General was authorized, at the request of a county State's Attorney, to aid in the investigation of or prosecution of a violation under the law. In exercising this authority, the Attorney General has all powers and duties of a State's Attorney. Where violations of this bill were alleged to have been committed in more than one county, the Attorney General and State's Attorney for each county could join the causes of action in a single complaint.

In January 2008, the Attorney General and the Maryland State Attorneys' Association reported to the General Assembly on recommendations for more legislation to assist in the prosecution of gang activity.

### **Further Refinement of Gang Prosecution Laws**

Subsequently, *Chapter 197 of 2010* was enacted to further strengthen the authority to prosecute gangs in the State. The "criminal gang" definition was modified by repealing the requirement that an association of three or more persons whose members meet certain criteria be "ongoing" and by repealing "an identifying sign, symbol, name, leader, or purpose" as common factors and substituting "an overt or covert organizational or command structure." *Chapter 197* also added the following offenses to the list of underlying crimes that serve to prove criminal gang activity: (1) misdemeanor second-degree assault; (2) wearing, carrying, or transporting a handgun; (3) misdemeanor inducing false testimony or avoidance of a subpoena; (4) misdemeanor retaliation for testimony; (5) misdemeanor intimidation or corruption of a juror; (6) human trafficking; (7) receiving the earnings of a prostitute; and (8) operation of a brothel.

Other provisions required a sentence for subsequent gang participation offenses or gang participation offenses that result in the death of a victim to run consecutively to any sentence for an underlying crime on which the conviction was based. Organizing, supervising, financing, or managing a criminal gang became a felony that subjected a violator to a maximum penalty of 20 years imprisonment and/or a fine of \$100,000. A sentence was required to run consecutively to a sentence for any crime based on the act establishing a violation.

### **Related Legislation**

In related legislation, *Chapter 684 of 2009* removed the prohibition against the manufacture of a controlled dangerous substance from the provision that prohibited distribution and dispensing a controlled dangerous substance and placed it with the provision that prohibited the manufacture, distribution, or possession of certain items used to produce controlled dangerous substances. While this was primarily a technical change, the law also established that a violation of the prohibition against manufacturing a controlled dangerous substance or manufacturing, distributing, or possessing items used to produce a controlled dangerous substance was an "underlying crime" for purposes of the criminal gang offenses subtitle.

## Identity Fraud and Computer Crimes

Identity fraud is commonly regarded as one of the fastest growing crimes in the United States. To address the growth in this criminal activity, legislation establishing the General Assembly Task Force to Study Identity Theft was enacted in 2005 and completed its work in 2007. During the 2007-2010 term, many of the recommendations of the task force were enacted to further specify those activities that comprise identity fraud and increase the penalties for aspects of this criminal activity.

### Pretexting Prohibited

Historically, thieves have employed a variety of methods to obtain personal information, including “pretexting.” Pretexting occurs when a person falsely claims to be someone else or to represent a business and then tries to obtain confidential information about another person. *Chapter 447 of 2007* prohibited a person from knowingly and willfully claiming to represent another person without the knowledge and consent of that person, with the intent of soliciting, requesting, or taking any other action to induce another to provide personal identifying information or a payment device number.

### Task Force Recommendations

The Task Force to Study Identity Theft was charged with studying the adequacy of current Maryland law in deterring identity theft, the privacy laws of other states, and issues related to restricting information provided in consumer reports. Emergency legislation (*Chapters 9 and 10 of 2007*) authorized the task force to report its findings to the General Assembly by December 31, 2007, and extended its termination date to January 31, 2008. Pursuant to recommendations of the task force, *Chapters 354 and 355 of 2008* made the following changes in the identity fraud criminal law:

- increased the maximum imprisonment penalty for felony identity fraud from 5 to 15 years;
- established that it is a crime for a person, intentionally, willfully, and without authorization to copy, attempt to copy, possess, or attempt to possess the contents of all or part of a computer database that was unlawfully accessed;
- authorized the introduction of the affidavit of a lawful credit cardholder as substantive evidence that the credit card or credit card number of the credit cardholder was taken, used, or possessed without the authorization of the credit cardholder in a criminal case or juvenile proceeding involving identity fraud; and
- prohibited a person from using a “re-encoder” or “skimming device” to access, read, or scan personal identifying information or a payment device number.

## **Computer Sabotage**

The security of the nation's power grid and public utilities has been a growing concern since the attacks on September 11, 2001. The Internet connections on which public utilities rely have made these companies more vulnerable to cyber attacks.

*Chapter 436 of 2010* prohibited a person from intentionally and willfully gaining unauthorized access to computer services with the intent to interrupt or impair the functioning of the State government; a service, device, or system related to the production, transmission, delivery, or storage of electricity or natural gas in the State that is owned, operated, or controlled by a person other than a public service company; or a service provided in the State by a public service company. For a violation causing a loss of \$50,000 or more, the crime is a felony punishable by imprisonment for up to 10 years and/or a fine of up to \$25,000. For a loss of less than \$50,000, the crime is a misdemeanor and punishable by imprisonment for up to five years and/or a fine of up to \$25,000.

## **Crimes Against or Involving Children**

During the 2007-2010 term, the possession of child pornography was addressed through legislation. The Task Force to Combat Driving Under the Influence of Drugs and Alcohol recommended legislation to reduce the incidence of underage drinking. Also, the General Assembly addressed the issue of escape from juvenile facilities.

### **Possession of Child Pornography**

*Chapter 596 of 2007* increased penalties for knowingly possessing a film, videotape, photo, or other visual representation of a minor (1) engaged as a subject of sadomasochistic abuse; (2) engaged in sexual conduct; or (3) in a state of sexual excitement. For a first violation, a convicted violator was subject to maximum penalties of a fine of \$2,500 and/or two years imprisonment. Offenders committing second and subsequent violations were subject to maximum penalties of a fine of \$10,000 and/or five years imprisonment. *Chapter 596* also altered the language of the prohibition to require proof that a defendant intentionally retained the material and specified that the prohibition applied to visual representations of an actual child. An affirmative defense was created to allow a person to show that the person promptly and in good faith took reasonable steps to destroy each visual representation or reported the matter to a law enforcement agency.

*Chapters 510 and 511 of 2009* further increased the penalties for this offense. The maximum imprisonment penalty for the misdemeanor first offense was increased from 2 years to 5 years. A second or subsequent offense was designated as a felony, and the maximum imprisonment penalty was increased from 5 years to 10 years. *Chapters 510 and 511* also granted concurrent jurisdiction to the District Court and the circuit courts for possession of child pornography as a second or subsequent offense.

*Chapter 454 of 2010* expanded the State's prohibition against child pornography by prohibiting a person from knowingly promoting, advertising, soliciting, distributing, or



possessing with the intent to distribute, any matter, visual representation, or performance in a manner that reflects the belief, or that is intended to cause another to believe, that the representation depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct. According to law enforcement authorities, this provision was needed because of the difficulty of proving that pornography on the Internet involves real children.

### **Furnishing Alcohol to a Minor and Underage Drinking**

It is a civil offense for a person to furnish an alcoholic beverage for consumption to a minor. A violator commits a “code” violation. Before 2008, the offense had a maximum penalty of a \$1,000 fine for a first violation and a \$1,500 fine for a subsequent violation. **Chapters 565 and 566 of 2008** increased the maximum civil penalty for furnishing or allowing underage consumption or possession of alcohol from \$1,000 to \$2,500 for a first offense and, for a subsequent violation, from \$1,500 to \$5,000. Exemptions continue to exist if the person furnishing the alcoholic beverage and the person consuming are members of the same immediate family and the beverage is consumed in the private residence of the adult or in the immediate area surrounding the private residence, or if the alcohol was consumed by participants in a religious ceremony.

As recommended by the Task Force to Combat Driving Under the Influence of Drugs and Alcohol, **Chapter 499 of 2009** established a criminal offense by making it a misdemeanor for an adult to knowingly obtain or attempt to obtain alcohol for consumption by someone younger than 21, or furnish or allow possession or consumption of alcohol by an individual younger than age 21. An adult violator is subject to a maximum fine of \$2,500 for a first offense and \$5,000 for a second or subsequent offense. The law clarified that these criminal penalties do not alter existing penalties applicable to alcoholic beverage licensees.

**Chapter 499** also created a code violation for an individual younger than age 21 who consumes an alcoholic beverage. A violator may not be stopped on suspicion of the violation, however, unless observed in possession of an alcoholic beverage. Pursuant to **Chapter 499**, an adult younger than 21 who violates prohibitions against misrepresentation of age, underage possession, or possessing a false ID must be issued a code violation citation. Someone younger than 18 who obtains or attempts to obtain an alcoholic beverage from an alcoholic beverages licensee or a minor who furnishes or facilitates the possession or consumption of an alcoholic beverage by an individual younger than 21 must be issued a citation for a code violation. Prepayment of the fine is not permitted and the accused individual must appear in court.

### **Escape from a Private Secure Juvenile Facility**

The Department of Juvenile Services (DJS) reported that in fiscal 2009, there were 12 escapes from secure facilities operated by DJS. A violator is guilty of the felony of escape in the first degree and subject to maximum penalties of a 10 years imprisonment and/or a fine of \$20,000. **Chapter 123 of 2010** expanded the elements of the crime of escape in the first degree and escape in the second degree to include a prohibition against escape from a privately operated hardware secure facility for juveniles committed to DJS. A “hardware secure facility” means a facility that is securely locked or fenced to prevent escape. While DJS reported that it had no contracts with any vendor to operate a hardware secure facility, enactment of **Chapter 123**

ensures that if any such contract is entered into in the future, a person who escapes from a privately operated facility will be subject to the same penalties as a person who escapes from a DJS-operated facility.

## **Human Trafficking**

Human trafficking is a modern day form of slavery involving the recruitment, transportation, and sale of individuals (often members of vulnerable populations in countries outside the United States) for labor and sexual services. Work is forced and maintained through violence, threats, and coercion. Human trafficking is considered a growing, lucrative criminal enterprise in today's world economy. During the 2007-2010 term, legislation was enacted that expanded actions that comprise the offense of human trafficking and increased the penalties for this offense when it involves a minor.

### **Pandering Becomes Human Trafficking**

With the passage *Chapter 340 and 341 of 2007*, Maryland joined 25 other states which, by that year, had enacted laws prohibiting human trafficking. *Chapters 340 and 341* expanded the prohibition against sexual solicitation of a minor by adding commission of a violation of the prostitution laws as a prohibited offense. In addition, the crime of extortion was expanded by prohibiting a person from obtaining or conspiring to obtain labor or services by wrongfully inducing consent. The actual or threatened destruction, concealment, removal, confiscation, or possession of any immigration or government identification document with intent to harm the immigration status of another person were added as prohibited manners of inducing consent. *Chapters 340 and 341* renamed the crime of pandering to human trafficking and established a felony for this offense involving a minor. An offender is subject to maximum penalties of a \$15,000 fine and/or 25 years imprisonment. The law also established concurrent jurisdiction for the circuit courts and the District Court over the felony of human trafficking. For this crime involving an adult victim, an offender is guilty of a misdemeanor and subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000.

### **Inducement or Enticement**

*Chapter 143 of 2009* expanded the prohibition against human trafficking by adding the knowing inducement or enticement of another into prostitution and by eliminating the need for persuasion, inducement, or enticement to prostitution to have been made by threat or promise. *Chapters 529 and 530 of 2010* expanded the human trafficking law by subjecting individuals who knowingly aid, abet, or conspire in the violation of human trafficking laws or knowingly benefit financially from ventures or activities in violation of State human trafficking laws to the same penalties imposed on a person who violated the applicable statute. In addition, *Chapters 529 and 530* expanded the prohibition against human trafficking to include prohibitions on forced participation in a "sexually explicit performance" and interference with the possession of a passport, immigration document, or government identification document of another while violating or attempting to violate the human trafficking laws.

## **Hate Crimes**

Maryland's hate crimes law has long established that a person may not take certain actions against another because of the other's race, color, religious beliefs, sexual orientation, or national origin. The prohibited actions include commission of a crime; defacement, damage, destruction, or attempted defacement, damage, or destruction of property; or burning or attempting to burn an object on the person's property. *Chapters 201 and 402 of 2009* expanded the protected classes under the hate crimes law. The "homeless" and a person's "gender" are included as protected classes under *Chapter 201*. "Homeless" is defined as lacking a fixed, regular, and adequate nighttime residence or having a primary nighttime residence that is a supervised shelter designed for temporary living or a place not designed for or ordinarily used by humans as a regular sleeping accommodation. *Chapter 402* added "disability" as a protected class. Both *Chapters 201 and 402* added the attempt to commit a crime motivated by bias as a prohibited offense.

## **Financial Exploitation of the Elderly**

In general, the State's criminal law does not impose sanctions based on the age of the victim. During the 2007-2010 legislative term, the age of the victim was addressed in the crime of financial exploitation of a vulnerable adult.

*Chapters 236 and 237 of 2009* expanded the prohibition against financial exploitation of vulnerable adults to include persons who are at least 68 years old. *Chapters 236 and 237* were intended to protect seniors who may be vulnerable to exploitation by sales persons, service providers, in-home care providers, or even family and friends because they may be lonely, isolated, or suffer from loss of memory. When the value of the property obtained is \$500 or more, a violator is guilty of a felony and subject to maximum penalties of 15 years imprisonment and/or a \$10,000 fine. When the value of the property is less than \$500, a violator is guilty of a misdemeanor and subject to maximum penalties of 18 months imprisonment and/or a \$500 fine.

## **Crimes in Correctional Facilities or Against Law Enforcement Officers**

The use of cell phones and other devices by correctional inmates to continue criminal activities or to escape confinement was the subject of legislation during the 2007-2010 legislative term, as well as expanding the prohibition against sexual acts with an inmate, among other measures.

## **Contraband and Illegal Activities in Correctional Facilities**

*Chapter 458 of 2007* expanded a prohibition against sexual acts with inmates by applying the prohibition to any individual working in a correctional facility, whether on a paid or volunteer basis. *Chapter 458* also expanded to any person the application of the prohibition against sexual activity with individuals confined in juvenile facilities. The law specified that engaging in prohibited sexual activity with inmates in correctional and juvenile facilities is a cause for automatic termination of employment from the State Personnel Management System.

The use of cell phones by inmates to facilitate escapes and other criminal activity has presented a vexing problem for correctional officials. Additionally, the possession of contraband, weapons, drugs, and alcoholic beverages was not specifically addressed in the law. *Chapters 535 and 536 of 2007* established several prohibitions relating to contraband, including cell phones in places of confinement. *Chapters 535 and 536* prohibited a person from knowingly possessing contraband in a place of confinement or knowingly possessing or receiving a weapon or contraband to effect an escape and prohibited a person detained or confined in a place of confinement from knowingly possessing or receiving an alcoholic beverage or controlled dangerous substance.

In addition, *Chapters 535 and 536* established that (1) a person may not deliver a “telecommunication device” to a person detained or confined in a place of confinement with signs posted indicating that such conduct is prohibited; (2) a person may not possess such a device with the intent to deliver it to a detained or confined person; (3) a person may not deposit or conceal such a device in or about a place of confinement, or on any land next to such a place, with the intent that the device be obtained by a detained or confined person; and (4) a detained or confined person may not knowingly possess or receive a telecommunication device. An offender is guilty of a misdemeanor and subject to maximum penalties of a \$1,000 fine and/or three years imprisonment.

### **Crimes Against Correctional Officers**

Before 2008, a person was prohibited from intentionally causing physical injury to another if the person knew or had reason to know that the other was a law enforcement officer engaged in official duties. “Law enforcement officer” included a correctional officer or a member of a State or local police force. *Chapters 166 and 167 of 2008* expanded the definition of law enforcement officer by adding members of the Washington Metropolitan Area Transit Authority Metro Transit Police. *Chapters 264 and 265 of 2010* further expanded the definition to include parole and probation agents engaged in official duties.

### **Drug Crimes**

During the 2007-2010 term, the General Assembly made it more difficult for a person to defraud a drug screening test and focused on problems presented by the use of salvia (a hallucinogenic plant) as a recreational drug.

### **Synthetic Urine**

Maryland law prohibits a person, with the intent to defraud or alter the outcome of a drug or alcohol screening test, from altering a “bodily fluid” sample, substituting a bodily fluid sample with that of another person or animal, or possessing, using, selling, or transporting into the State a “bodily fluid adulterant.” *Chapter 311 of 2008* clarified the law by including synthetic urine or any substance intended to substitute for a sample of bodily fluid under the definition of “bodily fluid adulterant.”

## **Salvia**

Salvia is the common name for *Salvia divinorum* or *Salvinorum A*, an herb related to mint and native to Mexico. According to the U.S. Drug Enforcement Administration, it is usually sold as dried leaves and commonly ingested by infusing it into a tea, smoking the leaves, or chewing it. The psychoactive effects of Salvia are hallucinogenic and vary in severity based on the method of ingestion. According to news accounts, Salvia has proliferated on the Internet and at college-area paraphernalia shops. At least 19 states, in addition to Maryland, have enacted laws to regulate or restrict the availability, possession, or sale of Salvia.

*Chapters 200 and 201 of 2010* prohibited the distribution of Salvia to, or possession of Salvia by, an individual under age 21. An individual prosecuted for distribution to an individual under age 21 is subject to a maximum \$300 fine for the first violation of the misdemeanor and an increasing fine for each subsequent violation. A violation of the prohibition against a person under the age of 21 possessing Salvia is a code violation, subjecting an adult violator to the issuance of a citation and a maximum \$500 fine for a first violation and \$1,000 for a second or subsequent violation and subjecting a minor to juvenile court procedures and dispositions, including referral to substance abuse education or rehabilitation.

### **Effect of Previous Conspiracy and Out-of-state Convictions**

*Chapter 417 of 2010*, passed in response to a 2006 ruling of the Court of Special Appeals, amended the third-strike mandatory minimum 25-year sentence for specified drug-related offenses by adding as another qualifying offense, a minimum 180-day confinement based on a conviction for a prior drug conspiracy or for a similar offense under the laws of another state or federal law.

## **Property Crimes**

During the 2007-2010 term, legislation was enacted targeting document forgery, property destruction in a cemetery, the value of stolen goods, and trespassing on posted property or committing wanton trespass.

### **Forgery of Signature and Counterfeit Documents**

As recommended by the Committee to Revise Article 27 of the Annotated Code of Maryland – Crimes and Punishments, *Chapters 29 and 30 of 2008* removed the element of “intent to defraud another” from the offense of counterfeiting, causing to be counterfeited, or willingly aiding in the counterfeiting of a commission, patent, or pardon. *Chapters 29 and 30* also prohibited a person from (1) forging, falsifying, or counterfeiting the signature of a judge, court officer, or court employee of the State; or (2) using a document with the forged, falsified, or counterfeit signatures of these individuals while knowing that the signature is forged, falsified, or counterfeit. If convicted, a violator is guilty of a misdemeanor and is subject to a maximum penalty of five years imprisonment and/or a \$10,000 fine.

### **Cemetery Crimes**

A person convicted of violating the law prohibiting the destruction of funerary objects in a cemetery is required by *Chapter 268 of 2008* to pay for the restoration of any damaged or defaced property to the property's owner or the cemetery's owner. However, *Chapter 675 of 2009* modified prohibitions against the unauthorized removal of human remains to allow certain family members or designated representatives to arrange for the removal of human or cremated remains from a burial site within a cemetery and reinterment in the same burial site or another burial site within the boundary of the same cemetery.

### **Theft**

Before 2009, a person convicted of property theft with a value of \$500 or more was guilty of a felony and subject to maximum penalties of 15 years imprisonment and/or a \$25,000 fine while a person convicted of theft of property with a value of less than \$500 was guilty of a misdemeanor and subject to maximum penalties of 18 months imprisonment and/or a \$500 fine. The sentencing category of petty theft established a maximum penalty of 90 days imprisonment and/or a \$500 fine for the theft of property valued at less than \$100.

*Chapter 655 of 2009* increased the maximum property value for misdemeanor theft from \$500 to \$1,000. It also created three tiers of felony theft:

- when the value of the item stolen is between \$1,000 and \$10,000, the maximum penalty is 10 years imprisonment and/or a \$10,000 fine;
- when the value of the item stolen is between \$10,000 and \$100,000, the maximum penalty is 15 years imprisonment and/or a \$15,000 fine; and
- when the value of the item stolen is \$100,000 or more, the maximum penalty is 25 years imprisonment and/or a \$25,000 fine.

### **Trespass on Posted Property**

*Chapters 334 and 335 of 2010* increased the maximum misdemeanor penalties applicable to the crimes of trespass on posted property and wanton trespass on private property. Each crime retained the existing penalty of 90 days imprisonment and/or a \$500 fine for a first offense. For a second crime that occurs within two years of the first offense, a violator is subject to maximum penalties of six months imprisonment and/or a \$1,000 fine. Subsequent offenses occurring within two years of the previous offense subject a violator to a maximum penalty of imprisonment for one year and/or a \$2,500 fine.

### **Fraudulent Conversion of Rental Property**

A person may not fraudulently convert to the person's own use a good or thing of value received under a written contract or written lease entered into for the purpose of renting or

leasing things for valuable consideration. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of 60 days imprisonment and/or \$1,000 fine. *Chapters 218 and 219 of 2009* clarified the language of this prohibition to ensure that it applies to both rent-to-rent and rent-to-own situations. The laws also required that the property subject to a fraudulent conversion charge have a value of at least \$1,500 and authorized merger with a theft conviction arising out of the same act or transaction.

## **Animal Cruelty**

The prevention of animal cruelty was the subject of enactments in the 2007-2010 term that addressed the inhumane treatment of pet dogs and increased the penalties for being a knowing and deliberate spectator at a deliberately conducted dogfight or cockfight.

### **Restraining Dogs Outside**

Tethering dogs is considered inhumane, causing aggression in dogs and making them more likely to bite. *Chapter 570 of 2007* prohibited a person from leaving a dog outside and unattended by using a restraint that (1) unreasonably limits the dog's movement; (2) uses a collar made primarily of metal or that is less than one inch larger than the circumference of the dog's neck; (3) restricts the dog's access to sufficient clean water or appropriate shelter; (4) is in unsanitary or unsafe conditions; or (5) causes injury to the dog. On conviction, a violator is guilty of a misdemeanor and subject to a maximum penalty of 90 days imprisonment and/or a fine of \$1,000.

### **Dogfighting and Cockfighting**

In 2008, according to the Humane Society of the United States, being a spectator at a dogfight was a felony in 19 states while in 27 states, including Maryland and the District of Columbia, being a spectator at a dogfight was a misdemeanor. In 27 states, including Maryland, being a spectator at a cockfight was a misdemeanor, while in 13 states being a spectator at a cockfight was a felony. *Chapters 350 and 351 of 2008* increased the maximum penalties for the misdemeanor crime of knowingly attending a deliberately conducted dogfight or cockfight as a spectator from 90 days imprisonment and/or a fine of \$1,000 to imprisonment for one year and/or a fine of \$2,500.

## **Criminal Procedure**

### **Sexual Offenders – Pre-conviction and Sentencing**

Following several high-profile sexual assault cases, far-reaching State and federal legislation has been adopted to more strongly punish and more closely monitor sex offenders. During the 2007-2010 term, the General Assembly extensively revised provisions of law relating to sexual offenders in the areas of treatment, supervision, registration, community notification, and penalties.

### **Jessica's Law – Parole Eligibility**

In Florida in 2005, nine-year-old Jessica Lunsford was abducted, molested, and murdered by a previously convicted child sex offender. In response to this and similar cases, stiffer sentencing for child sexual offenses has been considered in a number of states. Many of these bills are designated as “Jessica’s Law.”

Chapter 4 of the 2006 special session made significant revisions to provisions of law relating to sexual offenders. In particular, the Act required, when the victim is under age 13, a mandatory minimum, nonsuspendable 25-year sentence for a person at least 18 years old convicted of first degree rape or first degree sexual offense. A similar five-year minimum sentence was required under the same circumstances for second degree rape or second degree sexual offense.

*Chapters 494 and 495 of 2007* made the mandatory minimum sentences created by Chapter 4 nonparolable.

*Chapters 180 and 181 of 2010* increased the mandatory minimum sentence for the commission of second degree rape or second degree sexual offense of a child under age 13 by a defendant at least 18 years old from 5 years to 15 years imprisonment without the possibility of parole and increased the maximum imprisonment penalty from 20 years to life.

### **Crimes of Violence**

*Chapters 524 and 525 of 2007* added the crime of sexual abuse of a minor under 13 years of age by an adult (if the offense involved specified acts) and the crime of continuing course of conduct with a child to the list of crimes of violence for which enhanced penalties, including mandatory minimum sentences and ineligibility for parole, are applied to repeat offenders.

### **Evaluation before Sentencing**

*Chapter 601 of 2007* provided that, unless waived by the State’s Attorney and defense counsel, before sentencing a defendant who is required to register on the State sex offender registry for the crime of sexual abuse of a minor, the court must order the defendant to submit to (1) a presentence investigation conducted by the Division of Parole and Probation; and (2) a mental health assessment, including whether the defendant is a danger to self or others, conducted by a qualified mental health professional employed or engaged by the Department of Health and Mental Hygiene.

### **Sexual Offenders – Post-conviction**

#### **Restrictions on Pretrial Release and Inclusion on RAP Sheet**

*Chapter 184 of 2010* prohibited a District Court commissioner from authorizing the pretrial release of a defendant who is a registered sex offender. A judge is authorized to release such a defendant on suitable bail, on any other conditions reasonably assuring that the defendant



will not flee or pose a danger to others, or both bail and such other conditions. A State record of arrest and prosecution (a “RAP” sheet) that is accessible to judicial officers making pretrial release determinations must prominently indicate, when applicable, that the subject of the report is a registered sex offender or subject to a term of lifetime sexual offender supervision.

*Chapter 184* also specified that, under the Maryland Rule governing the review of a commissioner’s pretrial release order, when such a defendant is presented to the court, the judge must order a continued detention if the judge determines that bail or other conditions of release would not protect against flight or a danger to others. There is a rebuttable presumption that such a defendant will flee or pose such a danger. In addition, *Chapter 184* made the imposition of lifetime sexual offender supervision a reportable offense to the Criminal Justice Information System Central Repository.

### **Violation of Pretrial or Posttrial Release No Contact Order**

*Chapter 187 of 2010* created a new crime that prohibits a person charged with committing a sexual crime against a minor from violating a condition of pretrial or posttrial release prohibiting the person from contacting the victim. *Chapter 187* authorized a police officer to arrest a person without a warrant if the police officer has probable cause to believe that the person has violated a condition of pretrial or posttrial release as prohibited under the Act. A violator is guilty of a misdemeanor and subject to imprisonment not exceeding 90 days.

### **Lifetime Supervision**

A law passed in the 2006 special session provided for extended supervision of sexual offenders by requiring specified sexual offenders to have a term of extended sexual offender parole supervision for a minimum of three years to a maximum of life, with the ability to petition for discharge after that minimum period. Strengthening that law and addressing unintentional operational difficulties that have arisen since the 2006 law was adopted, *Chapters 176 and 177 of 2010* required the lifetime supervision of the following sexual offenders for a crime committed on or after October 1, 2010:

- a sexually violent predator;
- a person convicted of first or second degree rape, first degree sexual offense, or certain circumstances of second degree sexual offense;
- a person convicted of attempted first or second degree rape, first degree sexual offense, or the same form of second degree sexual offense cited above;
- sexual abuse of a minor if the violation involved penetration of a child under the age of 12;

- a person required to register with the person's supervising authority because the person was at least 13 years old but not more than 18 years old at the time of the act; or
- a person convicted more than once arising out of separate incidents of a crime that requires registration.

For a person who is required to register because the person was at least 13 years old but not more than 18 years old at the time of the act, the term of lifetime sexual offender supervision begins when the person's obligation to register in juvenile court begins and expires when the person's obligation to register expires, unless the juvenile court finds after a hearing that there is a compelling reason for the supervision to continue and orders the supervision to continue for a specified time.

*Chapters 176 and 177* authorized a court to sentence a person convicted of a certain third degree sex offense to lifetime supervision and required a risk assessment before that sentence is imposed. The Acts also eliminated the role of the Maryland Parole Commission to administer or enter agreements for extended parole supervision of sexual offenders and deleted reference to an "extended parole supervision offender." Also eliminated was extended supervision for a period less than life.

*Chapters 176 and 177* also prohibited a person subject to lifetime supervision from knowingly or willfully violating the conditions of the supervision, with the following penalties:

- for a first offense, the person is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 5 years and/or a fine of \$5,000; for a second or subsequent offense, the person is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000;
- a person imprisoned for a violation of lifetime supervision is not entitled to diminution credits and continues to be subject to lifetime supervision upon release until discharge from supervision, as specified. A court may remand the person to a correctional facility pending the hearing or a determination on a charge of violation of a condition of lifetime sexual offender supervision.

The sentencing court must hear and adjudicate a petition for discharge from lifetime sexual offender supervision. The court may not deny a petition for discharge without a hearing. Further, the court may not discharge a person unless the court makes a finding on the record that the petitioner is no longer a danger to others. The judge who originally imposed the lifetime sexual offender supervision must hear the petition. If the judge has been removed from office, has died or resigned, or is otherwise incapacitated, another judge may act in the matter.

The sentencing court or juvenile court must impose special conditions of lifetime sexual offender supervision at the time of sentencing or imposition of the registration requirement in juvenile court and advise the person of the length, conditions, and consecutive nature of that

supervision. Before imposing the special conditions, the court must order a presentence investigation. The Acts delineated allowable special conditions, including global positioning satellite tracking or equivalent technology and required participation in a sexual offender treatment program. The sentencing court may adjust the special conditions of such lifetime supervision in consultation with the person’s sexual offender management team.

The Department of Public Safety and Correctional Services (DPSCS) is required to adopt regulations necessary to carry out the duties of DPSCS relating to lifetime offender supervision.

Finally, *Chapters 176 and 177* required notice to victims or victims’ representatives of hearings relating to lifetime sexual offender supervision.

## **Sexual Offenders – Registry**

### **Notification, Registration, and Penalties**

The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109), calls for conformity by the states with various aspects of sex offender registration provisions, including registration by specified juvenile offenders, specific information to be collected from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. Under SORNA, July 27, 2010, is the deadline for substantial implementation of SORNA’s requirements for all registration jurisdictions.

*Chapters 174 and 175 of 2010* substantially revised Maryland’s sex offender registration law in an effort to comply with SORNA and increase penalties for certain sex offenses committed against minors. Among its provisions, *Chapters 174 and 175*:

- replaced references to the four existing categories of sexual offenders with the three tiers of categorization under SORNA;
- specified that a Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life;
- required a sex offender to register in each county where the sex offender habitually lives and defined the term “habitually lives” to include any place where a person visits for longer than five hours per visit more than five times within a 30-day period;
- required a sex offender who is homeless to register in person within a specified period of time with the local law enforcement unit in the county where the registrant habitually lives and to reregister weekly while habitually living in the county;

- generally narrowed all registration, changes of information, and notification deadlines to three days;
- required new in-person reporting requirements relating to institutions of higher education;
- required local law enforcement notifications for any registrant when a change of residence occurs;
- required new notifications and timeframes relating to a change of name, leaving the United States for residence or work in a foreign country, or a temporary residency and required new notifications by local law enforcement units to DPSCS of such changes;
- added information that must be included in a registration statement, such as a copy of the registrant's passport or immigration papers, Social Security number (and purported Social Security numbers), locations where all vehicles are kept, and landline and cell telephone numbers;
- required DPSCS to post on the Internet certain identifying information about each registrant, including the registrant's name and crime;
- prohibited registration information provided to the public by DPSCS from including certain personal information including the sexual offender's Social Security number, driver's license number, and certain medical information;
- required a registrant who establishes a new electronic mail address or other online identity to provide written notice of the new online identity to the sexual offender registry;
- provided for the retroactivity of certain provisions of the Act;
- established a listing of juvenile sex offenders that is maintained by DPSCS and is accessible only by law enforcement personnel for law enforcement purposes; and
- increased the maximum and mandatory minimum penalties for a person convicted of rape in the second degree of a child under the age of 13 years, or sexual offense in the second degree against a child under the age of 13 years, to life imprisonment and 15 years without the possibility of parole, respectively.

#### **Inclusion of Former Names, Email Address, etc. on Registry**

*Chapters 352 and 353 of 2008* required that, in addition to any aliases, the registration statement of a person required to register with the State's sexual offender registry include the

registrant's former names, electronic mail addresses, computer log-in or screen names or identities, instant messaging identities, and electronic chat room identities used by the registrant. The chapters also added (1) a copy of the registrant's valid driver's license or identification card; and (2) the license plate number and description of any vehicle owned or regularly operated by the registrant as items that must be included in a registration statement.

### **Retroactive Application of Offender Registry**

*Chapter 541 of 2009* applied Maryland's offender registry provisions retroactively to include (1) a person convicted on or after July 1, 1997, of an offense committed before that date for which registration as a sexually violent predator or sexually violent offender is required; and (2) a person convicted on or after October 1, 1995, of an offense committed before that date, for which registration as a child sex offender is required. *Chapter 541* also required DPSCS to notify individuals required to register under the bill who are not currently in custody or under supervision. However, *Chapters 174 and 175 of 2010*, which was previously discussed, significantly revamped retroactive registration requirements.

### **Delinquent Acts as Predicate for Registration**

A police record concerning a child is confidential and must be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or as otherwise provided under provisions of the Education Article relating to arrests for reportable offenses.

*Chapter 524 of 2009* required a person who has been adjudicated delinquent for an act that would constitute first or second degree rape or first or second degree sexual assault if committed by an adult to register with a supervising authority at the time the juvenile court's jurisdiction terminates (usually at age 21), for inclusion on the State's sex offender registry if (1) the person was at least 13 years old at the time the qualifying delinquent act was committed; (2) the State's Attorney or the Department of Juvenile Services requests that the person be required to register; (3) the court determines by clear and convincing evidence after a hearing (90 days prior to the time the juvenile court's jurisdiction is terminated) that the person is at significant risk of committing a sexually violent offense or an offense for which registration as a child sexual offender is required; and (4) the person is at least 18 years old.

### **Concurrent Jurisdiction for Failure to Register**

*Chapters 636 and 637 of 2009* authorized concurrent jurisdiction between the District Court and circuit court in a criminal case in which a person is charged with a second or subsequent offense of knowingly failing to register, knowingly failing to furnish required notice, or knowingly providing false information of a material fact to the State's sex offender registry. The second or subsequent offense is a felony subject to maximum penalties of five years imprisonment and/or a \$10,000 fine.

## Sexual Offender Advisory Board

Chapter 4 of the 2006 special session created a Sexual Offender Advisory Board, with specified reporting requirements, to review technology for the tracking of offenders; review the effectiveness of the State's laws concerning sex offenders; review the laws of other jurisdictions regarding sex offenders; review practices and procedures of the Parole Commission and the Division of Parole and Probation regarding supervision and monitoring of sex offenders; review developments in the treatment and assessment of sex offenders; and develop standards for conditions of extended sex offender parole supervision based on current and evolving best practices in the field of sex offender management.

*Chapters 178 and 179 of 2010* altered the composition of the Sexual Offender Advisory Board by adding specified government officials and other members with expertise in sexual abuse and related crimes. The Acts expanded the duties of the board to include developing criteria for measuring a person's risk of reoffending, studying the issue of civil commitment of sexual offenders, and considering ways to increase cooperation among states with regard to sexual offender registration and monitoring.

## Death Penalty

### Background

Implementation of the death penalty was effectively halted nationwide when the U.S. Supreme Court agreed to hear the appeal in *Baze v. Rees* (553 U.S. 35, 128 S.Ct. 1520 (2008)). In September 2007, the court granted *certiorari* to consider the constitutionality of the lethal injection process in Kentucky. The case had wide-ranging implications because the Kentucky procedures for lethal injection are substantially similar to the procedures used in many other states, including Maryland. In April 2008, the court affirmed the decision of the Kentucky Supreme Court and ruled that Kentucky's lethal injection protocol did not constitute cruel and unusual punishment.

Prior to developments in the *Baze* case, the ruling of the Maryland Court of Appeals in *Evans v. State*, 395 Md. 256 (2006) halted executions in Maryland. In that case, the court rejected a race-based constitutional challenge but found that the procedures for lethal injection were implemented without the input required by the Administrative Procedure Act (APA). The court held that the Division of Correction protocols directing the administration of lethal injection are ineffective until either (1) the protocols are adopted as regulations under the APA; or (2) the General Assembly exempts the protocols from the procedures required by the APA. New regulations to adopt the protocols were not issued by DPSCS until 2009 and to date are under review by the Administrative, Executive, and Legislative Review Committee. As a result, implementation of the death penalty has effectively been halted in Maryland since the ruling in *Evans*. Evans' civil rights claim in the United States District Court of Maryland that the use of lethal injection in Maryland is cruel and unusual punishment because of the combination of chemicals used, the lack of medical expertise of correctional officers who administer the

injections, and the condition of his veins after years of drug use is pending. That case was put on hold after the Court of Appeals decision halted executions in the State.

### **Maryland Commission on Capital Punishment**

Political and social arguments for and against the use of capital punishment have persisted over many years both nationally and in Maryland. Although questions about the use of the death penalty previously focused on the morality of state-sanctioned killing, more attention is now being paid to the ability of government to administer the system fairly – without racial, geographic, or socioeconomic inequities – and in a way that minimizes the risk of executing innocent persons.

*Chapters 430 and 431 of 2008* established a 22-member Maryland Commission on Capital Punishment (MCCP) to study all aspects of capital punishment as currently and historically administered in the State. The Acts specified the commission’s membership and provided for the Governor to appoint certain members reflecting the broad diversity of views on capital punishment and the racial, ethnic, gender, and geographic diversity of the State. MCCP was required to make a final report, and if applicable, a minority report on its findings and recommendations to the General Assembly by December 15, 2008. MCCP recommendations were to address the application and administration of the death penalty in the State so that they are free from bias and error and achieve fairness and accuracy. The recommendations must have also addressed racial, jurisdictional, and socioeconomic disparities, the risk of innocent people being executed, a comparison of the effects of court cases involving capital punishment and life imprisonment, and the impact of DNA evidence in capital cases.

The commission held five public hearings during which it heard testimony from judges, law professors, attorneys, and others with expertise in or experience with the death penalty. The commission held five additional meetings to discuss the evidence presented at the hearings. In a 13-9 vote, the commission recommended abolishing capital punishment in Maryland. Among other things, the commission found that:

- racial and geographic disparities exist in how the death penalty is applied;
- death penalty cases are more costly than nondeath penalty cases and take a greater toll on the survivors of murder victims;
- there is no persuasive evidence that the risk of execution is a deterrent to crime; and
- the unavailability of DNA evidence in some cases opens the “real possibility” of wrongly executing an innocent person.

The commission’s minority report cited the reasons below, among other things, as support for retaining the death penalty in Maryland.

- Maryland is more judicious in its application of the death penalty compared to other states and compared to death penalty imposition in the State prior to 1978. The State has an extensive statutory scheme before the death penalty may be imposed, and the death penalty is sought in a low percentage of murder cases.
- Advances in technology, Maryland's extensive review process, and post-conviction DNA reforms have reduced the chance that an innocent person may be sentenced to death as far as is humanly possible. The slight chance that this may occur does not justify repealing the death penalty.
- The death penalty does have a deterrent effect; it protects future victims and is a deterrent from committing future murders for individuals already serving life sentences. The minority report also indicated that if the death penalty is repealed, it should, at the very least, be retained for cases involving murders of correctional police officers.

### **Proposed Repeal/Enacted Modification**

As introduced, *Chapter 186 of 2009* sought to repeal the death penalty in Maryland. However, *Chapter 186* was amended to restrict the death penalty to cases in which the State presents the court or jury with (1) biological evidence or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation, and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. *Chapter 186* also prohibited a defendant from being sentenced to death if the State relies solely on evidence provided by eyewitnesses.

If the State has already properly filed a notice of intent to seek a death sentence in a case that does not qualify for the death penalty under *Chapter 186*, that notice must be considered withdrawn and it shall be considered that the State properly filed a notice to seek a sentence of life imprisonment without the possibility of parole.

*Chapter 186* expressed that it is the intent of the General Assembly that expanded victim services for survivors of homicide victims be funded by savings resulting from the restrictions on the death penalty included in the bill. It also required the Governor's Office of Crime Control and Prevention (GOCCP) to submit a report to the House Judiciary and Senate Judicial Proceedings committees on how these services should be expanded. The report was due November 1, 2009.

*Senate Bill 645/House Bill 1328 of 2008* and *Senate Bill 211/House Bill 225 of 2007 (all failed)* would have repealed the death penalty and all provisions relating to it. A person found guilty of murder in the first degree would be sentenced to imprisonment for life or imprisonment for life without the possibility of parole. The bills also would have provided that an inmate who had been sentenced to death before the bills' effective dates and who had not been executed may not be executed and would have been considered as having received a sentence of life imprisonment without the possibility of parole.



### **Administrative Procedure Act**

*House Bill 1250 of 2008* and *Senate Bill 239/House Bill 690 of 2007 (all failed)* would have exempted from the requirements of the APA the protocols of DPSCS governing the administration of the death penalty, including any execution operations manual. As a practical matter, these bills would have ended the moratorium on the death penalty and provided for the execution of inmates currently sentenced to death.

### **Electronic Citations**

A national study found that an estimated 10% of all written citations issued by law enforcement officers and received by courts contain errors from misspelling, poor handwriting, smudges, and inconsistencies. An electronic system could eliminate most, if not all, of these problems. Electronic citations could save time and increase the safety and efficiency of officers in the field.

*Chapter 605 of 2007*, requested by the Maryland Judicial Conference, authorized the issuance of traffic citations in an electronic format. The Chief Judge of the District Court is required to authorize the use of a single document for the issuance of multiple traffic citations, which must be separately numbered. The Chief Judge must specify the appropriate means in which a citation may be (1) certified by the issuing police officer, under penalties of perjury, that the facts in the citation are true; and (2) acknowledged to have been received by the person to whom the traffic citation is issued. Appropriate means may include a written signature, an electronic signature, or the data encoded on a person's driver's license or identity card.

An electronic or written traffic citation must include a notice that the citation is a summons to appear by a court through a trial notice, or that a court will issue a writ containing that information. In addition, a traffic citation must contain the violations charged and an acknowledgement of receipt of the citation to be executed by the person receiving the citation. The citation must also contain a clear and conspicuous statement that acknowledgement of the citation is not an admission of guilt and failure to acknowledge the citation could subject the person to arrest. A person receiving a citation must comply with the notice to appear contained in a trial notice or writ issued by a court.

A police officer who issues a citation is required to file an electronic or written copy of the citation and keep a written or electronic copy of the citation. If the person cited acknowledges receipt on a written copy of the citation, then the police officer must keep the signed copy to produce as evidence. In consultation with the Chief Judge of the District Court, the Motor Vehicle Administration must adopt regulations to govern the distribution and disposition of electronic, as well as written traffic citation forms. *Chapter 605* provided that an electronic or written traffic citation that conforms to State requirements is a sufficient charging document for the prosecution of any traffic offense.

## **Custodial Interrogations**

Interest in recorded interrogations increased after the 2002 release of the five teenagers convicted of the 1989 rape and near-murder of the “Central Park Jogger” on the basis of their nonvideotaped interrogations, but videotaped confessions. They were ordered released after another person confessed to having committed the crime, acting alone, and DNA evidence failed to link the teenagers to the attack.

Recording the *Miranda* warnings at the start of an interrogation could reduce subsequent challenges based on a defendant’s allegation that law enforcement failed to properly advise of these rights. The practice could also help resolve questions as to what was said and done over the course of an interrogation.

Several states have mandatory recording of confessions. Also, at least 500 local jurisdictions have voluntarily adopted recording policies.

*Chapters 359 and 360 of 2008* declared that it is the public policy of the State that (1) a law enforcement unit that regularly utilizes one or more interrogation rooms capable of creating audiovisual recordings of custodial interrogations shall make reasonable efforts to create an audiovisual recording of a custodial interrogation of a criminal suspect in connection with a case involving murder, rape, sexual offense in the first degree, or sexual offense in the second degree, whenever possible; and (2) a law enforcement unit that does not regularly utilize one or more interrogation rooms capable of creating audiovisual recordings of custodial interrogations shall make reasonable efforts to create an audio recording of a custodial interrogation of a criminal suspect in connection with a case involving murder, rape, sexual offense in the first degree, or sexual offense in the second degree, wherever possible.

Under the Acts, an audio or audiovisual recording made by a law enforcement unit of a custodial interrogation of a criminal suspect is exempt from the Maryland Wiretapping and Electronic Surveillance Act. The Acts also required GOCCP to annually report to the General Assembly on the progress of jurisdictions in establishing interrogation rooms capable of making audiovisual recordings and to give such reports at StateStat meetings. GOCCP must also work with State and local law enforcement agencies to secure all funding available for law enforcement improvement and to develop a program to assist local and State law enforcement agencies to fund the establishment and operation of interrogation rooms capable of creating audiovisual recordings of custodial interrogations.

## **Firearm Offenses – Restrictions on Pretrial Release of Repeat Offenders**

In general, District Court commissioners have the authority to order the pretrial release of a defendant. However, there are certain offenses for which a defendant is not eligible for pretrial release or for which only a judge, rather than a District Court commissioner, is authorized to grant pretrial release. *Chapters 41 and 42 of 2009* prohibited a District Court commissioner from authorizing the pretrial release of a defendant charged with one of nine specified firearms offenses if the defendant has been previously convicted of one of those crimes. A judge is

authorized to release such a defendant on suitable bail, on any other conditions reasonably assuring that the defendant will not flee or pose a danger to others, or both bail and such other conditions.

The Acts also specified that, under the Maryland Rule governing the review of a commissioner’s pretrial release order, when such a defendant is presented to the court, the judge must order a continued detention if the judge determines that bail or other conditions of release would not protect against flight or a danger to others. Under *Chapters 41 and 42*, there is a rebuttable presumption that such a defendant will flee or pose such a danger.

## **Post-conviction Matters**

### **Writ of Actual Innocence**

Under the Maryland Rules, a defendant may file a motion for a new trial within 10 days after a verdict. A court may grant the motion if it is in the interest of justice. A court is also authorized under the Maryland Rules to grant a new trial or other appropriate relief if newly discovered evidence exists that could not have been discovered by due diligence in time to move for a new trial within 10 days after the verdict. Motions based on the newly discovered evidence must be filed within one year after the later of the date the court imposed a sentence or received a mandate from one of the State’s appellate courts. If the defendant was sentenced to death, however, the defendant may move for a new trial at any time if the newly discovered evidence shows that the defendant is innocent of the capital crime or an aggravating circumstance or other condition of eligibility that was actually found by the court or jury in imposing the death sentence. A defendant may also make a motion at any time if the motion is based on DNA or related evidence that, if proven, exonerates the defendant.

*Chapter 744 of 2009* authorized a convicted person to file a petition for a writ of actual innocence at any time in the circuit court in the county in which the conviction was imposed if the person claims that there is newly discovered evidence that creates a substantial or significant possibility that the outcome in the case may have been different and the evidence could not have been discovered in time to move for a new trial. *Chapter 744* also contained procedural requirements for the court and content requirements for the petition.

*Chapters 233 and 234 of 2010* limited the availability of a petition for a writ of actual innocence to a person who was charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime. The legislation also (1) required a petitioner to notify the State in writing of the filing of a petition; (2) authorized the State to file a response to a petition within 90 days of receiving notice or under a set time period ordered by the court; (3) specified that a victim or the victim’s representative must be notified of and has a right to attend a hearing on the petition; and (4) clarified that a court may only dismiss a petition without holding a required hearing if the court finds that the petition fails to assert grounds on which relief may be granted.

### **Violation of Probation**

Traditionally, if the District Court wished to charge a person with violation of probation, it was required to do so within the probationary period. This timeline is different from the one used in the circuit courts, where revocation of probation proceedings may begin at any time, as long as “the State proceeds with reasonable promptness and diligence.” *State v. Miller*, 289 Md. 443, 424 A.2d 1109 (1981).

In some instances, defendants alleged to have violated probation could not be brought in for a hearing because there was insufficient time within the probation period for probation agents to submit required documentation to the District Court after learning of alleged violations. In an attempt to address this problem, *Chapter 513 of 2009* authorized the District Court to institute proceedings for violation of probation during the period of probation or within 30 days after the violation, whichever is later. *Chapter 513* also required that a violation of probation hearing in District Court be timely and extended the applicability of other provisions relating to termination and violation of probation in District Court to circuit court.

### **Medical Parole**

Prior to 2008, there were no statutory provisions for medical parole, whereby inmates with terminal illnesses who pose no danger to public safety could be afforded early release from incarceration.

*Chapter 299 of 2008* established medical parole as a form of release from incarceration in a State or local correctional facility for incapacitated inmates who are serving a sentence with the possibility of parole and, as a result of a medical or mental health condition, disease, or syndrome, pose no danger to public safety. *Chapter 299* provided a procedure for the Maryland Parole Commission to initiate consideration of the appropriateness of granting a medical parole and obtain information relevant for its consideration.

The commission is required to consider specified information and to notify victims, allowing them an opportunity to be heard, before granting the inmate a medical parole release. The commission may impose conditions on a medical parolee, and, if a parolee’s incapacitation ends, may reincarcerate the parolee. The Governor must approve a medical parole for a person serving a life sentence.

### **Occupational Licenses or Certificates – Criminal Convictions**

*Chapter 686 of 2009* prohibited a department from denying an occupational license or certificate to an applicant solely on the basis that the applicant has previously been convicted of a crime, other than a crime of violence, unless the department determines that (1) there is a direct relationship between the applicant’s previous conviction and the specific occupational license or certificate sought; or (2) the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. *Chapter 686* defined “department” as the Maryland Department of Agriculture; the Maryland Department of the Environment; the Department of Health and Mental Hygiene; the Department

of Human Resources; the Department of Labor, Licensing, and Regulation (DLLR); or DPSCS, or any unit of one of these agencies. *Chapter 686* also stated that it is the policy of the State to encourage the employment of nonviolent ex-offenders and remove barriers to their ability to demonstrate fitness for occupational licenses or certifications required by the State.

## **Expungement**

### **Release without Charge**

Prior to the 2007 General Assembly session, concern had arisen about a large number of people who were arrested in Baltimore City and ultimately released from police custody without having been charged with a crime. Having an arrest on one's record can have serious consequences due to the adverse impact on employment and housing opportunities. Although the Baltimore City Police Department contended that all arrests were legal and based upon probable cause, the Baltimore City State's Attorney was declining to prosecute 20% to 30% of arrests because there was insufficient evidence to support an arrest or obtain a conviction or the time already served in jail was deemed sufficient.

Expungement means removing a police or court record from public inspection by obliteration or by removing the record to a separate secure area to which people without a legitimate reason are denied access. Under former law, a person who had been arrested but never charged with a crime could pay a fee and petition to have the police records relating to the arrest expunged. A person seeking an expungement before the three-year statute of limitations on lawsuits expires was required to sign a release waiving the right to sue for improper arrest.

In response to the Baltimore City over-arrest issue, *Chapter 63 of 2007* established an automatic expungement that applied to arrests without charge statewide beginning October 1, 2007. Within 60 days after release of a person entitled to expungement, a law enforcement agency is required to do a diligent search; expunge each police record relating to the arrest, including photographs and fingerprints; and send a notice of expungement to the Criminal Justice Information System Central Repository, each booking facility and law enforcement unit that may have a record of the arrest, and to the person. The booking facility, law enforcement unit, and Central Repository then have 60 days to expunge each police record. If the agencies fail to expunge a police record, the person entitled to expungement may seek relief in the court and recover costs of the action. A police record expunged under *Chapter 63* must be moved to a secure, nonaccessible area for three years after the date of expungement. After the three-year period, the expunged record may be obliterated.

*Chapter 63* provided that a person who was arrested for the suspected commission of a crime before October 1, 2007, and was then released without being charged with the commission of a crime may request expungement of the police record without having to wait or sign a waiver of the right to sue. A similar procedure must then be followed by law enforcement units to perform the expungement. A person must request expungement within eight years after the arrest.

No fee or costs may be charged for an expungement under *Chapter 63*, regardless of when the arrest or confinement occurred.

### **Civil Offenses or Infractions**

A person charged with a civil offense or infraction, except a juvenile offense, as a substitute for a criminal charge may file a petition for expungement under the same circumstances as someone charged with a crime under *Chapter 388 of 2007*. The Act, requested by the Maryland Judicial Conference, applies retroactively.

### **Nuisance Crimes**

*Chapters 615 and 616 of 2008* authorized a person convicted of certain State or local public nuisance crimes, including urination in a public place, panhandling, loitering, and vagrancy, to seek expungement of the associated criminal records. The petition may not be filed within three years after the conviction or satisfactory completion of the sentence, whichever is later. If two or more charges arise from the same incident or set of facts, a person is not entitled to petition for the expungement of one charge or conviction if the other charge would not be expungeable. In addition, a person is not entitled to expungement if, since the time of the conviction of the nuisance crime for which expungement is sought, the person has been convicted of another crime other than a minor traffic violation, or is a defendant in a pending criminal proceeding.

### **Restoration of Voting Rights**

Prior to 1974, individuals who had been convicted of an infamous crime in Maryland were prohibited from registering to vote. The General Assembly passed legislation in 1974, however, allowing an individual convicted of one infamous crime to vote if the individual completed the sentence imposed, including any period of probation. Individuals convicted of a subsequent infamous crime remained unable to vote. No substantive changes were made to State law on the issue after 1974 until Chapter 304 of 2002, which enfranchised an individual with more than one conviction for theft or an infamous crime if the court-ordered sentence was completed and at least three years had elapsed since the completion of the sentence. An individual convicted of buying or selling votes or convicted of a second or subsequent crime of violence, however, remained disqualified to register to vote.

*Chapter 159 of 2007* allowed an individual convicted of any crime, with the exception of buying or selling votes, to register to vote if not actually serving a court-ordered sentence of imprisonment, including any term of parole or probation, for a felony conviction. *Chapter 159* eliminated a provision requiring an individual with a second or subsequent conviction of theft or other infamous crime to allow three years to elapse after completing the individual's court-ordered sentence, and a provision disqualifying an individual who has been convicted of a second or subsequent crime of violence from being a registered voter.

## Office of the Public Defender

### Eligibility for Services

The Office of the Public Defender (OPD) provides legal representation services to persons charged with criminal offenses who cannot afford to hire private attorneys. OPD determines eligibility for services by evaluating the financial ability of the applicant to pay for a competent private attorney and all other necessary expenses of representation. Financial ability is determined by a number of factors, including the individual's assets, income, the nature of the offense, and the length and complexity of the proceedings.

OPD is required to investigate the financial status of an applicant when the circumstances merit. OPD may require an applicant to execute and deliver written requests or authorizations that are necessary under law to provide OPD with access to confidential records of public or private sources to determine eligibility. OPD, on request, may obtain information without charge from a public record office or other unit of the State or local government.

State law specifies that tax information, including the amount of income disclosed in a tax return, may be disclosed to an employee or officer of the State who by reason of the employment or office has the right to the information. However, federal law generally prohibits the disclosure of tax information. Although there are exceptions for the disclosure of tax information to state agencies, the exception is limited to those agencies charged with state tax administration. *Chapter 393 of 2010* authorized OPD to submit requests to DLLR and the Comptroller's Office for information regarding the employment status and income of individuals applying for the services of OPD. Each request must be accompanied by a signed authorization in a form acceptable to the responding agency. DLLR and the Comptroller's Office are required to comply with the requests.

### Board of Trustees

The Public Defender is the head of OPD. In August 2009, Maryland's longstanding Public Defender was removed from office by a two to one vote of the then three-member Board of Trustees of the OPD.

*Chapters 223 and 224 of 2010* repealed the requirement that the Public Defender serve at the pleasure of the Board of Trustees, and instead authorized the Board of Trustees, by a vote of at least seven members, to remove the Public Defender from office only for (1) misconduct in office; (2) persistent failure to perform official duties; or (3) conduct prejudicial to the proper administration of justice.

The Acts also made several changes to the composition and appointment of members of the Board of Trustees, including increasing the size of the board from 3 to 13 members. Eleven members are appointed by the Governor with the advice and consent of the Senate. The 11 members must include a representative from each judicial circuit of the State. The President of the Senate and the Speaker of the House of Delegates must each appoint one member to the board. Each member of the board must be an active attorney admitted to practice before the

Court of Appeals of the State and must (1) have significant experience in criminal defense or other matters related to the board's work; or (2) have demonstrated a strong commitment to quality representation of indigent defendants. The Attorney General, the State Prosecutor, and State's Attorneys are prohibited from serving on the board, as are current members or employees of the Judicial Branch or a law enforcement agency in the State. Board members serve three-year terms and may be reappointed. Members continue to serve until a qualified successor is appointed. The initial members of the board must be appointed by December 31, 2010. A board member serving on June 1, 2010, must continue to serve until a successor is appointed and qualifies.

The Acts clarified that the Public Defender serves for a term of six years. The Public Defender serving on June 1, 2010, may continue to serve for six years and may be reappointed after the expiration of his term.

## **Victims' Rights**

### **Appearance of Victim at Hearing on Motion for Revision, Modification, or Reduction of Sentence**

*Chapter 573 of 2009* was introduced in response to *Hoile v. State*, 404 Md. 591 (2008) in which the Court of Appeals held that a victim who had submitted a victim notification form but was not notified of the reconsideration hearing in which the defendant's sentence was reduced has no remedy.

*Chapters 573* established that if a victim or victim's representative fails to appear at a hearing on a motion for a revision, modification, or reduction of a sentence or disposition in a circuit court or juvenile court, the prosecuting attorney must state on the record that proceeding without the appearance of the victim or representative is justified because (1) the victim or representative was contacted by the prosecuting attorney and waived the right to attend the hearing; (2) efforts were made to contact the victim or representative and to the best knowledge and belief of the prosecuting attorney, the victim or representative cannot be located; or (3) the victim or representative has not filed a victim notification form. If the court is not satisfied by the statement that proceeding without the appearance of the victim or representative is justified, or if no statement is made, the court may postpone the hearing.

### **Criminal Injuries Compensation Board**

The Criminal Injuries Compensation Board (CICB) in DPSCS provides financial assistance for innocent victims of crime. The board may compensate victims who suffer physical or psychological injury for their medical expenses and loss of earnings. *Chapters 69 and 70 of 2010* subjected a claim filed with CICB to review under applicable provisions of the Administrative Procedure Act. If a claimant requests a hearing after the board has issued proposed findings of fact, conclusions of law, or orders, the board must hold a hearing in accordance with the Administrative Procedure Act before issuing final findings of fact, conclusions of law, or orders.



## Juvenile Law

### Department of Juvenile Services Facilities

During the 2007-2010 term, the General Assembly considered legislation that changed the way facilities dedicated to providing services to juveniles are administered.

#### Reorganization and Regionalization

In accordance with Chapter 431 of 2004, the Department of Juvenile Services (DJS) contracted with Development Services Group to complete a Facilities Master Plan. Phase 1 of the Facilities Master Plan (Gap Analysis Report) divided the State into five operational areas. Phase 2 of the Facilities Master Plan proposed dividing the State into four operational regions. DJS recommended that each region contain shelter care, secure detention, and a youth center. The plan recommended 15 projects over 10 years with a total estimated cost for design, construction, and equipment of \$111.8 million. Eleven of the 15 projects involved renovations or replacements of existing facilities.

*Chapter 498 of 2007* required DJS to serve children in its system with specific programming that includes ensuring their safety and the safety of the community, holding delinquent children accountable for their actions, assisting in the development of competencies for these children, and delivering services on a regional basis. *Chapter 498* specified that at least four operational regions must be established, required that facilities must be operationally separate from each other, and required DJS to submit a revised master facilities plan to the Department of Budget and Management by November 1, 2007.

#### 48-bed Committed Facilities

DJS must serve children in the juvenile services system with programming that:

- ensures the safety of the community and the children served;
- holds delinquent children accountable to victims and communities;
- assists children to develop competencies to become successful members of society;
- delivers services on a regional basis through at least four operational regions;
- ensures that a committed facility owned by DJS serves no more than 48 children at one time; and
- uses detention and committed facilities that are operationally separate from each other and that do not share common program space, including dining halls and educational or recreational facilities.

DJS operates facilities to diagnose, care for, train, educate, and properly rehabilitate children who need services. DJS is also authorized to contract with private providers to place children in other facilities that meet State licensing criteria. While State-owned committed facilities are required by law to serve no more than 48 children at one time, no such restriction on capacity formerly existed for private committed facilities licensed by DJS. “Committed facilities” provide for the diagnosis, care, training, education, and rehabilitation of children in DJS custody.

*Chapter 280 of 2010* required DJS to ensure that each committed facility licensed by DJS serves no more than 48 children at one time, unless the Secretary of Juvenile Services finds good cause for a facility to serve more than 48 children at one time.

### **Youth Welfare Funds**

A July 2007 legislative audit found that DJS had recorded fiscal 2006 telephone and vending machine commissions of \$186,000 as special funds in violation of General Accounting Division (GAD) requirements. According to the *Accounting Procedures Manual* developed by GAD, all such commissions are considered general funds unless the Board of Public Works determines otherwise. As DJS was not able to document board approval to account for these commissions as special funds, the audit determined that DJS had lacked the authority to carry these funds over to the next fiscal year.

DJS advised that telephone and vending machine commissions had been historically recorded as special funds, with proceeds used for recreational and other programs. The proposed fiscal 2009 State budget reflected these commissions as special funds. *Chapter 291 of 2008* established a special, nonlapsing youth welfare fund in each facility of DJS. Each youth welfare fund consists of monies derived from commissary profits, telephone and vending commissions, and money received from other sources. These funds are authorized for use in purchasing goods and services that benefit the youth in the facility.

### **Repeal of Private Residential Rehabilitative Institutions**

Chapter 419 of 2005 defined a “private residential rehabilitation institution” as a private, nonprofit facility serving 150 or more youth that provides academic, athletic, and workforce development to court-adjudicated children. To qualify as this type of institution, the program was required to have been approved to operate by October 1, 2005.

Only one program, Bowling Brook Preparatory School in Carroll County, however, met the definition of a private residential rehabilitative institution, and in March 2007, the facility closed. *Chapter 288 of 2008* repealed the authorization for and operating requirements of a private rehabilitative institution.

### **Oversight of Juvenile Services and Professionals**

In the 2007 and 2009 sessions, the General Assembly took steps to ensure the quality of services provided by DJS and the competence of DJS employees.

### **Juvenile Justice Monitoring Expansion**

Chapter 12 of 2006 transferred the Juvenile Justice Monitoring Unit from the Governor's Office of Children to the Office of the Attorney General (OAG). This office investigates and determines whether the needs of the children in facilities owned or operated by DJS are being met, their rights are being upheld, and they are free from abuse.

*Chapter 499 of 2007* expanded the jurisdiction of the Juvenile Justice Monitoring Unit to include the monitoring of any residential facility licensed by DJS. The Act authorized the Governor to transfer two regular positions and \$120,000 for those positions from DJS to the monitoring unit, effective October 1, 2007. The legislation also authorized the transfer of one position within OAG to the monitoring unit. The expansion of the monitoring unit's jurisdiction took effect on January 1, 2008, contingent on the transfer of positions and funds.

### **Department of Juvenile Services Employees – Criminal History Records Checks**

Within the first month of employment with the department, DJS was required to apply to the Criminal Justice Information System (CJIS) Central Repository for a federal and State criminal history records check for each of its employees. The CJIS Central Repository was required to provide the requested information.

The CJIS Central Repository is established within the Department of Public Safety and Correctional Services to collect, manage, and disseminate Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

*Chapter 723 of 2009* required DJS to apply for an initial criminal history records check for each of its employees on or before the first day of employment, rather than within the first month. Additionally, the Act required CJIS to provide to DJS and the affected employee a revised printed statement of the employee's criminal history record information if new information is reported after the date of the initial records check.

### **Juvenile Programs**

The 2007 and 2009 sessions saw attempts to improve and expand certain programs to benefit children serviced by DJS.

#### **Mentoring**

Chapter 307 of 2003 established the Task Force to Study the Mentoring and Monitoring of Children in the Custody of or Under the Supervision of the Department of Juvenile Justice. The task force found that mentoring programs affect positive outcomes for youth, including improvements in academic performance, classroom behavior, and peer relationships. The task force's final report stated that it was feasible for the department to implement a statewide mentoring program provided that sufficient funding and administrative support are made available to the program.

*Chapter 526 of 2007* established the “Maryland Rising” mentoring program for children who had spent at least 30 days in a committed placement. DJS was required to develop a statewide network of groups, including State agencies, that would attempt to recruit a volunteer mentor for each child in the program. Mentors must have frequent contact with the children to whom they are assigned and may provide counseling, tutoring, life skills training, and other support services.

### **Juvenile Justice Alternative Education Program**

The Juvenile Justice Alternative Education Pilot Program was originally established by Chapter 685 of 2001 as a program for public school students who had been suspended, expelled, or identified as candidates for suspension or expulsion. The program was required to (1) provide programs designed to promote self-discipline and reduce disruptive behavior; (2) ensure that students continue to receive appropriate educational and related services during their suspension and expulsion terms; and (3) offer services to facilitate students’ transitions back to schools after they have served their suspension and expulsion terms.

All local school systems have a type of alternative education program available to their students who face long-term suspension or expulsion. However, Prince George’s County is the only jurisdiction operating a program that originated as a juvenile justice alternative education program.

*Chapter 662 of 2009* authorized a juvenile court, in a county that has established a juvenile justice alternative education program, to order a student who is suspended, expelled, or identified as a candidate for suspension or expulsion from school to attend that program. The Act took effect July 1, 2009, and terminates on June 30, 2012.

### **Child in Need of Supervision Pilot Programs – Extension**

A “child in need of supervision” (CINS) is a child who requires guidance, treatment, or rehabilitation and (1) is required by law to attend school and is habitually truant; (2) is habitually disobedient, ungovernable, and beyond the control of the person having custody of him; (3) departs himself so as to injure or endanger himself or others; or (4) has committed an offense applicable only to children.

Chapter 601 of 2005 required the Secretary of Juvenile Services to establish a Child in Need of Supervision Pilot Program in Baltimore City and Baltimore County. The Governor was required to include \$250,000 annually in the fiscal 2007 through 2010 State budgets. The program must select community-based providers that offer assessment, intervention, and referral services to children in Baltimore City and Baltimore County who are alleged to be in need of supervision. The designated assessment service providers must be contracted and funded by the local management in Baltimore City and Baltimore County.

A juvenile intake officer who receives a complaint alleging that a child in Baltimore County or Baltimore City is in need of supervision must refer the child and the child’s parents to one of the selected providers unless the intake officer concludes that the court has no jurisdiction

or that neither an informal adjustment nor judicial action is appropriate. The provider must meet with the child and the child's parents two to six times to discuss the child's school performance, family interactions, peer relationships, and health, including drug and alcohol use. The provider must review all available, relevant records concerning the child, conduct an assessment of the child, and establish a case plan and record for providing services to the child.

An intake officer may not authorize the filing of a delinquency or CINS petition or peace order request or propose an informal adjustment for the child unless the provider has filed a report with the court stating the date of the initial meeting with the child and that all attempts to provide assessment, intervention, and referral services have failed. Any information provided by a child incident to a referral to a selected provider may not be admitted in evidence in any adjudicatory hearing, peace order proceeding, or criminal proceeding against the child.

*Chapter 420 of 2009* extended to June 30, 2013, the termination date of the Child in Need of Supervision Pilot Program in Baltimore City and Baltimore County. The Act required the Governor to include a general fund appropriation of \$250,000 for DJS in fiscal 2011, 2012, and 2013 to continue funding the pilot program.

### **Truancy Reduction Pilot Programs**

Except as otherwise provided by law, each child who resides in Maryland and is 5 years or older and under 16 years must regularly attend a public school unless the child is otherwise receiving regular, thorough instruction during the school year. Each person who has legal custody or care and control of a child who is at least age 5, but younger than age 16, must see that the child attends school or receives instruction. Any person who has legal custody or care and control of a child who is at least 5 years old, but younger than 16 years, who fails to see that the child attends school or receives instruction is guilty of a misdemeanor.

Chapter 551 of 2004 authorized a three-year Truancy Reduction Pilot Program (TRPP) in the juvenile courts in Dorchester, Somerset, Wicomico, and Worcester counties.

Under the program, a school official is authorized to file a civil petition alleging that a child who is required to attend school has failed to do so without lawful excuse. For students under the age of 12 years, prior to participation in TRPP, a criminal charge must be filed against the student's legal custodian and dismissed or placed on the inactive docket prior to participation in TRPP.

In making a disposition on the truancy petition, the court may order the student to (1) attend school; (2) perform community service; (3) attend counseling, including family counseling; (4) attend substance abuse evaluation and treatment; (5) attend mental health evaluation and treatment; or (6) comply with a curfew set by the court. Following the disposition hearing, a hearing is scheduled to review family assessment findings and determine appropriate services. Participants are eligible for graduation from the program when they have remained in the program for 90 days without any unexcused absences.

**Chapter 648 of 2007** authorized the establishment of a TRPP in the juvenile court in Harford and Prince George's counties and extended the authorization for existing truancy reduction programs in Dorchester, Somerset, Wicomico, and Worcester counties. **Chapter 718 of 2009** repealed the termination date for existing TRPPs and clarified that provisions of law relating to the programs apply only in a county in which the circuit administrative judge has established a TRPP and to the extent that funds are provided in the State budget. The Act required the Chief Judge of the Court of Appeals to submit an annual report to the General Assembly on each program by November 1.

### **Juvenile Learner's Permits and Driver's Licenses**

During the 2007 and 2009 sessions, the General Assembly limited the ability of truant minors to obtain learner's permits and expanded the offenses for which a license suspension could be imposed against a minor.

**Chapters 562 and 563 of 2007** prohibited the Motor Vehicle Administration from issuing a learner's instructional permit to an applicant under the age of 16 if the applicant's school attendance record indicates more than 10 unexcused absences during the prior school semester. **Chapter 525 of 2009** expanded the offenses committed by drivers younger than age 18 for which the Motor Vehicle Administration (MVA) is required to impose a mandatory driver's license suspension. Specifically, the legislation required the clerk of the court to report to MVA a child adjudicated delinquent or found to have committed a delinquent act (without an adjudication) for the offenses of (1) failing to remain at the scene of an accident involving bodily injury, death, or property damage; and (2) fleeing and eluding a police officer. On notification, MVA is required to suspend the license of the child for six months for a first adjudication or finding that the child committed the offenses and for one year for a second or subsequent adjudication or finding. A more detailed discussion of these Acts may be found under Part G – Transportation and Motor Vehicles of this *Major Issues Review*.

### **Interstate Compact for Juveniles**

Chapter 520 of 1966 entered the State of Maryland into the Interstate Compact on Juveniles. The compact guides the return of juveniles to other states when their return is sought and also guides proceedings for return of Maryland residents apprehended in other states. The compact is administered by DJS. The Association of Juvenile Compact Administrators estimates that the compact governs 20,000 to 30,000 transfer and supervision cases each year.

**Chapter 500 of 2007** replaced the existing Interstate Compact for Juveniles with an updated version of the compact. The revised Interstate Compact was intended to address deficiencies in the original agreement unanticipated when the compact was developed in 1955. Provisions include (1) an independent compact operating authority; (2) an interstate commission with representation from all member states; (3) rule-making and sanctioning authority; (4) an annual assessment for commission operations; (5) uniform data collection and sharing procedures; and (6) conformity with other state compacts governing corrections and placement of children.

The Act provided that the compact takes effect on the latter of July 1, 2008, or the date 35 states pass a similar act. As of September 14, 2009, 40 states had enacted the revised Interstate Compact for Juveniles into law.

### **Juvenile Records**

The confidentiality of juvenile records is generally protected by law and regulation. In the 2008, 2009, and 2010 sessions, the General Assembly took steps to provide limited access to and release of these records in specific situations.

### **Escapes from Detention Centers**

A police record concerning a child is confidential and must be maintained separate from those of adults. The contents of the record may only be divulged (1) by order of the court; (2) for purposes of notifying a local school superintendent of an arrest; (3) to DJS or law enforcement for purposes of investigation or prosecution; (4) to the Maryland Division of Parole and Probation, Maryland Parole Commission, or Maryland Division of Correction for purposes of carrying out their statutory duties; (5) for purposes of notification of a victim of a proceeding involving a juvenile defendant or respondent; or (6) for criminal justice research purposes.

*Chapter 526 of 2008* provided an exception to the general prohibition against disclosure of a juvenile police record by authorizing a law enforcement agency to release to the public a photograph and information identifying a child who has escaped from a juvenile detention center or a secure residential facility for purposes of facilitating apprehension of the child and ensuring public safety.

### **Arrests for Reportable Offenses**

When a student who is enrolled in a public school is arrested for committing a violent crime or for any of various gang-, weapons-, or drug-related offenses, the law enforcement agency making the arrest must notify either the student's principal or the local superintendent of schools of the student arrest. The State's Attorney must notify the local superintendent of disposition of the case. Information concerning the arrest and disposition of the case is considered confidential and may not be made part of the student's permanent school record. However, it may be shared as a confidential file with another public school in which the student enrolls or transfers information obtained by a local superintendent is to be used to provide appropriate educational programming to the student and to maintain a safe and secure school environment.

*Chapters 375 and 376 of 2008* were prompted by an incident that occurred in a private school in Carroll County, Maryland. The principal of Faith Christian School in Westminster unknowingly enrolled a student in the school who had previously committed a sexual assault. Because law enforcement and the public schools that the student previously attended were prohibited from notifying a private school of the student's arrest and subsequent disposition, the safety of the students at Faith Christian School was compromised. Accordingly, *Chapters 375*

*and 376* applied the laws relating to the notification to school officials of the arrest of a student for certain reportable offences to private schools.

### **Access by the Baltimore City Health Department**

Chapter 10 of 2006 established the authority of the Baltimore City Health Department to access the court, social services, juvenile justice, and police records of children who are victims of violence or who are under the health department's care. For records concerning victims of violence, the purpose of the disclosure must be the development of appropriate programs and policies to reduce violence against Baltimore City children. All information must be kept confidential, and the health department must report on the purposes for which the records were used. The health department is liable for the unauthorized release of any information provided under the Act's provisions. This authority would have terminated on September 30, 2008.

*Chapters 602 and 603 of 2008* extended the termination date to September 30, 2011, for the provisions enacted by Chapter 10 of 2006. Additionally, the Acts authorized the Baltimore City Health Department to access the court, social services, juvenile justice, and police records of a child if the record concerns a child convicted of a crime or adjudicated delinquent for an Act that caused a death or near fatality. This provision also terminates on September 30, 2011.

### **Disclosure to Federal Department of Human Services and to Other Jurisdictions**

Under the former law, a court record pertaining to a child is confidential, and its contents may not be divulged, by subpoena or otherwise, except by court order on a showing of good cause. This prohibition does not restrict access to and the use of court records or fingerprints in court proceedings involving the child by personnel of the court, the State's Attorney, counsel for the child, a court-appointed special advocate for the child, or authorized personnel of DJS. Subject to certain exceptions, the restriction also does not prohibit access to and confidential use of the court record or fingerprints of a child by DJS or in an investigation and prosecution by a law enforcement agency.

A public agency may not disclose information and records on children, youth, and families served by that agency to other public agencies serving the same youth, children, and families without written consent of an appropriate person of interest or another individual authorized to give consent.

*Chapter 486 of 2009* created two additional exceptions to the general rule of confidentiality of juvenile records. The Act allowed access to and confidential use of a juvenile court record by the Department of Human Services for the purpose of claiming federal Title IV-E funds. The department is liable for an unauthorized release of a court record under the Act.

Additionally, the legislation authorized DJS to provide access to and confidential use of a treatment plan of a child by an agency in the District of Columbia or Virginia if the agency (1) performs the same functions in its jurisdiction as DJS does in Maryland; (2) has a reciprocity agreement with Maryland; and (3) has custody of the child. A shared record may only provide



information that is relevant to the supervision, care, and treatment of the child. The department is liable for an unauthorized release of a court record and must adopt regulations to implement the Act.

### **Expungement of Criminal Charges**

Formerly, a person could file a petition for expungement of a criminal charge transferred to the juvenile court after the date of the decision not to file a delinquency petition or after the decision on the delinquency petition of facts-not-sustained.

The court could grant a petition for expungement to a person when the person became 21 years old if a charge transferred to the juvenile court resulted in the adjudication of the person as a delinquent child. A court was required to grant a petition for expungement of a criminal charge that was transferred to the juvenile court if the charge did not result in the filing of a delinquency petition or the decision on the delinquency petition was a finding of facts-not-sustained.

*Chapter 712 of 2009* required a court to grant a petition for expungement of a criminal charge that was transferred to the juvenile court. The Act repealed former statutory provisions limiting the circumstances under which a person may obtain an expungement of a criminal charge transferred to the juvenile court.

### **Juvenile Hearings**

A juvenile court must conduct all hearings in an informal manner. In any proceeding in which a child is alleged to be in need of supervision or to have committed a delinquent act that would be a misdemeanor if committed by an adult or in a peace order proceeding, the court may exclude the general public from a hearing and admit only the victim and those persons with a direct interest in the proceeding.

Generally, in a proceeding in which a child is alleged to have committed a delinquent act that would be a felony if committed by an adult, the court must conduct in open court any hearing or proceeding at which the child has a right to appear. The court is permitted, on a showing of good cause, to exclude the general public and admit only the victim and persons with a direct interest in the proceedings and their representatives. Except on a showing of good cause, a court must announce, in open court, adjudications and dispositions for cases in which a child is alleged to have committed an act which would be a felony if committed by an adult. On a showing of good cause, the court may exclude the general public and admit only the victim and those persons having a direct interest in the proceeding and their representatives.

*Chapter 710 of 2009* required the juvenile court, on petition of the State's Attorney, to exclude the general public from the testimony of a victim during a hearing or other proceeding in a case in which the victim of an alleged delinquent act is a child, and admit during the testimony only the victim and those persons with a direct interest in the proceeding and their representatives. The court may receive the testimony of the victim in open court on a finding of good cause.

## **Escapes from Detention Centers**

*Chapter 123 of 2010* altered the elements of the crime of escape in the first degree and escape in the second degree to include a prohibition against escape from a privately operated, hardware secure facility for juveniles committed to DJS. A “hardware secure facility” is a facility that is securely locked or fenced to prevent escape. The Act also excluded a “hardware secure facility” from the statutory definition of a place of confinement. For further discussion of *Chapter 123*, see the subpart “Criminal Law” within this Part E.

## **Lead Testing**

According to the federal Centers for Disease Control and Prevention, adverse health effects exist in children with blood lead levels less than 10 micrograms per deciliter. Lead poisoning has various side effects, including learning disabilities and behavioral problems. According to the most recent data available, the number of children with elevated blood lead levels has been decreasing at both the State and national level. At the State level, out of the 106,452 children up to 72 months of age tested for lead in 2008, 713 (0.7%) were found to have blood lead levels greater than 10 micrograms per deciliter. This compares with 23.9% in 1993, the first year in which this data was tracked, and is the sixteenth straight year in which the rate has dropped. According to the Maryland Department of the Environment, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland.

*Chapter 451 of 2010* authorized the juvenile court, after a delinquency petition has been filed but before adjudication, to order the child to undergo blood lead level testing. Before trial, a court exercising criminal jurisdiction in a case involving a child is also authorized to order the child to undergo blood lead level testing. The results of the test must be provided to the child, the child’s parent or guardian, the child’s attorney, and the State’s Attorney.

## **Task Forces**

During the 2007-2010 term, two task forces dealing with juvenile issues conducted fact finding duties for the General Assembly.

### **Task Force to Study Group Home Education and Placement Practices**

A September 2000 executive order established the Task Force to Study the Licensing and Monitoring of Community-Based Homes for Children. The task force met from February to September 2001 and held two public hearings for citizens to voice their concerns about group homes. One of the issues addressed by citizens was the adverse impact that group homes have on local schools and community resources. Although the task force acknowledged that this particular recommendation was outside of its charge, the task force suggested in its final report that further study be conducted to assess the effect that group home placements have on local schools.

*Chapter 333 of 2007* established the Task Force to Study Group Home Education and Placement Practices. The task force was required to make recommendations for future requirements for the placement of children in programs licensed by the State after considering funding issues, the educational needs of youth served by group homes, and the feasibility and impact of having separate programs and facilities for children placed by different State agencies. The task force provided an interim report in December 2007. The Act terminated June 30, 2009.

### **Delinquency Prevention and Diversion Services Task Force**

Chapter 466 of 2006 established the Delinquency Prevention and Diversion Services Task Force. Among its mandates, the task force was required to study, survey, and assess the adequacy, quality, and quantity of delinquency prevention and diversion services being provided to juvenile offenders in the State by public and private agencies.

*Chapter 460 of 2007* extended the termination date of the task force to September 30, 2008.

## **Public Safety**

### **Law Enforcement**

The General Assembly responded to several issues relating to the duties and recourses of law enforcement officers during the 2007-2010 term.

### **Freedom of Association and Assembly Protection Act of 2009**

In July 2008, it became publicly known that the Department of State Police (DSP) had engaged in hundreds of hours of covert surveillance of meetings and rallies of anti-death penalty and anti-war groups in 2005 and 2006. Although no indication of any intention to engage in criminal activity by the subjects of the surveillance was discovered, DSP provided reports about participants to databases accessible by local and federal law enforcement agencies.

On July 31, 2008, the Governor appointed former Attorney General Stephen H. Sachs to conduct an independent review of the facts and circumstances surrounding the covert surveillance operation. Mr. Sachs completed his review and submitted a report on September 29, 2008. Based on the recommendations included in the Sachs report, *Chapters 492 and 493 of 2009* established the responsibilities of law enforcement agencies relating to investigations affecting First Amendment activities and the rights of persons, groups, and organizations engaged in First Amendment activities. These activities include constitutionally protected speech or association; or conduct related to freedom of speech, free exercise of religion, freedom of the press, the right to assemble; or the right to petition the government.

*Chapters 492 and 493* prohibited a law enforcement agency from conducting a “covert investigation” of a person, a group, or an organization engaged in First Amendment activities,

unless the law enforcement agency's chief or designee makes a written finding in advance, or as soon as is practicable afterwards, that the covert investigation is justified because:

- it is based on a reasonable, articulable suspicion that the person, group, or organization is planning or engaged in criminal activity; and
- a less intrusive method of investigation is not likely to yield satisfactory results.

Membership or participation in a group or organization engaged in First Amendment activities does not alone establish reasonable, articulable suspicion of criminal activity.

A law enforcement agency is required to conduct all investigations involving First Amendment activities for a legitimate law enforcement objective and, in the process of conducting the investigation, safeguard the constitutional rights and liberties of all persons. A law enforcement agency may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against a person engaged in a First Amendment activity to punish, retaliate against, or prevent or hinder the person from exercising constitutional rights. An investigation involving First Amendment activities must be terminated when logical leads have been exhausted or no legitimate law enforcement objective justifies the continuance of the investigation.

*Chapters 492 and 493* also direct that information maintained in a criminal intelligence file be evaluated for the reliability of the source of the information and the validity and accuracy of the information. A law enforcement agency must accurately classify intelligence information in its databases to properly reflect the purpose for which the information is collected. When a law enforcement agency lists in a database a specific crime for which an individual, a group, or an organization is under suspicion, the agency must ensure that the classification is accurate based on the information available to the agency at the time. By January 1, 2010, DSP and all other law enforcement agencies in Maryland covered under the bills must have adopted regulations or policies governing the conduct of covert investigations of persons, groups, or organizations engaged in First Amendment activities and the collection, dissemination, retention, database inclusion, purging, and auditing of intelligence information relating to persons, groups, or organizations engaged in First Amendment activities. Also by that date, DSP was required to report to the Senate Judicial Proceedings Committee and the House Judiciary Committee on the status of matters relating to its Case Explorer database. Finally, DSP was required to contact all persons who have been described in the Case Explorer database as being suspected of involvement in terrorism, or who have been labeled in that database as a terrorist, but as to whom DSP has no reasonable, articulable suspicion of involvement in terrorism; afford those persons an opportunity to review and obtain copies of the relevant database entries; and subsequently purge those entries.

### **Use of DNA**

Seeking to increase the use of DNA samples for law enforcement purposes, *Chapter 337 of 2008* required a DNA sample to be collected from an individual who is charged with a crime of violence or felony burglary or an attempt to commit those crimes. State law defines a "crime

of violence” to include several specific crimes, including abduction, arson, kidnapping, manslaughter, murder, rape, carjacking, first or second degree sexual offense, various types of assault, and attempts to commit those crimes.

This requirement to collect DNA samples terminates December 31, 2013. The Office of the Public Defender and the Governor’s Office of Crime Control and Prevention (GOCCP) were required, by January 15, 2009, to jointly report on barriers to post-conviction review of claims of factual innocence, particularly those based on DNA evidence.

*Chapter 337* contained requirements designed to safeguard against the misuse of DNA samples and set forth requirements for the proper collection, testing, storage, and disposal, when applicable, of DNA samples. The Act also required a court to order a DNA database search if the court finds during a post-conviction hearing that a reasonable probability exists that a search has the potential to provide exculpatory evidence relating to a post-conviction claim. If the search results are favorable to a petitioner, the court is required to order a new trial if there is a substantial possibility that the petitioner would not otherwise have been convicted or may order a new trial in the interest of justice.

*Chapter 337* provided for the automatic expungement of a DNA record and destruction of a DNA sample within 60 days if the criminal action does not result in a conviction, is finally reversed or vacated and no new trial is permitted, or results in the granting of an unconditional pardon. A DNA sample or DNA record may not be automatically destroyed or expunged if the criminal action is placed on the *stet* docket or the individual receives probation before judgment. Moreover, an individual may request a court to have a DNA record or profile expunged from the statewide database. On receipt of a court order of expungement, the director of the crime laboratory must purge any DNA record, DNA sample, or other identifiable information covered by the order from the statewide DNA database and the statewide DNA repository.

To further guard against the improper use of DNA information, *Chapter 337* prohibited the testing of a DNA sample if the information does not relate to the identification of an individual. The Act also prohibited the use of a DNA sample or record that is required to be destroyed or expunged from being used in a subsequent civil or criminal proceeding. Disclosure of DNA information to unauthorized persons or obtaining DNA information without authorization were made misdemeanor offenses, punishable by maximum penalties of five years incarceration and/or a \$5,000 fine.

Beginning April 1, 2010, the State Police must annually report on the status of the statewide DNA database system, including expenses, human resource costs, a statistical analysis of the racial demographics of individuals charged with a covered offense, and a detailed analysis of the investigations aided by DNA profiles. Beginning January 31, 2010, local law enforcement agencies must annually report to the State Police with information needed for the statewide report. The fiscal 2009 budget provided \$1.4 million to the State Police for additional DNA sample collections.

### **SWAT Teams**

In July 2008, members of the Prince George's County Sheriff's SWAT team raided the home of the Mayor of the Town of Berwyn Heights in search of a drug-filled package that had been addressed to the residence. Two dogs belonging to the mayor's family were shot and killed by SWAT team members during the raid. Investigations subsequent to the SWAT team raid indicated that the mayor and his family were victims of a smuggling scheme that used FedEx to ship drugs and that they knew nothing about the box intercepted by police.

In response to that incident and others, *Chapters 542 and 543 of 2009* required, beginning January 1, 2010, a "law enforcement agency" that maintains a SWAT team to report the following information to the Governor's Office of Crime Control and Prevention (GOCCP) and the appropriate county or municipal governing body, on a biannual basis:

- the number of times the team was activated and deployed by the law enforcement agency in the previous six months;
- the name of the county and/or municipality and zip code of the location where the team was deployed for each activation;
- the reason for each activation and deployment;
- the legal authority, including type of warrant, if any, for each activation and deployment; and
- the result of each activation and deployment.

A summary of the biannual reports must be prepared each year by GOCCP and submitted to the Governor, the General Assembly, and each law enforcement agency by September 1.

### **Race-based Traffic Stops**

Since 2001, State law enforcement agencies have held to a policy against race-based traffic stops. The policy prohibits the practice of using an individual's race or ethnicity as the sole justification to initiate a traffic stop, but it does not alter the authority of an officer to make an arrest, conduct a search or seizure, or otherwise fulfill the officer's law enforcement obligations. Under the policy, a law enforcement officer records specified information in connection with each traffic stop, including the driver's gender, race, and ethnicity, to evaluate the manner in which the vehicle laws are being enforced. Each law enforcement agency must compile the data collected by its officers and submit an annual report to the Maryland Justice Analysis Center (MJAC) by March 1 of each year reflecting the prior calendar year. MJAC is required to issue a report to the Governor and the General Assembly by September 1 of each year. *Chapter 220 of 2007* extended the termination date for the collection of traffic stop data

from December 31, 2007, to December 31, 2009, and required a final report on this data by MJAC by August 31, 2010, rather than August 31, 2008.

### **Eyewitness Identification**

Ensuring that eyewitness evidence is reliable and not unnecessarily suggestive is essential in preserving a defendant’s due process rights. In 1999, the U.S. Department of Justice released a report entitled *Eyewitness Evidence: A Guide for Law Enforcement*, which recommended specific procedures for obtaining reliable eyewitness evidence through line-ups, field identifications, “mug shot” books, and other methods. Since the release of this report, three states have passed eyewitness identification reform laws adopting some or all of these recommendations. With **Chapter 590 of 2007**, Maryland joined this group of states by requiring each law enforcement agency in the State to adopt a written policy relating to eyewitness identification by December 1, 2007. The policies must comply with the Department of Justice standards on obtaining accurate eyewitness identification.

### **Forensic Laboratories**

**Chapter 147 of 2007** required the Secretary of Health and Mental Hygiene to license, set standards and requirements for, and inspect forensic laboratories in Maryland. The bill required that regulations contain the standards and requirements to assure that forensic laboratories provide safe, reliable, and accurate services. A more detailed description of this enactment can be found under Part J – Health Care Facilities and Regulation of this *Major Issues Review*.

### **Silver and Blue Alerts**

**Chapters 503 and 504 of 2009** created a statewide Silver Alert Program within the Department of State Police (DSP) to provide a system for rapid dissemination of information to assist in locating a missing person. DSP was required to take several specific procedural, training, local assistance, and recruitment actions, as well as to consult with the State Highway Administration and the Maryland State Department of Education, to implement the legislation’s objectives.

Similarly, **Chapter 473 of 2010** required DSP to establish a Blue Alert Program to provide a system for rapid dissemination of information to assist in locating and apprehending a “missing offender” who is suspected of killing or seriously injuring a law enforcement officer. The Act also required DSP to adopt guidelines and develop procedures for issuing a Blue Alert, and provide training and assistance to local law enforcement agencies and recruit broadcasters, local volunteer groups, and other members of the public for assistance in a Blue Alert.

## **Public Safety Personnel**

### **Polygraph Examinations**

An individual may be required to pass a polygraph examination before being appointed to serve as a correctional officer in a State correctional facility under *Chapter 467 of 2010*. The legislation authorized the Division of Correction to require the examination.

### **Unsubstantiated Complaints**

*Chapters 87 and 88 of 2010* specified that, under the Law Enforcement Officers' Bill of Rights, evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if (1) the investigation resulted in an exoneration of the officer or an unsustained or unfounded finding; or (2) the hearing board acquitted the officer, dismissed the action, or made a not guilty finding.

### **State Correctional Officers' Bill of Rights**

*Chapter 194 of 2010* established exclusive procedures for the investigation and discipline for alleged misconduct of a State employed correctional officer working in a State correctional facility and established new timeframes relating to interrogations and appeals. Under the Act, investigations of alleged misconduct may be carried out by the appointing authority as well as the Internal Investigations Unit of the Division of Correction. All correctional officer disciplinary cases must be decided by an internal hearing board or under grievance provisions of the State Personnel and Pensions Article.

### **Death Benefits**

During the 2007-2010 term, a variety of additional public safety employees were granted entitlement to State death benefits if killed in the line of duty. Beginning in fiscal 2009, the \$125,000 public safety employee death benefit is adjusted annually by the Consumer Price Index. Reasonable funeral expenses, not exceeding \$10,000, must be paid to the same persons. An individual who receives this death benefit may not also receive the \$100,000 death benefit otherwise paid to State employees.

*Chapter 203 of 2007* afforded a public safety aviation employee this death benefit and funeral expenses. A public safety aviation employee includes a pilot and aviation maintenance technician employed by the State. The performance of duties for employees qualifying for this benefit includes actively participating in flight operations as a crew member in a rotary or fixed wing aircraft. Death by a heart attack or stroke during flight operations is evidence of dying in the performance of duties.

A hazardous material response team employee of the Maryland Department of the Environment (MDE) was granted this death benefit (including allowable funeral expenses) under *Chapters 518 and 519 of 2009*. An employee on a hazardous material response team is defined



as an individual who is on call 24 hours a day to provide emergency response to a discharge of oil or a release of hazardous material or other emergency response activity.

*Chapters 50 and 51 of 2010* provided an employee of a hazardous material response team of a local government agency with the same death benefit and funeral expenses. The benefits are applicable to the extent that the local government employer maintains sufficient funds in reserve for the payment of one death benefit and one reasonable funeral benefit. A local government is not required to place such funds in reserve each year.

Maryland's Secretary of State is required to issue a State flag to the family of a firefighter, police officer, member of the military, or sworn member of the Office of the State Fire Marshal who is killed in the performance of duty. Under *Chapter 272 of 2010*, the family of a professional or volunteer emergency medical services provider who is killed in the performance of duty will also be issued a State flag.

## **Correctional Facilities and Inmates**

### **Task Force to Study Prison Violence**

In an attempt to find ways to stem inmate-on-inmate and inmate-on-correctional staff assaults, *Chapter 518 of 2007* established a Task Force to Study Prison Violence in Maryland. The 20-member panel, including State officials, prison reform advocates, criminologists, attorneys, health care experts, as well as two former prisoners, was charged with studying such issues as the scope, nature, patterns, and causal relationships of violence in the State's prisons and the impact on violence made by illegal drugs, lead and other pollutants, contraband, and gangs. *Chapter 102 of 2009* reconstituted the task force with an interim report due to the Governor and the General Assembly by December 31, 2009, and a final report of findings and recommendations by December 31, 2010.

### **Task Force on Prisoner Reentry**

*Chapters 625 and 626 of 2009* established a Task Force on Prisoner Reentry. Consisting of members of the Senate and House of Delegates, other government officials, and members of the public, including individuals who were formerly committed to a State correctional facility, the task force was required to:

- examine ways to pool resources and funding streams to promote lower recidivism rates for returning offenders and minimize the harmful effects of offenders' time in prison, jail, or a juvenile facility on families and communities of offenders by collecting data and best practices in offender reentry from demonstration grantees and other agencies and organizations;
- analyze the statutory, regulatory, rules-based, and practice-based hurdles to reintegration of adult and juvenile offenders into the community;

- investigate guidelines and criteria to track outcomes of inmate reentry program participation, including program approvals, day-to-day program participation, and program graduation and other types of program completion and noncompletion;
- research longitudinal data tracking of the pre- and post-release impact of reentry programs;
- investigate the number of idle inmates in each State correctional facility; and
- develop a comprehensive strategic reentry plan as specified under the federal Second Chance Act of 2007.

The Acts required that an interim report be submitted to the Governor and the General Assembly by December 31, 2010, and a final report of findings and recommendations be submitted by December 31, 2011.

### **Diminution Credits**

*Chapter 182 of 2010* prohibited the earning of diminution credits to reduce the term of confinement of an inmate who is serving a sentence in a State or local correctional facility for committing first or second degree rape or first or second degree sexual offense against a victim under 16 years of age. Another bill dealing with diminution credits, *Chapter 183 of 2010*, prohibited the earning of diminution credits in a State or local correctional facility to reduce the term of confinement of an inmate who is serving a sentence for committing third degree sexual offense against a child under the age of 16 after being previously convicted of committing a third degree sexual offense against a child under the age of 16.

### **Identification Cards for Released Inmates**

*Chapter 215 of 2009* required the Commissioner of Correction to issue an identification card to an inmate before being released from confinement in a State correctional facility. The identification card must comply with the requirements for secondary identification for the purpose of an identification card issued by the Motor Vehicle Administration (MVA). *Chapter 215* codified a then current practice, including a pilot program operating under a memorandum of understanding between the Division of Correction and MVA.

### **Individuals with Mental Illness**

*Chapters 347 and 348 of 2010* required the managing official at a local correctional facility to provide an inmate who is diagnosed with a mental illness access to a 30-day supply of medication for his or her mental illness when the inmate is released. Part of the supply may be provided by prescription if the inmate is provided sufficient medication on release to remain medication-compliant until the prescription can be filled. The requirement only applies to an inmate who has been incarcerated in a local correctional facility for at least 60 days, and only if a

treating physician determines that the possession of medication will be in the best interest of the inmate.

## **Building Safety**

During the 2007-2010 term, the General Assembly considered legislation that addressed building safety issues relating to elevators, electrical installations, and carbon monoxide alarms.

### **Elevators**

*Chapter 408 of 2007* authorized third-party qualified elevator inspectors to perform periodic annual no-load test inspections if the inspector meets qualifications, insurance requirements, and procedures established by the Commissioner of Labor and Industry. The Act required that State inspectors continue to inspect all elevator installations, modifications, and alterations. A building owner may contract with a qualified third-party elevator inspector for a no-load test inspection at his or her discretion. If an inspection by a third-party qualified elevator inspector discloses that an elevator is unsafe, the inspector is required to immediately notify the commissioner. Upon notification, the Commissioner is required to conduct an inspection of the unsafe condition to determine whether to issue a citation and assess penalties.

*Chapter 484 of 2008* established an Elevator Safety Review Board Fund to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board.

*Chapter 145 of 2009* established that State inspectors conduct final inspections of all new elevators prior to initial certification, final inspections of modernized or altered elevators, investigations of accidents and complaints, follow-up inspections to confirm corrective action, comprehensive five-year inspections, and quality control monitoring of inspections conducted by third-party elevator inspectors.

Under *Chapter 145*, elevators owned by units of State or local government may be certified either by the State or by their owners. Other elevator owners in the State must hire qualified third-party elevator inspectors to conduct annual safety inspections to ensure that the elevator complies with the State safety code and other regulations adopted by the Commissioner of Labor and Industry. Except for minor violations that do not affect health or safety, the commissioner must issue a citation to an elevator owner if an elevator has violated the safety code or other regulation within the past six months. The commissioner may establish regulations for the issuance of a warning notice instead of a citation for a *de minimus* violation that has no direct effect on health or safety.

Individuals who violate the safety code or an adopted regulation may be fined up to \$5,000 per unit. The amount of the penalty is determined based on the gravity of the violation, the owner's good faith, and the owner's history of violations. Fines may be doubled for willful or habitual violators. If the violation is not corrected within 10 days, the commissioner may impose a civil penalty of up to \$1,000 for each day a violation continues.

Under *Chapter 531 of 2010*, the commissioner may adopt specified regulations to authorize and regulate the installation and inspection of noncommercial elevator units in assisted living programs with five or fewer beds that are licensed by the Department of Health and Mental Hygiene. In 2010, there were 1,377 assisted living facilities in the State, of which 718 had five or fewer beds.

### **Electrical Installations**

*Chapter 127 of 2010* required certification by the State Fire Marshal of nongovernmental electrical inspectors in the State for the inspection of electrical installations for conformity with the National Electrical Code or any adopted local code or amendments. All prior statutory provisions relating to the regulation of nongovernmental electrical inspectors were repealed.

The requirements of *Chapter 127* do not apply to (1) public utilities, their affiliated companies, and electrical appliances and devices used in their work; (2) the inspection or certification of an electrical installation by a unit of a county government authorized to conduct electrical inspections; or (3) an electrical installation of the State or federal government during an emergency if it is necessary for the public welfare as a result of the emergency.

### **Carbon Monoxide Alarms**

Carbon monoxide is an odorless, tasteless, invisible gas that results from the incomplete combustion of fossil fuels, such as wood and oil. According to the *Journal of the American Medical Association*, carbon monoxide poisoning is the leading cause of accidental poisoning in the United States. *Chapter 401 of 2007* required that a carbon monoxide alarm be installed within a dwelling that (1) relies on the combustion of a fossil fuel for heat, ventilation, hot water, or clothes dryer operation; and (2) is a newly constructed dwelling for which a building permit was issued on or after January 1, 2008.

Under *Chapter 401*, an alarm must be installed in a central location outside of each sleeping area. However, if there is a centralized alarm system that is capable of emitting a distinct and audible sound to warn all occupants, the owner of a dwelling may install the alarm within 25 feet of any carbon monoxide-producing fixture and equipment. Also, a carbon monoxide alarm may be combined with a smoke alarm if the combined device complies with State law and certain industry standards.

## **Public Safety Funding**

### **Medevac Helicopters**

In 2009, largely in response to a Medevac helicopter crash in September 2008, the subjects of Medevac funding and safety drew a great deal of press and public attention. The Budget Reconciliation and Financing Act of 2009 (*Chapter 487*), included the transfer of the \$51.5 million fund balance from the State Police Helicopter Replacement Fund to the general fund which effectively eliminated the use of the Replacement Fund for the purposes of procuring Medevac helicopters. The \$52.5 million of general obligation bond funds was intended to fund

the purchase of three helicopters during fiscal 2010, though the actual purchase may not occur until fiscal 2011.

### **State Aid for Police Protection Fund**

Starting in fiscal 2009, annual State funding for the Police Protection Fund increased for qualifying municipalities under *Chapters 492 and 493 of 2007*. The amount distributed to each qualifying municipality was increased from \$1,800 to \$1,950 per full-time sworn police officer. To qualify for grants, a municipality must have a minimum expenditure for police protection of \$5,000 annually and employ at least one qualified full-time police officer or have a minimum expenditure for police protection of \$80,000 annually and employ at least two qualified part-time officers from a county police department or county sheriff's office. For purposes of the police aid formula, Baltimore City is not considered a municipality.

### **Volunteer Company Assistance Fund – Maryland State Firemen's Association**

The Maryland State Firemen's Association (MSFA) may use money annually appropriated to the Volunteer Company Assistance Fund (VCAF) for an expanded array of purposes under *Chapters 179 and 180 of 2007*, which also authorized the fund to provide grants to MSFA for administrative expenses and grants to widows and orphans.

*Chapter 479 of 2010* was an emergency measure that allowed money from the Senator William H. Amoss Fire, Rescue, and Ambulance Fund or VCAF to be distributed to include fire, rescue, and ambulance companies located outside of Maryland if they have been members of the Maryland State Firemen's Association for at least the past 10 years and have a first due response area in Maryland. *Chapter 479* affected two fire companies serving Caroline and Wicomico counties, The Delmar Volunteer Fire Company and the Marydel Volunteer Fire Company.

## **Miscellaneous**

### **Electronic Control Devices**

Electronic control devices, such as stun guns and devices made by TASER International, Inc., are employed to disrupt the body's electrical system, and to temporarily incapacitate the person. *Chapters 320 and 321 of 2009* prohibited an electronic control device from being sold and activated unless (1) the device and any cartridge attached to the device each display a serial number; (2) an instructional manual or audio or audio visual instructions are provided to the purchaser; (3) the manufacturer maintains a record of the original owner of the device; and (4) the manufacturer or seller has obtained a State and federal criminal history records check of the original owner. The use of such a device was limited to a person who is at least 18 years old and has never been convicted of a crime of violence.

The illegal possession or use of an electronic control device was made a misdemeanor and a violator is subject to maximum penalties of two months imprisonment and/or a \$500 fine.

If the violation occurs while the person is committing a separate felony, the violator is guilty of a felony and subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

### **Security of State Facilities**

The Department of General Services (DGS) Division of Facilities Security offers 24-hour law enforcement and security for the Annapolis and Baltimore State office complexes. *Chapter 549 of 2008*, an emergency bill, altered and expanded provisions relating to the DGS jurisdiction, authority, and responsibilities in Annapolis and Baltimore City. A more detailed discussion of this bill may be found under Part C – State Government of this *Major Issues Review*.

## **Part F**

### **Courts and Civil Proceedings**

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#### **Judges and Court Administration**

##### **Creation of Judgeships**

In 1979, the Chief Judge of the Court of Appeals began an annual procedure suggested by the Legislative Policy Committee of formally certifying to the General Assembly the need for additional judges in the State. The certification is prepared based upon a statistical analysis of the workload of the courts and the comments of the circuit administrative judges and the Chief Judge of the District Court. However, the certification of judgeships does not always directly correspond to the Judiciary's request for additional judgeships.

For fiscal 2008, the Judiciary certified the need for 26 additional judgeships but only requested 4. *Senate Bill 60/House Bill 58 of 2007 (both failed)* would have added the requested judgeships – 2 in the circuit courts (1 in Baltimore City and 1 in Montgomery County), and 2 in the District Court (1 in Montgomery County and 1 in Charles County).

*Chapter 269 of 2009* altered the number of resident judges of the circuit courts by adding one additional judgeship each in Baltimore City, and in Anne Arundel, Baltimore, and Montgomery counties. The Maryland Judiciary's annual certification of need for additional judgeships certified the need for at least three judgeships in each of these jurisdictions. The legislation was contingent on the appropriation of funds in the State budget for fiscal 2010 or 2011. The fiscal 2010 budget included an appropriation of \$621,274 to fund these judgeships, contingent on the enactment of the legislation.

##### **Election of Circuit Court Judges**

###### **Retention Elections**

Circuit court judges are the only members of the Maryland bench who must run in contested elections. Judges of the circuit courts are elected at the general election by the qualified voters of the respective county or Baltimore City in which the circuit court sits. A

person appointed to fill a vacancy on a circuit court must run for election at the first general election after one year following the occurrence of the vacancy. A sitting judge may be challenged by any candidate who meets the constitutional requirements for the office. Each judge holds the office for 15 years from the time of election and until either a successor is elected and qualified or the judge reaches the age of 70, whichever occurs first. Since the 1960s, there have been periodic attempts to eliminate contested elections for circuit court judges and provide for retention elections in the same manner as appellate judges. These efforts continued during the 2007 to 2010 term.

*House Bill 1363 of 2007, House Bill 1275 of 2008, and Senate Bill 833/ House Bill 1385 of 2010 (all failed)* would have proposed an amendment to the Maryland Constitution to alter the method of selection and tenure of circuit court judges. The bills would have proposed that circuit court judges be selected by gubernatorial appointment, subject to confirmation by the Senate, followed by approval or rejection by the voters in a retention election, rather than a contested election. The bills also would have decreased the term of office from 15 to 10 years following election.

### **Nonpartisan Elections**

Circuit court judges are nominated by the two principal political parties during the primary election. Although the two principal parties in Maryland each hold a closed primary in which only members of that party may vote, each of those parties allow candidates for circuit court judge to register their candidacies so as to appear on the primary ballots of both parties.

In 2004, a suit was filed in the Circuit Court for St. Mary's County alleging that unaffiliated voters are unconstitutionally disenfranchised from participating in the initial selection process for circuit court judges. On appeal from the trial court, the Court of Appeals recognized that there is a legitimate State interest in keeping partisanship out of judicial elections, without abandoning the party primary system. The court held that the "State's attempts to achieve this goal do not violate the equal protection provisions of either the Maryland or Federal Constitutions simply because some voters who decline to join a political party nevertheless wish to vote in that party's primary." *Suessman v. Lamone*, 383 Md. 697 (2004).

*Senate Bill 46 of 2007 (failed)* would have provided for nonpartisan nomination and election of circuit court judges. Under the bill, any voter, regardless of party affiliation or lack thereof, would have been permitted to vote for the number of candidates for which there were offices to be filled. The bill would have eliminated the current partisan primaries and third-party nominations as well as nominations by petition.

### **Judicial Compensation**

The Judicial Compensation Commission, established in 1980, is required to review judicial salaries and pensions and make recommendations to the Governor and the General Assembly once every four years. A joint resolution incorporating the salary recommendations must be introduced in each house of the General Assembly by the fifteenth day of the session following the commission's proposals. The General Assembly may amend the joint resolution to



decrease, but not to increase, any of the salary recommendations, and it may not reduce the salary of a judge below current levels. Failure by both houses of the General Assembly to adopt or amend a joint resolution within 50 calendar days after its introduction results in the adoption of the salary recommendations. If the General Assembly rejects any of the commission's recommendations, the salaries of the judges remain unchanged, unless modified under other provisions of law.

In 2005, a four-year phased in salary plan recommended by the commission was implemented after the General Assembly did not adopt or amend the joint resolution containing the salary plan within 50 days after its introduction. In fall 2008, the commission finalized recommendations to increase the salaries of all Maryland judges by \$39,858 over a four-year period. The commission's recommendations were incorporated in *Senate Joint Resolution 4/ House Joint Resolution 2 (both failed)* introduced in the 2009 session. Under the then current law, the commission was not scheduled to meet again until 2012.

*Chapter 2 of 2009* was an emergency measure that provided that for the 2009 session only, the failure of the General Assembly to act on the joint resolution of the Judicial Compensation Commission by the fiftieth day of the session may not be deemed to have made effective the salary increases recommended in the joint resolution. In recognition of the failure to take salary action for the Judiciary, the Act also altered the time period for the commission to meet. Under the Act, the commission was required to meet again September 1, 2009, and every four years thereafter, aligning the schedule of the Judicial Compensation Commission with the meeting schedules of the Governor's and General Assembly's compensation commissions. The Act rendered action on *Senate Joint Resolution 4/House Joint Resolution 2* unnecessary.

The commission resubmitted the same salary recommendations in the 2010 session, which were incorporated in *Senate Joint Resolution 2/House Joint Resolution 3*; however, both resolutions were amended to maintain judicial salaries at their then current levels. In light of the State's fiscal condition at the time, the General Assembly also rejected salary increases for the Governor, Lieutenant Governor, other constitutional officers, and members of the General Assembly.

## **District Court**

### **District Court Jurisdiction**

The District Court has exclusive jurisdiction over civil cases involving claims up to \$5,000, and concurrent jurisdiction with the circuit courts over claims for amounts above \$5,000 but not exceeding a monetary limit set by statute, exclusive of interest, costs, and attorney's fees. *Chapter 84 of 2007* expanded the concurrent civil jurisdiction of the District Court by raising the maximum amount in controversy from \$25,000 to \$30,000.

### **Jurisdiction of District Court Commissioners**

District Court commissioners are judicial officers, appointed by the administrative judge of each district with the approval of the Chief Judge of the District Court. Commissioners

review applications for statements of charges to determine whether probable cause exists to issue a charging document, warrant, or criminal summons. They advise arrested individuals of their rights at initial appearance hearings and determine whether the individual will be committed to jail or released on personal recognizance or bail pending trial. Commissioners also have the authority to issue interim peace orders and interim protective orders.

There are more than 250 District Court commissioners. Commissioners must be residents of the counties in which they serve. Prior to 2008, the Chief Judge of the District Court was authorized to assign a commissioner to serve temporarily in a county that bordered the commissioner's county of residence. This assignment could only be made in extraordinary circumstances and could not exceed 30 days. *Chapter 40 of 2008* eliminated these restrictions and authorized District Court commissioners to exercise the powers of office in any county to which they are assigned by the Chief Judge, or the Chief Judge's designee, and to serve temporarily in any county in the State without the need for an emergency designation by the Chief Judge.

### **Orphans' Court Judges in Baltimore City**

*Chapter 481 of 2010* proposed an amendment to the Maryland Constitution that prescribes additional qualifications for judges of the orphans' court in Baltimore City. If ratified by the voters at the November 2010 general election, an orphans' court judge in Baltimore City will be required to be a member in good standing of the Maryland Bar who is admitted to practice law in the State. The amendment continues the requirements that an orphans' court judge in Baltimore City be a citizen of the State and a resident of Baltimore City for the 12 months preceding the election.

### **Maryland Legal Services Corporation Fund**

The Maryland Legal Services Corporation (MLSC) was established by legislation in 1982. It receives and distributes funds to nonprofit grantees that provide legal assistance to eligible clients in civil cases. MLSC's primary sources of revenue are from the Interest on Lawyer Trust Accounts (IOLTA) program and surcharges on filing fees in civil cases. As a result of historically low interest rates, IOLTA revenue declined from \$6.7 million in fiscal 2008 to a projected total of \$2.0 million in fiscal 2010.

To help meet the shortfall, *Chapter 486 of 2010* increased the maximum surcharge on civil cases filed in circuit court from \$25 to \$55. In the District Court, the maximum authorized surcharge increased from \$5 to \$8 for summary ejectment cases, and from \$10 to \$18 for all other civil cases.

The legislation also required the executive director of MLSC to prepare an informational budget for the corporation and to submit the budget to the General Assembly each year.

The legislation contained a termination provision abrogating the measure at the end of June 2013.

## Lawyers – Payment of Taxes and Unemployment Insurance

The Client Protection Fund of the Bar of Maryland reimburses claimants for losses caused by theft of funds by members of the Maryland Bar, acting either as attorneys or as fiduciaries. About 33,000 lawyers pay annual fees to support the fund.

To assist the Comptroller in determining whether each lawyer has paid all taxes and unemployment insurance contributions, *Chapter 410 of 2008* required that the fund annually provide to the Comptroller a list of lawyers who have paid annual fees to the fund during the previous fiscal year. If the Comptroller determines that a lawyer has not paid all undisputed taxes and unemployment insurance contributions and the lawyer does not make payment or provide for payment in a satisfactory manner, the Comptroller may refer the matter to Bar Counsel for disciplinary action.

## Civil Actions and Procedures

### False Claims

Under the English common law, a private individual could bring a *qui tam* action in court on behalf of the Crown. If the individual was successful, he or she would receive a part of the penalty imposed. In the United States, the practice exists as a component of some “whistleblower” statutes. *Chapter 4 of 2010*, modeled extensively on the federal False Claims Act, implemented *qui tam* provisions under State law in cases involving false or fraudulent claims against a State health plan or State health program. *Chapter 4* (1) prohibited a person from making a false or fraudulent claim for payment or approval by the State or the Department of Health and Mental Hygiene under a State health plan or State health program; (2) authorized the State to file a civil action against a person who makes a false health claim; (3) established liability for civil penalties and up to treble damages for making a false health claim; (4) permitted a private citizen to file a civil action on behalf of the State against a person who has made a false health claim, but required the action to be dismissed if the State declines to intervene; (5) required the court to award a certain percentage of the proceeds of the action to the private citizen initiating the action; and (6) prohibited retaliatory actions by a person against an employee, contractor, or grantee for disclosing a false claim or engaging in other specified false claims-related activities.

The enactment of *Chapter 4* followed attempts to enact similar false claims legislation during previous sessions, including, *Senate Bill 215 of 2008*, *Senate Bill 272/House Bill 304 of 2009*, and *Senate Bill 830/House Bill 915 of 2009 (all failed)*.

### Liability of Property and Casualty Insurers – “First-party” Claims

In response to some insurance companies’ claims settlement practices following Hurricanes Isabel and Katrina, as well as reportedly pervasive unfair practices in the settlement of uninsured/underinsured motorist claims and personal injury protection claims under motor

vehicle insurance policies, several bills were introduced expanding relief available to policyholders alleging failure by their own insurance companies to act in good faith in resolving their “first party” property and casualty claims.

**Chapter 150 of 2007** provided that, in a first-party claim under property and casualty insurance policies (including homeowner’s, motor vehicle, and commercial policies), an insured who proves that an insurer did not act in good faith may recover expenses and litigation costs, including reasonable attorney’s fees not exceeding one-third of the actual damages recovered, in addition to actual damages not exceeding the policy limits and interest.

**Chapter 150** defined “good faith” as an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim. This is the same test for good faith established by the Court of Appeals for determining the duty owed, in another context, by insurance companies to their policyholders under *State Farm Mutual Automobile Insurance Company v. White*, 248 Md. 324 (1966). **Chapter 150** specified that an insurer may not be found to have failed to act in good faith solely on the basis of delay, if the insurer acted within the time period specified by statute or regulation for investigation of a claim.

Under the legislation, generally a party may not file an action in a court until the date of a final decision by the Maryland Insurance Administration (MIA) on the party’s claim if expenses and litigation costs are sought. However, a case may be filed initially in court if the case is within the small claims jurisdiction of the District Court, the parties agree, or the claim is under a commercial insurance policy with a limit of liability exceeding \$1 million. If a complaint is filed with MIA, the legislation (1) required prompt submission of specified claims documents by the parties, except for good cause shown (*e.g.*, refusal to submit a document that would not be subject to discovery under the Maryland Rules); (2) required MIA to promptly make its determinations and issue a decision within 90 days from the date of filing; and (3) allowed any party within 30 days after an adverse decision from MIA to request a hearing by the Office of Administrative Hearings or to appeal to a circuit court. A party who receives an adverse decision at an administrative hearing may appeal to a circuit court.

**Chapter 150** also established that a single instance of a failure to act in good faith in settling a first-party claim is also an unfair claim settlement practice for which MIA may institute an administrative enforcement action that may result in the Insurance Commissioner imposing a fine of up to \$125,000. The Commissioner also may order an insurer to pay actual damages up to the policy limits, expenses, and litigation costs, including reasonable attorney’s fees and interest as part of the restitution ordered if MIA proceeds on a violation under its regulatory enforcement authority. In addition, MIA may proceed with more severe license sanctions against property and casualty insurers available under MIA’s enforcement authority if an insurer’s failure to act in good faith in settling first-party property and casualty claims is committed with the frequency to indicate a general business practice. MIA is required to report annually to the General Assembly on the number and type of such claims and regulatory actions filed and their dispositions at the administrative and judicial levels.

## **Civil Jury Trials – Amount in Controversy**

Under the English common law, parties to a civil case at law were entitled to a trial by jury regardless of the amount in controversy. Article 23 of the Declaration of Rights of Maryland preserves the right to a trial by jury in a civil case if the amount in controversy exceeds a specified amount. *Chapter 480 of 2010* proposed a constitutional amendment to increase, from over \$10,000 to over \$15,000, the amount in controversy in civil proceedings in which the right to a trial by jury may be limited by legislation. *Chapter 225 of 2010* made statutory changes to implement the proposed constitutional amendment by specifying that a party in a civil action may not request a jury trial if the amount in controversy does not exceed \$15,000.

Previous attempts to pass a proposed constitutional amendment to increase the amount in controversy from over \$10,000 to over \$20,000 were unsuccessful, including *Senate Bill 469/House Bill 354 of 2009* and *Senate Bill 404/House Bill 644 of 2008 (all failed)*.

## **Maryland Uniform Interstate Depositions and Discovery Act**

In 2007, the National Conference of Commissioners on Uniform State Laws recommended the Uniform Interstate Depositions and Discovery Act to clarify issues that arise with respect to interstate discovery, *i.e.*, a deposition or a production of documents or both.

*Chapter 41 of 2008* enacted the uniform act in Maryland, setting forth procedures to be followed with respect to a foreign subpoena issued from another state, the District of Columbia, or any territory or possession of the United States. A party requesting issuance of a subpoena in this State is required to submit a foreign subpoena to a circuit court clerk for the county in which the deposition or production of documents is sought to be conducted. When a foreign subpoena is submitted, the clerk must promptly issue a subpoena for service on the individual named in the foreign subpoena. The subpoena is required to incorporate the terms used in the foreign subpoena and include or be accompanied by the names and contact information of all counsel and unrepresented parties. The subpoena must be served in compliance with the Maryland Rules. The Maryland Rules governing discovery and subpoenas in civil actions apply to subpoenas issued under the legislation. However, a request for the issuance of a subpoena does not constitute an appearance by an attorney in a court of this State.

## **Service of Process on Nonresident Drivers**

*Chapter 578 of 2008* established that, by exercising the privilege to drive in this State, a nonresident driver appoints the Motor Vehicle Administration (MVA) as agent to receive a subpoena, summons, or other process that is directed to the nonresident driver and is issued in an action that is related to an accident or collision involving a motor vehicle driven by the nonresident driver and in which the nonresident driver is named a party.

Service of process on the nonresident driver under the Act is valid if (1) service is made by personal delivery and leaving of a copy of the process with MVA, with a certification of the last known address of the nonresident driver; (2) a fee for service of process is paid to MVA;

(3) MVA sends a copy of the process by certified mail, return receipt requested, to the nonresident driver at the driver's last known address; and (4) MVA files an affidavit of compliance with the clerk of the court in which the action is pending. MVA must provide a copy of the affidavit to the party seeking service, who is required to send a copy of the affidavit to the motor vehicle insurer of the nonresident driver by certified mail, return receipt requested. When the certified mail return receipt is returned to MVA, MVA must deliver it to the party seeking service and keep a record of the date of its receipt and delivery to the party seeking service. MVA is authorized to establish and collect a fee to recover its costs.

### **Dismissal of Medical Injury Claims – Attesting Expert's Report**

In a contested action or claim for medical injury, each party must file a certificate from a qualified expert attesting to the standards of care and the proximate cause of the alleged injury. A report of the attesting expert must be attached to each party's certificate. Discovery is available as to the basis of this certificate. In a 2006 case, *Walzer v. Osborne* (395 Md. 563), the Maryland Court of Appeals held that the attesting expert's report must be attached to the certificate in a medical injury action or claim and that the only sanction that a court may impose for failure to attach the report in a timely manner as required by law is dismissal of the action or claim without prejudice. However, if the statute of limitations had expired, a dismissed action or claim would be barred from being refiled. Several proposals were introduced in the 2007 session to address the impact of the *Walzer* decision.

*Chapter 324 of 2007* authorized a party to commence a new health care malpractice action or claim for the same cause against the same party or parties as the original action or claim if the original action or claim was dismissed for failure to file an attesting expert's report and the new action or claim is filed within the later of (1) 60 days from the date of dismissal; (2) the expiration of the applicable statute of limitations; or (3) August 1, 2007, if the action or claim was dismissed on or after November 17, 2006 (the date of the *Walzer* decision), but before June 1, 2007 (the effective date of the legislation).

### **Comparative Negligence Act**

For the first time since 2002, bills were introduced during the 2007 session attempting to change Maryland from a contributory negligence state to a comparative negligence state. Maryland remains one of five jurisdictions, along with Alabama, North Carolina, Virginia, and the District of Columbia, in which contributory negligence on the part of a plaintiff completely bars any recovery by the plaintiff for damages.

*Senate Bill 267/House Bill 110 of 2007 (both failed)* would have established comparative negligence as the method for awarding damages in negligence actions. Specifically, the bills would have provided that, in an action to recover damages for negligence that resulted in property damage or the death of or injury to a person, the fact that the plaintiff may have been contributorily negligent would not bar recovery by the plaintiff if the negligence of the plaintiff was less than the negligence of the defendant or the combined negligence of all defendants.

Instead, any damages awarded to the plaintiff would be diminished in proportion to the amount of negligence attributed to the plaintiff.

## **Freedoms of Speech and Press**

### **Strategic Lawsuits Against Public Participation**

Strategic Lawsuits Against Public Participation (SLAPP) suit laws protect individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government. Covered activities may include writing letters to the editor, circulating petitions, organizing and conducting peaceful protests, reporting unlawful activities, speaking at public meetings, and similar actions. Plaintiffs in these lawsuits, who typically have far greater resources than defendants, may allege a number of legal wrongs. The goal of these lawsuits is often not to win the case, but rather to cause the defendants to devote such significant resources to defending it that they are unable to continue the challenged activities.

*Chapters 368 and 369 of 2010* changed the statute pertaining to SLAPP suits by expanding the definition of a SLAPP suit to include (1) a suit that inhibits the exercise of federal or State constitutional rights of free speech (rather than the then current limited application of SLAPP status to a suit in which there is an intent to inhibit those rights); and (2) a suit based on communications regarding any issue of public concern (rather than the then current limited application to matters within the authority of a government body).

### **Foreign Defamation Lawsuits**

In 2008, the United Nations' Committee on Human Rights criticized "libel tourism" for its stifling effects on public interest reporting and the press. "Libel tourism" is a term used for instances when plaintiffs use foreign courts with more lenient defamation laws to sue publishers and writers. Under the Maryland Uniform Foreign Money-Judgments Recognition Act, a foreign judgment that is final and conclusive may be recognized and, therefore, enforced under certain circumstances in this State. *Chapters 658 and 659 of 2010* authorized a State court to exercise personal jurisdiction, to the extent permitted by the U.S. Constitution, over any person who obtains a judgment in a defamation proceeding outside of the United States against any person who is a State resident or has assets in the State. This authority is solely for the purpose of providing declaratory relief with respect to determining the personal liability of the person for the judgment or determining whether the judgment may not be recognized under State law, if certain conditions apply. *Chapters 658 and 659* also prohibited a court from recognizing a foreign defamation judgment unless the court first determines that the defamation laws as applied in the foreign jurisdiction provide at least as much protection for freedoms of speech and the press as the federal and State constitutions. A court is also prohibited from recognizing a foreign judgment if the cause of action resulted in a defamation judgment against the provider of an interactive computer service, as defined by federal law, unless the State court before which the matter is brought determines that the judgment is in compliance with the applicable federal statute.

### **Testimonial Privileges – Student Journalists**

With limited exceptions, a judicial, legislative, or administrative body, or anybody that has the power to issue subpoenas, may not compel any person who is, or has been, employed by the news media in any news gathering or news disseminating capacity to disclose (1) the source of any news or information procured by the person while employed by the news media, whether or not the source has been promised confidentiality; or (2) any news or information procured by the person while employed by the news media, in the course of pursuing professional activities, for communication to the public but which is not so communicated, in whole or in part. *Chapter 140 of 2010* extended their testimonial privileges to students engaged in any news gathering or news disseminating capacity recognized by their schools as a scholastic activity or in conjunction with an activity sponsored, funded, managed, or supervised by school staff or faculty (“school-related activity”). The privilege applies to any news or information procured by the student in the course of pursuing the scholastic or school-related activity.

### **Civil Immunity**

#### **Defense of Dwelling or Place of Business**

A person who has reasonable grounds to believe that the person is being attacked may use force that is reasonably necessary for protection against the potential injury. A person may not use force that is likely to cause death or serious bodily injury unless the person reasonably believes that he or she is in danger of serious bodily injury. In evaluating claims of self-defense in the criminal context, some states, like Maryland, have adopted a standard known as the “castle doctrine.” Under the castle doctrine, a person facing the danger of an attack upon his/her dwelling does not have a duty to retreat from the home to escape the danger, but instead is allowed to stand his/her ground and may kill the attacker if it is necessary to repel the attack.

*Chapter 555 of 2010* specified that a person is not liable for damages for a personal injury or the death of an individual who enters the person’s dwelling or place of business if (1) the person reasonably believes that force or deadly force is necessary to repel an attack by the individual; and (2) the amount and nature of the force used by the person is reasonable under the circumstances. Immunity does not attach, however, if the person is convicted of a crime of violence, second degree assault, or reckless endangerment as a result of the incident. “Person” does not include a government entity. A court may award costs and reasonable attorney’s fees to a defendant who prevails in a claim of immunity established by the Act. *Chapter 555* does not limit or abrogate any immunity from civil liability or defense under any other provision of the Maryland Code or at common law.

#### **Immunity from Liability – Automated External Defibrillators**

An automated external defibrillator (AED) is about the size of a laptop computer, and it analyzes a cardiac arrest victim’s cardiac rhythm, charges to an appropriate energy level, and delivers an electric charge, as directed by the operator, through adhesive pads placed on the victim’s chest.



Chapter 167 of 1999, which created the AED Program, authorized a facility to make AEDs available to victims of sudden cardiac arrest under a program administered by the Emergency Medical Services Board. **Chapter 593 of 2008** made several changes to the program, including (1) renaming the AED program the Public Access Automated External Defibrillator Program; (2) altering program requirements to remove barriers to participation and increase AED placement, particularly at high-risk locations; and (3) repealing the program fee. Facilities wishing to participate are no longer required to be authorized but instead must become registered facilities. Each participating facility is required to:

- maintain each AED and all related equipment and supplies in accordance with manufacturer and U.S. Food and Drug Administration standards;
- ensure that each individual who is expected to operate an AED has successfully completed an educational training course and refresher training as required by the Emergency Medical Service Board; and
- report the use of an AED to the Maryland Institute for Emergency Medical Systems Services for review by the regional council AED committee.

**Chapters 596 and 597 of 2008** expanded the circumstances under which an individual is immune from civil liability for providing automated external defibrillation by repealing the following eligibility requirements for civil immunity for conduct by individuals relating to the use of an AED (1) the act or omission occurred while an individual was providing automated external defibrillation at an authorized facility; (2) the individual successfully completed an AED training course and was authorized to provide automated external defibrillation; or (3) the individual was using an AED obtained by a prescription issued by a physician.

An individual must be acting in good faith and provide the assistance or aid in a reasonably prudent manner and without fee or other compensation. Immunity is not available if the conduct of the individual amounts to gross negligence, willful or wanton misconduct, or intentionally tortious conduct.

### **Local Government Tort Claims Act**

The Local Government Tort Claims Act (LGTC) limits the liability of a local government to \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions. By providing that a local government is liable for the tortious acts or omissions of its employees acting within the scope of employment, the LGTC prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

An action for unliquidated damages against an entity covered by the LGTC or its employees may not be brought unless notice of the claim meeting specific requirements is given within 180 days of the injury. Except for statutory notice requirements for Baltimore City, prior

to 2009, the LGTCA did not contain any specific provisions exclusively devoted to notice to a local government that was not a county. *Chapters 634 and 635 of 2009* clarified to whom notice must be given for claims under the LGTCA by creating a clear distinction between notice given to counties and notice given to other local governments under the LGTCA. If the defendant local government is a county, the notice must be given to the county commissioners or the county council, unless otherwise specified in statute. If the notice is to be given to a defendant local government that is not a county, the notice must be given to the corporate authorities of the defendant local government.

### **Indemnity Agreements**

At common law, a contract can be unenforceable if it has an illegal purpose, is contrary to public policy, or is unconscionable, among other reasons. Statutory law establishes that construction or property maintenance contracts or agreements that purport to indemnify the promisee against property damage or bodily injury caused by or resulting from the sole negligence of the promisee or indemnitee (or the person's agents or employees) are against public policy and are void and unenforceable. The prohibition also applies to promises, agreements, or understandings connected to these contracts or agreements but does not apply to insurance-related and workers' compensation contracts.

### **Motor Carriers**

*Chapter 83 of 2007* established that a provision or agreement contained in, collateral to, or affecting a motor carrier transportation contract that indemnifies, defends, or holds harmless the promisee against liability for loss or damage resulting from negligence or intentional acts or omissions of the promisee is against public policy and is void and unenforceable. The legislation was introduced in response to complaints from motor carriers that they were increasingly being pressured by shippers to agree to contracts that contained provisions by which the motor carrier had to agree to indemnify the shipper for the shipper's failure to meet its duties and responsibilities or lose the business opportunity by refusing to agree to the indemnity provision. *Chapter 83* does not apply to the Uniform Intermodal Interchange and Facilities Access Agreement or other agreements for the interchange, use, or possession of intermodal equipment.

### **Design Professionals**

*Chapter 656 of 2010* added architectural, engineering, inspecting, and surveying services to the list of services for which indemnity agreements are considered void and unenforceable as a matter of public policy under State law. *Chapter 656* also clarified that the prohibition on these types of indemnity agreements does not apply to a general indemnity agreement required for a surety bond.

## **Statutes of Limitation and Repose**

### **Child Sexual Abuse – Statute of Limitations in Civil Actions**

Generally a civil action must be filed within three years from the date it accrues unless another statutory provision provides a different period of time within which an action may be commenced. Under the “discovery rule,” which is applicable generally in all actions, a cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong. If a cause of action involves a minor, the statute of limitations is tolled until the minor reaches the age of majority, which is age 18.

Pursuant to Chapter 360 of 2003, an action for damages arising out of an alleged incident of sexual abuse that occurred while the victim was a minor must be filed within seven years of the date that the victim attains the age of majority.

*Senate Bill 575 of 2007 (failed)* would have allowed an action for damages arising out of alleged incident of sexual abuse that occurred while the victim was a minor to be filed by December 31, 2008, if the victim, regardless of age, obtained a “certificate of merit.”

*Senate Bill 238 of 2009 (failed)* would have extended the statute of limitations in these cases to 32 years from the date the victim attains the age of majority. The bill also would have revived an action that otherwise would have been barred as of January 1, 2010, solely because of the statute of limitations, so long as the cause of action was commenced before January 1, 2012.

### **Land Surveys – Statute of Repose**

Under the “statute of repose” in effect prior to 2010 for lawsuits related to errors in a land survey, no cause of action accrued and a person could not seek contribution or indemnity for damages incurred for an error in a survey of land unless an action for damages was brought within 15 years of the survey, or within three years after the discovery of the error, whichever occurred first. *Chapters 312 and 313 of 2010* reduced this statute of repose from 15 to 10 years after the survey, or within three years after the discovery of the error, whichever occurs first.

### **Bankruptcy Homestead Exemption**

In any federal bankruptcy proceeding under the federal Bankruptcy Code (Title 11 of the U.S. Code), an individual debtor domiciled in the State was authorized to exempt up to \$5,000 worth of real property or personal property. The State has opted out of several federal bankruptcy exemptions, including exemptions for personal property and owner-occupied residential property. Thus, in a bankruptcy proceeding, an individual debtor domiciled in the State is not entitled to the federal exemptions provided by § 522(d) of the federal Bankruptcy Code. *Chapters 349 and 350 of 2010* authorized an individual debtor domiciled in the State to exempt the following in a bankruptcy proceeding: (1) personal property up to \$5,000; and (2) owner-occupied residential real property up to the amount permitted under the federal Bankruptcy Code. The exemption for owner-occupied residential real property (“homestead exemption”) (1) may be claimed if the individual debtor and specified family members have not

successfully claimed the exemption on the property in question within the eight years prior to the filing of the bankruptcy proceeding; and (2) may not be claimed by both a husband and a wife in the same bankruptcy proceeding. As of April 1, 2010, the federal homestead exemption is \$21,625. The amount of the exemption is adjusted every three years.

### **Nuisance – Prostitution**

Under the State's drug-related nuisance abatement provisions, a "nuisance" is a property that is used for specified drug-related activity. *Chapter 289 of 2010* classified real property used for prostitution as a nuisance subject to a similar abatement action under the statute authorizing abatement of a nuisance when property is used for drug offenses.

## **Family Law**

### **Domestic Violence**

The General Assembly passed significant legislation designed to strengthen the State's domestic violence laws in the 2007-2010 term. These measures included (1) extending the duration of protective orders; (2) providing for the surrender of firearms by abusers; (3) clarifying the authority of law enforcement to use reasonable force when enforcing a custody provision of a protective order; (4) requiring notification to victims of service of protective orders; (5) establishing a central domestic violence repository; (6) providing for the monitoring of abusers by global positioning systems (GPS); and (7) limiting public access to protective order records under specified circumstances.

#### **Duration of Protective Orders**

*Permanent Protective Orders:* In a domestic violence proceeding, if a judge finds by clear and convincing evidence that abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse. All relief granted in a final protective order is effective for the period stated in the order, up to a maximum of 12 months. However, for good cause shown, a judge may extend the term of a protective order for six months beyond the specified period after giving notice to all affected persons eligible for relief and the respondent and after a hearing.

*Chapters 397 and 398 of 2008* required a judge to issue a final protective order against an individual that is permanent in duration if (1) the individual was previously a respondent against whom a final protective order was issued; (2) the individual was convicted and served a term of imprisonment of at least five years for any of the following acts of abuse that led to the issuance of the final protective order: attempted murder in the first or second degrees; first degree assault; first or second degree rape; first or second degree sexual offense; or attempted rape or sexual offense in the first or second degree; and (3) the victim of the abuse who was the person eligible for relief in the original protective order requests the issuance of a new final

protective order. An order issued under these laws may be terminated only at the request of the victim.

***Extension of Final Protective Orders – Subsequent Act of Abuse: Chapters 611 and 612 of 2009*** extended, from one to two years, the maximum duration of a final protective order that is issued against a respondent for an act of abuse committed within one year after the date that a prior final protective order issued against the same respondent on behalf of the same person eligible for relief expires, if the final protective order was issued for a period of at least six months.

***Chapters 620 and 621 of 2010*** authorized a judge to extend the term of a final protective order for up to two years if, during the term of the protective order, the judge finds by clear and convincing evidence that the respondent named in the protective order has committed a subsequent act of abuse against a person eligible for relief named in the protective order. Prior to extending a final protective order, the judge must give notice to the respondent and all affected persons eligible for relief and hold a hearing. In determining the period of extension, the judge must consider the following factors: (1) the nature and severity of the subsequent act of abuse; (2) the history and severity of abuse in the relationship between the respondent and any person eligible for relief named in the protective order; (3) any pending criminal charges against the respondent and the type of charges; and (4) the nature and extent of the injury or risk of injury caused by the respondent.

***Extension of Temporary Protective Orders:*** If, after a hearing on a petition, a judge finds that there are reasonable grounds to believe a person eligible for relief has been abused, the judge may issue a temporary protective order. The temporary protective order is effective for a maximum of seven days after service of the order. A judge is authorized to extend the temporary protective order as needed to effectuate service of the order where necessary to provide protection or for other good cause. Before enactment of ***Chapters 563 and 564 of 2009***, an extension of a temporary protective order could not exceed 30 days. ***Chapters 563 and 564*** authorized a judge to extend a temporary protective order for up to six months to effectuate service of the order where necessary to provide protection or for other good cause.

### **Surrender of Firearms**

Federal law prohibits anyone who is subject to a domestic violence order of protection or who has been convicted of a misdemeanor crime of domestic violence from possessing, in any way affecting commerce, or from receiving, any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. The federal law does not apply to orders issued *ex parte* (which means the prohibition does not apply to those emergency, interim, or temporary orders that are issued without the presence of the respondent). The federal prohibition also only applies to orders that (1) specifically prohibit the respondent from harassing, stalking, or threatening an intimate partner or a child of the partner or respondent; and (2) include a finding that the respondent represents a credible threat to the physical safety of the partner or child or specifically prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. Additionally,

under Maryland law, it is a crime for a respondent against whom a final protective order has been issued to possess any regulated firearms (*i.e.*, handguns and assault rifles). Prior to the 2009 session, a judge did not have the authority to order the respondent to surrender firearms as part of a temporary protective order. Additionally, a judge had the authority, but was not required, to order the respondent to surrender firearms as part of a final protective order.

**Chapters 488 and 489 of 2009** required a final protective order to order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession and to refrain from possession of any firearm for the duration of the protective order.

**Chapters 490 and 491 of 2009** authorized a court, when issuing a temporary protective order, to order the respondent to surrender to law enforcement any firearm in the respondent's possession and to refrain from possession of any firearm for the duration of the temporary protective order if the abuse consisted of (1) the use of a firearm by the respondent against a person eligible for relief; (2) a threat by the respondent to use a firearm against a person eligible for relief; (3) serious bodily harm to a person eligible for relief caused by the respondent; or (4) a threat by the respondent to cause serious bodily harm to a person eligible for relief.

Each of these laws required a law enforcement officer to provide to the respondent information on the process for retaking the firearm after the expiration of the order and to transport and store the firearm in a protective case, if one is available, and in a manner intended to prevent damage to the firearm during the time the protective order is in effect. The respondent may retake possession of the firearm at the expiration of the temporary protective order, unless the respondent is ordered to surrender the firearm in a protective order or the respondent is not otherwise entitled to own or possess the firearm. The respondent may retake possession of the firearm at the expiration of any final protective order, unless the protective order is extended or the respondent is not otherwise legally entitled to own or possess the firearm.

### **Enforcement of Orders**

According to Opinions of the Attorney General issued in 1998 and 1999, domestic violence laws did not give law enforcement the requisite authority to use reasonable and necessary force to secure the temporary custody of a child pursuant to a protective order. In response to the absence of this authority, **Chapters 395 and 396 of 2008** authorized a judge who awards temporary custody of a minor child in a final protective order to order a law enforcement officer to use all reasonable and necessary force to return the minor child to the custodial parent at the time the final protective order is served or as soon as possible after entry of the order. In 2009, **Chapters 595 and 596 of 2009** extended that authority to interim and temporary protective orders.

### **Notification of Service**

**Chapter 711 of 2009** required the Department of Public Safety and Correctional Services to notify a petitioner for relief from domestic violence of the service of an interim, temporary, or final protective order on the respondent. A law enforcement officer must electronically notify the department of the service of an interim or temporary protective order on the respondent

within two hours after the service. If the petitioner requested notification of the service of a protective order, the department must (1) notify the petitioner of the service on the respondent of an interim or a temporary protective order within one hour after a law enforcement officer electronically notifies the department of the service; and (2) notify the petitioner of the service on the respondent of a final protective order within one hour after knowledge of service of the order on the respondent. The legislation was contingent of the receipt of federal funds under the American Recovery and Reinvestment Act of 2009, and it terminates December 31, 2011.

### **Domestic Violence Central Repository**

On July 1, 2008, the Maryland Judiciary launched a statewide database (central repository) that includes all protective orders and peace orders issued by District Court and circuit court judges and District Court commissioners. The repository was designed to provide Maryland’s law enforcement agencies with real time, secure access to imaged copies of protective orders and peace orders. This enables law enforcement officers to verify the existence and content of an order at any time, particularly when responding to domestic violence calls, and to facilitate immediate arrests for violations. The central repository is also intended to enable court personnel to eliminate conflicting or simultaneous orders between District and circuit courts that share concurrent jurisdiction over domestic violence cases.

*Chapter 687 of 2010* codified the central repository by requiring the Administrative Office of the Courts to maintain a Domestic Violence Central Repository to store the following domestic violence orders issued in the State: (1) interim protective orders; (2) temporary protective orders; (3) final protective orders; (4) peace orders; and (5) peace orders issued pursuant to a juvenile cause. Peace orders issued pursuant to a juvenile cause must only be stored during the term of the peace order.

### **Monitoring of Abusers**

“Active electronic monitoring” is electronic monitoring that takes place on a 24-hour basis. The monitoring law enforcement agency receives reports in real time, that is, at the time an infraction occurs. A monitoring system that is connected to a GPS tracking system enables the law enforcement agency to know not only when the defendant went out of range, but precisely to what location the defendant went.

*Chapters 429 and 464 of 2010* established domestic violence GPS tracking system pilot programs in Prince George’s and Washington counties, respectively. The laws required those counties to implement GPS tracking system pilot programs that authorize the court, as a condition of a defendant’s pretrial release on a charge of violating a protective order, to order that the defendant be supervised by means of active electronic monitoring. The laws also established that on entering a judgment of conviction for failing to comply with the relief granted in a protective order, if a court suspends the imposition or execution of sentence and places the defendant on probation, the court may order that the defendant be supervised by means of active electronic monitoring for the duration of the protective order.

The Acts required the sheriff and the Administrative Judge for the District Court in each county to submit a report evaluating the pilot programs by September 1, 2012. The Acts terminate September 30, 2012.

### **Shielding of Protective Order Records**

Court records, including those relating to a domestic violence or peace order proceeding, that are maintained by a court are presumed to be open to the public for inspection. Generally, a custodian of a court record must permit a person who appears in the custodian's office during normal business hours to inspect the record. Subject to certain exceptions, a court record that is kept in electronic form is open to inspection to the same extent that a record in paper form is open to inspection. The Maryland Judiciary's web site includes a link to "CaseSearch," which provides public Internet access to information from court records maintained by the Judiciary. Maryland District Court traffic, criminal and civil case records and Maryland circuit court criminal and civil case records are available. Records can remain in CaseSearch indefinitely and are not removed except by a court-ordered expungement.

*Chapters 361 and 362 of 2010* authorized a respondent to file a written request to shield all records relating to a domestic violence or peace order proceeding if the domestic violence or peace order petition was denied or dismissed at any stage of the proceeding. "Shield" is defined as removing information from public inspection. "Shielding" means (1) with respect to a record kept in a court house, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and (2) with respect to electronic information about a proceeding on the web site maintained by the Maryland Judiciary, removing the information from the public web site. A court record includes (1) an index, docket entry, petition, memorandum, transcription of proceedings, electronic recording, order, and judgment; and (2) any electronic information about a proceeding on the web site maintained by the Maryland Judiciary (*i.e.*, "CaseSearch").

A request for shielding may not be filed within three years after the denial or dismissal of the petition, unless the respondent files a general waiver and release of all the respondent's tort claims related to the proceedings. The court must schedule a hearing on the shielding request and provide notice of the hearing to the petitioner or the petitioner's attorney of record. After the hearing, the court must order the shielding of court records relating to domestic violence protective order or peace order proceedings if the court finds (1) that the petition was denied or dismissed at the interim, temporary, or final order stage of a protective order or peace order proceeding; (2) that a final protective order or peace order has not been previously issued in a proceeding between the petitioner and the respondent; and (3) that none of the following are pending at the time of the hearing: (i) an interim or temporary protective order or peace order issued in a proceeding between the petitioner and the respondent; or (ii) criminal charge against the respondent arising from alleged abuse against the petitioner.

The court may, for good cause, deny the shielding if the petitioner appears at the hearing and objects. In determining whether there is good cause to grant the request to shield court records, the court must balance the privacy of the respondent and potential danger of adverse



consequences to the respondent against the potential risk of future harm and danger to the petitioner and the community.

The following persons are not prohibited from accessing a shielded record for a legitimate reason: (1) a law enforcement officer; (2) an attorney who represents or has represented the petitioner or the respondent in a proceeding; (3) a State’s Attorney; (4) an employee of a local department of social services; or (5) a “victim services provider.” A “victim services provider” means a nonprofit organization that has been authorized by the Governor’s Office of Crime Control and Prevention or the Department of Human Resources to have access to records of shielded peace orders or protective orders to assist victims of abuse. Other individuals may subpoena or file a motion for access to a shielded record. If the court finds that the individual has a legitimate reason for access, the court may grant access to the shielded record under the terms and conditions that the court determines. The court must balance the person’s need for access with the respondent’s right to privacy and the potential harm of unwarranted adverse consequences to the respondent that disclosure may create.

## **Child Support**

The General Assembly passed much legislation designed to improve the system for child support including legislation that (1) revised the schedule of basic child support obligations, (2) more equitably allocated health insurance obligations between the parents; (3) complied with federal mandates regarding medical support and fee collection; (4) extended the statute of limitation for paternity actions for adult destitute children; (5) established a child support payments incentive program; (6) required the suspension of attorney licenses for failure to pay child support; (7) expanded the child support intercept program to include an obligor’s interest in abandoned property; and (8) clarified the enforcement of orders involving interstate jurisdiction.

### **Child Support Guidelines**

In any proceeding to establish or modify child support, a court is required to use the child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. There is a rebuttable presumption that the amount of child support that would result from the application of the guidelines is the correct amount of support to be awarded. The presumption may be rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case. The current schedule uses the combined monthly adjusted actual income of both parents and the number of children for whom support is required to determine the basic child support obligation. The maximum combined monthly income subject to the schedule is \$10,000.

Maryland’s child support guidelines were originally enacted in 1989 in response to federal child support mandates. The current child support schedule is based on economic estimates of child-rearing expenditures as a proportion of household consumption developed in 1988 using national data on household expenditures from the 1972-1973 Consumer Expenditure Survey conducted by the U.S. Bureau of Labor Statistics.

At least every four years, the Child Support Enforcement Administration (CSEA) of the Department of Human Resources is required to review the guidelines to ensure that their application results in appropriate child support award amounts and to report its findings and recommendations to the General Assembly. During the 2008 interim, CSEA conducted its most recent review of the guidelines and, based on that review, proposed legislation in the 2010 session to update the current child support guidelines.

*Chapters 262 and 263 of 2010* revised the schedule of basic child support obligations used to calculate child support amounts under the child support guidelines to reflect changes in child-rearing costs and income levels. The revised schedule is based on the results of a federal study on child-rearing costs that was conducted in 1990 using data from 1980-1986, updated to 2008 price levels. The schedule is also adjusted to account for Maryland's above average housing costs.

Because it has become more common for combined monthly incomes to exceed the former \$10,000 limit and, therefore, fall outside of the guidelines, the laws expanded the current guidelines to include combined monthly incomes of up to \$15,000.

The laws also specifically provided that the adoption or revision of the guidelines is not a material change of circumstances for the purpose of a modification of a child support award.

### **Health Insurance and Medical Support**

*Health Insurance:* Under the guidelines that establish basic child support, a child support obligation is divided between the parents in proportion to their adjusted actual incomes. Prior to the enactment of *Chapters 35 and 36 of 2007*, the parent who paid for the child's health insurance was authorized to deduct it from that parent's income.

*Chapters 35 and 36* altered the treatment of health insurance under the child support guidelines to provide that, instead of deducting the cost of a child's health insurance coverage from the income of the parent who provides the coverage, the cost is added to the basic child support obligation and divided by the parents in proportion to their incomes. As a result, the Acts gave the parent paying for health insurance a greater deduction from that parent's share of child support and apportioned the cost of health insurance more equitably between the parties. Additionally, the Acts potentially increased the amount of money upon which a child support obligation is based.

*Medical Support:* The federal Deficit Reduction Act of 2005 amended federal requirements regarding medical support for children and directed the Secretary of the Department of Health and Human Services to issue implementing regulations. The regulations are intended to increase the number of children who receive medical support, either through private health insurance or cash medical support. *Chapter 508 of 2009* was intended to ensure that State law conforms to these new federal requirements by requiring a court to include in any support order under Title IV, Part D of the Social Security Act (*i.e.*, cases in which the recipient is receiving Temporary Assistance for Needy Families or has filed an application for support enforcement services) that is established or modified, a provision requiring one or both parents to

include the child in the parent's health insurance coverage if (1) the parent can obtain health insurance coverage through an employer or any form of group health insurance coverage; (2) the child can be included at a "reasonable cost" to the parent; and (3) the health insurance coverage is "accessible" to the child. The cost of health insurance is deemed reasonable if the cost of adding the child to existing health insurance coverage, or the difference between self-only and family coverage does not exceed 5% of the actual income of the parent ordered to pay for the coverage. Coverage that insures primary care services located within the lesser of 30 miles or 30 minutes from the child's primary residence is considered to be accessible.

If health insurance is not available at a reasonable cost at the time a support order is established or modified, the Act provided that a court (1) may include a provision requiring one or both parents to include the child in the parent's health insurance coverage if health insurance coverage at a reasonable cost becomes available in the future; and (2) must require one or both parents to provide cash medical support in an amount not to exceed 5% of the actual income of the parent ordered to provide cash medical support at a reasonable cost. Court-ordered cash medical support must be added to the basic child support obligation calculated under the child support guidelines and divided by the parents in proportion to their adjusted income.

Cash medical support is defined as an amount paid toward the cost of health insurance provided by a public entity, by one or both parents through employment or otherwise, or for other medical costs not covered by insurance, including extraordinary medical expenses. The court may not order the obligee to pay cash medical support toward the cost of health insurance provided by a public entity for which the obligee does not pay a premium, including the Maryland Children's Health Program.

### **Establishment of Paternity**

Parents are required to support their adult children who are destitute. An "adult destitute child" is defined as an adult child who has no means of subsistence and cannot be self-supporting due to mental or physical infirmity.

In the case of *Trembow v. Schonfeld*, 393 Md. 327 (2006), the Court of Appeals ruled that the mother of a destitute adult child born out of wedlock was not entitled to try to establish paternity once the child reached 18 years old. In that case, the mother filed suit seeking a determination of paternity and child support on behalf of her adult child who became permanently disabled before reaching the age of 18 years. The Court of Appeals held that under the statute, a paternity action must be brought prior to the child's eighteenth birthday. The court pointed out that had paternity been established before the disabled child reached 18 years, both the mother and the child, directly, or if incompetent, through a guardian, would have been entitled to seek support both during the child's minority and after the child became a destitute adult. **Chapter 242 of 2007** reversed this ruling by extending the statute of limitations and establishing that a paternity action for a child who is dependent on a parent due to a physical or mental disability may commence at any time before the child's twenty-first birthday.

## Enforcement of Child Support Orders

**Collection Fees:** Under the federal Deficit Reduction Act of 2005, states must assess an annual \$25 fee for child support enforcement cases in which the family has never received benefits from the Temporary Cash Assistance (TCA) program and at least \$500 in child support is collected within a federal fiscal year (from October 1 to September 30). The federal government then deducts 66% of the estimated revenue from the state's Federal Financial Participation matching grant.

In conformity with the federal law, *Chapter 483 of 2007* authorized CSEA to deduct from child support payments a collection fee of \$25 from cases in which the family has never received TCA and has received at least \$500 in child support payments during the federal fiscal year. The Act terminated on September 30, 2008, but *Chapter 162 of 2008* repealed the September 30, 2008 termination date. The law made the fee requirement contingent on the continuation of the original fee requirement established by the federal government. *Chapter 162* also increased to \$3,500 the amount of child support payments that a family is required to have received during the federal fiscal year before the CSEA is authorized to deduct the annual collection fee.

**Child Support Payment Incentive Program:** Low-income obligors often accumulate significant arrearages in child support obligations during periods of unemployment or incarceration, which may negatively impact the ability to collect current child support.

*Chapters 15 and 16 of 2007* required CSEA to develop a statewide Child Support Payment Incentive Program to encourage payment of child support arrearages in cases in which the right to child support has been assigned to the State in exchange for TCA. The program is intended to encourage obligors to enter into agreements with CSEA in exchange for reductions in the amount of arrearages.

To participate in the program, an obligor's gross income must be less than 225% of the federal poverty level. For purposes of determining the federal poverty level, the obligor's household includes children for whom the obligor must pay support under a child support order that is the subject of the application to the program.

In determining whether to authorize an obligor to participate in the program, CSEA must consider whether the obligor has a current ability to pay, the reduction of arrearages will enhance the obligor's economic stability, and the agreement serves the best interests of the children the obligor must support. If any of the aforementioned factors are met, then a presumption exists that it is in the best interest of the State to authorize an obligor to participate in the program.

Under the program, CSEA must agree to reduce the arrearages as follows:

- after 12 months of uninterrupted court-ordered payments, the arrearages must be reduced by 50% of the amount of the arrearages owed before the agreement; and

- after 24 months of uninterrupted court-ordered payments, the arrearages must be reduced to zero in full settlement of the arrearages owed.

***Suspension of Attorneys’ Licenses:*** In 1997, Maryland enacted a law to authorize the suspension of professional licenses for the failure to pay child support; however, the Court of Appeals, which is responsible for licensing attorneys, was not included in that law. ***Chapter 256 of 2007*** altered the definition of “licensing authority” to specifically include the Court of Appeals and established procedures for the suspension of attorneys’ licenses for failure to pay child support.

***Interception of Abandoned Property:*** CSEA is authorized to certify to the Comptroller that a child support obligor is in arrears in paying child support if the amount of the arrearage exceeds \$150 and CSEA is providing services as specified under the federal Social Security Act. This certification applies to individuals who receive State tax income refunds or other payments from the State. If CSEA makes a certification to the Comptroller, CSEA must notify the obligor that a certification has been made, and the obligor has the right to request an investigation.

According to CSEA, the child support intercept program has been successful since its inception in 1980 and has collected millions of dollars. ***Chapter 717 of 2010*** expanded the program by requiring the Comptroller to intercept abandoned property in which a child support obligor has an interest, in addition to any payments due the obligor, to defray a child support arrearage.

### **Maryland Uniform Interstate Family Support Act**

***Chapter 522 of 2008*** revised Maryland’s current Uniform Interstate Family Support Act (UIFSA), which governs the enforcement of child support orders that involve interstate jurisdiction, to include revisions proposed in 2001 by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The most significant substantive revisions (1) clarified provisions relating to the determination of the controlling order, particularly requiring a court to make a determination as to arrears owed under all past orders; (2) required a court to permit a nonresident party or witness to testify by telephone; (3) clarified provisions relating to the duration of support to specifically list “duration of the obligation of support” as an example of a nonmodifiable term under UIFSA; (4) altered provisions relating to the modification of a support order to specifically add to the bases for modification of jurisdiction the consent of the parties to have the issuing state modify the order, even if no party continues to reside there; (5) authorized a support enforcement agency to request a redirection of payments to the support enforcement agency in the state in which the obligee currently receives child support services; (6) facilitated the modification of orders across international borders by specifying the recognition of foreign support orders on the basis of comity; and (7) specifically addressed the issue of interest on arrears.

***Chapter 122 of 2010*** made several technical revisions to Maryland’s UIFSA to ensure compliance with federal requirements. The most significant changes (1) expanded the ability of

the State to exercise personal jurisdiction over a nonresident individual if the individual resided with the child in the State; (2) specified that if the Attorney General determined that a support agency is neglecting or refusing to provide services to an individual, the Attorney General is authorized to provide services directly to the individual; (3) clarified that, in situations in which a request to determine which of multiple child support orders that have been issued for the same obligor and the same child controls, the requesting party is responsible for providing notice to each party whose rights may be affected by this determination; (4) established that a party to a proceeding under UIFSA may not object to documentary evidence transmitted electronically from another state based on the means of transmission; and (5) clarified that neither spousal immunity nor immunity based on the relationship of parent and child is available in a UIFSA proceeding.

## **Marriage and Divorce**

### **Same-sex Marriage**

Numerous bills, including constitutional amendments, were proposed regarding same-sex marriage. Some measures proposed authorizing same-sex marriage or extending the rights and benefits of marriage to same-sex couples, other legislation was introduced to specifically limit the rights and benefits of marriage to heterosexual couples only. Some bills were in direct response to the impact of the Court of Appeals decision, *Conaway v. Deane, et al.* 401 Md. 219 (2007), while other bills were in response to the legislation of same-sex marriage in other states and the District of Columbia.

**Maryland Law:** Since 1973, Maryland law has specified that only a marriage between a man and a woman is valid in this State. In July 2004, nine same-sex couples filed suit in Baltimore City against the clerks of the circuit courts from five counties, contending that the State law banning same-sex marriage was unconstitutional. On January 30, 2006, the Circuit Court for Baltimore City held that the State statute defining marriage is unconstitutional and violates Article 46 of the Maryland Declaration of Rights because it discriminates based on gender against a suspect class and is not narrowly tailored to serve any compelling governmental interests.

In 2007, the Court of Appeals issued an opinion reversing the judgment of the circuit court and upholding the State's marriage statute. See *Conaway, et al. v. Deane, et al.*, 401 Md. 219 (2007). While determining that the State passed constitutional muster, the court cautioned that the opinion "...should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex." *Id.* at 325.

**Legislative Responses:** In response to the Court of Appeals ruling, a number of bills were introduced. Some would have legalized same-sex marriage or conferred the rights and benefits of marriage on same-sex couples through civil unions or domestic partnerships. Other bills would have submitted to the electorate a proposed constitutional amendment to ban same-sex marriage.

*Senate Bill 290 of 2008, House Bill 351 of 2008, Senate Bill 565 of 2009, House Bill 1055 of 2009, Senate Bill 582 of 2010, and House Bill 808 of 2010 (all failed)* would have altered the definition of a valid marriage by specifying that a marriage between two individuals who are not otherwise prohibited from marrying is valid in Maryland. *House Bill 570 of 2008 and House Bill 1112 of 2008 (both failed)* would have established civil unions as the legally recognized union of two eligible individuals of the same sex and would have extended all the rights and responsibilities of marriage to parties to a civil union. Similarly, *House Bill 1174 of 2008 (failed)* would have established domestic partnerships, akin to civil unions, for same-sex couples. *Senate Bill 689 of 2008 and House Bill 848 of 2008 (both failed)* would have replaced the institution of marriage with the institution of domestic partnership for all couples, whether of the opposite or same gender. All qualifications, rights, and responsibilities applicable to marriage would have been transferred to the institution of domestic partnership.

The General Assembly also considered *Senate Bill 564 of 2007, House Bill 919 of 2007, Senate Bill 169 of 2008, House Bill 1345 of 2008, Senate Bill 647 of 2009, House Bill 913 of 2009, Senate Bill 1097 of 2010, and House Bill 1079 of 2010 (all failed)*, which would have amended the Maryland Constitution to establish that only a marriage between a man and a woman is valid in Maryland. Another bill, *House Bill 1176 of 2010 (failed)* would have proposed an amendment to the Maryland Constitution to establish that a marriage between any two consenting adults is valid in Maryland. *House Bill 1279 of 2010 (failed)* would have implemented that proposed constitutional amendment.

While not altering or affecting the definition of marriage in State law, *Chapter 590 of 2008* specified that hospitals, nursing homes, and residential treatment centers are required to allow visitation by a patient's or resident's domestic partner and members of the domestic partner's family and established health care decision making rights. For additional discussion of visitation and medical decisions by domestic partners see the subpart "Health Care Facilities and Regulation" of Part J – Health and Human Services of this *Major Issues Report*.

Additionally, those persons in domestic partnerships or former domestic partnerships as specified in *Chapter 599 of 2008* qualify for an exemption from recordation and State and county transfer taxes for residential property used as a common residence. Evidence of the domestic partnership or former domestic partnership must be submitted to qualify for the exemption. For additional discussion of exemptions for recordation and transfer taxes for a domestic partner see the subpart "Property Tax" of Part B – Taxes of this *Major Issues Report*.

Effective July 1, 2009, Maryland extended health benefits to State employees, retirees, and their children that are in same-sex domestic partnerships by regulatory action.

**Recognition of Foreign Same-sex Marriages:** In 2004, Massachusetts became the first state to issue marriage licenses to same-sex couples after the state's highest court ruled that authorizing civil unions for same-sex couples while prohibiting them from marrying was unconstitutional. Same-sex marriage is now legal in four other states: Connecticut (2008); Iowa (2009); Vermont (2009); and New Hampshire (2010). In addition, the District of Columbia passed legislation in 2009 legalizing same-sex marriage.

Under the Full Faith and Credit Clause of the U.S. Constitution, states usually are required to give full faith and credit to the public acts, records, and judicial proceedings of every other state. Therefore, Maryland recognizes foreign marriages that are validly entered into in another state. For example, Maryland recognizes a common law marriage from a foreign jurisdiction, although common law marriages are not valid in Maryland. *Henderson v. Henderson*, 199 Md. 449 (1952). However, a state is not required to apply another state's law in violation of its own legitimate public policy. See *Nevada v. Hall*, 440 U.S. 410 (1979). Similarly, the *Henderson* court stated that Maryland is not bound to give effect to marriage laws that are "repugnant to its own laws and policy." 199 Md. at 459.

**Attorney General Opinion:** In 2004, the Office of Attorney General informally advised that the Maryland law prohibiting same-sex marriage could create a valid public policy exception to the general rule that marriages valid where performed are valid anywhere (Advice of Counsel Letter to the Honorable Joseph. F. Vallario, Jr., Chairman, House Judiciary Committee, February 24, 2004).

However, on February 23, 2010, the Attorney General issued a formal opinion on the question of whether Maryland may recognize same-sex marriages legally performed in other jurisdictions. The Attorney General concluded that although not free of all doubt, the Court of Appeals "... is likely to respect the law of other states and recognize a same-sex marriage contracted validly in another jurisdiction." (See 95 Op. Att'y Gen. 3 (2010) at 54.) The opinion advised that in light of evolving State public policies that favor, at least for some purposes, domestic partnerships and same-sex intimate relationships, the court would not readily invoke the public policy exception to the general rule of recognition of out-of-state marriages. The extent to which the Attorney General's opinion will alter State agency policies and actions toward same-sex spouses who enter, visit, or reside in Maryland remains to be seen.

**Legislative Activity:** In response to this opinion, emergency bills, *Senate Bill 1120 and House Bill 1532 of 2010 (both failed)*, would have prohibited a unit of State or local government from altering any policy, procedure, rule, or regulation in effect on February 22, 2010 (the day before the opinion was issued), to the extent that the alteration requires or depends on a determination of whether a marriage must be recognized by the State. The prohibition would have been effective until the issue of recognition of same-sex marriage legally performed in other jurisdictions is decided by the Court of Appeals or addressed by the General Assembly through the enactment of a law.

*Senate Bill 852 and House Bill 90 of 2010 (both failed)* would have established that a marriage between two individuals of the same sex that is validly entered into in another state or foreign country is not valid in Maryland and that marriages between individuals of the same sex are against the public policy of the State.

In addition, *House Simple Resolution 1 (failed)* called for the impeachment of Attorney General Douglas F. Gansler for alleged "incompetency and willful neglect of duty," based, in part, on his rendering of the opinion regarding same-sex marriages.



### **Other Marriage Legislation**

A marriage ceremony may be performed in Maryland by any religious official of a body or order authorized by rules or custom to perform a marriage ceremony, a clerk of court, a deputy clerk of court designated by the county administrative judge for the county circuit court, or a judge. *Chapter 324 of 2009* expanded the definition of “judge” for purpose of performing a marriage to include a judge of the United States Tax Court.

### **Divorce**

While federal law specifies that child support is exempt from attachment for a parent’s debts, alimony is not protected from collection by creditors. Because alimony is so substantial a part of its recipient’s income, alimony recipients typically report it when applying for a home, auto, or other loans, and Maryland law requires lenders to consider alimony when determining loan eligibility of an applicant. Under former Maryland law, alimony was subject to garnishment. In response to this concern, *Chapter 238 of 2007* exempted from execution on a judgment money payable or paid for child support or alimony, to the extent that wages are exempt from attachment (*i.e.*, 75% of the disposable wages due).

### **Child Abuse and Neglect**

Numerous bills were enacted to strengthen the State’s child abuse and neglect laws. Some of the most significant measures included legislation that authorized the reporting of a risk of child sexual abuse, created a “birth match program,” and expanded access to child abuse and neglect records.

### **Reporting of Risk of Sexual Abuse**

Formerly, statutory requirements regarding the reporting of child abuse applied only if the reporter suspected that abuse actually occurred. State law did not establish reporting requirements if a reporter believes that a child may be at substantial risk of abuse. *Chapters 185 and 186 of 2010* authorized an individual to notify the local department of social services or the appropriate law enforcement agency if the individual has reason to believe that a parent, guardian, or caregiver of a child allows the child to reside with or be in the presence of an individual, other than the child’s parent or guardian, who (1) is registered on the sexual offender registry based on the commission of an offense against a child; and (2) based on additional information, poses a substantial risk of sexual abuse to the child.

After confirming that the allegations in the report regarding the individual’s history are true and that there is specific information that the child is at substantial risk of sexual abuse, the local department must make a thorough investigation to protect the health, safety, and welfare of any child or children who may be at substantial risk of sexual abuse.

### **Birth Match Program**

The Department of Human Resources (DHR) maintains a “central registry,” which is a database containing information concerning its child abuse and neglect cases. The department may identify an individual in a central registry as responsible for abuse or neglect only if the individual has been found guilty of the criminal charge arising from the allegation or if the individual has been found responsible for the abuse or neglect and has unsuccessfully appealed the finding or failed to exercise appeal rights.

*Chapters 259 and 260 of 2009*, Maryland’s version of a “birth match program,” required the Executive Director of the Social Services Administration in DHR to provide the Secretary of Health and Mental Hygiene with identifying information regarding individuals who have had their parental rights terminated and have been identified as responsible for abuse or neglect in a central registry. The Secretary must provide the executive director with birth record information for a child born to an individual whose identifying information has been provided to the Secretary within the previous five years. If the executive director receives birth record information for a child born to an individual whose identifying information has been provided as described above, the executive director must (1) verify the identity of the birth parent; and (2) notify the local department of social services of the county in which the child resides so that the local department may review its records and, when appropriate, provide an assessment of the family and offer services if needed.

### **Disclosure of Child Abuse and Neglect Records**

*Division of Parole and Probation:* All records and reports concerning child abuse and neglect are confidential; however, records of child abuse or neglect must be disclosed pursuant to an order of the court or an administrative law judge and, under certain circumstances and on a written request, to the Baltimore City Health Department. Child abuse and neglect records may be disclosed on request to employees or persons of interest as specified in statute, including specified personnel of DHR and local departments of social services, law enforcement personnel, and individuals who are providing treatment or care to a child who is the subject of a report of child abuse or neglect. Unauthorized disclosure of child abuse or neglect records is a misdemeanor and is subject to penalties of up to 90 days imprisonment and/or a fine of up to \$500.

*Chapters 629 and 630 of 2010* required the disclosure of a report or record concerning child abuse or neglect to the Division of Parole and Probation if, as a result of a report or investigation of suspected child abuse or neglect, the local department of social services has reason to believe that an individual who lives in or has a regular presence in a child’s home is registered on the sexual offender registry based on the commission of an offense against a child.

*Public Disclosure:* The federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to adopt provisions allowing for the public disclosure of findings or information relating to a case of child abuse or neglect which resulted in a child fatality or near fatality. A 2008 report produced by the Children’s Advocacy Institute and First Star compared and graded the child death and near death disclosure laws and policies of each state. The evaluation

considered (1) whether a state had a public disclosure policy as mandated by CAPTA; (2) whether a state's policy was codified in statute; (3) the ease of access to the information; (4) the scope of information authorized for release; and (5) whether a state allowed public access to abuse or neglect proceedings. While the State is in compliance with CAPTA, this report gave Maryland, along with nine other states, a grade of "F." In evaluating the ease of access to information about child abuse or neglect which resulted in a child fatality or near fatality, the report criticized Maryland's policy as being "permissive with severely restrictive conditional language."

In response to the report's criticism of State laws, *Chapters 637 and 638 of 2010* allowed greater public disclosure of information from child welfare records. Such disclosure is intended to increase public awareness and confidence that DHR is providing appropriate services to abused or neglected children and not using confidentiality as a shield from disclosing appropriate public information regarding service delivery in child protective service cases where there is a fatality or near fatality.

The laws make it mandatory, rather than discretionary, for the director of a local department of social services or the Secretary of Human Resources to disclose, on request, specified information regarding child abuse or neglect if (1) the information is limited to actions or omissions of the local department, DHR, or an agent of the department; (2) the child named in a report has suffered a fatality or near fatality; and (3) the State's Attorney's Office has consulted with and advised the local director or Secretary that disclosure would not jeopardize or prejudice a related investigation or prosecution.

*Nonpublic School Officials: Chapter 473 of 2007* extended to nonpublic school officials the same rights to receive child abuse and neglect records concerning a school employee who has allegedly abused or neglected a student as are afforded to public school officials when determining appropriate personnel or administrative actions following a report of suspected abuse or neglect of a student committed by the employee.

### **Child Advocacy Centers**

Child advocacy centers are child-focused entities that investigate, diagnose, and treat children who may have been abused or neglected. The centers include local law enforcement officers, prosecutors, and the local departments of social services, and may include child mental health service providers and other children and family service providers. The centers are intended to reduce trauma on abuse victims by eliminating the need to have children repeat their stories to multiple individuals and also reduce the amount of resources used in obtaining information. *Chapter 453 of 2010* required the Governor's Office of Crime Control and Prevention (GOCCP) to establish and sustain child advocacy centers in the State and required that the State Victims of Crimes Fund, which provides services for victims and witnesses of crimes and delinquent acts and is administered by the State Board of Victim Services under the authority of GOCCP, be used to support the center.

## Children in Out-of-home Placement

Legislation was enacted that clarified the circumstances under which parental rights may be terminated. Legislation was also enacted to require more thorough investigation of opportunities for voluntary placement of disabled children and expedited disclosure of medical records. Laws to increase the review of child placements and to extend the period under which a person can leave an unharmed infant with a responsible adult for “safe haven” were enacted, among other measures.

### Termination of Parental Rights

In ruling on a petition for guardianship of a child, a juvenile court must give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether the termination of parental rights is in a child’s best interests. In *In Re: Adoption of Rashawn Kevon H.*, 402 Md. 477 (2007), the Court of Appeals recognized an implicit presumption that the interest of a child is best met by continuing the parental relationship. This presumption is based on the fundamental constitutional right of parents to raise their children without undue influence by the State. The presumption may be rebutted only by clear and convincing evidence that a parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child’s best interest. In addition to consideration of the factors currently specified in statute, a court is required to make clear and specific findings based on the evidence with respect to each of the factors. A trial court must determine expressly whether the findings are sufficient either to show that a parent is unfit or that exceptional circumstances exist that would make continuation of the parental relationship detrimental to the child’s best interest.

The *Rashawn* case was remanded in order for the trial court to make and articulate clear and specific findings with respect to each of the relevant statutory factors. **Chapter 350 of 2009** codified the *Rashawn* opinion by establishing that after the consideration of existing statutory factors, a juvenile court, in order to grant guardianship of a child without parental consent and over the child’s objections, must also find by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the parent’s rights is in the child’s best interest.

### Children with Disabilities

A “child in need of assistance” (CINA) is a child who requires court intervention because (1) the child was abused or neglected or has a developmental disability or a mental disorder; and (2) the child’s parents, guardian, or custodian are unable or unwilling to give the proper care and attention to the child’s needs. If the court finds that a child is a CINA, the court may commit the child to the custody of a local department of social services, the Department of Health and Mental Hygiene, or both.

Legislation enacted in 2003 established a Voluntary Placement Agreement Program for children with disabilities. Under this law, the Social Services Administration is required to

establish an out-of-home placement program for minor children (1) who are placed in local departments of social services' custody for not more than 180 days by parents or legal guardians under voluntary placement agreements; or (2) who, with the approval of the Social Services Administration, are placed in out-of-home placements by local departments of social services under voluntary placement agreements. A voluntary placement agreement is a binding, written agreement between a local department of social services and the parent or legal guardian that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or legal guardian.

Before determining whether a child with a developmental disability or mental illness is a CINA, *Chapter 461 of 2007* required the juvenile court to make a finding as to whether the local department of social services made reasonable efforts to place the child in accordance with a voluntary placement agreement. The Act also authorized the court, in making a disposition on a CINA petition, to hold in abeyance its determination and order the local department of social services to (1) assess or reassess the family and child's eligibility for a voluntary placement agreement; and (2) report to the court in writing within 30 days unless the court extends the time period for good cause shown.

If the local department does not find the child eligible for a voluntary placement agreement, the court must hold a hearing to determine the issue of eligibility. After the hearing, the court must (1) find that the child is a CINA and order the local department of social services to offer to place the child in accordance with a voluntary placement agreement; (2) find that the child is not a CINA; or (3) dismiss the case.

### **Drug-exposed Infants**

Within one year after a child's birth, there is a presumption that a child is not receiving proper care and attention from the mother for the purposes of determining whether a child is a CINA if (1)(i) the child was born exposed to cocaine, heroin, or a derivative of cocaine or heroin as shown by any appropriate test of the mother or child; or (ii) on hospital admission for delivery of the child, the mother tested positive for one of these drugs as shown by any appropriate toxicology tests; and (2) drug treatment was made available, and the mother refused the recommended level of drug treatment or did not successfully complete the drug treatment. Additionally, for purposes of a court's consideration of a petition to terminate parental rights, a court must consider any exposure of the child to any of these drugs and amenability to treatment of the parent as described above.

The negative impact on health and well-being of a child exposed to methamphetamine is as significant as exposure to cocaine and heroin. *Chapters 47 and 48 of 2007* expanded the definition of a drug-exposed infant to include exposure to methamphetamine or a derivative of methamphetamine for the purposes of determining whether a child is a CINA or whether terminating a parent's rights is in the child's best interests.

### **Disclosure of Medical Records**

Maryland law prohibits health care providers from providing medical information without a person's authorization unless the person has been given notice of the request and has 30 days to object. Under the CINA statute, a child placed in shelter care because the child is in danger in the home may not be continued in shelter care longer than 30 days unless the court finds after an adjudicatory hearing that continued shelter care is needed to provide for the safety of the child.

Because of the 30-day notice requirement, medical records that are often necessary to determine whether child abuse or neglect has occurred in a CINA case are not available to the court at the time of the adjudicatory hearing due to the abbreviated trial schedule in CINA cases. To address this problem, *Chapter 300 of 2008* authorized the expedited disclosure of medical records in these CINA cases. Specifically, the law reduced the timeframe from 30 to 15 days that a person in interest has to object to disclosure of a medical record that is requested for a CINA proceeding.

### **Interstate Placement**

Foster care is generally a federally based program, which must adhere to federal laws and conditions. The federal Safe and Timely Interstate Placement of Foster Children Act of 2006 encourages states to improve protections for children and holds them accountable for the safe and timely placement of children across state lines.

To comply with federal guidelines, *Chapter 16 of 2008* required a local department of social services and the juvenile court to consider both in-state and out-of-state placements in the development and evaluation of permanency plans for children in out-of-home placements. Additionally, the Act required that at least every 12 months at a permanency planning or review hearing, the court consult on the record with the child in an age appropriate manner. The Act also increased from 7 to 10 the number of days' notice required to be given to a foster parent, preadoptive parent, or relative providing care regarding a permanency planning or review hearing, if practicable, and clarified that these individuals have the right to be heard at those hearings.

### **Guardianship Review Hearings**

A juvenile court must hold an initial guardianship review hearing no later than 180 days after the date of an order granting guardianship to establish a permanency plan for a child. Additional review hearings must be held at least once each year after the initial review hearing until the juvenile court's jurisdiction terminates. *Chapter 655 of 2010* was intended to bring Maryland into compliance with federal legislation enacted in 2008, by requiring the court to consult on the record with the child in an age-appropriate manner at least every 12 months in a guardianship review hearing.

### **Emergency Placement**

State law requires criminal background investigations of certain individuals who work or volunteer with children. Among the individuals requiring a criminal history records check are an adult relative with whom a child is placed by a local department of social services, any adults living in that home, a parent or guardian of a child in an out-of-home placement, and any adult living in the home of that child’s parent or guardian.

To minimize the amount of time a child placed by a local department of social services in an emergency out-of-home placement, due to the sudden unavailability of the child’s primary caretaker, remains in a home with an adult with a criminal history, *Chapter 263 of 2008* authorized the local department of social services to request an interim federal name-based check on an adult relative with whom the child is placed, any adult residing in that home, and any adult residing in the home of the child’s parent or guardian.

The local department must immediately remove a child from an emergency out-of-home placement if an individual does not comply with requirements for a name-based check. In addition, within 15 days after receiving the results of an individual’s name-based check, the local department of social services must submit a complete set of the individual’s fingerprints to law enforcement for a complete criminal history records check.

### **Informal Kinship Care**

In general, a public school student must attend the appropriate level public school in the attendance area of the student’s permanent residence. *Chapters 361 and 362 of 2008* allowed a child to attend a public school outside of the attendance area of the child’s permanent residence if the child is living in the school’s attendance area with a relative who is providing informal kinship care due to a serious family hardship. The relative must verify the informal kinship care relationship through a sworn affidavit.

For additional discussion of school attendance outside the attendance area of a child’s permanent residence, see the subpart “Education – Primary & Secondary” of Part L – Education of this *Major Issues Report*.

### **Citizens Review Board for Children**

The Citizens Review Board for Children (CRBC) reviews and coordinates the activities of the local review boards and reviews policy issues, procedures, legislation, resources, and barriers relating to out-of-home placement and the establishment of permanency for children. By reviewing specific cases, CRBC evaluates the extent to which State and local agencies are effectively discharging their child protection responsibilities. There must be at least one local board of review in each county.

*State and Local Review: Chapter 153 of 2007* conformed State law to changes in the federal Child Abuse Prevention and Treatment Act and enhanced implementation of Chapters 31

and 475 of 2006, the Child Welfare Accountability Act of 2006. The law altered the powers, duties, and reporting requirements for the State CRBC and local review boards.

The most significant changes made by the legislation included (1) expanding the duties of the State CRBC to include examining the practices of State and local agencies and reviewing specific cases; (2) expanding the duties of each local board of review for minor children in out-of-home placement to include the review of the services provided to children in aftercare following a child's out-of-home placement; (3) changing case review requirements by local boards from a requirement of once every six months to a requirement of at least once within the first 12 months after a child enters an out-of-home placement and subsequent reviews when the court, the local department, an interested person, or the local board raises a specific concern; and (4) expanding the duties of local citizens review panels to include performing case reviews.

*Chapters 629 and 630 of 2009* further altered the existing duties of CRBC and local boards of review. Specifically, the Acts required DHR and CRBC to adopt regulations requiring that local boards review cases based on priorities agreed upon the department and CRBC as stated in a memorandum of agreement. Additionally, local boards are required to report on the following when reporting to the juvenile court and the local department of social services on each minor child whose case is reviewed (1) the identification of barriers to achieve timely permanency; (2) whether the child is receiving appropriate services to achieve the stated permanency goal; and (3) any reasonable efforts made towards promoting the child's relationship with individuals who will play a lasting, supporting role in the child's life.

### **Safe Havens**

Under Maryland's "safe haven" statute, a person who leaves an unharmed newborn with a responsible adult within a certain number of days after the birth of the newborn, as determined within a reasonable degree of medical certainty, and does not express an intent to return for the newborn is immune from civil liability or criminal prosecution for the act. *Chapters 415 and 416 of 2008* extended, from 3 to 10 days after birth, the time within which a person may leave an unharmed newborn with a responsible adult, without being subject to civil liability or criminal prosecution.

### **Child Custody**

Legislation was enacted to address the special needs of parents subject to military deployment who are involved in custody proceedings, limit the relevance of the disabled condition of a prospective guardian or custodian, increase the amount of notice that may be required before a custodial parent can relocate a child, and increase the penalties for abduction of a child by a relative.

### **Military Duty**

The federal Servicemembers Civil Relief Act protects the interests of active duty military personnel. Under this law, federal court hearings may be stayed to protect the interests of active military personnel. The law requires at least a 90-day stay in a federal court or administrative



hearing if requested by the service member. Additional stays may be granted at the discretion of the federal judge or hearing official. However, the federal law does not protect deployed military personnel regarding child custody and visitation proceedings in State courts.

*Chapter 672 of 2009* established special provisions for custody proceedings involving a parent subject to military deployment. The Act specified that any order or modification of an existing child custody or visitation order issued by a court during a term of a deployment of a parent must specifically reference the deployment of the parent. A parent who petitions the court for an order or modification of an existing order after returning from deployment must specifically reference the date of the end of the deployment in the petition. If the petition is filed within 30 days after the end of the deployment, the court must set a hearing on the petition on an expedited basis. On a finding that extenuating circumstances prohibited the filing of the petition within 30 days, the court may set a hearing on the petition on an expedited basis whenever the petition is filed.

Any custody or visitation order issued based on the deployment of a parent must require that (1) the other parent reasonably accommodate the leave schedule of the parent who is subject to the deployment; (2) the other parent facilitate opportunities for telephone and electronic mail contact between the parent who is subject to the deployment and the child during the time of deployment; and (3) the parent who is subject to the deployment provide timely information regarding the parent’s leave schedule to the other parent.

### **Prohibition of Consideration of Disabilities**

*Chapters 567 and 568 of 2009* limited the relevance of a disability of a parent, guardian, custodian, or party in certain CINA, custody, and visitation proceedings. Specifically the laws established that, in making a disposition on a CINA petition, a disability of the child’s parent, guardian, or custodian is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the ability of the parent, guardian, or custodian to give proper care and attention to the child and the child’s needs. In determining whether to grant custody and guardianship of a CINA to a relative or nonrelative, a disability of the relative or nonrelative is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child. In any custody or visitation proceeding, a disability of a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

Under the legislation, “disability” is defined as a physical impairment that substantially limits one or more of the major life activities of an individual. “Disability” does not include illegal use of or addiction to a controlled dangerous substance.

### **Child Relocation**

Under the former law, in any custody or visitation proceeding, the court could include as a condition of a custody or visitation order a requirement that either party provide advance written notice of at least 45 days to the court, the other party, or both, of the intent to relocate the permanent residence of the party or the child either within or outside the State. The court must

waive the notice requirement on a showing that the notice would expose the child or either party to abuse or for any other good cause. If either party is required to relocate in less than the 45-day period specified in the notice requirement, the court may consider as a defense to any action brought for a violation of the requirement that (1) relocation was necessary due to financial or other extenuating circumstances; and (2) the required notice was given within a reasonable time after learning of the necessity to relocate. *Chapter 531 of 2009* increased the number of days' notice from 45 to 90 that a court may require a party to a custody or visitation order to give before relocating the residence of the party or the child. The bill also required the court to set an expedited hearing if either party files a petition regarding a proposed relocation within 20 days of the written notice.

### **Child Abduction**

Abduction of a child by a parent or other relative was traditionally considered a family matter rather than a criminal matter. A parent who abducted or hid a child in violation of a lawful custody order could be cited for contempt of court, but any penalties imposed were usually not severe. In the 1960s and 1970s, a rapidly increasing divorce rate led to a correspondingly higher number of children who were subject to custody orders and also led to an increasing number of parental abductions, or "custodial interference" cases. In the majority of states, including Maryland, penalties apply when a parent or another covered relative hides a child, whether or not that person has lawful custody.

*Chapter 666 of 2009* increased the penalty for a parent or relative convicted of abducting a child to another state or harboring, hiding, or detaining a child in another state for not more than 30 days from a maximum of 30 days imprisonment and/or a \$250 fine to a maximum of one year imprisonment and/or a \$1,000 fine. If the child is in another state for more than 30 days, the Act increased the penalties to a maximum of three years imprisonment and/or a fine of \$2,500. If the child is taken or detained outside of the United States, the maximum term of imprisonment was increased from three to five years. The law also added as a required element for the crime of child abduction by a relative that the relative abduct, detain, or harbor the child with the intent to deprive the lawful custodian of custody of the child.

### **Counsel for Minors**

In an action in which custody, visitation rights, or the support of a minor child is contested, the court may appoint a lawyer to serve as a child advocate attorney or a best interest attorney for the minor-child. Prior to 2008, the law specified that the court may impose counsel fees for such an appointment against "either or both parents." In *Taylor v. Mandel*, 402 Md. 109 (2007), the maternal grandmother sought custody of or visitation with her grandchildren and requested the appointment of an attorney for the children. The parties in the action reached a settlement, and the circuit court required the maternal grandmother to pay a portion of the children's attorney's fees. The decision was affirmed by the Court of Special Appeals.

The Court of Appeals reversed those rulings, holding that the plain meaning of the term "parent" does not include grandparents. Therefore, the circuit court did not have authority to require the maternal grandmother or any nonparent to pay the attorney's fees because the term

“parent” in the current statute authorizing the imposition of attorney’s fees against either or both parents only permits the court to assess those fees against a mother or father.

*Chapter 488 of 2008* modified the result in the *Taylor* case by authorizing a court to impose counsel fees for a child’s attorney against one or more parties to an action in which custody, visitation rights, or the support of a minor child is contested.

### **Child Care**

Legislation was enacted to establish emergency license suspensions of child care centers, increase the frequency of unannounced child care and day care center inspections, expand criminal background check requirements, and protect children from the hazards of corded window coverings.

***Emergency License Suspension:*** The State Superintendent of Schools may suspend the license of a child care center on an emergency basis as required to protect the health or safety of the child. Under the former law, after the issuance of an emergency suspension, a child care center may continue to operate for up to 72 hours, despite the severity of the violation.

The Maryland State Department of Education (MSDE) reported numerous emergency suspension actions taken for reasons including health and safety issues (*i.e.*, mice and roach infestations or lack of running water); injurious treatment of children; lack of supervision; gross overcapacity; child sexual abuse allegations; and inappropriate child-to-staff ratios.

*Chapter 156 of 2008* required a child care center to immediately cease operation on delivery of an emergency suspension notice. The emergency suspension remains in effect until the order is reversed or until the State Superintendent of Schools determines that the health, safety, or welfare of children is no longer threatened.

***Inspections:*** Before enactment of *Chapter 242 of 2010*, regulations required, at a minimum, the announced inspection by MSDE of each registered family day care home prior to the issuance of an initial registration and at least once every two years thereafter to determine whether applicable requirements, including those relating to recordkeeping were being met. MSDE was also required to inspect each child care center operating under a license or a letter of compliance (1) on an announced basis before issuing the license or letter of compliance and at least every two years thereafter; and (2) on an unannounced basis at least once during each 12-month period that the license or letter of compliance is in effect to determine whether safe and appropriate child care is being provided.

*Chapter 242* altered those requirements by establishing announced inspections prior to the issuance of an initial or continuing registration, license, or letter of compliance and repealing the requirement for a subsequent inspection every two years thereafter. Eliminating the requirement for announced inspections every two years was intended to allow for more unannounced inspections, which provide a more accurate assessment of the facility on a daily basis.

**Background Checks:** State law requires criminal background investigations of certain individuals who work or volunteer with children. A volunteer who works with children in certain child care settings and is required to have a criminal history records check must pay the mandatory processing fee for the national records check assessed by the Federal Bureau of Investigation (FBI), reasonable administrative costs to the Department of Public Safety and Correctional Services, and the fee for access to Maryland criminal history records. The total cost of each criminal history records check for volunteers who work with children is \$56, which includes State and national background checks plus fingerprinting and a discount for the national background check.

**Chapter 521 of 2007** provided that a volunteer who works with children through programs registered with the Maryland Mentoring Partnership and who is required to obtain a national and State criminal history records check is not required to pay the \$38 fee for access to Maryland criminal history records but would be required to pay the \$18 mandatory processing fee assessed by the FBI for the national criminal history records check

**Chapter 18 of 2010** added the following two facilities serving minors to the list of facilities whose employees are required to obtain a criminal history check: (1) a licensed home health or residential service agency authorized to provide home or community-based health services for minors; and (2) privately operated recreation centers and programs.

Additionally, the law requires the Department of Public Safety and Correctional Services to provide a full Report of Arrests and Prosecutions (RAP) sheet, which includes arrest information, rather than the “filtered” RAP sheet provided under current law, which reports only the existence of a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending change.

### **Child Safety – Window Coverings**

According to the U.S. Consumer Product Safety Commission (CPSC), almost once a month a child between the ages of 7 months and 10 years dies from window cord strangulation. In December 2009, CPSC recalled millions of window coverings, including Roman shades and roll up blinds, due to the serious risk of strangulation to young children. CPSC has identified window coverings with cords as one of the top five hidden hazards in the home, and recommends the use of cordless window coverings in all homes where children live or visit.

**Chapters 326 and 327 of 2010** required that all new and replacement window coverings installed in a foster home, family day care home, or child care center in the State on or after October 1, 2010, be cordless. Window coverings in place before the bill’s effective date must meet minimum safety standards to be established in regulations jointly adopted by DHR and MSDE. A person who fails to comply with the established minimum standards may be required to replace existing window coverings with cordless ones.

## Human Relations

### Employment Discrimination

#### Administrative and Judicial Remedies

In 2007, Maryland was one of 11 states that did not allow a private cause of action for employment discrimination in state courts. Under the Fair Employment Practices Act, employees who worked for an employer with 15 or more employees were required to have their complaints heard by the Maryland Human Relations Commission (MHRC). Remedies at administrative hearings were limited to reinstatement or hiring, with or without back pay not exceeding 36 months, or other appropriate equitable relief; compensatory damages were not authorized.

*Chapters 176 and 177 of 2007* created a civil cause of action in State circuit courts for workplace discrimination without regard to employer size. The Acts authorized a civil action to be filed (1) by a claimant after filing an administrative charge or complaint; or (2) by MHRC on behalf of a claimant. Remedies available in a civil action include (1) compensatory damages based on the size of the employer; (2) punitive damages if the respondent is not a government entity and is engaged in an unlawful practice with actual malice; and (3) reasonable attorney's fees, expert witness fees, and costs. If compensatory or punitive damages are sought, any party may demand a jury trial. The measures also expanded the remedies available through MHRC proceedings by authorizing compensatory damages based on the size of the employer. *Chapters 176 and 177* were consistent with protections available in the majority of states and brought Maryland law into alignment with the comparable federal statutes, the Civil Rights Acts of 1964 and 1991 (commonly referred to as "Title VII").

The Attorney General's bill review letter for *Chapters 176 and 177* raised several concerns. Specifically, the Attorney General noted that although the bills authorized MHRC and, under certain circumstances, a complainant to go to court to seek back pay, compensatory damages (within certain limitations), attorney's fees, and expert witness fees, the Acts did not amend former Article 49B, §17, which prohibited the State from raising sovereign immunity as a defense against a *salary* award in an employment discrimination case. That provision of law did not waive sovereign immunity as a defense in a claim for compensatory damages and other monetary liability. Absent a waiver of sovereign immunity, the State and its agencies would be immune from monetary liability. The Attorney General further noted that the Court of Appeals has said that, even where a statute specifically waives sovereign immunity, a suit may be maintained only where there are funds available for the satisfaction of the judgment or the agency has the power to raise funds to satisfy the judgment.

In response, *Chapters 587 and 588 of 2008* addressed the concerns raised by the Attorney General regarding waiver of the State's sovereign immunity. The measures specified that the State may not raise sovereign immunity as a defense against any award made in an employment discrimination case and required the State, if there are sufficient funds available, to pay any award made against the State as soon as practicable within 20 days after the award is

final. If sufficient funds are not available, the affected State unit or officer must report the outstanding award to the Comptroller, who is required to keep and report to the Governor annually an accounting of all such awards. In addition, the measures required the Governor to include in the State budget sufficient money to pay all such awards and required the Comptroller, on appropriation of money by the General Assembly, to authorize payment of all outstanding awards in the order of the date on which each award was made.

**Chapters 587 and 588** made several other changes in the laws governing administrative and judicial relief in employment discrimination cases. The Acts authorized a *respondent* in a discrimination complaint, in addition to the complainant, to elect to have the claims asserted in the complaint determined in a civil action brought on behalf of the complainant by MHRC. The measures also provided that a civil action brought by a complainant automatically terminates any related proceeding before the commission; required that a civil action brought by a complainant be filed within two years after the alleged act of discrimination; and clarified that the offset against back pay awards is based on amounts “earnable” rather than amounts earned.

### **Equal Pay**

Chapter 3 of the 2004 special session established the Equal Pay Commission to study the extent of wage disparities in the public and private sectors. The commission was also charged with studying the factors that cause the disparities, including segregation within occupations, payment of lower wages for work in female-dominated occupations, child-rearing and household responsibilities, and differences in education or experience. The commission was required to report on the consequences of the disparities and recommend actions to eliminate differential pay.

Based on the recommendations of the Equal Pay Commission, **Chapter 114 of 2008** required an employer, including the State and local governments, to keep a record of the racial classification and gender of employees. The records are required to be kept in accordance with requirements established by the Commissioner of Labor and Industry, who is authorized to analyze the records to study pay disparity issues. The commissioner is required to report to the General Assembly on the findings of this review by October 1, 2013. The Act terminates December 31, 2013. For a more detailed discussion of this issue, see the subpart “Labor and Industry” of Part H – Business and Economic Issues of this *Major Issues Review*.

### **Discriminatory Compensation Claims**

In *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), the U.S. Supreme Court held that a complainant claiming pay discrimination under federal law must allege discriminatory pay decisions that occurred within the applicable period for filing a charge with the Equal Employment Opportunity Commission (EEOC). Since Ms. Ledbetter based her complaint on discriminatory acts that occurred long before she filed her charge with the EEOC, she was not entitled to relief.

**Chapters 56 and 57 of 2009** responded to that decision by authorizing the recovery of back pay for up to two years preceding the filing of a complaint under State law for employment

discrimination based on an unlawful employment practice that occurred outside the statute of limitations for filing a complaint but was similar or related to an unlawful practice with regard to discrimination in compensation that occurred during the complaint filing period. The Acts specified that an unlawful employment practice with respect to discrimination in compensation occurs when (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to a discriminatory compensation decision or other practice; or (3) an individual is affected by the application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting wholly or partly from the discriminatory decision or other practice. The measures mirrored language in federal legislation, the *Lilly Ledbetter Fair Pay Act of 2009*, signed by the President on January 29, 2009.

### **Long-term Care Insurance – Discrimination Based on Genetic Information**

*Chapters 631 and 632 of 2008* prohibited a carrier or an insurance producer of a carrier that provides long-term care insurance from requesting or requiring a genetic test or using specified genetic information to (1) deny or limit long-term care insurance coverage; or (2) charge a different rate for the same long-term care insurance coverage. The prohibition does not apply if the use of genetic information is based on sound actuarial principles.

For a more detailed discussion of this issue, see the subpart “Health Insurance” of Part J – Health and Human Services of this *Major Issues Review*.

### **Individuals with Disabilities**

#### **Right of Access**

*Chapters 594 and 595 of 2008* extended the rights and privileges afforded to blind, visually impaired, deaf, and hard of hearing individuals under State law to all individuals with disabilities and the parents of minor children with disabilities. The measures granted to all individuals with disabilities and the parents of minor children with disabilities the same rights of access to public places, accommodations, and conveyances, as well as housing accommodations, that are currently afforded to blind, visually impaired, deaf, and hard of hearing individuals. A parent of a minor with a disability who is accompanied by a service animal cannot be denied admittance or be required to pay extra compensation for the service animal. For a more detailed discussion of this issue, see the subpart “The Disabled” of Part J – Health and Human Services of this *Major Issues Review*.

#### **Reasonable Accommodations in Employment**

Under the Americans with Disabilities Act (ADA), an employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operation of the employer’s business. “Undue hardship” is defined as an action requiring significant difficulty or expense when considered in

light of an employer's size, financial resources, and the nature and structure of its operation. Reasonable accommodations may include making existing facilities used by employees more readily accessible, modifying work schedules, adjusting or modifying examinations or training materials, and providing qualified readers or interpreters. **Chapters 299 and 300 of 2009** were designed to make State law more consistent with the ADA and to codify existing case law and regulations. The measures expanded the definition of "disability" applicable to provisions of law relating to employment discrimination by including a record of having a physical or mental impairment or being regarded as having a physical or mental impairment. The Acts prohibited an employer from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee unless the accommodation would cause undue hardship on the conduct of the employer's business. The measures also prohibited an employer or labor organization from retaliating against any employee, applicant, or member who has opposed any prohibited employment practice or participated in an investigation, proceeding, or hearing relating to a discrimination charge.

### **Public Accommodations – Closed-captioning Activation**

Under State law, an owner or operator of a place of public accommodation may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person's race, sex, age, color, creed, national origin, marital status, sexual orientation, or disability. A "place of public accommodation" includes (1) a hotel, motel, or other lodging establishment; (2) a facility serving food or alcoholic beverages, including facilities on the premises of a retail establishment or gasoline station; (3) entertainment, sports, or exhibition venues; and (4) a public or privately operated retail establishment offering goods, services, entertainment, recreation, or transportation. **Chapters 213 and 214 of 2010** required a place of public accommodation, on request, to keep closed captioning activated on any closed-captioning television receiver that is in use during regular hours in any public area. Places of public accommodation are excluded from this requirement if (1) no television receiver of any kind is available in the public area or (2) the only public television receiver available in the public area is not a closed-captioning receiver. A "closed-captioning television receiver" means a receiver of television programming that has the ability to display closed captioning. As a result of Federal Communications Commission requirements, most televisions in use today have the ability to display closed captioning, and a high percentage of television programs have closed captions. The measures were intended to improve access for the deaf and hard of hearing to television broadcasts in public places.

### **Expression of Regret for Slavery in Maryland**

Slavery existed in Maryland since its inception as an English colony in 1634 and was officially sanctioned by State law in 1664. Two hundred years later, slavery was abolished with the ratification of the Maryland Constitution of 1864. **Joint Resolution 1 of 2007** expressed profound regret for the role Maryland played in instituting and maintaining slavery and for slavery's legacy of discrimination. The resolution also committed the State to the formation of a more perfect union among its citizens regardless of color, creed, or race and recommitted the



State to the principle that all people “are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.”

## **Revision of Article 49B**

As part of the General Assembly’s ongoing process of Code revision, which updates existing law without making any substantive changes, former Article 49B (Human Relations Commission) was revised and recodified in the 2009 session. *Chapter 120 of 2009* revised, restated, and recodified State laws relating to prohibitions against various forms of discrimination, remedies for unlawful discrimination, and the Maryland Commission on Human Relations. The measure repealed most of the provisions of Article 49B of the Annotated Code of Maryland and added a new title, designated as “Title 20. Human Relations,” to the State Government Article. *Chapter 366 of 2009* made substantive changes in the new Title 20 of the State Government Article to address issues flagged for consideration by the General Assembly in the revisor’s notes in *Chapter 120*, including repealing obsolete and unconstitutional provisions, conforming the protected classes in provisions prohibiting discrimination, and filling in gaps and correcting errors in provisions relating to enforcement. *Chapter 367 of 2009* clarified that provisions authorizing certain complainants to elect or file a civil action apply only to alleged unlawful employment practices and not to all discriminatory acts.

## **Gender Identity**

Thirteen states and the District of Columbia have passed laws prohibiting discrimination based upon gender identity. Since 2002, Baltimore City has had laws prohibiting discrimination based upon gender identity and expression in employment, public accommodations, education, and housing. In 2007, Montgomery County added gender identity as a covered basis under county law prohibiting discrimination in employment, housing, cable television services, and taxicab services. Governor Martin O’Malley issued an executive order in August 2007 that included gender identity and expression as a proscribed basis for discrimination in State personnel actions. Maryland law prohibits discrimination in labor and employment, housing, and public accommodations on the basis of race, sex, creed, color, religion, national origin, marital status, disability, and sexual orientation.

*Senate Bill 516 and House Bill 945 of 2007 (both failed)* would have added gender identity and expression as a legally protected class under State law. “Gender identity and expression” was defined in the bills as a gender-related identity, appearance, expression, or behavior of an individual regardless of the individual’s sex at birth. The bills would have also prohibited discrimination based on gender identity and expression and sexual orientation in State personnel actions.

Similar bills that would have prohibited discrimination based on “gender identity” were unsuccessful in 2008, 2009, and 2010. (*Senate Bill 976/House Bill 1598 of 2008 (both failed)*, *Senate Bill 566/House Bill 474 of 2009 (both failed)*, and *Senate Bill 583/House Bill 1022 of 2010 (both failed)*).

## Real Property

### Residential Foreclosures

#### Background

The State's multi-faceted approach to the foreclosure crisis during the 2007-2010 term involved legislative reforms, consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. Legislation passed during the 2008, 2009, and 2010 sessions (1) reformed the foreclosure process to provide homeowners with more time and additional notices before their properties are sold; (2) created the Mortgage Fraud Protection Act, Maryland's first comprehensive mortgage fraud statute; (3) prohibited foreclosure consultants from participating in foreclosure rescue transactions; (4) required notices to be given to residential tenants renting properties in foreclosure; and (5) allowed an owner-occupant of residential property to request a foreclosure mediation session prior to the scheduling of a foreclosure sale.

#### Foreclosure Process

Prior to the 2008 session, Maryland's foreclosure process, from the first foreclosure filing to final sale, had been among the shortest in the nation. Maryland is a quasi-judicial State, meaning that the authority for a foreclosure sale is derived from the mortgage or deed of trust, but a court has oversight over the foreclosure sale process. Most mortgages or deeds of trust include a "power of sale" (a provision authorizing a foreclosure sale of the property after a default) or an "assent to decree" (a provision declaring an assent to the entry of an order for a foreclosure sale after a default).

Under the Maryland Rules, it was not necessary to serve process or hold a hearing prior to a foreclosure sale pursuant to a power of sale or an assent to a decree. Consumer advocates contended that the short timeframes and weak notice provisions in State law seriously limited a homeowner's options to avoid foreclosure by, for example, working out a payment plan with the lender or selling the house. In addition, filing a request for an injunction to stop the sale was expensive, time consuming, and not a realistic option for most homeowners.

Introduced as emergency legislation, *Chapters 1 and 2 of 2008* significantly reformed the residential foreclosure process in the State to provide homeowners with greater time and additional notices before their properties are sold. Except under specified circumstances, *Chapters 1 and 2* prohibited the filing of a residential foreclosure action until the later of 90 days after a default in a condition on which the mortgage or deed of trust states that a sale may be made or 45 days after the notice of intent to foreclose required under the Acts is sent. *Chapters 1 and 2* also required the service of process of an order to docket or complaint to foreclose on residential property and prohibited a residential foreclosure sale from occurring until at least 45 days after the service of process.

## **Mortgage Fraud**

Prior to the 2008 session, mortgage fraud was not a crime specifically defined by statute in Maryland. Although mortgage fraud previously could have been prosecuted as theft by deception, the Maryland Homeownership Preservation Task Force found that prosecuting these cases under the general theft statute was cumbersome and difficult to explain to juries. **Chapters 3 and 4 of 2008** created the Mortgage Fraud Protection Act (MFPA), Maryland's first comprehensive mortgage fraud statute with criminal penalties. The emergency Acts made mortgage fraud a felony, punishable by a fine of up to \$5,000, imprisonment for up to 10 years, or both, and authorized the Attorney General, a State's Attorney, and the Commissioner of Financial Regulation to take action to enforce the MFPA.

## **Foreclosure Rescue Transactions**

Chapter 509 of 2005, commonly known as the Protection of Homeowners in Foreclosure Act, or PHIFA, was designed to provide some protection for homeowners who deal with foreclosure "rescuers." PHIFA requires foreclosure consultants to enter into consulting contracts with homeowners that lay out the terms of their agreements, contain disclosures, and afford basic consumer protections such as a three-day rescission period. As the number and variety of foreclosure scams continued to grow, **Chapters 5 and 6 of 2008** were enacted to strengthen PHIFA by prohibiting foreclosure consultants from engaging in, arranging, promoting, promising, soliciting, participating in, assisting with, or carrying out a "foreclosure rescue transaction." **Chapters 5 and 6** also subjected title insurers, licensed title insurance producers, and licensed mortgage brokers to the provisions of PHIFA and granted the Commissioner of Financial Regulation and the Attorney General additional enforcement powers.

## **Notice of Foreclosure to Residential Tenants**

To address the plight of residential tenants who were losing their homes with virtually no notice due to the landlord's loan default, two emergency measures, **Chapters 614 and 615 of 2009**, required notices of foreclosure to be sent to residential tenants at three separate times during the foreclosure process: (1) when a foreclosure action is filed; (2) no earlier than 30 days and no later than 10 days before the foreclosure sale; and (3) after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession.

The following year, after the enactment of the federal Protecting Tenants at Foreclosure Act of 2009, **Chapters 587 and 588 of 2010** made necessary conforming changes to State law concerning notices to occupants of residential property subject to a foreclosure proceeding. Specifically, the Acts incorporated the federal definition of a "bona fide" tenant in State law; required that a 90-day notice to vacate be sent to a bona fide tenant stating the landlord's basis for terminating the tenancy; and altered the contents of notices required to be sent to the occupants.

## Foreclosure Mediation

To facilitate the utilization of new federal and State homeowner assistance programs, the Administration convened a workgroup of various stakeholders in fall 2009 to explore options for instituting a foreclosure mediation program in Maryland. The workgroup examined the existing foreclosure process in the State and analyzed the advantages and disadvantages of other states' mediation programs.

*Chapter 485 of 2010*, an emergency Administration measure that grew out of the workgroup's collective efforts, sought to prevent a homeowner from losing his or her home through foreclosure when a loan modification may be available and required the consideration of other loss mitigation options where appropriate. The Act strengthened the disclosures contained in a notice of intent to foreclose and required the notice to be accompanied by a loss mitigation application along with instructions and other useful information.

With respect to an owner-occupied residential property subject to a foreclosure action, *Chapter 485* allowed the borrower to file with the court a request for foreclosure mediation, to be conducted before the scheduling of the foreclosure sale. The Act imposed a \$300 filing fee on every order to docket or complaint to foreclose a mortgage or deed of trust on residential property, and required a borrower to pay a \$50 filing fee with a request for foreclosure mediation. Revenue from the fees is required to be distributed to a special fund to assist with the costs of foreclosure mediation and to support housing counseling.

## Ground Rents

Ground rents have been a form of property holding in Maryland since colonial times. Generally, "ground rent" is paid for the use of property under a long-term lease with the lessor or ground rent holder retaining a reversionary interest in and fee simple title to the land. The lease creates a leasehold estate that is commonly renewable. Most tenants have a statutory right to redeem, or purchase, a ground rent and obtain fee simple title by paying a specified amount to the ground rent holder.

Prior to the 2007 session, when a tenant failed to pay rent, the ground rent holder could bring an action for the past-due rent or for possession of the premises. The amount of monetary compensation the ground rent holder could seek was limited by statute to three years' past-due rent plus fees and expenses. Because a tenant has a leasehold estate, the tenant whose property was seized in an ejectment action (an action to retake the premises) received no other compensation. The ground rent holder could then release the property under the ground rent or sell the property in fee simple.

In December 2006, a series of articles in the *Baltimore Sun* described an apparently dysfunctional ground rent system in which residential property was being seized over missed ground rent payments and homeowners were being charged exorbitant fees. Often, because of the age of the ground rent, it was reported that the occupant of the property did not know of the existence of the ground rent until facing ejectment or other legal action.

Several measures in the 2007 session addressed the ground rent system. *Chapter 1 of 2007* prohibited the creation of new residential ground rents on or after January 22, 2007. The other measures dealt with existing ground leases on residential property.

To eliminate the possibility that a leasehold tenant could lose the tenant's home and all of the equity in it for failure to pay a ground rent, *Chapter 286 of 2007* repealed the ability of a ground rent holder to bring an action of ejectment for failure to pay ground rent and instead provided for the creation of a lien.

*Chapter 290 of 2007* facilitated the timely payment of ground rents by requiring the State Department of Assessments and Taxation to establish an online registry of properties subject to a ground rent. Ground rent holders are required to register their properties by September 30, 2010. If a ground rent holder fails to register by this date, the ground rent holder's reversionary interest is extinguished and the ground rent is no longer payable.

*Chapters 288 and 289 of 2007* required a ground rent holder to mail a bill to the leasehold tenant's last known address no later than 60 days before an installment payment is due. The bill must include specified information about the property, contact information for the ground rent holder, consequences for failing to pay the ground rent, and the right to redeem the ground rent. A contract for the sale of real property subject to a ground rent must include similar information.

Lastly, *Chapters 287 and 291 of 2007* encouraged leasehold tenants to redeem ground rents and gain fee simple title to the land underneath their homes. *Chapter 287* provided for the conversion of irredeemable ground rents, those executed before April 9, 1884, to redeemable ground rents. An irredeemable ground rent becomes converted to a redeemable ground rent unless a notice of intention to preserve irredeemability is recorded in the land records by December 31, 2010. If notice is filed, then the irredeemability continues through 2020 unless another 10-year notice is filed. Once a notice lapses, the ground rent becomes redeemable. *Chapter 291* eliminated the statutory waiting period before a leasehold tenant may redeem a ground rent and established notice requirements about the right to redeem when a ground rent is transferred to a third party.

## **Eminent Domain**

### **Background**

The power to take, or condemn, private property for public use is an inherent power of state government and the state's political subdivisions. Courts have long held that this power, known as "eminent domain," is derived from the sovereignty of the state. Both the federal and State constitutions expressly limit condemnation authority by establishing two requirements for taking property through the power of eminent domain. First, the property taken must be for a "public use." Second, the party whose property is taken must receive "just compensation."

The damages to be awarded for the taking of land are determined by the land's "fair market value," a term defined by statute. In some cases, a business can have market value that

exceeds the real property and tangible personal property utilized in the business; however, this concept, referred to as “goodwill,” is not generally compensable. In addition, when land is acquired by condemnation, the condemning agency must pay a displaced person for specified moving expenses and other expenses associated with moving or discontinuing a business.

The U.S. Supreme Court ruled in *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), that New London, Connecticut’s use of its condemnation authority to require several homeowners in an economically depressed area to vacate their properties to make way for mixed use development did not violate the U.S. Constitution. The *Kelo* decision left to state law the determination as to whether eminent domain may be used for economic development purposes. Legislative efforts to respond to the *Kelo* decision began in the 2006 session and continued in the 2007-2010 term.

### **Legislative Approaches**

Although 13 bills related to eminent domain were introduced in the 2007 session, only one measure was successful, **Chapter 305**. The Act increased compensation for homeowners, tenants, and business or farm owners who are displaced as a result of a condemnation action. Specifically, **Chapter 305 (2007)** doubled the cap on the amount that may be paid to a displaced homeowner or tenant (\$45,000 and \$10,500, respectively) for a comparable replacement dwelling; increased from \$10,000 to \$60,000 the cap on the amount that may be paid to reestablish a displaced farm, nonprofit organization, or small business at its new site; and increased from \$20,000 to \$60,000 the alternative fixed payment that may be elected by a displaced business or farm operation in lieu of being relocated.

**Chapter 305** also required a representative of the displacing agency to contact the owner of any business or farm operation on the private property to be acquired in a condemnation action no less than 30 days before the filing of a condemnation action to negotiate in good faith a relocation plan for the business or farm. Lastly, the Act required the State, its instrumentalities, or its political subdivisions to file a condemnation action within four years after the date of the specific administrative or legislative authorization to acquire the property.

### **State Purchase or Condemnation of Thoroughbred Racetracks and the Preakness Stakes**

In March 2009, Magna Entertainment Corporation, the owner of the Pimlico Race Course and the Preakness Stakes, filed for Chapter 11 bankruptcy protection. As part of its bankruptcy filing, Magna Entertainment stated its intent to auction a group of its horse racing assets, including Pimlico and Laurel Park in Anne Arundel County. The bankruptcy filing also raised the possibility that the Preakness Stakes could be sold and transferred out of Maryland. In response, **Chapter 3 of 2009**, an emergency measure, authorized the State to acquire, by purchase or condemnation, the group of horse racing assets that Magna had identified for auction. For an additional discussion of **Chapter 3**, see the “Horse Racing and Gaming” subpart of Part H – Business and Economic Issues of this *Major Issues Review*.

## **Private Transfer Fees**

Private transfer fees are similar to ground rents and are typically created as a 99-year deed restriction that is recorded against the title to property and requires the buyer, and all future buyers, to pay the original seller a fee of up to 1% of the purchase price upon each transfer of the property. Private transfer fees can be costly and create unnecessary complications in the sale of property. A growing number of jurisdictions in the country have experienced problems with these fees and have prohibited them. In order to preempt similar problems in Maryland, *Chapters 332 and 333 of 2010* were enacted to prohibit a person who conveys a fee simple interest in real property from recording a covenant against the title for the payment of a transfer fee.

## **Affordable Housing Land Trusts**

*Chapters 609 and 610 of 2010* established a new means to create and maintain permanently affordable housing in the State. An affordable housing land trust is a nonprofit or governmental entity that provides affordable housing to low- and moderate-income families through an affordable housing land trust agreement. *Chapters 609 and 610* established the powers and duties of an affordable housing land trust; required an affordable housing land trust to register with the State Department of Assessments and Taxation; and specified that an affordable housing land trust agreement does not create a ground rent and is not subject to the law applicable to ground rents.

## **Common Ownership Communities**

Condominiums, homeowners associations, and cooperative housing corporations, collectively referred to as common ownership communities (COCs), continued to generate a large number of bills introduced during the 2007-2010 term. Several of these bills were prompted by recommendations of the final report of the Task Force on Common Ownership Communities, issued in December 2006.

## **Transition of Control**

*Chapters 95 and 96 of 2009* established procedures for the transition of control of a condominium or homeowners association from the developer to a governing body elected by the unit or lot owners. *Chapters 95 and 96* required a meeting to elect the governing body to be held within 60 days from the date a certain percentage of the units or lots have been sold to the public. The developer must deliver a notice to each unit owner or lot owner that the minimum number of units or lots have been sold and stating when the meeting will be held. Within 30 days of that meeting, the developer must deliver copies of specified records, contracts, and financial statements to the newly elected governing body.

### **Fidelity Insurance**

*Chapters 77 and 78 of 2009* required the governing body of a COC to purchase fidelity insurance to provide indemnification against losses resulting from criminal misconduct or fraudulent acts or omissions of its officers, directors, management companies, or associated agents or employees. *Chapter 616 of 2010* exempted very small COCs (those with four or fewer members, unit owners, or lot owners and less than \$2,500 in charges, assessments, or gross fees for a three-month period) from the requirement of purchasing fidelity insurance, while *Chapter 615 of 2010* authorized a COC governing body to satisfy the fidelity insurance requirement by purchasing a fidelity bond.

### **Implied Warranties on Common Areas and Common Elements**

In addition to the implied warranties on any parcel of improved real property, there is a statutory implied warranty on the common elements of a condominium from the developer to the council of unit owners. The warranty applies to the roof, foundation, external and supporting walls, and other structural elements. The warranty provides that the developer is responsible for correcting any defect in materials or workmanship and that the common elements are within acceptable industry standards in effect when the building was constructed. A similar implied warranty covers the common areas in a homeowners association.

For a condominium, *Chapter 584 of 2010* extended the length of time of the implied warranty to the later of three years from the first transfer of title to a unit owner or two years from the date the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors for the council of unit owners. For a homeowners association, *Chapter 584* extended a declarant's implied warranty on improvements to common areas to the later of two years from the first transfer of title to a lot to a member of the public or two years from the date on which the lot owners, other than the declarant and its affiliates, first elect a controlling majority of the governing body of the homeowners association.

*Chapter 584* also required certain common elements in a residential condominium, such as roofs, exterior walls, and foundations, to be designated in the declaration as "common elements" rather than as parts of the "units" to ensure that the implied warranties apply to those common elements. The Act prohibited any amendment to the declaration's description and designation of the common elements until after the date the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors for the council of unit owners.

### **Property Insurance and Repair or Replacement of Damage or Destruction in Condominiums**

Property insurance and the repair of damaged property are significant concerns for a condominium. *Chapter 513 of 2008* increased the amount of a condominium unit owner's financial responsibility for the property insurance deductible of the council of unit owners in situations where the cause of damage or destruction originated in the owner's unit and the bylaws provided that the unit owner was responsible, from a maximum of \$1,000 to a maximum



of \$5,000. The amount of the deductible that is a common expense was correspondingly increased from an amount exceeding \$1,000 to an amount exceeding \$5,000. If the cause of damage or destruction originates from a common element, the deductible is a common expense.

*Chapters 522 and 523 of 2009* clarified that the responsibility of a condominium's council of unit owners to repair or replace the common elements in the event of damage or destruction to the condominium extended to the condominium units, exclusive of improvements installed in the units by unit owners other than the developer, notwithstanding inconsistent provision in the council of unit owners' bylaws.

*Chapters 522 and 523* overturned a 2008 Court of Appeals ruling by placing an affirmative duty on the council of unit owners to repair damage or destruction to the condominium that originated in a unit, and to purchase property insurance that reflects this duty.

The council of unit owners must maintain property insurance on the common elements and units, exclusive of improvements installed in the units by unit owners other than the developer. The Acts further required a unit owner, notwithstanding the bylaws, to pay the deductible of the condominium's master insurance policy, up to the statutory limit of \$5,000, if the cause of the damage originated from the owner's unit. Notice of a unit owner's responsibility for the insurance deductible must be included in a condominium sales contract and be given annually in writing by the council of unit owners to each unit owner.

## **Landlord and Tenant**

*Chapters 318 and 319 of 2010* provided certain protections for a residential tenant or a legal occupant who is a victim of domestic violence or sexual assault, including the ability to terminate a lease or change the locks of the residence. In order to terminate the lease, the tenant or legal occupant must provide the landlord with written notice of (1) an intent to vacate the premises; and (2) the individual's status as a victim of domestic violence or sexual assault. A copy of an enforceable final protective order or peace order issued for the benefit of the tenant or legal occupant is considered notice of victim status. Once the tenant or legal occupant provides written notice to terminate the lease, the tenant has 30 days to vacate. The tenant is responsible for the rent for the 30-day period.

## **Mobile Home Parks**

The number of households in Maryland that reside in mobile homes has declined steadily in past decades, and continues to decline. According to the U.S. Census Bureau, there were 55,992 such households in Maryland in 1990. By 2006, there were 38,421 or one-third fewer mobile home households. Mobile home park owners have found it increasingly more profitable to sell their land for development rather than continue to operate as a park. The dislocation of mobile home park residents due to park closings prompted legislation placing certain restrictions on owners who wished to close a mobile home park.

Under *Chapters 621 and 622 of 2008*, a mobile home park owner in St. Mary's County who applied for a change in land use of the park was required to submit a relocation plan for the residents who would be dislocated as a result of the change. The plan had to include names of and contact information for all residents, a relocation timeline, a list of mobile home parks with vacancies, and a budget reflecting money for each dislocated resident to cover costs of moving the mobile home.

*Chapters 258 and 259 of 2010* expanded statewide the requirement for a resident relocation plan. In addition, if the park operator elects to close a park with more than 38 sites, the park owner must pay relocation assistance in an amount equal to 10 months' rent to each displaced household. *Chapters 258 and 259* also provided a timetable for paying the relocation assistance and authorized local jurisdictions to provide additional relocation assistance.

## **Restrictions on Use of Real Property**

### **Solar Collector Systems**

Maryland law states that it is in the public interest to promote solar energy projects by providing State grants, loans, and other financial assistance. Problems can occur for property owners who have or wish to install solar energy systems, however, when the location for such a system on their property is blocked from adequate access to direct sunlight. *Chapter 138 of 2008* permitted property owners who have installed or intend to install solar collector systems to negotiate to obtain a solar easement, which must be in writing and recorded in the land records. *Chapter 138* also stated that a restriction on use may not impose or act to impose an unreasonable limitation on the installation of a solar collector system on the roof or exterior walls of improvements, provided that the property owner owns or has the right to exclusive use of the roof or exterior walls.

### **Clotheslines**

*Chapter 253 of 2010* prohibited any contract, deed, covenant, lease, or other similar residential governing document from banning the installation or use of clotheslines on the property of a homeowner or tenant. *Chapter 253* applied to any single-family residential dwelling or townhome, including condominiums, homeowners associations, and housing cooperatives. The Act does not apply, however, to a property with more than four dwelling units or to a restriction concerning the installation or use of clotheslines on specified historic properties. *Chapter 253* permitted reasonable restrictions relating to aesthetic considerations and the placement of clotheslines for safety purposes in the event of emergencies.

## **Estates and Trusts**

### **Uniform Acts**

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is an organization consisting of lawyers (including lawyer-legislators, attorneys in private practice,

state and federal judges, law professors, and legislative staff attorneys) who have been appointed by state governments to research, draft, and promote enactment of uniform state laws in areas where uniformity is desirable and practical. During the 2007-2010 term, the General Assembly adopted several uniform acts promulgated by NCCUSL.

### **Maryland Uniform Prudent Management of Institutional Funds Act**

*Chapter 134 of 2009* enacted the Maryland Uniform Prudent Management of Institutional Funds Act. The Act was a modified version of the 2006 Uniform Prudent Management of Institutional Funds Act drafted, approved, and recommended for enactment in all states by NCCUSL. The Act updated standards for the management and investment of charitable funds and for endowment spending, and included provisions concerning:

- management and investment conduct, including exercising ordinary business care and prudence under the existing prevailing facts and circumstances, an express obligation regarding cost management, a standard of whole portfolio management, a diversification requirement, and a special skills standard of performance;
- expenditure or accumulation of endowment funds, including elimination of the concept of historic dollar value;
- a rebuttable presumption of imprudence for the appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund and a requirement that the Attorney General be notified of such an appropriation (not applicable to appropriations permitted under other law or by the gift instrument);
- delegation of management and investment functions, including (1) requiring that ordinary business care and prudence under the existing prevailing facts and circumstances be exercised in selecting an external agent, establishing the scope and terms of the delegation, and periodically reviewing the actions of the agent; (2) establishing a duty of reasonable care for the agent; and (3) subjecting the agent to court jurisdiction;
- release or modification of a restriction on the management, investment, or purpose of an institutional fund with the consent of the donor;
- standards for the release or modification of a restriction on the management, investment, or purpose of an institutional fund (1) by a court of competent jurisdiction (modification only), on application of an institution; or (2) in the case of a fund with a total value of less than \$50,000 that has been in existence for more than 20 years, by the institution 60 days after notification of the Attorney General; and
- standards for the modification of a charitable purpose or restriction on the use of an institutional fund by a court of competent jurisdiction on application of an institution.

The Act applied to institutional funds existing on or established after the date the Act took effect (April 14, 2009). With respect to funds existing on the date the Act took effect, it only governed decisions made or actions taken on or after that date.

### **Maryland International Wills Act**

The Uniform International Wills Act (UIWA) was drafted, approved, and recommended for enactment in all states by NCCUSL in 1977. *Chapters 63 and 64 of 2010* established the Maryland International Wills Act, a slightly modified version of the UIWA, and were intended to eliminate the need to execute multiple wills for different countries and reduce the costs and problems associated with having a Maryland will accepted by foreign courts.

*Chapters 63 and 64* established requirements and procedures for a will to be made in the form of an international will, including:

- a requirement that the will be made in writing and by hand or any other means, although it may be in any language;
- requirements for the execution of an international will, including that at least two witnesses and a person authorized to act in connection with international wills attest the will by signing their names in the presence of the person making the will;
- requirements for the placement of signatures on a will and numbering of multiple sheets in a will, although failure to comply with these provisions does not affect the validity of a will that complies with the requirements for execution; and
- a requirement that a certificate be attached to the will (for which a statutory form is provided), signed by an authorized person, which, in the absence of evidence to the contrary, is conclusive of the formal validity of the will as an international will, although the absence or irregularity of a certificate does not affect the formal validity of a will.

An “authorized person” or “person authorized to act in connection with international wills” is a person, including a member of the diplomatic and consular service of the United States designated by Foreign Service Regulations, who is admitted, and currently licensed, to practice law before the courts in this State, or by the laws of the United States is empowered to supervise the execution of international wills.

### **Maryland Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

The circuit courts in Maryland have exclusive jurisdiction over guardianship and protective proceedings for disabled persons. A guardian may be appointed for a disabled person if the court determines (1) the person is unable to manage the person’s property and affairs effectively, for any number of specified reasons, and has or may be entitled to property or benefits that require proper management; or (2) based on clear and convincing evidence, the

person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person because of any mental disability, disease, habitual drunkenness, or drug addiction, and no less restrictive form of intervention is available that is consistent with the person's welfare or safety.

*Chapters 256 and 257 of 2010* established the Maryland Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The Acts were a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act drafted, approved, and recommended in 2007 for enactment in all states by NCCUSL.

The Acts addressed jurisdiction of Maryland courts over adult guardianship and protective proceedings, in relation to courts in other states, and related issues. The legislation contained various provisions concerning:

- circumstances under which a Maryland court has jurisdiction to appoint a guardian or issue a protective order appointing a conservator or guardian of property to administer/manage the property of an adult, in relation to courts in other states; the duration of jurisdiction once the court has appointed a guardian or issued a protective order; the ability of a Maryland court to decline jurisdiction if it determines a court of another state is a more appropriate forum; and factors to be considered in determining whether the court is an appropriate forum;
- options available to a court if it determines it acquired jurisdiction because of unjustifiable conduct, including the assessment of specified fees, costs, and expenses against the party that engaged in unjustifiable conduct;
- rules applicable when a petition for the appointment of a guardian or issuance of a protective order is filed both in Maryland and in another state;
- communication and cooperation between a Maryland court and a court in another state regarding a guardianship or protective proceeding;
- transfer of a guardianship or conservatorship to another state; and
- registration in a Maryland court of a guardianship or protective order issued in another state.

The Acts applied to guardianship and protective proceedings beginning on or after October 1, 2010.

### **Powers of Attorney**

The Uniform Durable Power of Attorney Act drafted by NCCUSL in 1979 and amended in 1987 was enacted in 43 states, the District of Columbia, and the U.S. Virgin Islands. In 2006,

a new Uniform Power of Attorney Act was drafted, approved, and recommended for enactment in all states because, according to NCCUSL, states had incorporated numerous nonuniform provisions, causing divergence and confusion. According to NCCUSL, the 2006 Act serves as a codification of state legislative trends and collective best practices and enhances the usefulness of durable powers of attorney while protecting the principal, the agent, and those who deal with the agent.

After several attempts to pass the uniform act (*Senate Bill 185/House Bill 961 of 2007*, *Senate Bill 87/House Bill 412 of 2008*, and *Senate Bill 150/House Bill 852 of 2009 (all failed)*), legislation was enacted in 2010, *Chapters 689 and 690*, that incorporated existing provisions of Maryland law governing powers of attorney, with minor alterations, and provisions derived from the uniform act into a new Maryland General and Limited Power of Attorney Act.

The legislation provided two statutory form powers of attorney and an optional form for use by an agent to certify facts concerning a power of attorney. One of the statutory forms (the “Maryland Statutory Form Personal Financial Power of Attorney”) provided an agent with broad authority as specified on the form, while the other statutory form (the “Maryland Statutory Form Limited Power of Attorney”) allowed a principal to specifically indicate which of the various powers are given to an agent.

The legislation authorized a principal to delegate to one or more agents the authority to do any act specified in the statutory forms, though the acts specified in the statutory forms may not be deemed to invalidate or limit the validity of other authorized acts that a principal may delegate to an agent.

Other provisions of the legislation address:

- requirements for proper execution of a power of attorney, including acknowledgement before a notary public and attestation by two or more adult witnesses;
- when a power of attorney becomes effective, and, if effective on the occurrence of a future event or contingency or the principal’s incapacity, the determination of the occurrence of the event or contingency or the principal’s incapacity;
- validity and enforceability of a power of attorney;
- required acceptance of a statutory form power of attorney, and sanctions applicable to a refusal of an acknowledged statutory form power of attorney;
- when a power of attorney terminates and when an agent’s authority terminates;
- standards applicable to an agent’s actions and other requirements of an agent; liability of an agent; and disclosure by an agent of receipts, disbursements, or transactions conducted

on behalf of the principal on request by specified persons or entities, including the principal, or by order of a court;

- persons that may petition a court to construe a power of attorney or review an agent’s conduct and grant appropriate relief; and the principal’s ability to have the petition dismissed, unless the court finds the principal lacks capacity to revoke the agent’s authority or the power of attorney; and
- entitlement of an agent to reimbursement of expenses reasonably incurred on behalf of the principal and, if the principal indicates in the power of attorney that the agent is entitled to compensation, authorization of the agent to receive compensation based on what is reasonable under the circumstances or on another basis as set forth in the power of attorney.

The Acts did not supersede other laws applicable to financial institutions or other entities. To the extent those other laws are inconsistent with the Acts, the other laws prevail.

### **Rule Against Perpetuities**

With limited exceptions, the common law “rule against perpetuities” applies in Maryland. Under the common law rule, a future property interest, either real or personal, must vest within a life or lives in being (the lifetime of a living person) at the time of the interest’s creation, plus 21 years. The term of gestation is added in the case of a posthumous birth. An interest that will not or may not vest within the vesting period violates the rule and is void. Maryland courts have placed limitations on nonvested future interests, chiefly through the rule against perpetuities, because the law does not favor nonvested future interests that cannot vest, or will not vest, within a recognizable period of time. The common law rule depends on possible, not actual, events, and any hypothetical violation of the rule extinguishes a future interest.

*Chapter 381 of 2007* added statutory exceptions to the common law rule against perpetuities. The Act made the rule against perpetuities inapplicable to:

- a tenant’s option to renew a lease;
- a tenant’s option to purchase all or part of leased premises;
- a usufructuary’s option to extend the scope of an easement or profit;
- the right of a county, a municipality, a person from whom land is acquired, or the successor-in-interest of a person from whom land is acquired, to acquire land from the State under provisions governing the disposal of unneeded land by the State Highway Administration;

- a right or privilege, including an option, warrant, pre-emptive right, right of first refusal, right of first option, right of first negotiation, call right, exchange right, or conversion right, to acquire an interest in a domestic or foreign joint venture, partnership, limited liability partnership, limited partnership, limited liability limited partnership, corporation, cooperative, limited liability company, business trust, or similar enterprise, whether the interest is characterized as a joint venture interest, partnership interest, limited partnership interest, membership interest, security, stock, or otherwise; or
- a nondonative (given for consideration other than nominal consideration) property interest, as defined under the legislation, that became effective on or after October 1, 2007.

The Act provided that a nondonative property interest becomes effective as of its delivery date. One that becomes effective on or after October 1, 2007, is void unless it is not subject to the rule against perpetuities or it is exercised or vested within the applicable time period set forth in the Act. A document creating a nondonative property interest that does not state a date or make reference to lives in being by which the property interest must be exercised or vested is void unless exercised or vested within seven years after the property interest's effective date. One that either expressly states a date or makes reference to lives in being by which the property interest must exercised or one from which the date may be determined is void on the earlier of the expressed or determined date or 60 years after the effective date. If the document creating the nondonative property interest refers to one or more lives in being for determining the date by which the property interest must be exercised or vested, it is void (1) at the end of the period of time referenced, if the reference is to the duration of not more than 10 identified lives in being and not more than 21 years; or (2) at the end of 60 years, if the reference is to the duration of more than 10 identified lives in being or to identified lives in being and more than 21 years.

## **Guardianships**

### **Guardianship of Disabled Person – Certification by Health Care Professionals**

On receiving a petition and after notice and a hearing, a court may appoint a guardian for a disabled person if it determines that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person (including providing for health care, food, clothing, or shelter) due to a mental disability, disease, habitual drunkenness, or drug addiction, and no less restrictive intervention is available. In the past, the petition had to include signed and verified certificates from either two licensed physicians who had examined the disabled person or a licensed physician and a licensed psychologist who had evaluated the disabled person. At least one of the examinations or evaluations must have been conducted within 21 days before the petition was filed. *Chapter 250 of 2007* added a licensed certified social worker-clinical (LCSW-C) as a health care professional who may sign a certificate. Under the Act, a certificate from an LCSW-C, along with a certificate from a licensed physician, may be included with a petition for guardianship.



### **Payment of Expenses After Death of Ward**

Guardians of minors or disabled persons who died were treated differently than guardians of minors or disabled persons who reach majority or cease to be disabled, respectively, with regard to unpaid claims and expenses at the end of the guardianship. Because of the statutory order of payment of claims against an estate with insufficient assets to pay all claims in full, commissions or other expenses of a guardian of a minor or disabled person who died could go unpaid if there were limited assets in the estate. *Chapters 544 and 545 of 2010* required the guardian of the property of a minor or disabled person, on the death of the minor or disabled person, to pay from the estate all commissions, fees, and expenses shown on the court-approved final guardianship account before delivering the balance of the estate to an appointed personal representative or other person entitled to it.

### **Orphans' Court**

The General Assembly considered various issues relating to the qualifications of orphans' court judges and the jurisdiction of the orphans' court during the 2007-2010 term.

#### **Qualifications of Orphans' Court Judges – Baltimore City**

Under the Maryland Constitution, orphans' court judges must be citizens of the State and residents of the city or county for which they are elected for the 12 months preceding the election. *Chapter 481 of 2010* proposed a constitutional amendment prescribing additional qualifications for judges of the orphans' court in Baltimore City. If ratified by the voters at the November 2010 general election, an orphans' court judge in Baltimore City would be required to be a member in good standing of the Maryland Bar who is admitted to practice law in the State. The proposed amendment continued the requirements that an orphans' court judge in Baltimore City be a citizen of the State and a resident of Baltimore City for the 12 months preceding the election.

#### **Determination by Orphans' Court of Title to Personal Property**

*Chapters 514 and 515 of 2009* increased the limit on the value of personal property (from \$20,000 to \$50,000) for which an orphans' court may determine questions of title for the purpose of determining what personal property is properly includable in an estate. The former limit was first enacted in 1994 and had not been updated since then. Disputes over vehicles, bank accounts, and household personal property often involved amounts that exceeded \$20,000, requiring these disputes to be heard in circuit court.

#### **Jurisdiction over Guardianship of Minors**

*Chapters 748 and 749 of 2009* specified that an orphans' court may exercise jurisdiction over the guardianship of the person of a minor if the presiding judge of the orphans' court is a member of the bar, regardless of whether the minor has property, may inherit property, or is destitute. An orphans' court that exercises, or is requested to exercise, this jurisdiction may

transfer the matter to a circuit court, on a finding that the best interests of the child require use of the equitable powers of the circuit court, and may waive the costs, if any, of the transfer.

### **Admission of Copy of Executed Will by Orphans' Court**

In many cases, the decedent's original will cannot be found, but copies are available. There was uncertainty regarding whether a copy of an original executed will may be admitted to probate in the absence of the original will, and the issue was addressed differently among the counties. In some counties, the register of wills admitted a copy of an executed will in place of an original as a matter of course, while in other counties, admission of a copy of an executed will required judicial probate. *Chapter 37 of 2009* allowed an interested person to file a petition for the admission of a copy of an executed will at any time before administrative or judicial probate if the original is alleged to be lost or destroyed, a copy evidencing the signatures of the decedent and witnesses is offered, and all heirs and persons that receive property under the will execute a specified consent to probate of the copy. An orphans' court may authorize the petitioner to proceed with administrative probate and authorize the register of wills to accept the copy or require the filing of judicial probate.

## **Interests in Property**

### **Donation of Conservation Easements**

Conservation easements allow landowners to protect natural resources and preserve open space by limiting future development. Chapter 603 of 2000 authorized a personal representative, trustee, or fiduciary to donate, or in the case of a trustee or fiduciary consent to the donation of, a conservation easement on any real property in order to obtain the benefit of the estate tax exclusion allowed under § 2031(c) of the Internal Revenue Code if (1) the will or governing instrument directs the donation of a conservation easement on the real property; or (2) each interested person or beneficiary who has an interest in the real property that would be affected by the conservation easement consents in writing to the donation. *Chapters 18 and 19 of 2007* provided that a personal representative, trustee, or fiduciary may donate, or in the case of a trustee or fiduciary consent to the donation of, a conservation easement on any real property to obtain the benefit of the federal estate tax exclusion if the will or governing instrument *authorizes* the donation of a conservation easement. The Acts applied retroactively to the donation of a conservation easement from an estate of a decedent who died on or after January 1, 1998.

### **Disclaimers**

A person may disclaim (*i.e.*, refuse to accept) in whole or in part any interest in or power over property, including a power of appointment, regardless of whether the creator of the interest or power imposed a restriction upon the transfer of, or a restriction or limitation on the right to disclaim, the interest or power. A disclaimed interest passes according to the terms of the instrument creating the interest if it provides for the disposition of the interest if it is disclaimed, or for disclaimed interests in general. If the instrument does not provide for the disposition of a disclaimed interest, the interest passes, if the disclaimant is an individual, as if the individual had

died immediately before the time of distribution of the interest, or if the disclaimant is not an individual, as if the disclaimant did not exist. A disclaimer of an interest in or power over property is not a transfer, assignment, or release. A disclaimer may be filed, recorded, or registered if the instrument transferring an interest in or power over property subject to the disclaimer is required or permitted by law to be filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and the persons to whom the interest or power passes to because of the disclaimer. *Chapter 155 of 2007* established that creditors of a disclaimant of an interest in or a power over property have no interest in the property disclaimed. The Act also broadened the application of existing law establishing that a failure to file, record, or register a disclaimer has no effect on its validity.

### **Property Held as Tenants by the Entireties – Transfer to Trust**

Property jointly held by a husband and wife as tenants by the entirety is protected from the claims of their separate creditors. However, Maryland law did not address whether the legal protection of owning property as tenants by the entirety was lost when the property was transferred to a trustee of a trust.

*Chapter 202 of 2010* established that property held by a husband and wife as tenants by the entirety that is conveyed to a trustee has the same immunity from the claims of their separate creditors as it would if they had continued to hold the property or its proceeds as tenants by the entirety as long as the husband and wife remain married, the property or its proceeds continues to be held in trust, and both the husband and wife are beneficiaries of the trust. After a conveyance to a trustee, the property transferred would no longer be held by the husband and wife as tenants by the entirety. After the death of the first of the husband and wife to die, all property held in trust that was immune from the claims of their separate creditors immediately prior to the individual's death continues to have the same immunity from the claims of the decedent's separate creditors as would have existed if the husband and wife had continued to hold the property conveyed in trust, or its proceeds, as tenants by the entirety. To the extent that the surviving spouse remains a beneficiary of the trust, the property is subject to the claims of the separate creditors of the surviving spouse.

The immunity from the claims of separate creditors may be waived as to any specific creditor or any specifically described trust property by (1) the express provisions of a trust instrument; or (2) the written consent of both the husband and the wife.

With specified exceptions, immunity from the claims of separate creditors is waived if a trustee executes and delivers a financial statement for the trust that fails to disclose the requested identity of property held in trust that is immune from the claims of separate creditors. This waiver is effective only as to the person to whom the financial statement is delivered by the trustee, as to the particular trust property held in trust for which the immunity from the claims of separate creditors is insufficiently disclosed on the financial statement, and as to the transaction for which the disclosure was sought.

## **Effect of Deed Granting Property from Trust or Estate**

In Maryland, because a trust or probate estate is a fiduciary relationship between one or more fiduciaries and the person to whom a fiduciary duty is owed, it could not be the transferor or transferee of property. Instead, the trustee or personal representative for the trust or estate, respectively, is the owner of the property subject to a trust or in an estate. Problems, then, could be created if a trust or estate was inadvertently designated in a deed as the grantor of property. *Chapters 281 and 282 of 2010* established that a grant of property by deed from an estate of a deceased person or from a trust has the same effect as if the person granted the property had received the property from the personal representative for the estate or trustee acting for the trust, respectively, on the effective date of the deed. The Acts applied to any grant of property by a trust or estate contained in a deed existing on or after October 1, 2010.

## **Estates**

### **Valuation of Real and Leasehold Property**

Within three months of appointment, a personal representative of an estate must prepare and file an inventory of property owned by the decedent at the time of the decedent's death, indicating the fair market value of each item listed as of the date of death. Generally, the personal representative must secure an independent appraisal of each item of property in the inventory. However, real and leasehold property may be valued at the full cash value for property tax assessment purposes, unless the property is assessed on the basis of its use value.

*Chapter 405 of 2009* added an additional exception to the appraisal requirement. The Act allowed real and leasehold property in an estate to be valued at the contract sales price for the property, instead of an appraisal at fair market value, if (1) the price is set forth on a settlement statement for an arm's length contract of sale of the property; and (2) the settlement on the contract occurs within one year after the decedent's death. This provision did not apply to property assessed for property tax purposes on the basis of its use value.

### **Extension of Time for Taking Elective Share**

Instead of property left to a surviving spouse by will, the surviving spouse may elect to take a specified share (one-third if there is a surviving lineal descendant of the deceased spouse or one-half if there is no surviving lineal descendant) of the net estate of the deceased spouse. Under the former law, the surviving spouse was required to make the election within the later of nine months after the date of the decedent's death or six months after the first appointment of a personal representative under a will. The orphans' court could extend the time for election, *before its expiration*, for a period not to exceed three months at a time, upon notice given to the personal representative and for good cause shown. The Maryland Rules similarly indicated that, within the period for making an election, the surviving spouse could file with the court a petition for an extension of time and the court could grant extensions not to exceed three months at a time, provided each extension was granted *before the expiration* of the period originally prescribed or extended by a previous order. *Chapter 146 of 2010* repealed statutory language specifying that an extension of the time for a surviving spouse to elect to take an elective share of

the deceased spouse's estate must be authorized by the court prior to the expiration of the time period for making the election. The Act instead specified only that the surviving spouse must file a petition (with a copy given to the personal representative) with the orphans' court for an extension of time within the period for making an election.

### **Trust for Care of Animal**

The validity and enforceability of a trust created for the care of an animal was not addressed by Maryland statutory law, and there did not appear to be any Maryland case law on the subject, which raised concern that such a trust would be unenforceable in this State. *Chapter 132 of 2009* allowed for the creation and enforcement of a trust to provide for the care of an animal alive during the lifetime of the person creating the trust and provided that the common law rule against perpetuities does not apply to such a trust. A trust created under the Act lasts for the lifetime of the animal or animals and may be enforced by a person appointed under the terms of the trust, or if no person is appointed, a person appointed by the court. A person with an interest in the welfare of the animal may ask the court to appoint a person to enforce the trust or remove a person appointed. The property of the trust can only be used for the intended purpose of the trust, unless the court determines that the value of the trust exceeds the amount required for the intended use. Unless otherwise provided by the terms of the trust, property not required for the intended use must be distributed to the person who created the trust, or if that person is deceased, the person's successors in interest. The Act applied only to trusts created on or after October 1, 2009.

### **Powers of Personal Representatives and Fiduciaries**

*Chapter 36 of 2009* allowed a personal representative to become a limited partner in a partnership or a member in a limited liability company, including a single member limited liability company. In addition, the legislation allowed a fiduciary to continue as or become a member in a limited liability company, including a single member limited liability company. The personal representative was also protected from personal liability in the business. The Act was intended to allow a personal representative to keep a small business running for the estate of a decedent, thereby helping to preserve its value, especially if the decedent was an owner or a major partner in the business.

### **Construction of References in Will or Trust to Federal Estate Tax or Generation-skipping Transfer Tax**

Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the federal estate tax did not apply to the estates of deceased persons dying after December 31, 2009, and the generation-skipping transfer tax did not apply to generation-skipping transfers after December 31, 2009. The Act itself was due to terminate December 31, 2010, at which point the federal estate and generation-skipping transfer tax laws as they existed prior to the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 would apply. Because of the one-year suspension of the federal estate tax and generation-skipping transfer tax, references to

those taxes in wills and trust documents of persons dying in 2010 could have resulted in unintended distributions from an estate or trust.

*Chapter 62 of 2010*, an emergency Act, required that specified words, phrases, and provisions (generally relating to or based upon the federal estate tax or generation-skipping transfer tax laws) included in specified wills or trusts (those of deceased persons who died after December 31, 2009, and before January 1, 2011) be deemed to refer to the federal estate tax or generation-skipping transfer tax laws as applied to estates of persons dying or generation-skipping transfers made on December 31, 2009. The Act contained exceptions and a provision limiting its applicability if a federal estate tax or generation-skipping transfer tax became applicable before January 1, 2011. The Act also allowed the personal representative or any interested person under a will or other instrument to bring a proceeding to determine whether references to the federal estate tax and generation-skipping transfer tax laws should be construed with respect to the law as it existed after December 31, 2009.

### **Unlawfully Obtaining Property of Vulnerable Adult or Elderly Individual**

*Chapter 667 of 2010* established that a person who is convicted of unlawfully obtaining property from a vulnerable adult or individual who is at least age 68 is disqualified, to the extent of the person's failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the person was convicted. The Act also (1) established that if a person is disqualified from benefiting from the estate or other property, the person is treated as if the person predeceased the victim; and (2) required that if the person receives a distribution in violation of law, the person must make restitution to the person who should have received the distribution. A fiduciary or other person who distributes property in good faith and without actual knowledge of a conviction is not personally liable for the distribution.

## Part G

# Transportation and Motor Vehicles

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### Transportation

#### Transportation Funding and Planning

One of the most significant issues the General Assembly faced during the 2007-2010 term related to the economic strain on the State's budget, including the Transportation Trust Fund (TTF).

#### Transportation Funding Enhancements

During the 2007 special session, the legislature completed action on a fiscal plan that sought to address the pre-recession structural deficit as well as provide additional revenue to the TTF for capital projects. Following is a summary of the revenue actions that enhanced the TTF by *Chapter 6 of the 2007 special session*:

- **Titling Tax:** The titling tax increased from 5% to 6% with all of the revenue from the 1% increase dedicated to the TTF. In addition, a trade-in allowance was provided for, which deducts the value of a trade-in vehicle from the purchase price, thus reducing the amount of tax applied to the purchase.
- **Increase in Titling Certificate Fee:** The certificate of title fee, which is paid when a vehicle is purchased, was increased from \$23 to \$50.
- **Ending Certain General Fund Transfers:** Transfers from the motor fuel tax to the Waterway Improvement Fund and Fisheries Research Development Fund were replaced with mandated general fund appropriations in fiscal 2009. Transfers of revenue from the security interest filing fee to the general fund were eliminated beginning in fiscal 2009 and are retained by the TTF. Finally, vanity tag revenue, previously transferred to the general fund, is now retained by the TTF.

- **Dedication of Sales Tax:** Beginning in fiscal 2009, the TTF was to receive 6.5% of the total sales tax receipts.

Furthermore, in recognition of the additional bonding capacity associated with the increased revenues, the statutory debt outstanding limit for Consolidated Transportation Bonds was increased from \$2.0 billion to \$2.6 billion.

The additional revenues provided for in the special session were modified by *Chapter 10 of 2008*, which repealed the sales tax on computer services and consequently reduced the portion of sales tax revenue directed to the TTF. The Act also reduced the share of the sales tax to be distributed to the TTF from 6.5% to 5.3% through fiscal 2013 to help offset the loss of general fund revenues. Beginning in fiscal 2014, the share of sales tax revenue distributed to the TTF will return to 6.5%.

### **Capital Program Funding**

With the additional revenue provided for through actions taken in the 2007 special session, the 2008-2013 capital budget as introduced increased by \$2.1 billion. Approximately 92% of the additional funding was divided between the Maryland Transit Administration (MTA) and the State Highway Administration (SHA). The additional capital funding was programmed for system preservation funding and expansion projects. The operating budget as introduced also included a number of enhancements to transit services provided by MTA for Core Bus, light rail, and MARC service as well as grants to locally operated transit systems.

The economic recession dramatically reduced titling tax revenues as well as other transportation revenues which resulted in the Maryland Department of Transportation (MDOT) making reductions to its six-year capital program. In total, the 2009-2014 capital program was reduced by approximately \$2.2 billion compared to the 2008-2013 capital program, effectively offsetting any gains from the 2007 special session revenue increase. The reductions to the capital program were largely borne by SHA and MTA because those administrations were where most of the additional revenue was applied with an emphasis on maintaining as many system preservation projects as possible.

Helping to offset the capital reductions was the federal American Recovery and Reinvestment Act that was signed into law in February 2009. Maryland received approximately \$566 million in additional federal highway and transit funding to help offset the earlier capital reductions. MDOT elected to fund smaller system preservation projects that could quickly begin construction to meet federal requirements on the use of the funds. Local jurisdictions also received a portion of the funding for federal aid eligible highway and transit projects.

### **Highway User Revenues**

The State shares various transportation revenues, commonly referred to as highway user revenues, with the counties and municipalities. Prior to fiscal 2010, Maryland local governments received 30.0% of highway user revenues. *Chapter 487 of 2009*, the Budget Reconciliation and



Financing Act of 2009, altered the department's share of highway user revenues. Beginning in fiscal 2012, the department will receive 71.5% of highway user revenues. In addition, to help balance the general fund budget, *Chapter 487* and *Chapter 484 of 2010*, the Budget Reconciliation and Financing Act of 2010, reduced the local share of highway user revenues and transferred that revenue to the general fund. Exhibit G-1 shows the distribution of highway user revenues from 2010 to 2013 after the actions taken in budget reconciliation legislation based upon current revenue estimates. Beginning in fiscal 2013, the overall local share is permanently set at 9.2% of highway user revenues: 7.5% for Baltimore City; 1.4% for counties; and 0.3% for municipalities.

**Exhibit G-1**  
**Highway User Revenue Distribution**  
**Fiscal 2010-2013**  
**(\$ in Millions)**

	Fiscal 2010		Fiscal 2011		Fiscal 2012		Fiscal 2013	
	<u>Percent</u>	<u>Dollars</u>	<u>Percent</u>	<u>Dollars</u>	<u>Percent</u>	<u>Dollars</u>	<u>Percent</u>	<u>Dollars</u>
MDOT	70.0%	\$1,070.2	68.5%	\$1,082.3	71.5%	\$1,185.9	71.5%	\$1,257.5
General Fund	19.5%	298.1	23.0%	363.4	20.4%	338.4	19.3%	339.4
Baltimore City	8.6%	131.5	7.9%	124.8	7.5%	124.4	7.5%	140.4
Counties	1.5%	22.9	0.5%	7.9	0.5%	8.3	1.4%	26.2
Municipalities	0.4%	6.1	0.1%	1.6	0.1%	1.7	0.3%	5.6
<b>Total</b>	<b>100.0%</b>	<b>\$1,528.9</b>	<b>100.0%</b>	<b>\$1,580.0</b>	<b>100.0%</b>	<b>\$1,658.6</b>	<b>100.0%</b>	<b>\$1,769.2</b>

MDOT: Maryland Department of Transportation

**Consolidated Transportation Bonds**

The recent credit crisis and lack of liquidity in the capital market during the fall of 2008 created a sluggish competitive bond market. If MDOT had needed to issue bonds in the public competitive bond market during the fall of 2008, it was possible that very few or possibly no bids would have been received.

*Chapters 641 and 642 of 2009* identified a public, competitive sale as the preferred method of issuance of Consolidated Transportation Bonds and authorized MDOT to issue Consolidated Transportation Bonds at a private, negotiated sale if the Secretary of Transportation determines that (1) extraordinary credit market conditions exist that warrant the use of this method rather than a public, competitive sale; and (2) the terms and conditions, including price, interest rates, and payment dates, that can be achieved by a private, negotiated sale are more advantageous to the State. The Acts require the resolution authorizing the issuance of Consolidated Transportation Bonds to specify whether the bonds are to be sold at a competitive or negotiated sale.

## Transportation Planning

The *Consolidated Transportation Program* (CTP) is MDOT's six-year budget for the construction, development, and evaluation of transportation capital projects. It is revised annually to reflect updated information and changing priorities.

*Chapter 725 of 2010* altered the process under which MDOT evaluates and selects capital projects to be included in the construction program of the CTP. A local government or other government agency that requests a major capital project for inclusion in the CTP is required to submit a document to MDOT discussing the need for the project and how the project addresses the State's transportation goals and supports local government land use plans. MDOT must evaluate requests for major capital projects based on the State's goals and, as appropriate, criteria as determined by the information submitted by the proposing entity and the availability of funding. As part of this evaluation, MDOT must acknowledge the difference between urban and rural transportation needs.

The CTP must include a "purpose and need summary statement" that includes (1) a general description and summary that describes why a project is necessary and satisfies State goals, including the current State transportation and climate action plan goals; (2) the location of the project, including a map of the project limits, project area, or transportation corridor; and (3) a summary of how the project meets the selection criteria for inclusion in the capital program. The Smart Growth Subcabinet is required under the Act to conduct an annual review of transportation goals, benchmarks, and indicators. MDOT and a previously established advisory committee, consisting of various transportation experts, representatives of State and local government, and representatives of environmental, business, and community interests, are required to consider the impact of the State's transportation investment on the environment, environmental justice, communities, economic development, and specified State climate action plan goals when establishing the State's transportation goals, benchmarks, and indicators.

*Chapter 145 of 2010* required MDOT to periodically update its Statewide 20-Year Bicycle-Pedestrian Master Plan and to take this plan into consideration when developing the CTP. The Act required MDOT to ensure that the CTP contains an appropriate balance between funding for new highway construction projects and projects that retrofit existing transportation projects with facilities for pedestrians and bicycle riders and to place an increased emphasis on these types of projects in transit-oriented areas within priority funding areas.

## Blue Ribbon Commission on Maryland Transportation Funding

Despite the actions taken by the General Assembly during the 2007-2010 term to address issues surrounding transportation funding, transportation funding issues remain. As a result of the continuing transportation funding challenges facing the State, *Chapters 525 and 526 of 2010* established a Blue Ribbon Commission on Maryland Transportation Funding. The commission must review, evaluate, and make recommendations on (1) the current State funding sources and structure of the TTF; (2) short- and long-term transit construction and maintenance funding needs; (3) short- and long-term highway construction and maintenance funding needs; (4) short- and long-term pedestrian and bicycle facility construction and maintenance funding

needs; (5) options for public-private partnerships to meet transportation funding needs; (6) the structure of regional transportation authorities and their ability to meet transportation needs; (7) the impact of economic development and smart growth on transportation funding; and (8) options for sustainable, long-term revenue sources for transportation. The commission must submit an interim report by January 1, 2011, and a final report by November 1, 2011, providing findings and recommendations to the Governor and the General Assembly.

## **Maryland Transportation Authority**

The Maryland Transportation Authority (MDTA) owns and operates the State's seven existing toll facilities, as well as an eighth facility currently under construction. Over the years, MDTA has provided fund transfers and loans to the TTF and has assumed responsibility for building revenue-generating transportation facilities in lieu of financing those facilities from the TTF. MDTA also serves as the conduit through which debt backed by a variety of revenue sources is issued.

### **Revenue Bonds**

Revenue bonds issued by MDTA are backed by toll revenues and do not count against State debt limits. *Chapter 567 of 2008* increased the limit on the aggregate outstanding and unpaid principal balance of revenue bonds issued by MDTA from \$1.9 billion to a maximum of \$3.0 billion; however, MDTA's maximum aggregate amount of revenue bonds that may be outstanding and unpaid must be reduced by the amount of:

- any loan extended to the State under the federal Transportation Infrastructure Finance and Innovation Act (TIFIA); and
- any line of credit extended to the State under the TIFIA, to the extent the State draws on the line of credit.

Primarily driving the need for the increase in the revenue bond cap is the simultaneous construction of two large capital projects: the \$2.6 billion InterCounty Connector (ICC) and the \$1.0 billion Express Toll Lanes on I-95 north of Baltimore. Both of these projects are primarily funded through the issuance of debt, with the ICC alone accounting for \$1.2 billion in revenue bonds. From fiscal 2008 through 2014, MDTA will issue \$2.6 billion in revenue bonds to support its capital program.

The construction of these two large capital projects has transitioned MDTA from a historically cash-rich agency with \$245.1 million in debt outstanding in fiscal 2007 to a highly leveraged agency with projected debt outstanding at the end of fiscal 2015 at \$2.7 billion. Large increases in the debt service associated with these bonds will require periodic increases in toll rates. In 2009, MDTA instituted a cost recovery initiative that increased tolls at all facilities for vehicles with three or more axles, instituted a number of new and increased fees associated with E-ZPass accounts and toll violations, ended the use of commuter and shoppers tickets, and made changes to the duration of E-ZPass commuter plans. Additional toll increases are expected in

fiscal 2012 and 2014 to support larger debt service payments. In an effort to increase the General Assembly's oversight of MDTA's financial status, **Chapter 567** also required MDTA to submit semi-annual financial forecasts to the legislature providing estimates of operating and capital expenses, revenues, debt service, bond issuances, and debt coverage ratios over a six-year planning period.

### **ICC Financing and General Fund Repayment**

MDTA is working in partnership with SHA to construct the \$2.6 billion ICC, a new east-west highway that will link the I-270/I-370 corridor in Montgomery County and the I-95/US 1 corridor in Prince George's County. Chapters 471 and 472 of 2005 created a finance plan for the construction of the ICC that includes the State's general fund, the TTF, Grant Anticipation Revenue Vehicle or GARVEE bonds, federal funds, MDTA toll revenue bonds, and a TIFIA line of credit. The general fund portion of the project was included to repay money borrowed from the TTF in fiscal 2003 and 2004.

**Chapter 567** smoothed the general fund payments to MDTA for the ICC in fiscal 2010 and 2011 to moderate demands on the general fund budget and to more closely align the State's payments to the project's cashflow needs. **Chapter 487**, the Budget Reconciliation and Financing Act of 2009, again altered the repayment schedule and authorized the use of general obligation bond proceeds or the State's general fund to make payments to MDTA. **Chapter 484**, the Budget Reconciliation and Financing Act of 2010, further altered the repayment schedule based on the project's cash flow needs and extended the final general fund payment for the ICC to fiscal 2012. The first segment of the ICC is expected to open in late calendar 2010 with the remaining portions opening in 2011. The ICC will be the State's first fully electronic toll facility utilizing open road tolling and congestion pricing.

**Chapter 567** also provides that, by December 1 of each year until completion of construction of the ICC, MDTA must submit a report on the status of the ICC to specified legislative committees. The report must include comparisons between current and original project information (e.g., costs, funding sources, progress schedule) provided to the legislative committees in January 2005.

### **Public-private Partnerships**

Across the nation, there is growing interest in utilizing private-sector financing as a means to maintain and expand capital infrastructure investment. In Maryland, public-private partnership (P3) agreements have been utilized primarily to finance transportation-related infrastructure. More recently, P3s have also facilitated the proposed multi-year phased redevelopment of the State Center complex in Baltimore City and the financing of the Department of Health and Mental Hygiene's new public health laboratory.

**Chapters 640 and 641 of 2010** created a statutory definition of a P3 and established a framework of P3 reporting requirements and oversight procedures for State entities, including MDTA. The Acts require annual reports from certain State entities on any existing P3s or those under consideration and any conduit debt issued by a State agency for a P3. These State entities

are also required to submit a report 45 days prior to issuing a public notice of solicitation for a P3. In addition, the State Treasurer or MDTA must submit a report analyzing the impact of each proposed P3 agreement on the State's or MDTA's debt capacity. The Board of Public Works is prohibited from approving a P3 agreement until the budget committees of the General Assembly have had 30 days to review and comment on the analysis of the P3's potential impact on debt capacity. The Acts also established a Joint Legislative and Executive Commission on Oversight of Public-Private Partnerships. Among other duties, the commission is required to study and make recommendations concerning the appropriate manner of conducting legislative oversight of P3s and recommend broad policy parameters within which P3s should be negotiated. The commission must submit a final report by December 1, 2011, to the Governor and the General Assembly. The commission terminates at the end of June 2012.

Prior to the enactment of *Chapters 640 and 641, Chapter 383 of 2007* required MDTA to provide 45-day notices to specified legislative committees before issuing a public notice of procurement for a P3 that allows private control over the operation or maintenance of an existing or future revenue-generating highway, bridge, tunnel, or transit facility. Moreover, before entering into such a P3, MDTA had to submit a description of the proposed lease agreement and a financing plan that includes the length of the lease, the scope of any toll-setting authority to be granted to the private entity, the scope of any payments to MDTA, and certain contractual requirements pertaining to the operation and maintenance of the facility and oversight.

## **Mass Transit**

### **Washington Metropolitan Area Transit Authority (WMATA) Compact**

WMATA was established to plan, finance, develop, and operate a balanced regional transportation system for the national capital area. It was created by interstate compact of the State of Maryland, the Commonwealth of Virginia, and the District of Columbia with the consent of the U.S. Congress. Maryland ratified the compact in 1965 (Chapter 869).

In October 2008, the U.S. Congress passed Public Law 110-432 authorizing up to \$1.5 billion in federal funds for WMATA capital and preventive maintenance improvements over 10 years, beginning in fiscal 2009. However, this federal law was made contingent upon the passage of specified amendments to the WMATA Compact by Maryland, Virginia, and the District of Columbia prior to the distribution of federal funds. As required by federal law, *Chapter 111 of 2009* amended the WMATA Compact to add two federally appointed, voting board members; require an Office of the Inspector General at WMATA; and require Virginia, Maryland, and the District of Columbia to make payments from a dedicated funding source to match up to \$1.5 billion in federal funds for WMATA capital and preventive maintenance projects. The Act designates the TTF as Maryland's dedicated funding source for matching specified federal funds.

### **Farebox Recovery**

Farebox recovery is the ratio of public transit operating revenues compared to operating expenditures. To the extent expenditures are not covered by fares, the operating deficit for public transit is paid from the TTF.

*Chapter 684 of 2008* lowered the statutory farebox recovery ratios for MTA services and extended and expanded the current requirement for MTA to submit annual performance reports. The Act requires MTA to obtain at least a 35% farebox recovery for Baltimore area transit, including bus, light rail, and Metro subway service. There is also a separate 35% farebox recovery ratio for Maryland Area Regional Commuter (MARC) service. The Act also established a 35% farebox recovery goal for eligible local bus service in Montgomery and Prince George's counties. Finally, the Act required MTA to establish annual performance goals for three measures and to report to the General Assembly on its ability to meet the goals.

Prior to the enactment of *Chapter 684*, MTA was required by law to achieve 40% to 50% farebox recovery for Baltimore area transit services, including bus, light rail, Metro subway service, and MARC service. In addition, the statutory formula governing State grants for local bus service in Montgomery and Prince George's counties included a 40% farebox recovery goal for those systems.

### **Transit-oriented Development**

Transit-oriented development leverages transit stations as the foundation for vibrant communities with a dense mix of commercial, residential, and retail development. By clustering development around transit sites, transit-oriented development seeks to maximize the State's investment in transit by promoting increased ridership and enhanced opportunities for pedestrian and bicycle mobility.

*Chapters 122 and 123 of 2008* included transit-oriented development among those transportation purposes established by law as "essential" for the "economic welfare and vitality" of the State and the development of its political subdivisions. Further, the Acts defined transit-oriented development as a mix of private or public parking facilities; commercial and residential structures; and uses, improvements, and facilities customarily appurtenant to such facilities and uses that:

- are part of a deliberate development plan or strategy involving property that is located within one-half mile of the passenger boarding and alighting location of a planned or existing transit station;
- are planned to maximize the use of transit, walking, and bicycling by residents and employees; and

- are designated as a transit-oriented development by the Secretary of Transportation in consultation with other specified State agencies and the local government or multicounty agency with land use and planning responsibility for the relevant area.

The Acts specified that the establishment of transit-oriented development as a transportation purpose may not be construed to limit the authority of local governments to govern land use or grant the State or a department of the State additional authority to supersede local land use and planning authority. They also expressed the intent that in order for areas with planned transit stations to be considered for designation as a transit-oriented development, local governments must coordinate with MTA on land use planning elements.

*Chapter 182 of 2009* authorizes certain counties and municipalities to finance the costs of infrastructure improvements located in or supporting a transit-oriented development, including the cost for operation and maintenance of infrastructure improvements. The Maryland Economic Development Corporation (MEDCO) may enter into agreements with certain counties and municipalities to use proceeds from a special taxing district, including tax increment financing, to repay debt service on bonds issued by MEDCO on behalf of transit-oriented development projects. For a further discussion of *Chapter 182*, see the subpart “Economic and Community Development” under Part H – Business and Economic Issues of this *Major Issues Review*.

## Motor Vehicles

### Drunk and Drugged Driving

Issues related to drunk and drugged driving continued to be of significant concern to the General Assembly during the 2007-2010 term. To enhance the State’s efforts to reduce the incidence of drunk and drugged driving, *Chapters 533 and 534 of 2007* established the Task Force to Combat Driving Under the Influence of Drugs and Alcohol. The task force was created to address (1) actions necessary to implement national best practices for combating drunk and drugged driving offenses; (2) new State initiatives to address all impaired driving populations; (3) actions to sustain and enhance the public’s awareness and concern regarding the dangers posed by impaired driving; and (4) strategies for improved coordination of management, funding, and resources at State and local levels.

The task force found that an increasing number of people arrested for driving under the influence of alcohol or while impaired by alcohol or drugs were repeat offenders and that an alcohol-related driving event is a reliable predictor of future recidivism. To address concerns related to repeat offenders, *Chapter 496 of 2009* enacted several provisions recommended by the task force. The Act authorized the Motor Vehicle Administration (MVA) to impose a driver’s license suspension of up to one year on a person who is convicted of any drunk or impaired driving offense more than once within a five-year period. Additionally, the Act authorized MVA, instead of imposing a license suspension, to issue a restricted driver’s license for the duration of the suspension period if the licensee participates in the Ignition Interlock System Program.

The Act also required MVA to impose a one-year driver's license suspension on a driver convicted of driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a controlled dangerous substance after a previous conviction of specified offenses within a five-year period. After notice and hearing requirements are met and MVA imposes a mandatory suspension of a driver's license, MVA may modify the mandatory suspension by imposing a suspension period of at least 45 days and ordering the person to maintain, for the remainder of the one-year suspension period, an ignition interlock system on each motor vehicle owned or operated by the person. The person is allowed to drive only to and from work, school, an alcohol or drug treatment program, or an ignition interlock system service facility.

*Chapters 494 and 495 of 2009* extended, from 5 to 10 years, the period during which a prior conviction for specified alcohol- or drug-related driving offenses disqualifies a person from eligibility to be placed on probation before judgment (PBJ) for subsequent offenses. Additionally, for a defendant ordered into treatment as a condition of probation, the Acts also extended, from 5 to 10 years, the period during which a court is prohibited from striking or staying the entry of judgment and placing the defendant on probation if, in that time, the defendant has been convicted of (or placed on PBJ for) an alcohol- or drug-related driving offense.

## **Licensing and Registration**

### **Teen Drivers**

Chapter 483 of 1998 established the State's graduated driver's licensing (GDL) program. According to a 2006 study conducted by Johns Hopkins University's Bloomberg School of Public Health, GDL programs reduce the incidence of fatal crashes by 16-year-old drivers by 11%. Analyzing various components of state GDL laws, the researchers also found that, the greater the number of program components, the fewer the number of traffic accident fatalities. Thus, states with a five-component program reduced fatalities by 18% as compared with states with no GDL laws, and states with a six- or seven-component program were able to reduce fatalities by 21%. In recognition of the importance of a structured GDL program, *Chapters 184 and 185 of 2009* enhanced Maryland's GDL program by:

- increasing the minimum age for obtaining a provisional license by 3 months to 16 years and 6 months;
- extending the time period at the end of which a holder of a learner's permit may test for and obtain a provisional license from 6 to 9 months after issuance of the learner's permit or being convicted of a moving violation, and adding placement on PBJ for a moving violation as an event that restarts this time period;
- increasing the minimum age for obtaining a driver's license by 3 months to 18 years; and



- adding violations of specific license restrictions, placement on PBJ for a moving violation, and restoration of a cancelled license as events that restart the 18-month time period at the end of which a holder of a provisional license may obtain a driver's license.

In addition, for an individual younger than 18 who held a provisional license on the date of a violation for which the individual was convicted or placed on PBJ, MVA may:

- for a second offense, suspend the driver's license for 30 days and impose a restriction for 90 days following the suspension that allows the driver to only drive to and from the driver's school or place of employment;
- for a third offense, suspend the license for up to 180 days, require the driver to attend a young driver improvement program, and impose an education and employment only restriction for 180 days following the suspension; and
- for a fourth or subsequent offense, revoke the license and require the driver to apply for reinstatement of the revoked license after a 180-day waiting period, which includes retaking and passing the skills and driving examinations.

In another attempt to enhance Maryland's GDL system, *Chapter 542 of 2008* extended the validity of a learner's permit from one year to two years after the date of issuance and repealed the exception that allowed a person who is at least 15 years old to drive under the supervision of a driving instructor without a learner's permit.

With respect to enforcement, *Chapter 525 of 2009* required the clerk of the court to report to MVA regarding a minor who fails to remain at the scene of an accident involving bodily injury, death, or property damage, or who flees or eludes a police officer. MVA is then required to suspend the minor's license for six months for a first offense and for one year for a second or subsequent offense. The Act also required MVA to suspend for six months the provisional license of an individual younger than age 18 who accumulates five or more points in a 12-month period for a first offense, and one year for a second or subsequent offense. If a provisional license holder younger than age 18 is guilty of reckless or negligent driving, aggressive driving, or engaging in racing, MVA must suspend the license for six months for a first offense and one year for a second or subsequent offense.

Traditionally, when a minor has received a citation for driving at least 20 miles per hour over the speed limit, MVA was required to notify the cosigner of the minor's driver's license application, typically the minor's parent or guardian. *Chapters 581 and 582 of 2008* applied this notification requirement to a citation for any moving violation.

### **Proof of Lawful Residence**

In May 2005, former President George W. Bush signed into law the REAL ID Act that required federal agencies to accept only personal identification cards that meet certain standards for official purposes. Subsequently, the U.S. Department of Homeland Security issued final

REAL ID regulations, and the O'Malley Administration announced that Maryland would comply with the REAL ID Act by certifying compliance with a number of federally determined benchmarks within the extension period granted to the State. Among the 18 benchmarks attached to the final REAL ID regulations is the state's ability to verify that a driver's license applicant is lawfully present in the United States. This mandate imposed a new requirement for applicants of driver's licenses in Maryland and required a statutory change by the General Assembly during the 2009 session because Maryland was one of five states that had, as of April 2009, extended the privilege to drive to individuals who did not have lawful status.

*Chapter 390 of 2009* defined "lawful status" as it applies to the issuance of identification cards, driver's licenses, and moped operator permits. The Act also established a two-tiered approach to the issuance of these documents by MVA, with one tier of licenses invalid for certain official federal purposes. Under *Chapter 390*, MVA may renew the driver's license of an individual who held a license on April 18, 2009, regardless of lawful status or the absence of a valid Social Security number. However, a license issued on or after July 1, 2010, must expire on July 1, 2015, and MVA may no longer undertake this two-tier issuance after July 1, 2015. In addition to providing one tier of MVA documents to individuals who cannot demonstrate lawful status or do not possess a valid Social Security number, the two-tiered approach also enables MVA documents to be issued to individuals who encounter identity verification problems in the MVA verification process prescribed by federal regulations.

Individuals who verify citizenship or lawful status are eligible to receive one of the documents for a period of up to five years as determined by MVA, or for only as long as the individual's lawful status remains valid. *Chapter 390* also required MVA to develop a plan to address physical security requirements for MVA locations and other information and privacy safeguards for MVA document issuance processes.

### **Motor Vehicle Salvage**

Maryland has traditionally maintained a vehicle salvage program to help prevent vehicle theft and to protect the buyers of used vehicles. *Chapter 422 of 2008* altered Maryland's vehicle salvage program in several ways. Most significantly, the Act lowered one of the threshold determinations of vehicle salvage by requiring MVA to issue a certificate of title for a vehicle branded as "rebuilt salvage" if the cost to repair the vehicle for highway operations was greater than 75% of the vehicle's fair market value before sustaining the damage for which the claim was paid; previously the threshold was 100%. In addition, the Act required that if an insurance company makes a claim settlement on a vehicle that is salvage and the owner retains possession of the vehicle, the company must notify MVA promptly by sending the vehicle's title, a description of the vehicle, the salvage statement concerning the vehicle's condition, and the required fee. If the salvage statement provides that the vehicle is not rebuildable, MVA is required to suspend the vehicle's registration and direct the vehicle owner to return the registration plates immediately. If the salvage statement is any one of the other statements allowed other than that the vehicle has been stolen, the Act required MVA to send notice to the vehicle owner that the registration will be suspended unless the vehicle undergoes a safety inspection within 90 days.

While *Chapter 422* expanded the number of vehicles that could be deemed “rebuilt salvage,” *Chapter 728 of 2010* altered the consideration of costs in making the determination as to whether a vehicle is deemed to be “rebuilt salvage,” thus making it more difficult to reach the 75% threshold. In determining whether a vehicle is “rebuilt salvage” or which salvage statement to display on a salvage application, the Act prohibited consideration of any cost associated with the vehicle’s towing or storage, repairing cosmetic damage, or renting another vehicle. However, if a vehicle is acquired by an insurance company as a result of a claim settlement and the cost to repair the vehicle is 75% or less of the fair market value of the vehicle before sustaining damage, the vehicle is to receive a title certificate brand that reads “X-Salvage.” The Act also repealed the “cosmetic damage” title brand and the statement reflecting cosmetic damage on the salvage application form.

## **Rules of the Road**

### **Distracted Driving**

While there may be many causes contributing to the growing problem of distracted driving, the U.S. Department of Transportation has stated that the sending of text messages while driving is the most alarming cause because it presents all three categories of distraction – visual, manual, and cognitive. To address this concern, the General Assembly passed *Chapters 194 and 195 of 2009*, which prohibited a driver from using a text messaging device to write or send a text message while operating a motor vehicle in motion or in the travel portion of a roadway. A violator is guilty of a misdemeanor and subject to a maximum fine of \$500. The prohibition does not apply to the use of a global positioning system (GPS) device or the use of a text messaging device to contact a 9-1-1 system.

*Chapter 538 of 2010* addressed another source of distraction by severely restricting the use of cell phones by drivers. The Act prohibited the use of a handheld cell phone by the driver of a school vehicle while carrying passengers and, similarly, prohibited handheld cell phone use by a holder of a learner’s permit or provisional driver’s license who is age 18 or older (drivers under the age of 18 were already subject to a prohibition on the use of cell phones and text messaging devices). For all other drivers over the age of 18, *Chapter 538* prohibited the use of a cell phone except to initiate or terminate a call or to turn the cell phone on or off. These prohibitions do not apply to emergency calls or the use of cell phones by emergency personnel or law enforcement officers.

A violation of *Chapter 538* is enforceable as a secondary action only, meaning that a police officer must detain a driver for another violation of the Maryland Vehicle Law before issuing a citation for unlawfully using a cell phone. For a first offense, a violator is subject to a maximum fine of up to \$40 and points may not be assessed against the driver’s license unless the offense contributes to an accident. The Act authorized a court to waive a fine for a first-time conviction if the person proves that the person has acquired a hands-free accessory or other phone feature that allows the use of the phone in accordance with the law. For a second or subsequent offense, the fine is \$100. *Chapter 716 of 2010* established an exemption from the

prohibition enacted in **Chapter 538** to allow the use of a cell phone with push-to-talk technology in a commercial motor vehicle.

DVD players and other types of electronic video display devices are becoming increasingly popular in vehicles. The trend toward the use of video displays has been driven in part by a desire for additional vehicle safety features including real-time displays of the vehicle perimeter, better location tracking by GPS, and more targeted roadside assistance. Most DVD players are intended to be viewed by passengers; however, in-dash models are becoming more common. Many of these video players have built-in safety functions that prevent them from being used while the vehicle is in motion, but these functions can be bypassed. **Chapter 539 of 2010** established equipment standards that prohibit television-type receiving equipment that is turned on and displaying an image visible to the driver while on a highway. The Act prohibited a person from driving in violation of the equipment standards but added certain exceptions, including exceptions for equipment displaying information or images related to the operation or safety of a vehicle, navigation systems, and video display equipment in a vehicle used by a public service company.

### **Speed Monitoring Systems**

In January 2006, Montgomery County was authorized to implement the first program in the State to enforce speed laws through the use of technology known as “speed monitoring systems,” which record images of speeding vehicles. Placement of the systems was restricted to school zones and to residential highways with a maximum speed of 35 miles per hour. If a vehicle was found by a speed monitoring system to be traveling at least 10 miles per hour over the posted speed limit, a citation could be issued to the owner. A citation carried a maximum penalty of \$40 and no points could be issued against the driver’s license of the offender. **Chapter 500 of 2009** expanded the authorization for the use of speed monitoring systems to allow use of the systems in school zones throughout the State. In addition, in school zones, the threshold speed above which local law enforcement agencies or their contractors were authorized to issue citations or warnings to vehicle owners for speeding was raised to at least 12 miles per hour above the posted speed limit. The Act retained the authority of Montgomery County to place speed monitoring systems on residential highways. The maximum fine for a citation was maintained at \$40.

A speed monitoring system may be placed in a school zone for operation between 6:00 a.m. and 8:00 p.m. Monday through Friday. Before a system may be placed in a local jurisdiction, its use must be authorized by the governing body after reasonable notice and a public hearing. A local ordinance or resolution authorizing use of the system must provide that, for at least the first 30 days after a speed monitoring system is placed, only warnings may be issued. The local government must publish the location of all unmanned stationary speed monitoring systems via a web site and in a general circulation newspaper in the jurisdiction. The local jurisdiction must also ensure that each school zone sign indicates that speed monitoring systems are used in the school zone.

Any fines or penalties collected by the District Court from school zone speed monitoring systems are remitted to the Comptroller and distributed to various transportation-related funds. Fines or penalties that are collected from uncontested citations accrue to the local government that implemented the speed monitoring system. Furthermore, the Act authorized local jurisdictions to use any revenues generated from school zone automated speed enforcement in excess of the amount necessary to recover implementation costs solely for public safety purposes, including pedestrian safety programs. However, if after recovering implementation costs the balance of revenues generated exceeds 10% of the local jurisdiction's total revenues for the fiscal year, then any amount above 10% must be remitted to the Comptroller and deposited in the general fund of the State.

In addition to school zones, **Chapter 500** also authorized the use of speed monitoring systems in highway work zones on certain highways where the speed limit is 45 miles per hour or greater. A conspicuous road sign warning of the use of a speed monitoring system must be placed at a reasonable distance in advance of the work zone. Under **Chapter 500**, the speed tolerance is 12 miles per hour over the posted speed limit; the maximum fine was set at \$40; and, during the first 30 days of system implementation, only warnings may be issued. All fines collected for work zone speed control violations, whether prepaid or imposed by the District Court in a contested case, must be deposited into a newly established special fund for distribution to the State Highway Administration and the Department of State Police (DSP) to cover the administrative costs of the speed control system. Before October 1, 2012, any remaining balance after covering these costs must be paid to DSP to fund its roadside police enforcement activities. After October 1, 2012, any remaining balance must be deposited into the Transportation Trust Fund.

## **Equipment and Inspections**

**Chapter 455 of 2008** expanded the child safety seat requirement to apply to all children under the age of eight years, unless the child is four feet, nine inches tall or taller or weighs more than 65 pounds. The Act expressly applied the child safety seat requirement to the transportation of a child in any Class E (truck) vehicle or any vehicle registered in another state or Puerto Rico.



## **Part H**

### **Business and Economic Issues**

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#### **Business Occupations**

During the 2007-2010 term, the General Assembly reestablished and required future sunset evaluations of numerous licensing boards. Further, for many business occupations and professions regulated under State law, specific changes were made to licensure requirements and industry practices.

#### **Occupational and Professional Licensing Boards – In General**

##### **Program Evaluation – Sunset Review**

The Maryland Program Evaluation Act, enacted in 1978, established a system of periodic legislative review of the regulatory, licensing, and other governmental activities of various units of State government. The Act is informally referred to as the “sunset law” and the associated review process as “sunset review” or “sunset evaluation” because most government units subject to the Act are scheduled to terminate unless affirmatively reestablished by the General Assembly. The goal of the sunset review process is to promote accountability in governmental operations. The sunset review process begins with a preliminary evaluation conducted by the Department of Legislative Services (DLS) on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation usually is undertaken the following year.

**2008 Legislation:** A 2007 preliminary evaluation of the State Board of Law Examiners recommended that LPC waive the board from full evaluation and that the board’s termination date be extended to July 1, 2020. **Chapter 413 of 2008** implemented these recommendations and increased the statutory cap on the bar examination fee that must be set by the Court of Appeals to a maximum of \$250 in fiscal 2009 and \$400 beginning in fiscal 2010. **Chapter 413** expressed the intent of the General Assembly that fee revenues approximate the board’s expenditures.

**2010 Legislation:** During the 2009 interim, DLS conducted a full evaluation of the State Board of Barbers and the State Board of Cosmetologists. **Chapter 395 of 2010** embodied several of the statutory recommendations developed by DLS during the evaluation. **Chapter 395** extended the termination dates for the boards by 10 years to July 1, 2021, and required evaluation of the boards by July 1, 2020. Various statutory provisions related to the regulation of barbers and cosmetologists in the State were also changed. Specifically, inspection procedures for beauty salons were made consistent with those for barbershops, the cosmetology board was authorized to increase license fees to up to \$50, license renewal provisions for apprentice cosmetologists were changed, and the boards were required to adopt regulations detailing curriculum standards for use by other entities in approving instructional programs at public schools or private career schools. In addition, the boards have to submit reports to specified committees of the General Assembly on their implementation of specified recommendations made in the evaluation.

**State Board of Examiners of Landscape Architects: Chapter 132 of 2010** implemented the recommendations of the 2009 preliminary sunset evaluation conducted by DLS and extended the termination date for the State Board of Examiners of Landscape Architects by 11 years to July 1, 2024. These recommendations were adopted at the December 15, 2009 LPC meeting. Another evaluation of the board must be completed by July 1, 2023.

**State Board of Pilots: Chapter 131 of 2010** implemented the recommendations of the 2009 preliminary sunset evaluation conducted by DLS and extended the termination date for the State Board of Pilots by 9 years to July 1, 2022. These recommendations were adopted at the December 15, 2009 LPC meeting. Another evaluation of the board must be completed by July 1, 2021.

**State Board for Professional Land Surveyors: Chapter 41 of 2010** implemented the recommendations of the 2009 preliminary sunset evaluation conducted by DLS and extended the termination date for the State Board for Professional Land Surveyors by 11 years to July 1, 2024. These recommendations were adopted at the December 15, 2009 LPC meeting. Another evaluation of the board must be completed by July 1, 2023.

**State Board of Plumbing: Chapter 134 of 2010** implemented the recommendations of the 2009 preliminary sunset evaluation conducted by DLS and extended the termination date for the State Board of Plumbing by 10 years to July 1, 2023. These recommendations were adopted at the December 15, 2009 LPC meeting. Another evaluation of the board must be completed by July 1, 2022.

In each of the preliminary sunset evaluations conducted in 2009, issues requiring further study were identified. Rather than subject the boards to a full evaluation, each of the Acts passed in the 2010 legislative session required the Department of Labor, Licensing, and Regulation (DLLR) to submit a follow-up report to specified committees of the General Assembly.



## Occupational Licensing Boards – By Specific Occupations

### Barbers and Cosmetologists

***On-site Practice Allowed for Estheticians and Nail Technicians:*** Licensed cosmetologists may practice cosmetology in an assisted living facility, hospice facility, nursing home, hospital, or residence of an individual confined to the residence because of infirmity. ***Chapter 470 of 2007*** allowed licensed estheticians and nail technicians, in addition to cosmetologists, to provide their services to patrons who would otherwise be unable to travel due to a medical condition.

***Elimination of Limited License for Makeup Artists:*** ***Chapter 18 of 2008*** repealed the limited licensing of makeup artists, as DLLR determined that regulation of makeup artists is not necessary to protect the public health or safety.

### Bay Pilots and Docking Masters

Maryland law provides for three categories of limited licenses for bay pilots and docking masters, conditioned by the maximum draft of the vessel that the holder may pilot, and for an unlimited license. ***Chapter 125 of 2010*** changed the categories of limited licenses issued by the State Board of Pilots. Limited licenses based on vessel drafts of 32 feet, 36 feet, and 40 feet replace the current categories of 28 feet, 34 feet, and 37 feet, respectively.

### Certified Public Accountants

***Practice Privilege for Out-of-state Licensees and Permit Holders:*** ***Chapter 536 of 2008*** established “practice privilege” for certified public accountants, which authorizes an individual licensed by another state to practice without a Maryland license while remaining subject to the State’s regulatory and disciplinary authority. An individual who qualifies for practice privilege, as well as the firm that employs the individual, is subject to the authority of the State Board of Public Accountancy and must comply with all State accountancy laws. Practice privilege applies as long as an individual holds a valid license from another state.

***Reinstatement Fee for Firm Permits:*** In general, partnerships, limited liability companies, and corporations offering certified public accountancy services must hold a permit issued by the board. Permits expire every two years on December 31. ***Chapter 466 of 2009*** authorized the board to reinstate permits and charge reinstatement fees if firms allow their permits to lapse but are otherwise entitled to be permitted.

***Revision of Continuing Education Requirements:*** ***Chapters 30 and 31 of 2009*** repealed a provision of law specifying that certified public accountants may not meet more than 40 hours of their required continuing education coursework through home study or service as a teacher, lecturer, or discussion leader.

***Peer Review Standards Modified:*** A peer review is a periodic independent review of a firm’s quality control system in accounting and auditing. The purpose of this review is to

determine whether a firm's auditing practices conform to professional standards. Generally performed once every three years, a peer review examines whether a firm can demonstrate the competencies necessary for performing services in accordance with professional, State, and/or federal standards. *Chapter 220 of 2009* modified governing standards and procedures for peer reviews in the State for licensees and firms performing certified public accountancy services. The changes reflect revised standards adopted by the American Institute of Certified Public Accountants.

***Disciplinary Authority Enhanced: Chapter 152 of 2010*** authorized the board to deny licensure or a permit to an applicant or discipline a licensee or firm permit holder if the applicant, licensee, or permit holder has been sanctioned by a regulatory entity established by law for an act or omission that directly relates to the practice of public accountancy. *Chapter 152* also established that a holder of a permit issued by the board may be fined up to \$5,000 for violations of the Maryland Public Accountancy Act.

### **Crane Operators**

In 2008, a much-publicized fatality resulting from a crane accident at a Maryland construction site followed fatal crane accidents in several other states. Thus, DLLR's Crane Safety Task Force addressed safety issues related to cranes and hoisting equipment and recommended new regulations that attempt to strengthen crane safety standards and require mandatory inspections. These regulations took effect on April 6, 2009.

In addition, *Chapter 640 of 2009* specified that a person may not operate a crane or authorize operation of a crane in the State for the purposes of construction or demolition work unless the operator holds a certificate of competence. A certificate of competence certifies that the holder demonstrates knowledge of and training in safe crane operating procedures. *Chapter 640* applied to persons who operate tower cranes but not to those who operate many other types of power equipment. Violators are guilty of a misdemeanor and are subject to a fine of up to \$1,000.

### **Individual Tax Preparers**

*Chapter 623 of 2008* established the State Board of Individual Tax Preparers within DLLR to register qualified individuals to provide individual tax preparation services. The board must waive examination requirements for an individual who has at least 15 consecutive years of individual tax preparation experience, has completed at least eight hours of annual continuing education, and is in good standing with federal and State regulatory agencies. *Chapter 623* also established an Individual Tax Preparers Fund to approximate the costs associated with board activities.

### **Plumbers**

***Lead-free Materials: Chapter 407 of 2010*** required that pipes and materials used in the installation or repair of plumbing intended to dispense water for human consumption be lead-free. "Lead-free" is defined as containing not more than a weighted average lead content of

0.25% for the wetted surfaces of a pipe, pipe-fitting, plumbing fitting, or fixture; 0.2% lead for solder and flux; 8.0% lead by dry weight for pipes and pipe-fittings; and containing a percentage of lead for plumbing fittings and fixtures that is in compliance with standards established in the federal Safe Drinking Water Act.

**Greywater Recycling:** *Chapter 137 of 2010* specified that a county may not adopt or enforce a provision of a local plumbing code that prohibits a greywater recycling system, as authorized under the State plumbing code. “Greywater” is defined as used, untreated water generated by washing machines, showers, and bathtubs and specified that greywater does not include water from toilets, kitchen sinks, or dishwashers.

### **Professional Engineers**

**Authority to Issue a Limited License for Practice of Engineering Repealed:** An individual has to be licensed by the State Board for Professional Engineers before practicing engineering in Maryland. *Chapter 403 of 2007* repealed the authority of the board to issue a limited license. A limited license, issued to a nonresident applicant licensed to practice engineering in another state, had authorized the licensee to practice engineering only for the specific job for which the license is issued. Demand for limited licensure decreased as licensing requirements have been standardized among states, making it easier for professional engineers to qualify for reciprocal licensing. A professional engineer licensed in another state or foreign country with requirements equivalent to those of the State board remains eligible for reciprocal licensure.

**Continuing Professional Competency Requirements Established:** *Chapter 124 of 2010* required board licensees to demonstrate continuing professional competency as a condition of license renewal. Professional engineers with significant experience in the field may be issued a retired status license if they choose not to fulfill the continuing professional competency requirements and may later reactivate their original licenses upon completion of the new requirements. Holders of retired licenses may not engage in the practice of professional engineering.

### **Real Estate Appraisers and Home Inspectors**

**Certification Required for Supervision of Trainees:** Real estate appraiser trainees may provide appraisal services under the direction of a supervising appraiser. *Chapter 649 of 2007* required supervising appraisers to be certified as either a residential or general real estate appraiser. Certified real estate appraisers must meet federal and State requirements that are more comprehensive than those for licensed real estate appraisers.

***Insurance and Training Requirements Increased:*** *Chapter 160 of 2008* increased training requirements to include at least 72 hours of on-site training approved by the State Commission of Real Estate Appraisers and Home Inspectors and a national home inspection organization. The course must include successful completion of the National Home Inspector Examination or an equivalent examination. In addition, a home inspector licensed by the commission has to maintain general liability insurance of at least \$150,000.

***Administrative Sanctions and Civil Penalties:*** *Chapter 153 of 2010* authorized the commission to impose a civil penalty of up to \$5,000 against a licensed home inspector in lieu of or in addition to administrative sanctions.

### **Real Estate Brokers, Salespersons, and Sales Agents**

***Real Estate License Required for Sale of a New Home by a Sales Agent:*** Individuals who provide real estate brokerage services are required to be licensed by the State Real Estate Commission. *Chapter 274 of 2007* expanded the definition of “real estate brokerage services” to include selling real estate as a sales agent for a home builder; a home builder who rents or sells a home that he or she has constructed remained exempt from licensing requirements. As discussed further in the subpart “Business Regulation” of this Part H, *Chapters 480 and 481 of 2008* repealed the requirement for a sales agent for a home builder to be licensed by the commission in favor of regulation by the Consumer Protection Division of the Office of the Attorney General.

***Services Provided through Teams:*** *Chapter 670 of 2010* established requirements for the provision of real estate services through teams of licensed real estate agents. Industry trends throughout the State and country increasingly include the performance of services through teams, but there has been confusion among consumers, and even some real estate professionals, regarding this practice.

***Continuing Education Requirements for Licensees Revised:*** *Chapter 386 of 2010* changed the commission’s continuing education requirements by requiring licensees, beginning January 1, 2012, to complete a three-clock-hour course on the principles of agency and agency disclosure once every four years. Real estate team leaders, brokers, and branch office managers must also complete a three-clock-hour course on the requirements of broker supervision once every four years. Continuing education course providers also have to pay the commission a \$25 course application fee before their courses may be offered to licensees to fulfill renewal requirements.

### **Stationary Engineers**

Chapter 613 of 2005 established the State Board of Stationary Engineers and required individuals to be licensed by the board before providing stationary engineering services in the State. *Chapters 432 and 433 of 2008* and *Chapters 475 and 476 of 2008* established exemptions to the licensure requirement. *Chapters 432 and 433* established that a licensed stationary engineer is not required to oversee the operation of a heating boiler; *Chapters 475 and 476* specified that an individual who provides stationary engineering services at a resource recovery

facility does not have to be licensed by the board if otherwise certified by the Maryland Department of the Environment.

## **Business Regulation**

During the 2007-2010 term, the General Assembly passed legislation regulating the manner in which goods and services are produced, provided, and sold. Many of the initiatives were aimed at fostering public health and safety with further regulation of tobacco products, enhanced authority of the State Athletic Commission, protection of vulnerable adults and minors, as well as enhanced protections for homeowners. The General Assembly also considered measures that enhanced regulation of certain retailers, particularly those dealing with secondhand goods transactions as well as measures to ease regulation of certain industries. Finally, legislation was adopted to enhance consumer protections regarding locksmith businesses, collection agencies, employment agencies, and the sale of burial goods and services.

### **Public Health and Safety**

#### **Tobacco Products**

*Chapter 497 of 2007* required cigarettes manufactured or sold in Maryland to conform to fire safety standards in force in several other states, effective July 1, 2008. The Act established civil penalties for false certification, the failure to provide requested testing information, and the sale of cigarettes that do not meet State requirements. Penalties accrue to the Senator William H. Amoss Fire, Rescue, and Ambulance Fund.

The General Assembly further regulated cigarettes by passing two pieces of legislation requested by the Comptroller in 2009. *Chapter 688 of 2009* changed the cigarette fire safety law enacted in 2007 and allowed cigarettes to be sold or distributed for the purpose of consumer testing in a controlled setting without meeting fire safety certification requirements. Thus, manufacturers are allowed to submit descriptions of cigarettes to the Comptroller as “confidential under seal” to protect proprietary information. *Chapter 688* remains effective until a reduced cigarette ignition propensity standard is adopted by the federal government. *Chapter 347 of 2009* effectively required every cigarette sold in Maryland to come through a licensed distribution chain and made the definition of cigarette “manufacturer” in the fire safety performance law consistent with other statutes enforced by the Comptroller’s Office.

Again at the Comptroller’s request, the General Assembly devoted its attention to “other tobacco products” (OTPs) in 2010 by adopting *Chapter 388 of 2010*. OTPs are cigars or any rolled tobacco (other than a cigarette) that is intended for consumption either by smoking, chewing, or as snuff. Every state other than Pennsylvania and the District of Columbia requires some type of licensure, registration, or permit for OTPs.

According to the Comptroller, a common scheme of OTP tax evasion is for a wholesaler to purchase untaxed OTPs from an outside source in another state for sale to in-state retailers at a discounted rate. These wholesalers underreport taxes owed to the State, and retailers also

purchase untaxed OTPs directly from out-of-state wholesalers. *Chapter 388* attempted to address this problem by requiring licensure of OTP retailers, wholesalers, storage warehouses, and tobacconists that operate in the State as well as any manufacturers that produce OTPs in Maryland. It was contingent on successfully securing funds for implementation; the Comptroller and the Administrative Office of the Courts must certify to specified legislative committees when they have entered into a memorandum of understanding providing for funding to implement the bill.

### **State Athletic Commission**

The State Athletic Commission has long had jurisdiction over all boxing, kickboxing, and wrestling contests held in the State, with the exception of intercollegiate or amateur events. The commission also establishes health and safety standards for the participants in these sports, and licenses participants, managers, referees, judges, seconds, matchmakers, and promoters of these contests. *Chapters 607 and 608 of 2008* extended the commission's regulatory authority to include certain mixed martial arts contests, which are competitions in which contestants use interdisciplinary forms of fighting. Mixed martial arts contestants are required to be licensed by the commission in order to participate in a regulated event.

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

The commission is also subject to periodic evaluation and has a termination date. A preliminary evaluation conducted by the Department of Legislative Services (DLS) in 2008 found that the commission plays an important role in regulating boxing, kickboxing, and wrestling, but an evaluation of the commission's new role in regulating mixed martial arts was not yet possible. DLS recommended waiving the commission from further evaluation and enacting legislation to extend its termination date by 10 years to July 1, 2021. To aid in future evaluations, DLS recommended that the commission maintain specified information on mixed martial arts each fiscal year and that, as an interim measure prior to the next scheduled evaluation, the commission report on its implementation of mixed martial arts regulation by October 1, 2013. *Chapter 122 of 2009* implemented those recommendations.

### **International Marriage Brokers**

Studies suggest that about 500 international marriage brokers operate in the United States, with at least 8,000 to 12,000 individuals finding foreign spouses through such brokers each year. After several publicized accounts of domestic abuse of women who met their husbands through international marriage brokers, lawmakers in Washington, Hawaii, Missouri, and Texas passed laws to regulate international marriage brokers operating in those states. These statutes, as well as the federal International Marriage Broker Regulation Act of 2005, generally work to provide foreign nationals with information about their potential spouses and the resources available to them in the United States.

Maryland took similar action through *Chapters 519 and 520 of 2010*, by requiring an international marriage broker to provide basic human rights information to an individual who is not a citizen or resident of the United States and who uses the services of or is recruited by an international marriage broker for dating, matrimonial, or social referral services. A client has to provide the broker with marital history information and notify the broker about any previously sponsored international spouse. The broker has to conduct a State and national criminal history records check of the client, including a search of the sex offender registry. Before providing personal contact information about the recruit to the client, the broker must provide the criminal and marital history information of the client to the recruit in the recruit's native language, with all translation costs borne by the marriage broker. Additionally, before any personal contact information about the recruit is disclosed to the client, the marriage broker must obtain written consent from the recruit, again in the recruit's native language. These requirements do not apply to traditional marriage brokers that operate on a nonprofit basis and comply with applicable laws or to entities that charge comparable rates and services regardless of gender or citizenship and do not principally provide international dating services.

### **Lodging Establishments – Human Trafficking**

The U.S. State Department has estimated that approximately 600,000 to 800,000 people are trafficked annually across international borders worldwide. Approximately half of these victims are minors. But, according to the Maryland Sentencing Guidelines Database, just four people were convicted of human trafficking from fiscal 2001 through 2009. In an attempt to respond to that low conviction rate, *Chapters 576 and 577 of 2010* authorized law enforcement to issue a civil citation to require the posting of signs in lodging establishments where arrests leading to convictions for prostitution, solicitation of a minor, or human trafficking have occurred. In determining whether to issue a citation, law enforcement has to consider any assistance it receives from a lodging establishment in an investigation leading to a conviction for a predicate violation.

The required sign must be developed by the Department of Labor, Licensing, and Regulation (DLLR) and posted on its web site. The sign has to be at least three by five inches in size and in multiple languages – at least English, Spanish, and any other language required for a jurisdiction under the federal Voting Rights Act. Violators are subject to a civil penalty of up to \$1,000.

## **Home Regulation**

### **Maryland Home Improvement Commission**

In general, a person must be licensed by the Maryland Home Improvement Commission before acting as a home improvement contractor, subcontractor, or salesperson in the State. In addition to other licensing and regulatory duties, the commission maintains the Home Improvement Guaranty Fund to reimburse homeowners from losses that result from an act or omission by a licensed contractor. The Guaranty Fund was established to compensate a homeowner for the “actual loss” created by a licensed home improvement contractor. Losses

due to actions of unlicensed individuals are not eligible for restitution from the Guaranty Fund. “Actual loss” is defined as the costs of restoration, repair, replacement, or completion that arise from an unworkman-like, inadequate, or incomplete home improvement.

*Chapter 272 of 2008* authorized the commission to issue a proposed order without a hearing for claims against the Guaranty Fund of \$5,000 or less, an increase of \$2,500. It also increased the limit on an award to a single claimant for an act or omission of a single contractor from \$15,000 to \$20,000. *Chapter 671 of 2010* established that a homeowner may not receive an award from the Guaranty Fund that is in excess of the amount paid by the claimant to the contractor against whom the claim is filed. DLLR advises that *Chapter 671* simplifies the process of determining the amount of actual loss suffered by a homeowner.

*Chapter 537 of 2008* established that mold remediation firms must be licensed by the commission. To qualify for licensure as a supervisor or a firm, an applicant must submit proof that each employee who provides mold remediation services is certified by an accreditation body as a microbial remediation supervisor or microbial remediation technician. An application for a firm license must be made by a representative member of the organization. These requirements do not apply to mold remediation on nonresidential property. Mold remediation service licensing is subject to evaluation and reestablishment under the Maryland Program Evaluation Act, with a termination date of July 1, 2016.

### **Home Builders**

*Chapter 274 of 2007* required that a sales agent for a home builder be licensed by the State Real Estate Commission. However, *Chapters 480 and 481 of 2008* repealed that requirement and instead required these individuals to be registered with the Home Builder and Home Builder Sales Representative Registration Unit within the Consumer Protection Division of the Office of the Attorney General.

*Chapters 480 and 481* also increased the initial registration fee for home builders from \$300 to \$600 and the renewal fee from \$150 to \$300 for a builder who has been issued building permits for fewer than 11 homes in the preceding year; the renewal fee for a builder who has been issued 11 or more new building permits was likewise doubled to \$600. Although Montgomery County home builders continue to be exempt from State registration requirements, they are required to pay a \$150 administrative fee to the county, which must be remitted to the Home Builder and Home Builder Sales Representative Registration Unit for deposit into the Home Builder Registration Fund.

*Chapters 480 and 481* required the Consumer Protection Division to establish a Home Builder Guaranty Fund to compensate claimants for an actual loss that results from an act or omission by a registrant. A home builder must pay a Guaranty Fund fee of up to \$50 with each application for a new home construction permit. Local building and permit departments must remit these fees to the State for deposit into the Guaranty Fund. *Chapters 58 and 59 of 2009* changed how counties and municipalities collect and remit Guaranty Fund fees collected from home builders. *Chapters 58 and 59* specified that municipalities, in addition to counties, must



collect the fee and that the fee must be on a per-house or, for multi-unit developments, a per-unit basis; local governments may retain up to 2% of the fees collected to cover administrative costs.

The division may award up to \$50,000 from the Guaranty Fund to one claimant for acts or omissions of one builder; the division may not award more than \$300,000 to all claimants for acts or omissions of a single builder unless the builder reimburses the fund for all or a portion of these claims. The division may not award an amount for attorney's fees, court costs, damages, or interest. In general, a claim against the Guaranty Fund must be filed within two years of discovering any damage or defect.

## **Retail Regulation**

### **Gasoline**

A person may not operate a motor vehicle on a State highway with dyed diesel fuel in the vehicle's propulsion tank, unless allowed to do so under federal law or regulation. Only the operator of the motor vehicle may be charged in such cases; the Comptroller expressed concern that, even though the vehicle owner or agent may be the responsible party in some cases, such individuals may not be held accountable. *Chapter 377 of 2009* addressed this concern by specifying who may be charged with a violation of using dyed diesel fuel in a motor vehicle driven on State highways. A person is guilty of a violation if he or she commits, attempts to commit, or conspires to commit a violation; aids or abets another in the commission of a violation; or intentionally induces, directs, causes, coerces, or permits another to commit a violation.

*Chapters 61 and 62 of 2009* permanently extended certain market protections for service station dealers, fuel processors, and jobbers that were subject to expiration. Thus, the Comptroller may not issue a certificate of registration to a retail service station dealer that markets fuel through retail service stations that have been structurally modified since July 1, 1977, unless specified conditions have been met. This conditional prohibition was designed to protect independent service station dealers from larger entities. Further, motor fuel producers, refiners, and wholesalers who supply retail station dealers may continue to extend voluntary allowance discounts to all dealers in an unequal manner. Company-owned retailers are more likely to receive discounts than independent service stations.

Prior to 1968, motor fuel suppliers, refiners, or retail service stations commonly promoted their businesses using games of chance. Chapter 465 of 1968, however, prohibited motor fuel suppliers from engaging in, sponsoring, promoting, advertising, or otherwise performing or participating in games of chance that are offered to the public at retail service stations. Even so, a supplier of motor fuel authorized to operate a retail service station could still participate in games of chance as long as the games were promoted or sponsored by entities other than a refiner or supplier of motor fuel. *Chapter 720 of 2010* allowed, through September 30, 2013, motor fuel suppliers that supply products to retail service stations to sponsor, advertise, or perform games of chance if the service station dealer agrees to participate in the promotional games.

The promotional games in use prior to 1968 typically involved small-scale prizes such as free merchandise or discounted products or services. The types of games envisioned today might also include sweepstakes similar to those conducted by soft drink companies and fast food restaurants. A general prohibition on conditioning participation in a game of chance on a purchase remains in the Commercial Law Article.

### **Metal Processors and Dealers**

DLLR regulates dealers who acquire and trade secondhand precious metal objects, including gold, iridium, palladium, platinum, silver, precious and semiprecious stones, and pearls. Dealers of these objects, including individuals, retail jewelers, and pawnbrokers not otherwise regulated by a county, must be licensed before doing business in the State.

*Chapters 591 and 592 of 2008* expanded the definition of a secondhand precious metal object dealer to include an individual who is compensated for the sale or delivery of a secondhand precious metal object on behalf of an unlicensed party. This definition includes auctioneers of secondhand precious metal objects, including those who operate at traditional auction sites and those who arrange for sale of objects on Internet auction sites. All dealers of secondhand metal objects must meet licensing requirements to continue to do business in the State.

The General Assembly further regulated secondhand metals transactions with the adoption of *Chapter 562 of 2009*, which required secondhand precious metal object dealers, including pawnbroker dealers, to submit required transaction information to law enforcement units electronically, rather than by paper record. The Governor's Office of Crime Control and Prevention (GOCCP) may authorize the primary law enforcement unit to require paper reporting from dealers in its jurisdiction for one year if the law enforcement unit does not have an electronic reporting system in place. Conversely, GOCCP may authorize a local law enforcement unit to receive records electronically even if the primary law enforcement unit cannot do so.

*Chapter 404 of 2010* further modified recordkeeping and reporting requirements for secondhand precious metal object dealers and repealed a provision that allowed them to conduct business for up to seven days at an event that takes place at a location other than the dealer's fixed business address.

High demand for metals such as copper and aluminum tend to encourage metal theft in the United States. As a result, in 2009, 25 states, including Maryland, introduced legislation to address the increase of theft of junk or scrap metal. Attempts to more comprehensively regulate junk or scrap metal succeeded in local jurisdictions like Baltimore City and Baltimore County before statewide changes were made. *Chapters 198 and 199 of 2010* modified the definition of junk and scrap metal to include articles made wholly or substantially of enumerated metals and alloys while repealing certain fixtures and equipment from and adding other articles to the definition. In addition, recordkeeping requirements were enhanced for all junk dealers and scrap metal processors that operate in the State, including those operating in jurisdictions generally exempt from statewide licensing and recordkeeping requirements.

For each purchase, a junk dealer or scrap metal processor has to keep specified transactional information. In turn, dealers and processors must then report certain information to law enforcement by the end of the business day after each transaction. The recordkeeping and reporting requirements do not apply to an item acquired from a licensed dealer or processor; a unit of government; or a commercial enterprise with a valid business license with which the dealer or processor has entered into a written contract. However, automotive dismantlers, recyclers, and scrap processors licensed under the Transportation Article are exempted if they only acquire whole vehicles for certain purposes. State or local law enforcement agencies with reasonable cause to believe junk or scrap metal is stolen may issue a written hold notice for up to 15 days. An initial violation is a misdemeanor subject to a fine of up to \$500. A fine of up to \$5,000, imprisonment for up to one year, or both applies to subsequent offenses. The right of a county or municipality to regulate the resale of junk or scrap metal is preempted but local licensure is not.

### **Returnable Containers**

Units of plastic secondary packaging are typically constructed of high-density polyethylene, which yields approximately 8¢ per pound from recyclers. According to the International Dairy Foods Association (IDFA), distributors pay about \$4 for each new milk crate they purchase. IDFA estimates that about 20 million milk crates are stolen annually in the United States; replacing the stolen milk crates costs dairy producers roughly \$80 million to \$100 million per year.

*Chapters 7 and 8 of 2010* prohibited anyone other than a manufacturer of plastic secondary packaging from purchasing four or more units of these items for the purpose of recycling, shredding, or destroying them. In addition, purchasers of plastic secondary packaging must make a written record of each transaction involving four or more of these items. Persons who violate these provisions are guilty of a misdemeanor and subject to a fine of \$100.

### **Bulk Vending Machines and Soda Fountains**

Individuals who sell goods through vending machines must be licensed by the State. The cost for each license is \$2.50 per year. *Chapters 209 and 210 of 2009* exempted bulk vending machines from State licensing requirements for vending machines. The National Bulk Vending Association reported that bulk vending represents less than 1% of the total vending industry. According to the Comptroller's Office, the number of vending machine licenses has declined 4.4% each year between 2004 and 2008.

Like vending machines, a business had to have a soda fountain license if it operated a soda fountain in the State. An applicant for a soda fountain license had to pay fees ranging from \$10 to \$60 for each soda fountain, depending on geographical location. The Comptroller's Office then clarified that the statutory provisions related to the licensure of soda fountains include establishments that operate soft drink dispensers, but that only one license per location was required. Although thousands of businesses in the State operate soft drink dispensers, there were only 76 soda fountain licenses issued in 2008 throughout the State. *Chapter 483 of 2009*

repealed the requirement that businesses in the State be licensed if they operate a soda fountain machine.

### **Advertising**

*Chapters 560 and 561 of 2008* protected the integrity of fallen soldiers by prohibiting the knowing use of the name or image of a soldier killed in the line of duty within the previous 50 years in any advertising for the sale of merchandise or services. A person using such an image is required to obtain prior consent from the soldier, the soldier's next of kin, or a representative before using the image to gain commercial advantage. A person who violates these provisions is guilty of a misdemeanor and is subject to a fine of up to \$2,500 and/or imprisonment for up to one year. Restrictions do not apply to noncommercial uses of a soldier's name or image, including use in print media, broadcast programming, film, a photography exhibition, or a performance.

*Chapters 322 and 323 of 2009* were passed to prevent the deceptive advertising of automobile prices. A dealer is prohibited from advertising a vehicle's purchase price unless the price is the full delivered purchase price, excluding certain taxes, title fees, and any freight or dealer processing charges. The full price has to be printed in the largest price-related font found in the advertisement. *Chapters 322 and 323* repealed the presumption that an advertisement is not false, deceptive, or misleading if it complies with federal law.

### **Professional Responsibility**

#### **Locksmiths**

In response to complaints to the Better Business Bureau about locksmiths significantly overcharging consumers and companies posing as locksmiths by using local phone numbers and fake street addresses, *Chapters 551 and 552 of 2009* required businesses providing locksmith services in Maryland to be licensed by the Secretary of Labor, Licensing, and Regulation by July 1, 2010. Criminal background checks and photo identification are required of the business owner and each employee. The Secretary may issue licenses only to applicants who have a fixed business address. Thus, licenses may not be granted for an address that is a hotel or motel room, a motor vehicle, or a post office box. The owner of a business must issue a photo identification card to each employee who provides locksmith services on behalf of the business, and employees are required to display the card while providing services on behalf of the business. Licensees must display their license conspicuously at the place of business and any advertisements, business cards, or other public notifications must include the name and license number of the licensed locksmith.

*Chapters 551 and 552* established violations and penalties related to the provision of locksmith services for licensed and nonlicensed individuals; established invoice and recordkeeping requirements for locksmiths; and required the Secretary to report to specified committees of the General Assembly assessing the appropriateness of competency-based credentials for licensed locksmiths and the nature and number of complaints regarding locksmiths.

*Chapters 81 and 82 of 2010* made adjustments to the Maryland Locksmiths Act. According to the Attorney General, the definition of fixed business address in *Chapters 551 and 552*, in that the location must be in Maryland, violates the Commerce Clause of the U.S. Constitution. Licensed locksmiths may now maintain their fixed business address outside the State; however, they must make required records available for inspection by DLLR after receiving reasonable notice.

DLLR has advised that, because a necessary appropriation for the locksmith licensing program has not yet been made, licensure of locksmiths will not begin by July 1, 2010.

### **Collection Agencies**

A person is required to be licensed by the State Collection Agency Licensing Board before doing business as a collection agency. *Chapter 472 of 2007* expanded the definition of collection agency to include a person who collects a consumer claim that was in default when it was acquired, thereby subjecting approximately 40 known debt purchasers to State regulation. It specified qualifications for licensure, clarified the grounds for denial of an application, and established the right to a hearing before the board for persons denied a license. Grounds for reprimanding a licensee or suspending or revoking a license were also clarified and extended to include specified fraudulent or unscrupulous activity by an owner, director, officer, member, partner, or agent of the licensee.

In 2010, the board asked for additional resources to conduct its work. The license fee for a two-year license, \$400, had not been increased since the board was established in 1996 and did not recoup the costs the board incurs in regulating licensees. Thus, *Chapter 149 of 2010* repealed the \$400 statutory fees for new and renewal collection agency licensees and required the board to establish fees by regulation. A new fee for the investigation of prospective collection agency licensees was also authorized. Fees for new licensees and renewal licensees may not exceed \$900 for every two-year licensing term. Any fees established by the board have to be reasonable, cover the actual direct and indirect costs of regulating collection agencies, and be published by the board.

### **Employment Agencies**

An employment agency is an entity that obtains an employee for another person, obtains employment for a client, or provides information that enables a client to gain employment. These agencies do not include businesses that directly employ individuals to provide part-time or temporary services. An employment agency is required to submit a penal bond of \$7,000 to the Commissioner of Labor and Industry as payment for any damages caused by the agency's deceit, fraud, misrepresentation, or misstatement. *Chapters 434 and 435 of 2008* authorized the commissioner to initiate an investigation or investigate a complaint that an employment agency has failed to submit a penal bond. The commissioner may require an employment agency to either submit the required bond or provide information showing that it is not required to comply with bonding requirements; the commissioner may then terminate proceedings or schedule a hearing. The commissioner may impose a civil penalty of between \$500 and \$1,000 for each

violation identified during the hearing as well as for each failure to comply with an order or failure to submit a timely response.

### **Office of Cemetery Oversight**

The Office of Cemetery Oversight, which is housed within DLLR, regulates cemeteries and associated burial goods sales under the Maryland Cemetery Act. The office is also subject to periodic review under the Maryland Program Evaluation Act. The office was evaluated in 2005; the “sunset review” made several recommendations, including extending the office’s July 1, 2007 termination date. Chapter 348 of 2006 incorporated some recommendations from that review but maintained the termination date of the office. To assist in deliberations during the 2007 session, the sunset review was updated in 2006.

*Chapter 348 of 2007* implemented several of the updated recommendations related to the office and the Maryland Cemetery Act, including extending the termination date of the Office of Cemetery Oversight by six years to July 1, 2013, with another evaluation prior to July 1, 2012. The director of the office was required to conduct an inventory of cemeteries and maintain lists of registered individuals and permitted businesses to compare with the inventory to assess compliance with registration and permitting requirements. The director also had to provide periodic status reports to the General Assembly. Certain conveyance and acreage limitations were also extended to unregistered individuals and businesses. The Advisory Council on Cemetery Operations had to study the issue of abandoned and neglected cemeteries in the State. In addition, the Act required the director, in consultation with the advisory council, to study and develop a legislative proposal on the preconstruction sale of garden and mausoleum crypts.

In 2010, the office asked the General Assembly to give it additional power to regulate the sale of preneed goods and services, a common practice in the death care industry. Preneed contracts allow individuals to pre-purchase these items and services before their death or the death of a loved one. Under State law, once a buyer has paid half of the preneed contract price, the seller must put in trust the buyer’s remaining payments (the second 50% of the total preneed contract price) as the seller receives the payments. Within 30 days of receiving the buyer’s last payment, the seller must ensure that the trust is funded at 55% of the total contract price. *Chapter 150 of 2010* gave the director the statutory authority to require sellers of preneed goods and services to correct any such underfunding, including interest due to a preneed trust fund. Previously, if a seller failed to make the appropriate deposits, the director had no direct statutory authority to compel the seller to correct any such underfunding.

### **Public Service Companies**

During the 2007-2010 term, the General Assembly spent a great deal of time on issues relating to public service companies, primarily in the areas of electricity and related energy policy issues, including energy efficiency and conservation, solar renewable energy, and net energy metering. Other areas that were addressed concern Voice over Internet Protocol Services, third-party vendor billing, and underground facilities.

## **Electricity Rates, Regulation, and Customer Choice**

### **History**

Effective July 2000, the Maryland Electric Customer Choice and Competition Act of 1999 restructured the electric utility industry in the State to allow electric retail customers to potentially shop for electric power from various electric suppliers. Implementation of the Act was predicated on the supposition that the emergence of a competitive retail market would put downward pressure on prices and provide consumers with lower cost power. Before restructuring, the local electric utility, operating as a regulated, franchised monopoly, supplied all end-use customers within its service area with the three principal components of electric power service: generation, transmission, and distribution.

Separate restructuring settlements were agreed to in 1999 with the four large investor-owned electric companies that operate in the State: Baltimore Gas and Electric Company (BGE), Potomac Electric Power Company, Potomac Edison (doing business as Allegheny Power), and Delmarva Power and Light Company. Restructuring settlements were designed to implement electric restructuring as adopted by the General Assembly. With Maryland's restructuring of the electric power industry, generation of electricity is offered in a competitive wholesale marketplace. Prices for power supply are determined by electric suppliers operating in the market, rather than being determined by the Public Service Commission (PSC) in a regulated environment.

Merchant generators or unregulated utility affiliates now own most power plants serving the State. Consequently, residential, commercial, and industrial customers purchase power from electric suppliers; residential and small commercial customers have the additional option of being supplied standard offer service procured by the local electric company. Power supplies are purchased from electric suppliers, who either own generation assets or purchase power from the wholesale market which is overseen by the Federal Energy Regulatory Commission (FERC). This power is transported through the local utilities' transmission and distribution systems and delivered to retail customers.

Prompted by increases in the price of electricity and the slow development of a competitive market for residential electricity supply, the General Assembly convened in special session on June 14, 2006, to consider comprehensive legislation to address electric industry restructuring, standard offer service, rate stabilization plans, and the makeup of PSC. Although Governor Robert L. Ehrlich, Jr. vetoed the resulting legislation on June 22, the General Assembly overrode the veto on June 23, enacting comprehensive energy legislation as Chapter 5 of the 2006 special session.

Chapter 5 required PSC to complete several reports to assist the General Assembly in assessing the impact of electric restructuring on the State and in altering it for the benefit of consumers. PSC was required to study actions taken to implement restructuring and study the impact of potential changes such as reregulating electric generation or allowing local aggregation. The majority of the studies required by the bill were not completed by the start of

the 2007 legislative session, leaving much uncertainty as to the ideal structure of the electric industry in the State. Thereafter, a majority of the membership of PSC was replaced by newly elected Governor Martin J. O'Malley.

### **2008 PSC Proceedings and Reports**

Chapter 5 of the 2006 special session and *Chapter 549 of 2007* required PSC to conduct studies and complete reports to assist the General Assembly in assessing the status of electric restructuring on the State. In particular, *Chapter 549* required PSC to initiate new proceedings to review and evaluate certain requirements of Chapter 5, including the review and evaluation of any orders that were issued under the 2006 enactment. The Act also required PSC to conduct additional studies and complete reports on electric industry reregulation, assess the availability of adequate transmission and generation facilities to serve the electrical load demands of all customers in the State, and consider the implications of establishing an office of retail market development and establishing a long-term goal for energy efficiency and conservation, among many other matters.

A preliminary report identifying the issues relating to options for reregulation as required by Chapter 5, including discussion of costs and benefits of returning to a regulated electric supply market was due December 1, 2007. A final report containing the complete set of evaluations, findings, and recommendations required under Chapter 5, as amended by *Chapter 549*, was due December 1, 2008.

In the December 2007 interim report, PSC stated that Maryland faced a serious reliability concern in the 2011-2012 timeframe. The lack of new generation in the State, coupled with inadequate transmission capability and growing demand meant Maryland faced the prospect of brownouts or even rolling blackouts on hot summer days in 2011 and 2012. In January 2008, PSC issued another report that, in part, asserted that the 1999 PSC order approving the 1999 BGE settlement resulted in unforeseen financial gains to BGE. The report concluded that, had foresight and the actual cost and benefits of the settlement been properly weighed, under the then-current PSC, the BGE settlement might not have been found to be in the public interest. Soon after that report was issued, and for a number of reasons, Constellation Energy gave the State notice that the company would abandon the standstill agreement entered into after the enactment of Chapter 5, and shortly after that agreement terminated, the State and Constellation Energy sued each other, as explained below.

In December 2008, PSC, at a cost of approximately \$2 million, completed a study of the efforts for new generation and possibilities for reregulation. In this report PSC outlined various options for "reregulation" considering tradeoffs among direct costs, risks, and benefits. PSC concluded that it would not recommend returning the existing generation fleet to full cost-of-service regulation under which the ratepayers bear all prudently incurred costs to own and operate a generation plant, plus a rate of return, in light of the costs, risks, and likely disruptions that might result from acquiring the plants. The study valued only the impact of the cost of purchasing the assets for fair market value of one service territory relative to ratepayer



benefits and did not attempt to quantify the complexities and risks that might result in added costs.

Instead, PSC recommended incremental, forward-looking reregulation when appropriate. Other options considered in the report focused on measures to mitigate price volatility for residential consumers that included directing utilities to enter into long-term contracts for new generation, establishing a State power authority to initiate power projects, adopting integrated resource planning to coordinate a variety of efforts, and aggressively intervening in proceedings of FERC to shape PJM Interconnections, LLC (PJM) wholesale market policies.

### **2008 Constellation Settlement**

*Chapter 133 of 2008* was introduced as part of a 2008 settlement agreement to resolve pending litigation and other disputed matters between the State of Maryland, certain State officials, and various Constellation Energy Group, Inc. companies, including BGE. The Attorney General and Governor O'Malley had filed suit in the Baltimore City Circuit Court asking the court to find the credits to BGE customers specified in Chapter 5 to be constitutional and legal acts of the General Assembly. Constellation Energy Group had filed suit in federal court to affirm BGE's 1999 settlement agreement that implemented electric restructuring in the BGE service territory. The latter suit sought to prevent what was alleged to be an unconstitutional taking of the \$386 million that Chapter 5 had required to be paid or otherwise credited to BGE's residential customers.

In 1999, PSC adopted a settlement establishing a restructuring plan for BGE. The plan included rate reductions and rate freezes, capped BGE's responsibility for Calvert Cliffs nuclear decommissioning costs, unbundled electric rates, and provided for the transfer or sale of generation facilities. The agreement also provided BGE with after-tax transition costs of \$528 million to be recovered by customers by June 30, 2006.

Chapter 5 required BGE to credit \$18.7 million in annual nuclear decommissioning charges for 10 years. The amount totals to \$186.6 million over the 10-year period. BGE also was collecting \$18.7 million from industrial, commercial, and residential customers and redistributing this total amount to residential customers as a credit, resulting in a reduction in residential rates. The remaining \$200 million of the total \$386 million of rate relief for residential customers was from a suspension of the collection of the residential return component of the administrative charge collected by BGE for providing standard offer service (deemed to be an annual value of \$20 million for 10 years).

In the 2008 settlement agreement, all parties acknowledged and agreed that the terms of the agreement were to be subject to enactment of conforming legislation. The parties agreed on specified issues, including Calvert Cliffs decommissioning, a \$187 million BGE electric rate credit to residential customers (approximately \$170 for each of BGE's 1.1 million residential customers), the terms of collection of the return component of BGE's residential standard offer service, resolution of ongoing PSC proceedings, and elimination of PSC's obligation to prepare certain final reports to the General Assembly. When enacted, *Chapter 133*, which incorporated these terms in legislation, sealed the agreement.

The Act incorporated into Maryland law oversight of public utility holding companies derived from the federal Energy Policy Act of 2005, which granted states the right to oversee the operations of utilities' parent companies as part of the repeal of the federal Public Utility Holding Company Act of 1935. In order to enhance the ability of Constellation to attract capital investment for development of generation in the State, the Act established as a "safe harbor" the acquisition of up to 20% of the capital stock of the parent company without requiring prior PSC approval. However, **Chapter 133** specifically asserted the authority of PSC to investigate and take action to preserve the regulated utility, BGE, regardless of how much or little stock an acquiring entity owned, if the acquiring entity were found to exercise substantial actual influence over the operation of the regulated utility. The Act specifically applied strong State merger oversight to acquisition of a gas and electric company or its parent, and required PSC to review its ring fencing provisions each time it reviewed a merger or acquisition of an electric company, gas company, or gas and electric company.

**Chapter 133** deemed the ratepayers' obligations for decommissioning expenses for Calvert Cliffs to be satisfied. Once the original term of decommissioning payments under the 1999 settlement agreement ceases in 2016, ratepayers will be entirely free from liability for nuclear decommissioning (valued at \$5.2 billion and a savings to ratepayers of \$1.5 billion). That liability will rest with the plant's owner, Constellation Nuclear. The Act restored residential ratepayer credits relating to the residential return component that Constellation challenged in its suit, although the credits were suspended for two years to cover certain cash flow issues. The Act also limited the ability of BGE to file and obtain a rate increase for its distribution services, which had not increased since 1993. Any increase could not take effect until October 2009 and would be limited to 5%, absent a specific PSC finding to the contrary.

### **2009 Proposal to Restructure Electricity Markets**

Faced with continuing dissatisfaction with the high cost of electricity, the General Assembly spent much of the 2009 session debating the regulatory and economic structure of the State's electricity markets, and options for altering that structure. **Senate Bill 844 of 2009 (failed)** would have established an integrated resource planning process similar to the process that was in place prior to electric restructuring in 1999 and would have required PSC to initiate a proceeding to investigate the electricity needs of the State. In this proceeding, PSC would have been required to consider whether to direct the construction of one or more generation facilities and the appropriate electric capacity and fuel source. The bill would also have required PSC to consider if it should require additional energy efficiency, conservation, and demand response measures. Each electric company would have been required to develop and submit long-range plans regarding electricity needs and the means to meet those needs.

Based on the evaluation of the long-range plans, the bill would have required PSC to order construction of new electric generation facilities if this was deemed to be in the public interest. Any new generation facilities constructed in the State, as directed by PSC, would have been operated under cost-of-service regulation principles. Instead of ordering an electric company to construct an electric generating facility, PSC would have had the option to require an electric company to procure the necessary electricity through (1) a bilateral contract with another

person for all or part of the output of a new generation facility; or (2) a competitive bidding process in which the electric company would solicit bids for all or part of the output of a new generation facility. Electricity sold to residential and small commercial customers would have been regulated under cost-of-service regulation principles. PSC would have also been required to complete a plan for transitioning residential and small commercial customers to a regulated market for electricity. PSC would have been required to implement a program to require electric companies to offer to its residential and small commercial customers the option to purchase green electricity supply.

*Senate Bill 844* would have excluded on-site generation facilities; waste-to-energy facilities; facilities with a generating capacity of 70 megawatts or less; and eligible customer generators under the net energy metering program. The bill also would have exempted generation facilities owned or controlled by local governments and small rural electric cooperatives. The bill specified that a generating facility that had submitted an application for a certificate of public convenience and necessity to PSC before July 1, 2009, would not be affected by the bill and could be constructed and operated as merchant generation. However, these facilities would have been allowed to “opt in” and operate a planned generating facility under cost-of-service regulation.

### **2010 Proposals for Retail Competitive Market Development**

During the 2010 legislative session, proposed legislation placed more emphasis on advancing the competitive market for electricity in the State than on reregulating the market for electricity. *House Bill 1340 of 2010 (failed)* would have required each distribution utility to provide competitive suppliers with specified customer account information for its residential and small commercial customers under specified conditions.

*House Bill 1372 of 2010 (failed)* would have required PSC to provide specified user friendly information on electric customer choice on its web site. The bill also would have required PSC to develop and air public service announcements publicizing customer choice and to convene a workgroup to advise it on implementation of the bill. The workgroup would have made recommendations on additional customer education mechanisms on customer choice and established an appropriate schedule for developing, funding, and deploying customer education materials on customer choice.

With the separation of generation from regulated utility services and the elimination of price regulation of generation, PSC no longer actively determines the need for additional supply sources as it did before restructuring. A number of bills during the 2010 legislative session sought to address long-term energy planning in the State. Notably, *House Bill 522 of 2010 (failed)* sought to require PSC to provide estimates of the State’s long-term energy needs and identify all reasonable options for meeting these needs.

### **Consumer Protection**

*Electric Universal Service Program:* The Electric Universal Service Program (EUSP) was established under the Electric Customer’s Choice and Competition Act of 1999 to assist

low-income electric customers with their current and past due electric bills and to implement energy efficiency measures to reduce future electric bills. The Act required PSC to establish the program, make it available to low-income electric customers statewide, and provide oversight over the program which is administered by the Office of Home Energy Programs, the agency within the Department of Human Resources (DHR) responsible for several energy programs.

Throughout this term, electricity rate increases and higher energy costs generally, combined with the deterioration in the economy, have led to an increasing demand for energy assistance. Prior to fiscal 2009, Maryland limited the use of federal Low Income Home Energy Assistance Program (LIHEAP) funding to Maryland Energy Assistance Program (MEAP), which provides assistance for home heating from a variety of fuels. EUSP, which provides assistance for electricity costs, was funded entirely from State funds – both special and general. A substantial increase in LIHEAP funding combined with the requirement that states spend at least 90% of the recent annual LIHEAP allocation by the end of federal fiscal 2010, has led DHR to begin using LIHEAP funds for EUSP as well in fiscal 2009. Under **Chapters 127 and 128 of 2008**, beginning in fiscal 2009, 17% of proceeds from the Regional Greenhouse Gas Initiative (RGGI) carbon auction were allocated to support the EUSP program. The Governor's Budget Reconciliation and Financing Act of 2009, **Chapter 487**, increased the share of RGGI auction funds going to EUSP to up to 50% in fiscal 2010 and 2011. This reallocation was extended through fiscal 2012 by the Governor's Budget Reconciliation and Financing Act of 2010, **Chapter 484**.

**Chapters 305 and 306 of 2009** were emergency Acts which altered the restrictions on how DHR could provide EUSP benefits for low-income energy bill assistance. The requirement that assistance offered through EUSP meet at least 50% of determined need was removed. The Acts eliminated the \$1.5 million limit on the total amount of assistance that DHR could provide each year to retire arrearages for electric customers. The Acts also allowed qualifying customers to retire arrearages if they had not had an arrearage retired within the past seven years, rather than the former once-in-a-lifetime limitation on arrearage retirement. **Chapters 305 and 306** also extended from three to six months after the end of the fiscal year the time that unexpended bill assistance and arrearage retirement funds in the EUSP fund that were collected in the fiscal year should be used to provide additional assistance. The Acts specified that low-income weatherization funding, administered through the Department of Housing and Community Development, would be available only to assist residential electric customers, rather than being used for more general improvement projects. DHR is authorized to establish minimum and maximum benefits available to an electric customer through the bill assistance and arrearage retirement components. DHR is authorized to coordinate benefits under EUSP with benefits under MEAP.

**Chapters 305 and 306** also required PSC's annual report on EUSP to reflect the benefit changes specified in the Acts. PSC is required to include in its annual report the amount of money DHR received and was projected to receive for low-income energy assistance from any fund source. These fund sources include the Maryland Strategic Energy Investment Fund; MEAP; and any other federal, State, local, or private source.

For additional discussion of home energy assistance, see the subpart “Social Services – Generally” under Part J – Health and Human Services of this *Major Issue Review*.

***Termination of Electric and Gas Service:*** The Code of Maryland Regulations (COMAR 20.31.03.03) prohibits a utility from terminating gas or electric service to residential buildings if the forecasted temperature at 6 a.m. is not expected to exceed 32 degrees Fahrenheit for the next 24 hours. ***Chapters 345 and 346 of 2009*** prohibited a public service company from terminating electric or gas service to a residential customer for nonpayment on a day that the forecasted high temperature was 32 degrees Fahrenheit or below in that customer’s designated weather station area, similar to the regulation. In addition, the Acts prohibited a public service company from terminating electric service to a customer on a day that the forecasted temperature was 95 degrees Fahrenheit or higher in that customer’s designated weather station area. Each public service company that provided electric or gas service was required to designate weather station areas within its service area for use in administering weather-related restrictions on service terminations to residential customers. PSC was required to adopt regulations to implement the Acts.

### **Reliability and Constraints in Maryland’s Electricity Supply**

Electric restructuring was intended to bring increased efficiencies to the electric utility industry, resulting in lower overall costs for industrial, commercial, and eventually residential customers. The result has been quite different. Growth in demand based on increasing population, as well as the proliferation of new devices requiring electricity has outstripped any efficiencies created by restructuring, at least as to the residential sector. This demand, coupled with the lack of any substantial new generating capacity in the State, as well as constrained transmission facilities and little in the way of substantial increase in transmission capacity has led the State to the brink of threatened brownouts during times of peak demand as soon as 2011.

For several years, the transmission system, as regulated by FERC and operated regionally by PJM, has been inadequate to allow the unrestrained importation of cheaper electricity from coal based plants in the Ohio River valley, both on economic and physical grounds. The response by FERC has been to impose capacity surcharges on electricity transmitted into central Maryland, in hopes of spurring development of additional transmission facilities. The response by PJM has been twofold – imposition of locational marginal pricing under which electricity is priced as a commodity based on a continuous auction of operating plants, with the final resulting price based on the bid of the most expensive plant actually dispatched to serve the load, adjusted for delivery into a constrained area; and an explicit forward looking capacity market, the reliability pricing mechanism, in which electricity providers bid to provide various forms of supply capacity in future years, and for which electricity customers pay.

In recent years, there has been some evidence that electricity suppliers who own and develop “iron in the ground” – physical power plants and transmission lines – have started to respond to some or all of these federal and regional incentives, though the timeframe for most of these new or expanded facilities extends beyond critical congestion effects in Maryland. Between permitting and construction, neither a substantial base load power plant nor a high

capacity transmission line can reasonably be constructed in less than five years, with many proposals expected to take twice as long. In addition, all these pricing mechanisms have contributed to raising the retail price of electricity in constrained areas – such as central Maryland and the Eastern Shore – and all remain out of the control of Maryland policymakers and regulators.

### **2008 Proposals for Energy Efficiency and Conservation and Renewable Energy**

Faced with electricity prices increasing due to factors outside of State control, and with the possibility of rolling brownouts within as little as three years, the Administration, PSC, and the Maryland Energy Administration (MEA) worked on legislative proposals to address both short-term and long-term issues of reliability and capacity within the legal jurisdiction of the State. Issues and solutions for reliability and capacity of the State's electricity system must address one or more of the three basic components of that system – generation, transmission, and demand. Transmission is primarily a federal issue, other than siting authority for facilities located in the State. Generation may be addressed through the incentive payment system in PJM or by any of several options on the State level. Demand may be addressed through energy efficiency and conservation – which are arguably the quickest acting and cheapest alternatives to building new supply, though they are also fraught with issues of reliable quantification and implementation.

The administration's suite of legislative proposals in the 2008 session addressed both the generation of and the demand for electricity. The three principal proposals were "Regional Greenhouse Gas Initiative – Maryland Strategic Energy Investment Program," *Chapters 127 and 128 of 2008*; "EmPOWER Maryland Energy Efficiency Act of 2008," *Chapter 131 of 2008*; and "Renewable Portfolio Standard Percentage Requirements – Acceleration," *Chapters 125 and 126 of 2008*. The first two proposals addressed supply concerns, through promotion of energy efficiency and conservation, while the last addressed diversity of generation.

***Maryland Strategic Energy Investment Program and Fund:*** Under the Healthy Air Act, enacted by Chapters 23 and 301 of 2006, Maryland joined the RGGI compact to limit greenhouse gas emissions in the participating states. Under that compact, Maryland participated in auctions of carbon dioxide emissions allowances starting in September 2008. The State's primary sources of carbon dioxide emissions are power plants fired by coal and natural gas and industrial facilities such as steel mills and brick yards.

Under pre-2008 law, RGGI auction proceeds were to be paid into the Maryland Clean Energy Fund, which the Maryland Department of the Environment used to administer its federally delegated air quality control programs. That fund, however, had a cap of \$750,000, beyond which excess monies reverted to the general fund. The RGGI compact specifies the permissible uses of auction proceeds, and limited their application to general expenditures. Accordingly, the State needed a separate special fund to receive RGGI auction proceeds, which were estimated to yield between \$80 and \$140 million each year.

*Chapters 127 and 128* established a Maryland Strategic Energy Investment Program and Fund administered by MEA. The program applies proceeds from the sale of RGGI carbon

dioxide allowances to specified purposes, including low-income energy assistance, energy efficiency and demand response programs, and ratepayer relief. The stated purpose of the fund is to decrease energy demand and increase energy supply to promote affordable, reliable, and clean energy to fuel Maryland's future prosperity. The Acts repealed the Maryland Renewable Energy Fund and redirected revenues formerly paid into that fund to the new fund, along with RGGI auction proceeds. The Acts specified allocations from the fund, established a related advisory board, and established planning and reporting requirements. Finally, the Acts modified provisions relating to the Maryland Clean Air Fund by segregating RGGI proceeds from it and by raising to \$2 million the cap before reversion to the general fund.

The Acts established specified duties for MEA with respect to managing, supervising, and administering the fund. Among other matters, MEA was required to adopt regulations to implement the program and to ensure that fund resources would be used only to carry out the purposes of the program.

MEA is required to use the fund to:

- invest in the promotion, development, and implementation of cost-effective energy efficiency and conservation programs, projects, or activities; renewable and clean energy resources; climate change programs; and demand response programs designed to promote changes in customer electric usage;
- provide targeted programs, projects, activities, and investments to reduce electricity consumption by low-income and moderate-income residential customers;
- provide supplemental funds for low-income energy assistance to the EUSP Fund;
- provide residential customers with rate relief by offsetting electricity rates of residential customers, including an offset of surcharges imposed on ratepayers for utility energy efficiency programs;
- provide grants, loans, and other assistance and investment as necessary and appropriate;
- implement energy-related public education and outreach initiatives regarding energy consumption and greenhouse gas emissions; and
- pay the expenses of the program.

The Acts specified that compliance fees and other revenues formerly paid into the Maryland Renewable Energy Fund that were redirected to the new fund must be used in the same manner as provided by the then-current Renewable Portfolio Standards (RPS) law. Other monies, in particular RGGI proceeds, are to be allocated as provided in Exhibit H-1.

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**Exhibit H-1**  
**Maryland Strategic Energy Investment Fund Allocations**

Low-income assistance through EUSP and related programs	17.0%
Residential rate relief	23.0%
Energy efficiency, conservation, and demand response	at least 46.0%
Renewable and clean energy, climate change, and energy-related public education and outreach	up to 10.5%
MEA administration	up 3.5%, but not more than \$4.0 million
<b>Total</b>	<b>100.0%</b>

EUSP: Electric Universal Service Program

MEA: Maryland Energy Administration

Source: Department of Legislative Services

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Of the allocation for energy efficiency, conservation, and demand response programs, at least one-half were required to target the low-income residential sector with no cost to participants and the moderate-income residential sector.

By December 15, 2008, MEA was required to develop a plan for expenditures from the fund for fiscal 2009 and 2010. By September 1, 2009, and every three years thereafter, MEA is required to develop a plan for expenditures covering the next three fiscal years. After holding public meetings in conjunction with the development of a plan, MEA is required to submit the plan to the advisory board for review. MEA also is required to regularly disclose specified summary information on any contract that encumbers \$100,000 or more from the fund. The Acts also established specified requirements for MEA with respect to monitoring and analyzing program impacts and outcomes.

For discussion of some of the environmental aspects of these Acts, see also the subpart “Environment” in Part K – Natural Resources, Environment, and Agriculture of this *Major Issues Review*.

**EmPOWER Maryland Energy Efficiency and Conservation Programs**

During an energy seminar sponsored by MEA in July 2007 in response to concerns of reliability and constraints in Maryland’s electricity supply, Governor O’Malley announced a State goal of reducing “15 by 15” – 15% of electricity demand from State facilities by 2015 and an aspirational goal of reducing per capita electricity demand statewide by 15% by 2015, based



on 2007 levels, through energy efficiency and conservation efforts. The administration then sought to solidify these goals through legislation.

**Chapter 131 of 2008**, the EmPOWER Maryland Energy Efficiency Act of 2008, required electric companies to procure and provide customers with energy conservation and energy efficiency programs and services that are designed to achieve targeted electricity savings and demand reductions for specified years through 2015. Electric company plans are required to include program descriptions, anticipated costs, projected electricity savings, and other information PSC requested. Electric companies are required to consult with MEA regarding cost recovery, program design, and adequacy to meet the target reductions. PSC is required to review the plans for adequacy and cost-effectiveness in achieving the electricity savings and demand reduction targets.

Using 2007 as a base year, the Act established a per capita State goal of achieving a 15% reduction in per capita electricity consumption and a 15% reduction in per capita peak demand by the end of 2015. Beginning with the 2008 calendar year and each year thereafter, PSC is required to calculate the per capita electricity consumption and peak demand for the year. On or before December 31, 2008, PSC, to the extent it determined that cost effective energy efficiency and conservation programs are available for each affected class, required electric companies to procure and provide customers with a cost effective demand response programs that were designed to achieve targeted electricity savings and demand reduction through 2015. Utility-based reductions of 5% are required in both electricity consumption and peak demand by 2011, and utility programs are required to reduce electricity consumption by 10% by 2015. Additional 2015 per capita reductions in electricity consumption of 5% are to be achieved independent of the Act through MEA efforts to obtain the overall 15% reduction in electricity consumption in 2015.

Electric companies were required to submit plans for obtaining the targeted reductions in July 2008, and every three years following, and to provide annual updates on progress. PSC is required to monitor progress to achieve the best possible results and could require an electric company to include specific measures designed to achieve the targeted reductions.

### **Renewable Energy Portfolio Standard**

Maryland's Renewable Energy Portfolio Standard was established in 2004 in order to recognize the economic, environmental, fuel diversity, and security benefits of renewable energy resources; establish a market for electricity from those resources in Maryland; and lower consumers' cost for electricity generated from renewable sources. RPS is a policy that requires suppliers of electricity to meet a portion of their energy supply needs with eligible forms of renewable energy. An electricity supplier must meet RPS by accumulating "renewable energy credits" created from various renewable energy sources classified as Tier 1 and Tier 2 renewable sources. An electricity supplier must pay an alternative compliance payment (ACP) for any shortfall in meeting RPS. For most renewable sources, the percentages of RPS gradually increase while ACP remains constant.

Owners of renewable generating facilities sell renewable energy credits associated with their facilities and the payment received for those renewable energy credits helps to offset a portion of the installation costs. Renewable energy credits may be purchased and traded in an open exchange, allowing electricity suppliers to purchase renewable energy credits directly from generators or through a third-party reseller.

**RPS Acceleration:** Although Maryland's RPS was considered progressive when first adopted in 2004, by 2008, several of Maryland's neighboring states had adopted more aggressive compliance schedules and fees making Maryland's system no longer considered as effective in spurring local deployment of renewable generation sources.

**Chapters 125 and 126 of 2008** sought to increase the diversity of generation sources available to Maryland customers by increasing the RPS percentages and compliance fees, while modestly shrinking the area within which renewable energy credits might be created to satisfy Maryland's RPS. These administration proposals accelerated the increase in Tier 1 percentage requirements of the RPS to 20% in 2022 and beyond. Percentage requirements began to accelerate beginning in 2011. Effective January 1, 2011, Tier 1 compliance fees rise to \$0.04 per kilowatt-hour, from \$0.02, and the geographic scope in which renewable resources could be obtained for compliance is restricted. Through December 31, 2018, however, an electricity supplier that demonstrates to PSC that the compliance cost for obtaining nonsolar Tier 1 renewable energy credits exceeds 10% of the supplier's total in-state revenues could defer the scheduled increase in the RPS percentage for a year. The RPS acceleration legislation was acknowledged to involve a continuing charge to residential customers, although it was intended to be offset by savings developed through the Maryland Strategic Energy Investment Program and the EmPOWER Maryland Program.

### **Solar Power**

The General Assembly twice turned its attention to the promotion of solar generation under RPS during the term.

**Creation of a Solar Band:** After years of discussion about the role of solar versus other forms of renewable energy under RPS, **Chapters 119 and 120 of 2007** revised the 2004 law for RPS to include a specific solar carve-out within Tier 1, requiring that at least 0.005% of electricity in 2008 be from solar generation increasing to at least 2.0% in 2022. The Acts also increased total Tier 1 requirements by the amount of the added solar component. Then, as noted above, **Chapters 125 and 126** amended RPS by increasing the percentage requirements of the Tier 1 RPS to equal 20% in 2022 and beyond.

The solar band of RPS under **Chapters 119 and 120** differed from nonsolar RPS by starting with a high initial ACP, \$0.45 per solar renewable energy credits in 2008, gradually decreasing to \$0.05 per solar renewable energy credits in 2023 and beyond. As the solar percentages of RPS increase, the solar ACP decreases – offsetting the financial impact of increased compliance requirements in later years. Solar ACP payments are directed to the Maryland Strategic Energy Investment Fund administered by MEA and used to provide financial assistance for the deployment of solar generation in the State.

**Chapters 119 and 120** required PSC to take certain steps to improve the State’s use of solar energy. As shown in Exhibit H-2, updated RPS requirements included increased amounts of Tier 1 renewable energy to match a required Tier 1 solar generation component, commonly known as a “solar band.” Beginning in 2012, the Acts also required that to be eligible for the Tier 1 solar requirements, the generating facility must be connected with the electric grid serving Maryland. Through 2011, an electricity supplier may purchase solar renewable energy credits from other states only if offers for solar credits from Maryland grid sources are not sufficient to meet Tier 1 solar requirements for the compliance year and only to the extent of the shortfall of Maryland-grid solar credits.

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**Exhibit H-2**  
**Renewable Energy Portfolio Standard**  
**Under 2004 Law, Chapters 119/120 of 2007, and Chapters 125/126 of 2008**

<b>Compliance Year</b>	<b>Tier 1 RPS 2004 Law</b>	<b>Tier 1 RPS Chs. 119/120</b>	<b>Tier 1 Solar Component Chs. 119/120</b>	<b>Tier 1 RPS Chs. 125/126*</b>
2006	1.0%	1.000%		1.000%
2007	1.0%	1.000%		1.000%
2008	2.0%	2.005%	0.005%	2.005%
2009	2.0%	2.010%	0.010%	2.010%
2010	3.0%	3.025%	0.025%	3.025%
2011	3.0%	3.040%	0.040%	5.000%
2012	4.0%	4.060%	0.060%	6.500%
2013	4.0%	4.100%	0.100%	8.200%
2014	5.0%	5.150%	0.150%	10.300%
2015	5.0%	5.250%	0.250%	10.500%
2016	6.0%	6.350%	0.350%	12.700%
2017	6.0%	6.550%	0.550%	13.100%
2018	7.0%	7.900%	0.900%	15.800%
2019	7.5%	8.700%	1.200%	17.400%
2020	7.5%	9.000%	1.500%	18.000%
2021	7.5%	9.350%	1.850%	18.700%
2022	7.5%	9.500%	2.000%	20.000%

\*The solar component remains the same under Chapters 125/126 as specified under Chapters 119/120.

RPS: Renewable Energy Portfolio Standard

Source: Department of Legislative Services

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Under the Acts, the compliance fee for a shortfall in meeting the Tier 1 solar requirements started at \$0.45 per kilowatt-hour in 2008 and decreases by \$0.05 every two years to equal \$0.05 per kilowatt-hour in 2023 and later. Like other RPS compliance fees, the solar compliance fee was to be paid into the Maryland Renewable Energy Fund, which MEA administers, to be used only to make loans and grants to support the creation of new solar energy sources in the State. Other compliance fees were to support the installation of Tier 1 renewable sources of any type in the State. An electricity supplier could request a one-year delay of a scheduled increase in the Tier 1 solar requirement if the compliance fee that the supplier would be required to pay was greater than or equal to, or was anticipated to be greater than or equal to, 1% of the supplier's annual electricity sales revenue in Maryland. MEA was required to report on all amounts received through compliance fees, all expected receipts, and how the funds were spent by February 1 of each year. The Maryland Renewable Energy Fund was later replaced by the Maryland Strategic Energy Investment Fund under *Chapters 127 and 128 of 2008*, as discussed above.

In addition to requiring the use of solar energy in the State, *Chapters 119 and 120* also created additional incentives to encourage the development of renewable energy generating facilities. The Acts made clarifying changes to the net energy metering statute, discussed below. The Acts also provided that an eligible customer generator owns all renewable energy generation credits. The owner of a nonsolar renewable energy generating facility might choose to sell or transfer those credits in the owner's sole discretion.

If the owner of a solar generating facility chooses to sell the renewable energy credits the owner must first offer them for sale to an electricity supplier or electric company that shall apply them toward compliance with RPS. If an electricity supplier purchases solar renewable energy credits from a solar generating facility to meet the Tier 1 solar component of RPS, the electricity supplier must agree to buy the credits for a period of at least 15 years. For a solar generating facility of 10 kilowatts or less, the electric supplier must purchase the credits with a single initial payment. Under the Acts, PSC was required to develop a method for estimating annual production from a solar generating facility and a method to determine the rate for a payment made to a solar generating facility consistent with the duration of the contract.

Further, the Acts required PSC to convene a small generator interconnections workgroup to facilitate and encourage a simplified connection of small distributed generators to the grid in a manner that would ensure the safe and reliable operation of the grid. By November 1, 2007, PSC was required to revise the State's interconnection standards and procedures to be consistent with nationally adopted standards and procedures.

As part of its annual report due February 1, 2014, PSC must report its findings and recommendations for modification, if any, to RPS requirements based on results of RPS requirements through 2013. PSC must also determine the realized and projected availability of solar renewable energy credits in Maryland, whether intended goals of the RPS provisions are being met, consider the impact of RPS on developing renewable energy in the State, and consider the cost implications of continuing the RPS requirements beyond 2014.

**Solar Enhancement:** In order further to enhance the attractiveness of investment in solar generation, *Chapter 494 of 2010* increased the percentage requirements of RPS that must be obtained from Tier 1 solar energy sources each year between 2011 and 2016; increased ACP through 2016; and established additional reporting requirements for the PSC. The percentage of electricity in the State that must be supplied from Tier 1 solar sources is shown in Exhibit H-3. Exhibit H-4 shows the increased solar requirements under the Act as megawatt-hours of electricity.

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**Exhibit H-3**  
**Solar Renewable Energy Portfolio Standard and Alternative Compliance**  
**Payments Under Chapters 119/120 of 2007 (Prior Law) and**  
**Under Chapter 494 of 2010**

<b>Compliance Year</b>	<b>Tier 1 Solar Component <u>Chs.119/120</u></b>	<b>Tier 1 Solar Component <u>Ch. 494</u></b>	<b>Solar ACP <u>Chs. 119/120*</u></b>	<b>Solar ACP <u>Ch. 494</u></b>
2011	0.04%	0.05%	\$0.35	\$0.40
2012	0.06%	0.10%	0.35	0.40
2013	0.10%	0.20%	0.30	0.40
2014	0.15%	0.30%	0.30	0.40
2015	0.25%	0.40%	0.25	0.35
2016	0.35%	0.50%	0.25	0.35

\* The solar ACP remains the same under Chapters 125/126 as specified under Chapters 119/120.

ACP: Alternative Compliance Payment

Source: Department of Legislative Services

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The cost of complying with increased solar RPS and ACP is incurred by all electricity suppliers in the State and passed on, directly or indirectly, to all electric customers, including the State and local governments. As introduced by the Governor, the Act would have increased solar RPS and slowed the scheduled decrease in ACP through 2026 and cost electricity customers more than \$1.2 billion over that period. The General Assembly amended the Act to slightly reduce the increase in the solar RPS percentage requirement and return the solar RPS and ACP curves to current law beginning in 2017. Exhibit H-5 illustrates the cost of complying with the increased solar RPS under *Chapter 494* in its final posture. The exhibit assumes that 50% of the increased solar RPS is met through solar renewable energy credits and 50% is met through ACP, with the value of an SREC equaling 75% of ACP.

**Exhibit H-4**  
**Solar Renewable Energy Portfolio Standard in MWh and Alternative Compliance Payments in Dollars per MWh Under Chapters 119/120 of 2007 (Prior Law) and Under Chapter 494 of 2010**

<b>Compliance Year</b>	<b>Maryland Electricity Sales Forecast in MWh</b>	<b>Solar RPS Requirement in MWh Chs. 119/120</b>	<b>Solar RPS Requirement in MWh Ch. 494</b>	<b>ACP \$ per MWh Chs. 119/120</b>	<b>ACP \$ per MWh Ch. 494</b>
2011	64,808,000	25,923	32,404	\$350	\$400
2012	65,760,000	39,456	65,760	350	400
2013	66,406,000	66,406	132,812	300	400
2014	66,981,000	100,472	200,943	300	400
2015	67,457,000	168,643	269,828	250	350
2016	68,352,000	239,232	341,760	250	350

ACP: Alternative Compliance Payment  
RPS: Renewable Energy Portfolio Standard  
MWh: Megawatt-hours

Source: Public Service Commission; Department of Legislative Services

**Exhibit H-5**  
**Solar Renewable Energy Portfolio Standard Cost Increase Under Chapter 494 of 2010**  
(\$ in Millions)

<b>Compliance Year</b>	<b>Increase in ACP Payments</b>	<b>Increase in SREC Cost</b>	<b>Total Increase in Compliance Costs</b>
2011	\$1.9	\$1.5	\$3.4
2012	6.2	4.7	10.9
2013	16.6	12.5	29.1
2014	25.1	18.8	44.0
2015	26.1	19.6	45.7
2016	29.9	22.4	52.3
<b>Total</b>	<b>\$106.0</b>	<b>\$79.5</b>	<b>\$185.4</b>

Note: ACP from a given compliance year assumed to be paid in the following fiscal year. Totals may not add up due to rounding.

ACP: Alternative Compliance Payment  
SREC: Solar Renewable Energy Credits

Source: Department of Legislative Services

## Net Energy Metering

Net energy metering measures the difference between the electricity that is supplied by an electric company and the electricity that is generated by an eligible customer generator and fed back to the electric company over the eligible customer generator's billing period and bills the customer only for the difference. An "eligible customer generator" is a customer that owns and operates, or leases and operates, a qualifying electric generating facility that is (1) located on the customer's premises or contiguous property; (2) interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (3) intended primarily to offset all or part of the customer's own electricity requirements.

The net energy metering program provides a meaningful benefit to eligible customer generators because during times of peak generation, excess electricity is fed into the electric grid, and the customer generator is only charged for the net difference of electricity used each month. The practical effect is that customer generators are able to use the utility grid as battery storage, so excess energy produced at any given instant can be captured for later use. While not strictly limited to renewable energy sources, net energy metering is primarily used for solar and similar small-scale renewable generation.

**Program Expansion:** In addition to requiring the use of solar energy in the State, *Chapters 119 and 120 of 2007* expanded the size of the net-generator program from 34,722 to 1,500 megawatts, increased the allowed generating capacity of an electric generating system used by an eligible customer generator (or net generator) from 200 kilowatts to 2 megawatts, and allowed PSC to consider the generating capacity of a customer generator when determining whether to require the customer to install a dual meter. The Acts also provided that an eligible customer generator owns all renewable energy generation credits. The owner of a nonsolar renewable energy generating facility might choose to sell or transfer those credits in the owner's sole discretion.

**Qualifying Generating Facilities:** *Chapters 341 and 436 of 2009* expanded the definition of an eligible customer generator to include a customer that contracted with a third party that owned and operated eligible generation located on the customer's premises or contiguous property. This expansion could benefit local governments and commercial and residential property owners who would allow a third party to place solar panels or wind turbines on their property by allowing the property owner to benefit from net energy metering. As an example, a commercial business could allow a third party to install solar panels on the roof of a structure that is on or adjacent to the customer's property.

In addition, *Chapter 436* added micro combined heat and power (micro CHP) to the types of generation eligible for net metering. Micro CHP is defined as the simultaneous or sequential production of useful thermal energy and electrical or mechanical power not exceeding 30 kilowatts. Micro CHP can be installed in an individual home. An installation typically consists of a Stirling engine that converts natural gas into both electricity and heat. The electricity that the micro CHP engine generates can be used in the home and through net energy metering, and any excess generation can be fed into the utility grid. Waste heat from the

generator can be used for hot water and space heating in the home. Although micro CHP does not typically use a renewable energy source, dispersed generation such as micro CHP provides a meaningful benefit by alleviating congestion in electric transmission lines and lessening overall demand for electricity during periods of peak demand.

*Chapters 573 and 574 of 2010* added a fuel cell power system to the types of generation eligible for net metering. A fuel cell is defined as an integrated power plant system containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy. This may include an inverter and fuel processing system and other plant equipment to support the plant's operation or its energy conversion, including heat recovery. Although a fuel cell power system does not typically use a renewable energy source, distributed generation such as a fuel cell power system provides a meaningful benefit by alleviating congestion in electric transmission lines and lessening overall demand for electricity during periods of peak demand.

*Credits from Excess Generation:* Under pre-2010 law, an eligible customer generator could carry forward credits from excess generation, in the form of a negative kilowatt-hour reading, for up to 12 months or until the customer-generator's consumption of electricity from the grid eliminated that credit. At the expiration of the 12-month accrual period, any credits from excess generation reverted to the electric company and could not be recovered by the eligible customer-generator.

*Chapters 437 and 438 of 2010* altered the net energy metering program by changing the way an eligible customer-generator may accrue credits from excess generation from a kilowatt-hour (kWh) basis to a dollar basis. The Acts repealed the requirement that an accrued generation credit expires at the end of a 12-month period and requires that the value of generation credits be based on the prevailing market price of electricity in the PJM Interconnection energy market. The Acts also specified the conditions under which an electric company would be required to provide payment to an eligible customer-generator for excess generation credits. In adopting implementing regulations, PSC was required to consider a number of factors, including the technology available at each electric company and the appropriate value of generation credits.

The Acts also required PSC to convene a technical working group to address issues relating to the pricing mechanisms for different hours and seasons, meter aggregation, the transfer of generation credits or aggregation of generation among separate accounts, and to report to specified committees on the technical work group's recommendations.

### **Land-based Wind Facilities**

The licensing of new electric power plants and transmission facilities in the State is a comprehensive two-part process involving PSC and several other State agencies, primarily, the Department of Natural Resources and the Maryland Department of the Environment. PSC is the lead agency for licensing the siting, construction, and operation of power plants in the State through a certificate of public convenience and necessity (CPCN). A CPCN is a consolidated permit to construct and operate the power plant or transmission facility, obviating the need for



separate environmental permits. Except for certain on-site generation facilities, all applicants wishing to construct a new power plant in the State must apply to PSC for a CPCN. The CPCN process also preempts all local authority, including zoning.

During the CPCN process, the State agencies hold extensive discussions with interested parties such as local governments, environmental organizations, the company proposing to build the power plant, and individual citizens. The agencies assess and incorporate identified concerns in an evaluation. Before a CPCN may be issued for a proposed power plant, the State agencies provide PSC the results of the evaluation and a consolidated set of recommendations as to whether the proposed site is suitable and whether the proposed power plant can be constructed and operated in an acceptable manner.

The agencies also provide detailed recommendations on conditions that should be incorporated in the CPCN. These conditions may relate, for example, to minimizing detrimental impacts on air, surface, and groundwater quality; aquatic and terrestrial resources; cultural and historic resources; noise; and land use.

*Chapter 163 of 2007* allowed a land-based wind powered energy generating facility to be built without requiring a CPCN as long as certain conditions were met. The capacity of an exempt generating facility may not exceed 70 megawatts, and any excess electricity generated must be sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company. PSC must provide an opportunity for public comment at hearings within the county or municipal corporation where the generating station is proposed to be located. PSC must provide adequate notice of the hearing at the expense of the applicant.

### **Maryland Clean Energy Center**

In concert with increased efforts to promote the development of renewable energy sources, the General Assembly has acted to promote a clean energy industry in the State to develop technology and jobs needed for renewable energy deployment. *Chapter 137 of 2008* established a Maryland Clean Energy Center as a public corporation to generally promote and assist the development of the clean energy industry in the State; promote the deployment of clean energy technology in the State; and collect, analyze, and disseminate industry data. The Act also established a Maryland Clean Energy Technology Incubator Program in the center to promote entrepreneurship and the creation of jobs in the clean energy technology-related industry. The Act provided the center with bonding authority to fund its activities. For an additional discussion of the center, see the subpart “Economic and Community Development” of this Part H.

### **Telephone Services**

#### **Voice over Internet Protocol Services**

“Voice over Internet Protocol” (VoIP) services convert the voice signal from a telephone into a digital signal that travels over the Internet. If a call is placed to a regular telephone number, the signal is then converted back at the other end. A VoIP call can be placed from a

computer, a special VoIP phone, or a traditional phone using an adapter. In addition, new wireless “hot spots” in public locations such as airports, parks, and cafes allow a user to connect to the Internet and may enable a person to use VoIP services wirelessly.

Utility companies, including telephone companies in the State, are required to establish rates for their services that are just and reasonable. PSC must review and approve those rates to ensure that they are indeed just and reasonable. Providers of intrastate long distance services are also regulated by PSC, but PSC does not have any authority over interstate long distance. The rate-setting authority for interstate long distance services rests with the Federal Communications Commission (FCC). PSC does not currently provide regulatory oversight for VoIP services. FCC has made some rulings on VoIP services but has yet to adopt comprehensive regulation.

*Chapters 580 and 581 of 2007* removed regulatory uncertainty over deployment of VoIP over fiber optic telephone lines. The Acts precluded potential PSC authority, in the absence of FCC directive, to impose regulatory fees and certification requirements or require the filing or approval of tariffs for VoIP service. VoIP service providers came under the authority of the Consumer Protection Division of the Office of the Attorney General and are subject to generally applicable State and federal laws relating to public safety, consumer protection, and unfair and deceptive trade practices. The Acts also prohibited switching customers from tariffed service to VoIP without consent.

In addition, *Chapters 580 and 581* required PSC, with input from the division and the Office of the People’s Counsel, to monitor the number of consumer complaints received by State agencies regarding the provision of VoIP services in Maryland. If PSC determined that additional consumer safeguards are warranted, it may report its findings and recommendations to the General Assembly.

### **Third-party Vendor Billing**

Billing aggregators and clearinghouses provide billing and collection services to long distance carriers, independent telephone companies, information service providers, and many other service providers. These aggregators and clearinghouses accumulate service charges for a telephone customer from different service providers and transmit them to the local telephone company for inclusion in the customer’s local telephone bill. While usually legitimate, third-party vendor billing has also been widely used for fraudulent charges for services that were never ordered, authorized, received, or used.

Since at least the mid-1990s, PSC proceedings and legislation have dealt with abusive practices involving telephone services such as “slamming,” unauthorized changes in a telephone service or billing provider without a customer’s consent, and “cramming,” the practice of including charges for services that the customer has not authorized in the customer’s local telephone service bill. Chapters 543 and 544 of 1999 addressed “slamming,” but “cramming” had not previously been addressed by legislation or a final PSC order.

*Chapters 89 and 90 of 2010* addressed the latter practice. “Crammed” charges might appear on a customer’s bill as one-time charges or as recurring monthly charges for services to

which the customer had not subscribed or had inadvertently subscribed. Common cramming methods include sweepstakes entry forms, responses to telemarketing questionnaires, and collect call acceptance.

The Acts prohibited a third-party vendor or its billing agent from submitting charges to a telephone company or reseller unless the third-party vendor or billing agent first obtained an ordering customer's express authorization. This authorization is required to be separate from any solicitation material or entry forms for sweepstakes or contests and is required to include specified information about the ordering customer, the date of the authorization, and the provided services and charges. A third-party vendor or billing agent is required to retain a copy of the authorization for two years.

Under the Acts, a customer was no longer liable for third-party vendor billing charges unless the customer (1) had received notice that free blocking of third-party vendor billing might be available to the customer; and (2) was given access to itemized third-party vendor charges and the name and telephone number of the third-party vendor or its billing agent. A customer who disputed the charges in a timely manner is no longer liable for the charge unless the third-party vendor or billing agent provided a copy of the required authorization.

## **Underground Facilities**

The one-call system known as "Miss Utility" protects underground facilities in the State from inadvertent damage caused by demolition and excavation. The program requires owners of underground facilities, such as water and sewer mains, telephone, cable, and electric lines, and steam heating pipes, to register as members of the one-call system. The system provides contractors with a single point of contact, so that one notification suffices to mark the location of all known underground facilities in the vicinity of proposed demolition or excavation. Generally, public utilities, local governments, and other owners of underground public facilities must belong to a one-call system. *Chapter 635 of 2010* established a new Maryland Underground Facilities Damage Prevention Authority to oversee the system, expanded the class of facility owners that must participate in the system, and significantly updated the procedures for notification and work around underground facilities.

The Act required owners of underground facilities, which includes units of the State under the Act, to become members of the one-call system. On notice of a planned excavation or demolition, the owners must provide for the marking of their underground facilities. The Maryland Department of Transportation, its administrations, and the Maryland Transportation Authority are required to become members of the one-call system through a separate agreement.

The bill also established a Maryland Underground Facilities Damage Prevention Education and Outreach Fund to cover the costs of public education and outreach programs and the development of safety procedures to prevent damage to underground facilities. The special fund is administered by the authority and consists of civil penalties, investment earnings, and any other monies paid into the fund. The fund may be used to make grants to local governments or private entities consistent with the purposes of the fund.

## **Insurance Other Than Health Insurance**

During the 2007-2010 legislative term, the General Assembly passed legislation reforming the law governing property insurance in coastal areas of the State and addressed issues relating to practices of the title insurance industry in Maryland. In addition, a number of measures were passed to subject insurers and insurance producers to additional regulation. Further, passed legislation made changes to policy coverage for motor vehicle insurance, homeowner's insurance, medical professional liability insurance, and life insurance. Also, a regulatory framework was established for portable electronics insurance, and penalty provisions were expanded for surety insurers.

### **Property Insurance in Coastal Areas and Response to Hurricane Isabel**

Hurricane Isabel struck Maryland's shores on September 18, 2003, with damage from the event estimated at the time to total \$4 billion in Maryland. Many Maryland homeowners were dissatisfied with the handling of their Isabel-related claims under their homeowner's insurance policies, their flood insurance policies under the National Flood Insurance Program, or both.

Due to an increased risk of hurricane damage linked to rising ocean temperatures, a number of insurance companies, including Allstate, Liberty Mutual, Nationwide Mutual, and State Farm, decided to stop offering property insurance in Mid-Atlantic coastal areas, including many counties in Maryland. On February 11, 2008, the Maryland Insurance Commissioner announced a decision accepting Allstate's move to refuse to issue new homeowners' insurance policies in specific coastal areas, holding that the company's decision did not violate State law.

During 2007 and 2008 sessions, the General Assembly addressed insurance issues that arose from the response of insurers to Hurricane Isabel and the refusal of insurers to offer property insurance in coastal areas.

### **Omnibus Coastal Property Insurance Reform Act**

*Chapter 486 of 2007* created the Task Force on the Availability and Affordability of Property Insurance in Coastal Areas. The task force was charged with examining methods to ensure the continued availability and affordability of property insurance in coastal areas of Maryland. The task force's final report concluded that while it did not believe there is an issue of either availability or affordability of property insurance in the coastal areas of Maryland, it wanted to make sure this situation remains that way and that the market place remains stable.

*Chapter 540 of 2008* made numerous changes to the law governing property insurance in coastal areas of the State, as discussed in the task force's final report. Under *Chapter 540*, an insurer may not adopt an underwriting standard that requires a deductible that exceeds 5% of the "Coverage A – Dwelling Limit" of the policy in the case of a hurricane or other storm unless the Commissioner has approved the underwriting standard. If an insurer has adopted a percentage underwriting standard, the deductible may be applicable only beginning at the time that the National Hurricane Center of the National Weather Service issues a hurricane warning for any part of the State where the insured's home is located and ending 24 hours after termination of the

warning. *Chapter 540* also required an insurer to offer at least one actuarially justified premium discount on a policy of homeowner's insurance to a policyholder who submits proof of improvements made to the insured premises as a means of mitigating loss from a hurricane or other storm.

Under *Chapter 540*, insurers that use a catastrophic risk planning model or other model in setting rates or refusing to issue or renew homeowner's insurance because of the geographic location of the risk must file a description of the specific model with the Commissioner and explain the model to the Commissioner. In addition, the Act established procedures for insurers to implement plans of material reduction for the orderly reduction in coverage provided by homeowner's insurance policies.

Finally, *Chapter 540* required the Department of Housing and Community Development to (1) review current statewide building codes; (2) develop enhanced codes for coastal regions of the State that promote disaster-resistant construction in these regions; and (3) report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee on or before October 1, 2010.

### **Notice to Applicants for Homeowner's Insurance**

As a result of issues homeowners faced in seeking payment for loss from their homeowner's insurers in the wake of Hurricane Isabel, Chapter 388 of 2006 required homeowner's insurers and their insurance producers to provide applicants for homeowner's insurance with notices that state (1) that the standard homeowner's insurance policy does not cover losses from flood; and (2) any additional optional coverage that is not included in the standard homeowner's insurance policy but is available from the insurer to the applicant. An unintended consequence of Chapter 388, however, was that insurance producers were made subject to administrative penalties for actions outside their control. Insurance producers rely on the insurer to provide them with the required notices, and if an insurer does not do so within the time required by law, both the insurer and the insurance producer are in violation of the law and subject to administrative penalties.

To remedy this situation, *Chapter 576 of 2007* repealed requirements for an insurance producer to provide an applicant for homeowner's insurance with a notice that the standard homeowner's insurance policy does not cover losses from flood and a notice regarding additional available optional coverage. *Chapter 576* also provided that the statement an insurer must provide to an applicant about additional available optional coverage does not create a private cause of action.

## **Title Insurance**

### **Commission to Study the Title Insurance Industry in Maryland**

Title insurance regulation and the title insurance industry have come under heightened scrutiny, due in large part to a significant rise in property foreclosure rates. Much of the concern stems from cases in which title insurers have used illegal sales tactics. While property

purchasers are free to choose their own title insurance provider, in most cases purchasers defer to their real estate agent or mortgage lender. This has led to situations in which title insurers have sometimes provided kickbacks to these decision makers or developed other conflicts of interest.

*Chapters 356 and 357 of 2008* established a Commission to Study the Title Insurance Industry in Maryland staffed jointly by the Department of Labor, Licensing, and Regulation (DLLR) and the Maryland Insurance Administration (MIA), to make recommendations for changes to laws relating to the title insurance industry. Starting in 2008, the commission met to review issues relating to practices in the title insurance industry in Maryland, resulting in several legislative reforms discussed below.

### **Control over Trust Money**

In conjunction with DLLR, MIA has investigated problems and irregularities related to real estate transactions and found instances of mismanagement or misappropriation of escrow funds totaling more than \$5 million in 2008. In identifying specific regulatory gaps, MIA determined that bonding amounts required under statute were insufficient to protect consumers when a misappropriation of funds occurs. During the 2008 interim, the Commission to Study the Title Insurance Industry in Maryland discussed limiting the control of escrow funds received to licensed title insurance producers and increasing the amount of the required fidelity bond and surety bond or letter of credit.

*Chapter 361 of 2009* provided that only a licensed title insurance producer may exercise control over trust money, with exceptions for trust money entrusted to law firms or title insurers. The Act also increased from \$100,000 to \$150,000 the amount of the fidelity bond and the amount of the blanket surety bond or letter of credit that title insurance producers must maintain as a condition of licensure.

### **Title Insurance Reform**

During the 2008 and 2009 interims, the Commission to Study the Title Insurance Industry in Maryland conducted extensive hearings and discussions and heard testimony about rate setting, affiliated businesses, closing practices, and the use and qualifications of title insurance producer independent contractors (TIPICs). *Chapter 740 of 2010* addressed a number of major issues considered by the commission.

The Act prohibited a title insurance producer from using or accepting the services of a TIPIC unless the TIPIC is covered by the producer's fidelity bond, surety bond, or letter of credit, and expressly stated that a producer is the legal principal of the TIPIC and is liable for all of the TIPIC's actions, even unintentional conduct, within the scope of the TIPIC's employment.

*Chapter 740* also required MIA and DLLR to collaborate on a number of issues relating to title insurance and real estate practices. The agencies must jointly develop a "Title Insurance Consumer's Bill of Rights" that explains a consumer's rights and responsibilities in a real estate transaction closing and make that document available to the public. *Chapter 740* further required the two agencies to share information regarding complaints received involving real

estate closings and work collaboratively to track any patterns of problem transactions or licensees.

### **Reserve Requirements for Domestic Title Insurers**

The current national recession has placed financial strains on title insurance companies, in light of depressed home sales and property values that contribute to the lower pricing of and compensation derived from commissions on title insurance policies. As a result, a number of title insurance underwriters across the nation have found it necessary to redomicile in states with low reserve requirements. In order not to lose the State's last domestic title insurer, *Chapter 634 of 2010* altered the statutory reserve requirements for domestic title insurers and established gradually increasing paid-in capital stock and minimum surplus that a domestic title insurer must maintain. Under the Act, the mandatory statutory reserve or unearned premium reserve is decreased to 8% from 10%. *Chapter 634* also decreased from six years to three years, the schedule for release of excess reserves, starting in calendar 2010.

## **Regulation of the Insurance Industry**

### **Adoption of Regulations during Emergency**

In light of harm to consumers resulting from emergencies and disasters both locally and nationally, MIA determined that the Commissioner needed additional flexibility in an emergency to ensure that consumers are protected. *Chapter 63 of 2008* required the Commissioner to adopt regulations that may be applied when the Governor has declared a state of emergency or the President of the United States has issued a major disaster or emergency declaration. To activate a regulation, the Commissioner must issue a bulletin in the manner specified in the Act. The regulations may address (1) the submission of claims or proof of loss; (2) grace periods for payment of premiums and performance of other duties by insureds; (3) temporary postponement of cancellations, nonrenewals, premium increases, or policy modifications; (4) procedures for obtaining nonelective health care services; (5) time restrictions for filling or refilling prescription drugs; (6) timeframes applicable to an action by the Commissioner; and (7) any other activity necessary to protect the residents of the State.

### **Regulation of Injured Workers' Insurance Fund**

The Injured Workers' Insurance Fund (IWIF) administers workers' compensation claims for the State (for injured State employees) and provides workers' compensation insurance to firms unable to procure insurance in the private market. IWIF only writes policies in Maryland and is a major insurer with almost a one-third share of the market. Chapter 567 of 2000 and Chapter 22 of 2003 extended to IWIF provisions of the Insurance Article regulating examinations, risk-based capital standards, assets and liabilities, reserves, reinsurance, and impaired entities. However, the Commissioner was prohibited from taking any action (such as a corrective order) to enforce any of the insurance law provisions governing IWIF.

*Chapter 612 of 2008* subjected IWIF to additional regulation by the Commissioner. With the exception of rate making, rating, and rate review, the Act made IWIF subject to examination

and enforcement by the Commissioner in the same manner as other property and casualty insurers. **Chapter 612** also required MIA to (1) study the impact of subjecting IWIF to the provisions of law regarding rate making, rating, and rate review that are enforced by MIA for other property and casualty insurers; and (2) identify other provisions of law relating to consumer protections and financial soundness that are enforced by MIA and are applicable to other property and casualty insurers but are not applicable to IWIF.

### **Oversight of Financial Condition of Insurers**

During the 2007-2010 legislative term, the General Assembly passed legislation that increased the oversight of the financial condition of insurers by MIA.

**Analyses and Examinations of Insurance Entities: Chapter 110 of 2007** authorized the Commissioner to conduct an analysis of specified insurance entities and added an entity's financial condition to the list of items that the Commissioner may examine or analyze. Under **Chapter 110**, a document, material, or information that is obtained during specified examinations or analyses by the Commissioner (1) is confidential and privileged; (2) is not subject to the public records provisions of the Public Information Act; (3) is not subject to subpoena; and (4) is not subject to discovery or admissible in evidence in any private civil action. If the recipient agrees to maintain the confidentiality and privileged status of the document, material, or information, the Commissioner may share a document, material, or information obtained during an examination or analysis with other State, federal, or international regulatory agencies, the National Association of Insurance Commissioners (NAIC), or State, federal, or international law enforcement authorities.

**Risk-based Capital Standards:** NAIC has developed risk-based capital (RBC) standards as a measure of the capital surplus an insurer should retain in relation to its size and risk profile. RBC is calculated by applying factors to various assets, premiums, and company reserves. The factors applied in the capital requirements calculation are higher for items with the greatest underlying risk, and lower for safer items. To keep State law consistent with NAIC standards, **Chapter 375 of 2009** subjected property and casualty insurers to additional financial regulation by MIA and defined a company action level event for RBC reporting requirements. Under **Chapter 375**, a company action level event for a property and casualty insurer occurs when total adjusted capital (1) is greater than or equal to its company action level RBC; (2) is less than the product of its authorized control level RBC and 3.0; and (3) triggers the trend test calculation in the property and casualty RBC instructions

**Audits, Investments, and Operations of Insurers:** To better protect policyholders, allow Maryland to maintain its accreditation from NAIC, and provide consistency in the filing of financial reports and financial information, **Chapter 120 of 2010** increased the oversight tools available to MIA. **Chapter 120** specifically addressed NAIC requirements in the areas of:

- specifying criteria that nonlife insurers must consider with respect to investments in securities lending transactions;



- limiting to five years the length of time during which a partner in an accounting firm responsible for preparing an audited financial report for an insurer may act in the same or similar capacity for the insurer and the insurer’s subsidiaries or affiliates;
- authorizing the Commissioner to require an insurer, nonprofit health service plan, dental plan organization (DPO), managed care organization, or health maintenance organization (HMO) to file an audited financial report earlier than the statutory deadline, with 90 days’ advance notice; and
- specifying criteria against which an insurer’s financial condition and results of operations can be compared to determine if the insurer is operating in a hazardous financial manner.

*Chapter 120* also (1) modified the nonprofit health service plan audited financial reporting requirement; (2) moved up the date by which a DPO must file a statement of its financial condition; and (3) made the annual statement filing requirements and applicable penalties for a DPO consistent with requirements for other insurers.

### **Additional Requirements for Insurers**

***Slavery Era Insurance Policy Reporting:*** *Chapter 97 of 2009* required an insurer authorized to do business in Maryland to submit a report on slavery era insurance policies to the Commissioner by October 1, 2011. A “slaveholder insurance policy” is defined as a policy issued to or for the benefit of a slaveholder that insured against a slave’s injury or death. The required report must include information in the records of the insurer about each slaveholder insurance policy issued in the State by the insurer, or the insurer’s predecessor, during the slavery era (years prior to 1865). The insurer also must provide a copy of each document in the insurer’s records that relates to the information. The Commissioner is required to issue a report on the information and submit a report to the Governor and the General Assembly by April 1, 2012. Copies of the report must be made available to the public, published on MIA’s web site, and maintained at the law library of the University of Maryland School of Law.

***Insurance Fraud:*** In the past, the Insurance Fraud Division of MIA has been unable to prosecute perpetrators of insurance fraud because these individuals had not been given notice that certain activity is criminal. In insurance fraud cases, prosecutions are strengthened significantly by the ability to show that an individual was already aware of what constitutes insurance fraud, as well as the possible penalties, when the individual completed the insurance application, filed claim forms, and endorsed the claim payment instrument. *Chapter 271 of 2008* required insurers to include a fraud disclosure statement on all applications for insurance and all claim forms that inform the consumer that it is a crime to commit insurance fraud. The requirement does not apply to (1) reinsurance applications or claim forms; or (2) the uniform claims forms for reimbursement of hospital services or health care practitioners services. *Chapter 271* specified that the lack of the required statement does not constitute a defense in any legal action. All insurers were required to comply with the requirement by April 1, 2009.

**Domestic Reinsurers:** Changes in corporate structure through merger or acquisition may affect the domicile of an insurer and the regulatory fees that the insurer must pay to the state where it maintains specified assets. Under *Chapters 83 and 84 of 2010*, a domestic reinsurer that was domiciled in Maryland before December 31, 1995, and that moves its home office to another state, may maintain its regulatory domicile in Maryland if it (1) maintains certain required assets in Maryland; (2) pays an annual assessment to Maryland; and (3) makes its general ledger accounting records available to the Commissioner.

**Notice of Payment to Third-party Claimant's Attorney:** *Chapter 131 of 2007* required an insurer to provide written notice to a third-party claimant of payment of \$2,000 or more in settlement of a third-party liability claim for bodily injury if the claimant is an individual and the payment is delivered to the claimant's attorney. The notice must be sent to the claimant's last known address no more than five working days after payment is delivered to the claimant's attorney.

### **Insurance Producers**

**Use of Trade Names:** *Chapter 109 of 2007* prohibited an insurance producer from using a name, other than the name in which the insurance producer's license is issued or a trade name filed with the Commissioner, to engage in any activity for which a license is required. Under *Chapter 109*, the term "trade name" is defined to mean a name, symbol, or word, or combination of two or more names, symbols, or words, that a person uses to (1) identify its business, occupation, or self in a business capacity; and (2) be distinguished from another business, occupation, or person. The Act also required a licensee to file a change in legal name, trade name, or address with the Commissioner within 30 days after the change. Failure to do so may subject the licensee to suspension or, revocation of, or refusal to renew or reinstate a license.

**Licensing Requirements:** Chapter 731 of 2001 incorporated provisions of the Model Producer Licensing Act adopted by NAIC into Maryland's agent and broker licensing provisions, as required by the federal Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley). As part of its efforts to comply with Gramm-Leach-Bliley, NAIC established a goal of uniform educational requirements for resident insurance producer licenses.

*Chapter 331 of 2008* incorporated into Maryland law a number of provisions from the NAIC model law on producer licensing. The Act authorized the Commissioner to waive specified requirements for an insurance producer license applicant if the applicant has certain professional designations. *Chapter 331* also increased continuing education requirements for insurance producers from 16 to 24 hours every 2-year renewal period, with exceptions for (1) title insurance producers, who will continue to be required to receive 16 hours of continuing education; and (2) insurance producers who have held licenses for 25 or more consecutive years, who are required to receive no more than 8 hours. Of the required hours of continuing education per renewal period, at least 3 hours must relate directly to ethics. Finally, *Chapter 331* staggered renewals of insurance producer licenses every 2 years based on the licensee's birth month.

*Chapters 571 and 572 of 2009* prohibited the Commissioner from requiring an insurance producer to receive more than 16 hours of continuing education per renewal period if the

insurance producer is also a licensed funeral director or licensed mortician who (1) sells only life insurance policies or annuity contracts that fund a pre-need contract; and (2) is not a viatical settlement broker. Without this legislation, the Commissioner could have required funeral directors and morticians to complete up to 24 hours of continuing education per renewal period beginning October 1, 2009.

***Life and Health Insurance Producer Examinations: Chapters 440 and 441 of 2008*** required the Commissioner, by April 1 of each year, to prepare and publish a report regarding the life and health insurance producer examinations administered during the preceding calendar year. The report must include information on (1) the total number of examinees; (2) the percentage and number of examinees who passed the examination; (3) the mean and standard deviation of scaled scores; and (4) the correct answer rate and correlation rate for each test question and each test form. Information must be presented for all examinees combined and separately by race or ethnicity, gender, race or ethnicity within gender, educational level, and native language. The legislation terminates at the end of September 30, 2011.

***Fraudulent Insurance Acts: Chapter 133 of 2009*** expanded the scope of fraudulent insurance acts to make it a fraudulent insurance act for a person to act as or represent to the public that the person is an insurance producer or public adjuster in the State if the person has not received the appropriate license or otherwise complied with regulatory provisions for insurance professionals under Title 10 of the Insurance Article. Under the Act, a person may not, without the appropriate license or approval, represent oneself to be an adviser, a bail bondsman, a public adjuster, a vehicle damage adjuster and appraiser, or a motor vehicle rental company that provides insurance coverage.

### **Unfair or Deceptive Practices**

***Educational or Promotional Material Giveaways:*** A person may not directly or indirectly give inducements to a life or death insurance policy or an annuity contract, including (1) a rebate of insurance premiums; (2) a favor or advantage relating to dividends or benefits; (3) paid employment or a contract for services; or (4) any valuable consideration or other inducement not specified in the policy or contract, with an exception for educational materials, promotional items, or merchandise. ***Chapter 9 of 2009*** increased from \$10 to \$25 the limit on the value of educational materials, promotional items, or merchandise not specified in an insurance policy or annuity contract that an insurer may give to a person.

***Misleading Use of Senior or Retiree Credentials:*** One area of continuing concern is the use of potentially misleading credentials or designations to market financial instruments to the elderly. The sale of an inappropriate financial vehicle to a senior citizen by an individual using a fraudulent or misleading professional designation may result in financial devastation of the senior citizen.

***Chapters 604 and 605 of 2010*** made it unlawful for any person to use a senior or retiree credential or designation in a misleading way in connection with the offer, sale, or purchase of life insurance, health insurance, or an annuity. The Acts further required the Commissioner to adopt regulations in consultation with the Maryland Securities Commissioner to define what

constitutes a misleading use of a senior or retiree credential or designation. The Acts conform to similar Maryland legislation enacted in 2009 with respect to sellers of securities, rather than to the more specific NAIC model regulation on the sale of these products by an insurance producer using a senior-specific certification or professional designation.

## **Property and Casualty Insurance**

### **Underwriting, Renewals, and Cancellations of Policies**

*Transfers of Policyholders Among Insurers: Chapter 117 of 2008* provided that, with respect to private passenger motor vehicle insurance and homeowner's insurance, the transfer of policyholders among affiliates within the same insurance holding company system is classified as a renewal if (1) the policyholder's premium does not increase; and (2) the policyholder does not experience a reduction in coverage. With respect to policies of personal insurance and private passenger motor vehicle liability insurance, the issuance by an insurer of a new policy to replace an expiring policy issued by that insurer is a renewal – as is the issuance of a new policy to replace an expiring policy issued by another admitted insurer within the same insurance holding company system, subject to the same two conditions that apply to transfers. If a policyholder is being transferred between affiliate insurers in the same insurance holding company system, *Chapter 117* required the insurer to send a notice disclosing the transfer instead of sending a notice of cancellation or nonrenewal.

*Chapters 98 and 99 of 2009* classified the transfer of a policyholder by a commercial insurer or workers' compensation insurer to an affiliate within the same insurance holding company system as a renewal, rather than a cancellation or intention not to renew the policy, if (1) the policyholder's premium does not increase; and (2) the policyholder does not experience a reduction in coverage. Similarly, the issuance of a new policy to replace an expiring policy of commercial insurance or workers' compensation insurance issued by an affiliate within the same insurance holding company system is a renewal, subject to the two conditions that apply to transfers. The commercial insurer or workers' compensation insurer providing the new policy is required to notify the policyholder of a transfer.

*Notice of Premium Increases: Chapters 98, 99, and 376 of 2009* required insurers that write policies of commercial insurance and workers' compensation insurance to provide notice of the renewal policy premium to the named insured and insurance producer, if any, at least 45 days prior to the renewal date, regardless of the amount of the policy premium increase. An insurer can meet the notice requirement by including the new premium in a renewal policy, notice of renewal or continuation of coverage, or renewal offer that includes a reasonable estimate of the renewal policy premium. *Chapters 98, 99, and 376* exempted a commercial policyholder that pays aggregate property and casualty premiums of at least \$25,000 per year and meets certain revenue, net worth, employment, or other relevant criteria.

*Chapters 98, 99, and 376* allowed an insurer to comply with the notice requirement under the Acts by providing (1) to the named insured and the insurance producer, if any, a written notice of increase or a renewal offer with a reasonable estimate of the premium; or (2) to the

named insured alone, a copy of the renewal policy that includes the renewal premium. However, an independent insurance producer who is working with the named insured may not be fully aware of the renewal policy's terms and premium if the insurer only sends a copy of the renewal policy to the named insured and not to the insurance producer. **Chapter 663 of 2010** required an insurer that notifies the named insured of a premium increase by sending a copy of the renewal policy also to send to the independent insurance producer, if any, either a copy of the renewal policy by postal or electronic mail, or notice of the availability of that renewal policy on the insurer's online electronic system.

**Notice of Cancellation during Underwriting Period:** Chapter 580 of 2006 authorized the cancellation of policies or binders of specified property and casualty insurance during a 45-day underwriting period. Although other cancellation notices for property and casualty insurance must be sent by certificate of mail, the 2006 law did not specify the required method of notice for cancellations during an underwriting period. The practice of MIA, however, was to require insurers to send the notices via certificate of mail. **Chapter 88 of 2008** codified MIA practice and required insurers to send notices of policy or binder cancellation by certificate of mail. Certificate of mail is the least expensive method that provides a record of the date of mailing. A record of mailing is important to MIA when a consumer complaint triggers an investigation regarding insurer compliance with State law. Records of mailings also assist MIA in monitoring insurer practices relating to cancellations.

Although **Chapter 88 of 2008** codified the requirement that insurers send notices of policy or binder cancellation by certificate of mail, MIA's Property and Casualty Consumer Complaints Division received complaints of companies mailing notices to the insured at an address other than the last known address (*i.e.*, the address provided on the binder or policy application). To remedy this problem, **Chapter 23 of 2009** required insurers that provide personal insurance to send notices of binder or policy cancellation or nonrenewal to the last known address of the named insured. **Chapter 23** also required insurers that provide commercial property insurance or commercial liability insurance to send notices of binder or policy cancellation during the 45-day underwriting period to the last known address of the named insured.

**Midterm Cancellation of Policies:** Maryland law clearly prohibited midterm cancellations of policies until 2006. In that year, in a reorganization of law relating to cancellations and nonrenewals, the former prohibition on midterm cancellations was inadvertently rewritten as an authorization to do so. **Chapter 379 of 2009** corrected that error and provided specific guidance on situations that may merit midterm cancellations, while prohibiting all others.

The Act prohibited insurers that write policies of personal insurance, commercial insurance, and private passenger motor vehicle insurance, as well as insurers that write policies of homeowner's insurance under which a one-time guaranteed fully refundable deposit is required for a stated amount of coverage, from cancelling policies midterm except under specified circumstances. Under **Chapter 379**, an insurer may cancel a policy midterm only when there is (1) a material misrepresentation or fraud in connection with the application, policy, or

presentation of a claim; (2) a matter or issue related to the risk that constitutes a threat to public safety; (3) a change in the condition of the risk that results in an increase in the hazard insured against; (4) nonpayment of premium; (5) suspension or revocation of the driver's license or motor vehicle registration of a named insured or covered driver for reasons related to the driving record of the named insured or covered driver; or (6) in the case of homeowner's insurance only, an arson conviction. The limitation on midterm cancellations does not apply to the Maryland Automobile Insurance Fund.

**Rating, Retiering, and Discounts:** Insurers are prohibited from considering claims, traffic accidents, or traffic violations that are more than three years old when underwriting, cancelling, or nonrenewing automobile liability or homeowner's insurance policies. However, the Property and Casualty Consumer Complaints Division of MIA often receives complaints from consumers who have been placed in a higher-rated tier for claims or accidents that occurred more than three years prior to the effective date of the policy or renewal.

In order to make the law for homeowner's insurance parallel to the law on automobile liability insurance, **Chapter 378 of 2009** prohibited an insurer under a homeowner's insurance policy from classifying or maintaining an insured for more than three years in a classification that entails a higher premium due to a specific claim. The Act also prohibited an insurer under a homeowner's insurance policy from reviewing a period beyond the three years prior to the application date or proposed effective date for a new policy, or the effective date of the renewal for a renewal policy. It is not a violation of the Act (1) to remove, reduce, or refuse to apply a discount if the action results from a claim filed within the preceding five years; or (2) an insurer to grant a claim-free discount to an insured under a homeowner's or automobile liability insurance policy. **Chapter 378** further prohibited an insurer under personal injury protection coverage from retiering a policy for a claim or payment made under that coverage, in addition to the prohibition on a surcharge for such a claim.

### **Liability of Insurer for Failure to Act in Good Faith**

**Chapter 150 of 2007** authorized the recovery of actual damages, expenses, litigation costs, and interest in first-party claims against property and casualty insurers if the trier of fact finds in favor of the insured and finds that the insurer failed to act in good faith. For a more detailed discussion of this legislation, see the subpart "Civil Actions and Procedures" within Part F – Courts and Civil Proceedings of this *Major Issues Review*.

### **Motor Vehicle Insurance**

**Exclusion of Named Driver:** In *Harleysville Mutual Ins. Co. v. Zelinski*, 393 Md. 83 (2006), the Court of Appeals overturned a decision by the Court of Special Appeals and held that a named driver may be excluded from a commercial motor vehicle insurance policy. **Chapter 88 of 2007** codified this decision. The Act authorized an insurer under a commercial motor vehicle liability insurance policy that insures more than one individual to offer to continue or renew the insurance but exclude full coverage for a specifically named driver if the insurer otherwise would be authorized to cancel, non-renew, or increase the premium on the policy

because of the claims experience or driving record of one or more drivers covered under the policy.

***Fraudulent Insurance Acts:*** The 2005 Automobile Insurance Task Force to Study Rates in Urban Areas found that insurance fraud is one of the causes for higher insurance premiums. To address this issue, ***Chapter 651 of 2007*** made it a fraudulent insurance act under the State’s insurance fraud laws for a person, with the purpose of submitting a claim under a policy of motor vehicle insurance, to organize, plan, or knowingly participate in an intentional motor vehicle accident or a scheme to create documentation of a motor vehicle accident that did not occur. ***Chapter 651*** also provided that, for 60 days after a law enforcement officer completes and files a report that indicates that a motor vehicle accident has occurred, the report may be accessed only by (1) the individuals involved in the accident or their legal representatives; (2) the insurance producer, insurer, or employee or agent of the insurer of an individual involved in the accident; (3) a State’s Attorney or other prosecutor; (4) a representative of a victim services program; (5) an employee of a radio or television station licensed by the Federal Communications Commission; (6) an employee of a newspaper; or (7) a unit of local, State, or federal government that is otherwise authorized to have access to the report in furtherance of its duties. A person who obtains a copy of a report, or an officer of a law enforcement agency who knowingly discloses a report, in violation of ***Chapter 651*** is guilty of a felony and on conviction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 15 years or both.

***Motor Vehicle Liability Coverage:*** Unchanged since Maryland enacted compulsory motor vehicle insurance in 1972, the minimum motor vehicle liability coverage limits for bodily injury increased to \$30,000 for any one person and \$60,000 for any two or more persons per accident under ***Chapter 441 of 2010*** from the former limits of \$20,000 and \$40,000, respectively. The minimum motor vehicle liability coverage limit for property damage remained unchanged at \$15,000 per accident.

Maryland’s motor vehicle insurance consists of four types of privately purchased coverage: (1) motor vehicle liability coverage, which is designed to pay the overall costs attributable to an accident, including bodily injury and property damage; (2) uninsured motorist coverage, similar to motor vehicle liability coverage for incidents involving an uninsured motorist, also at minimums of \$20,000 and \$40,000; (3) waivable personal injury protection (PIP), no-fault coverage for medical expenses and lost wages, with a statutory minimum of \$2,500; and (4) optional no-fault collision coverage for damage to the automobile. ***Chapter 441*** altered the limits of the first type of coverage, motor vehicle liability for bodily injury, with the other three coverages remaining unchanged.

In the area of coordination of health insurance benefits and PIP benefits, ***Chapters 340 and 341 of 2010*** prohibited health insurers, nonprofit health service plans, and HMOs from requiring that PIP benefits under a motor vehicle liability insurance policy be paid before benefits under a health insurance policy or contract. For a complete discussion of these Acts, see the subpart “Health Insurance” within Part J – Health and Human Services of this *Major Issues Review*.

### **Medical Professional Liability Insurance**

The Rate Stabilization Fund was established during the 2005 session to retain health care providers in the State by allowing insurers to charge lower premium rates for medical professional liability insurance and increasing Medicaid payment rates for health care providers. Money in the fund is held in the Rate Stabilization Account which is used to pay for health care provider rate subsidies, and the Medical Assistance Program Account, which is used to increase Medicaid payments to health care providers.

Garrett County is designated as a Medically Underserved Area and a Health Professional Shortage Area. Due to these designations, the Garrett County Memorial Hospital (GCMH) is allowed to subsidize the premiums for medical professional liability insurance for family practitioners providing obstetrical services at GCMH. The 2007 policy year Rate Stabilization Fund subsidy for family practitioners who also perform obstetrical services at GCMH was 17%, the same subsidy as for all other physicians.

*Chapters 174 and 175 of 2007* increased the subsidy provided from the Rate Stabilization Account for medical professional liability insurance policies issued to family practitioners who have staff privileges and provide obstetrical services at GCMH. For these policies, the increase in the subsidy is an amount equal to 75% of the difference between the policyholder's premium for calendar 2007, 2008, and 2009 and the premium that otherwise would be payable in those years if the policyholder was not providing obstetrical services. The Acts also required that money necessary to pay for the increased subsidies remain in the Rate Stabilization Account.

### **Homeowner's Insurance**

*Coverage for Loss from Water or Sewer Backup:* An insurer that issues or delivers a homeowner's insurance policy must offer to provide coverage for loss that is caused by or results from water that backs up through sewers or drains and is not caused by the negligence of the insured. MIA has adopted and enforced the position that this mandatory offer of water backup damage coverage must be provided by insurers at the time of both initial policy application and policy renewal. To codify this practice, *Chapter 72 of 2008* specified that an insurer issuing, selling, or delivering homeowner's insurance policies in the State must offer the insured in writing the opportunity to purchase coverage for sewer or drain water backup damage at the time of both initial policy application and policy renewal. If an application or renewal is made by telephone, the insurer is in compliance with the Act's requirements if the insurer sends the offer to the applicant or insured by certificate of mailing within seven calendar days after the date of application or renewal. If an application or renewal is made using the Internet, the insurer is in compliance if the insurer provides the offer to the applicant or insured prior to submission of the application or renewal.

*Coverage for Additional Living Expenses:* Coverage for additional living expenses (ALE) in the case of the loss of a home is generally assumed by a purchaser of a homeowner's insurance policy to provide coverage until the home has been rebuilt. However, ALE coverage varies from insurer to insurer and may not always cover the insured until the home has been



rebuilt. *Chapter 95 of 2008* provided a uniform minimum standard for ALE coverage. The Act prohibited a policy of homeowner's, fire, farm owner's, or dwelling insurance from containing a clause that purports to limit coverage for ALE incurred by an insured as a result of a covered loss to a period of time that is less than 12 months. Any such clause is void and unenforceable. In addition, *Chapter 95* authorized the Commissioner to require that an insurer provide coverage for ALE under a policy for up to 24 months if the Commissioner finds that the covered property remains uninhabitable due to a delay in repair or replacement caused by the insurer or factors beyond the control of the insured.

**Coverage for Replacement Cost of Property:** After a fire or other casualty to property insured under a homeowner's, farm owner's, or dwelling insurance policy, it may take a considerable amount of time to repair or replace the dwelling or other property due to ongoing investigation into the casualty, delays in obtaining building permits and other construction difficulties, or limited seasonal availability of replacement goods. For policies that include the replacement value of damaged property, an insured will typically file first for the actual cash value of the property, and then file one or more additional claims for the amount by which the replacement cost exceeds the actual cash value. Some insurers have required a homeowner to submit all replacement cost claims within 180 days after the date of loss, whether or not the homeowner has finalized costs available at that time.

To allow an insured to obtain full repayment for repair or replacement of damaged property on a replacement cost basis, *Chapters 91 and 92 of 2010* required each policy of homeowner's, farm owner's, or dwelling insurance issued in the State with replacement cost coverage to allow an insured to file a claim for the additional replacement cost for not less than two years after the date of loss. However, so that the insurer knows what claims may be outstanding, the insurer may require the insured to notify the insurer, within 180 days after the date of loss, of the insured's *intent* to repair or replace the dwelling or personal property.

### **Portable Electronics Insurance**

*Chapters 316 and 317 of 2009* created a regulatory framework the sale of portable electronics insurance, which is defined as insurance that provides coverage for the repair or replacement of portable electronics, including coverage against loss by disappearance, theft, mechanical failure, malfunction, damage, and any other applicable peril. A vendor is required to hold a limited lines license to sell a portable electronics insurance policy in connection with a portable electronics transaction. A limited lines license issued under *Chapters 316 and 317* authorizes the vendor or the vendor's employees or authorized representative to sell a portable electronics insurance policy if (1) the policies have been filed with and approved by the Commissioner; (2) the vendor holds an appointment with each authorized insurer that the vendor intends to represent; (3) the vendor provides specified disclosures approved by the Commissioner at each sale location; and (4) the vendor provides an approved training program for its employees and authorized representatives.

Under the Acts, portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor

under which individual customers may elect to purchase coverage. Except as otherwise specified, an insurer may not terminate or change the terms and conditions of a portable electronics insurance policy without providing the policyholder and covered customers with at least 60 days' notice. Shorter notice periods apply in the event of (1) fraud or material misrepresentation in obtaining coverage or in the presentation of a claim; and (2) nonpayment of premium. An insurer may automatically terminate coverage if the covered customer ceases to have active service related to the use of portable electronics with the vendor or if the covered customer exhausts the aggregate limit of liability under the policy and the insurer sends notice of termination to the covered customer.

If a covered customer requests a reinstatement of portable electronics insurance coverage, the customer is eligible for reinstatement up to 12 months after the date of exhaustion of the coverage limit. If a vendor terminates a policy, the vendor must give a covered customer written notice by certificate of mail at least 45 days before the termination date unless the vendor is informed that the covered customer has obtained substantially similar alternative coverage from another insurer without lapse of coverage.

## **Life Insurance and Annuities**

### **Group Life Insurance – Domestic Partners**

*Chapter 586 of 2007* authorized an insurer to extend insurance coverage under a policy of group life insurance to the domestic partner of an insured employee or member who elects to obtain the coverage. Under the Act, the term “domestic partner” has the meaning stated in the policy. Coverage for a domestic partner is treated in the same manner as coverage for a spouse or dependent child.

### **Investment Accounts**

A life insurer, in connection with a qualified plan and in accordance with a written agreement, may allocate into separate investment accounts money that the life insurer is required to invest and apply to the purchase of guaranteed income benefits under the life insurer's individual or group policies or annuity contracts or to provide other guaranteed benefits incidental to those policies or annuity contracts. A “qualified plan” is a pension, retirement, or profit-sharing plan or agreement that meets specified criteria under federal law. *Chapters 22 and 23 of 2007* authorized domestic life insurers to use separate accounts for life or annuity products purchased by any customer, not just by qualified plans.

### **Insolvency Protection for Annuity Holders**

The Maryland Life and Health Guaranty Corporation guarantees the payment of certain life insurance, health insurance, and annuity benefits when an insurer becomes impaired or insolvent, subject to statutory limits. *Chapter 414 of 2010* increased the maximum benefit for which the corporation may become liable to the holder of an annuity from \$100,000 to \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal

values, with respect to any one life. This change is in line with NAIC model regulations. Maximum benefits for life insurance death benefits and health insurance benefits are unchanged.

### **Exemption from Insurance Laws of the State**

Except as otherwise specified, the insurance laws of the State do not apply to certain nonprofit lodges, societies, orders, or associations that provide certain types of life insurance, disability insurance, or survivor benefits to members. An order, society, or association that limits its membership to individuals engaged in one or more hazardous occupations in the same or similar lines of business also is exempted from State insurance laws.

The Navy Mutual Aid Association (Navy Mutual) is a not-for-profit association and congressionally chartered veterans service organization that provides approximately 95,920 members of the Sea Services (Navy, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and the U.S. Public Health Service) with life insurance and survivor benefits. Navy Mutual was formed in 1879 and provides life insurance and annuities only to active duty, reserve, and retired members of the Sea Services and their families. *Chapters 579 and 580 of 2009* provided that the statutory exemption granted to fraternal benefit societies from regulation under the insurance laws of the State also applies to an association, whether or not a fraternal benefit society, that was organized before 1880 and the members of which are officers or enlisted, regular or reserve, active, retired, or honorably discharged members of the Armed Forces or Sea Services.

### **Surety Insurance**

A surety insurer that is removed by the District Court from the list of insurers eligible to post bonds with the court because of failure to resolve or satisfy one or more bail bond forfeitures is subject to penalties under the Insurance Article. These penalties include suspension or revocation of the insurer's certificate of authority, as well as a fine of between \$100 and \$125,000. The Commissioner also may order a certificate holder to make restitution to any person who has suffered financial injury because of the violation. *Chapter 192 of 2008* extended these penalties to surety insurers that are precluded or removed by a circuit court from the list of insurers eligible to post bonds with any circuit court due to failure to resolve or satisfy one or more bail bond forfeiture judgments.

### **Horse Racing and Gaming**

During the 2007-2010 term, the General Assembly passed legislation authorizing the implementation of video lottery terminals (VLTs), the continued operation of specific electronic bingo machines, and an expansion of the type of organizations that may operate local slot machines for charitable purposes. Further, the General Assembly passed legislation that altered the provisions for night horse racing and authorized the State to acquire, by purchase or condemnation, private property relating to the Preakness Stakes.

## Gaming

### Legalization of Video Lottery Terminals

During the 2007 special session, after several years of contentious debate, the General Assembly passed VLT legislation. Among its numerous provisions, *Chapter 4 of the 2007 special session* authorized up to 15,000 VLTs at five locations, provided for one-time and ongoing license fees, provided for the distribution of VLT proceeds, and created the Education Trust Fund and other special funds. *Chapter 4* was contingent on the passage of *Chapter 5 of the 2007 special session*, a constitutional amendment authorizing VLT gaming that was ratified by voters in November 2008. Exhibit H-6 describes some of the prominent features of *Chapter 4*.

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#### Exhibit H-6 Major Provisions of Video Lottery Terminal Legislation

<p><b>Award of VLT Operation Licenses and Regulation of VLTs</b></p>	<p>Seven-member Video Lottery Facility Location Commission established to award video lottery operation licenses.</p> <p>Nine-member State Lottery Commission:</p> <ul style="list-style-type: none"> <li>• addition of four members to existing five-member commission; and</li> <li>• member of State Lottery Commission as liaison to State Racing Commission and vice versa.</li> </ul> <p>State Lottery Commission owns/leases VLTs and central monitor and control system.</p>
<p><b>VLT Licenses</b></p>	<p>Up to five licenses to be awarded (eligible locations specified).</p> <p>No more than one license in a single county or Baltimore City.</p>
<p><b>VLT Facility Locations and Maximum Number of VLTs Allowable</b></p>	<p>Total of 15,000 machines allowable in the State for the five licenses in the following locations:</p> <ul style="list-style-type: none"> <li>• 4,750 VLTs at a location in Anne Arundel County within two miles of Route 295.</li> </ul>

	<ul style="list-style-type: none"> <li>● 3,750 VLTs in Baltimore City, in a nonresidential area within one-half mile of Interstate 95 and Route 295, on city-owned land that is not adjacent to or within one-quarter mile of residential property.</li> <li>● 2,500 VLTs at a location in Worcester County within one mile of the intersection of Route 50 and Route 589.</li> <li>● 2,500 VLTs at a location in Cecil County within two miles of Interstate 95.</li> <li>● 1,500 VLTs on State property in Allegany County associated with Rocky Gap State Park in a building physically separate from the Rocky Gap Lodge and Golf Resort.</li> </ul> <p>Video Lottery Facility Location Commission may alter allocations if warranted by an evaluation of market and other factors; however, no more than 4,750 VLTs may be placed at any one location.</p>
<p><b>Limits on License Ownership</b></p>	<p>Prohibits ownership in more than one video lottery operation license.</p>
<p><b>Revenue Distributions</b></p> <p><b>Small, Minority, and Women-owned Business Investment</b></p> <p><b>Lottery (Administrative Costs)</b></p> <p><b>Local Government</b></p>	<p style="text-align: center;"><b>Percentage of Gross VLT Revenue</b></p> <ul style="list-style-type: none"> <li>● 1.5% to a small, minority, and women-owned business investment account.</li> <li>● 2.0% to the State Lottery Agency for administrative costs, with other costs provided for in the annual State budget.</li> <li>● 5.5% to local governments in which a video lottery facility is operating, 18.0% of which would go (beginning in fiscal 2012 and ending in fiscal 2027) to Baltimore City through the Pimlico Community Development Authority and to Prince George’s County for the community surrounding Rosecroft (\$1 million annually).</li> </ul>

<p><b>Horse Racing Industry</b></p> <p><b>Licensee (Operator)</b></p> <p><b>Education Trust Fund</b></p>	<ul style="list-style-type: none"> <li>• 7.0% to a purse dedication account to enhance horse racing purses and bred funds, not to exceed \$100 million annually, and 2.5% for eight years to a Racetrack Facility Renewal Account, not to exceed \$40 million annually.</li> <li>• No more than 33% to video lottery operation licensees.</li> <li>• Remainder to the Education Trust Fund (48.5-51.0%), to be used for the Bridge to Excellence in Public Schools Act funding (including the Geographic Cost of Education Index), public school construction, and public higher education construction, including community colleges.</li> </ul>
<p><b>Player Restrictions</b></p>	<p>Individuals under the age of 21 or intoxicated are prohibited from playing VLTs.</p>

### Implementation of VLTs

Building on the 2007 legislation, *Chapter 624 of 2010* made numerous clarifying and technical changes regarding the implementation of VLTs in the State. The changes generally followed the recommendations of the Video Lottery Facility Location Commission, which is the commission designated to award up to 15,000 VLTs at five authorized locations around the State.

While the Video Lottery Facility Location Commission awarded licenses for the Anne Arundel, Cecil, and Worcester County locations in 2009, licenses have yet to be awarded for the locations in Baltimore City and Allegany County. Several of the significant provisions of *Chapter 624* are intended to make the license for the VLT facility authorized for Allegany County more attractive to bidders. Under *Chapter 624*, if the licensee for the Allegany County VLT facility purchases the Rocky Gap Lodge and Golf Resort, the licensee will be entitled to receive, for the first five years of operation, an additional 2.5% from the proceeds generated at the facility that would otherwise go to the Racetrack Facility Renewal Account. In addition, if the licensee purchases the Rocky Gap Lodge and Golf Resort, current law authorizing a racetrack license and racing days in Allegany County would be repealed.

*Chapter 624* also repealed a requirement that a permanent VLT facility in Allegany County must be physically separate from the Rocky Gap Lodge and Golf Resort, and instead provided that the facility must be in a separate building that may be adjacent or

connected to the lodge and resort. Subject to approval by the State Lottery Commission and the Video Lottery Facility Location Commission, an individual or business entity may enter into a management agreement to operate a VLT facility in Allegany County that the individual or business entity does not own.

### **Slot Machines – Electronic Gaming Devices**

After passing statewide VLT legislation in the 2007 special session, the topic of slot machines arose again in the 2008 session in response to a proliferation of electronic gaming devices that began operating in several counties. These devices appeared in the wake of the Maryland Court of Appeals case *Chesapeake Amusements Inc. v. Riddle*, 363 Md. 16 (2001), in which the court held that an electrically operated machine that dispenses paper pull-tab tickets from a roll of preprinted paper pull-tabs is not a slot machine prohibited under State law.

To close this legal opening, *Chapter 474 of 2008* altered the definition of slot machine to include a machine, apparatus, or device that through the “the reading of a game of chance, [or] the delivery of a game of chance” awards money or objects that can be converted into money. The bill excluded from the definition of “slot machine” machines that award only free additional games or plays or noncash prizes of minimal value, as well as certain other machines.

*Chapter 474* also authorized an entity licensed to offer instant bingo under a commercial bingo license as of July 1, 2007, or certain qualified organizations on their own premises, to continue operating a game of instant bingo in the same manner using electronic machines until July 1, 2009, provided that (1) the machines had been in operation for a one-year period ending December 31, 2007; (2) the entity did not operate more than the number of electronic machines operated as of February 28, 2008; and (3) the conduct of the gaming and operation of the machines was consistent with all other provisions of the Criminal Law Article.

In addition to making other changes as described below, *Chapter 661 of 2009* extended the termination date for the operation of certain electronic bingo machines, as authorized under *Chapter 474*, from July 1, 2009, to July 1, 2012.

### **Taxation of Electronic Gaming Devices**

Among its numerous provisions, *Chapter 6 of the 2007 special session* imposed a State admissions and amusement tax of 20% on the net proceeds from electronic bingo machines and electronic tip jars.

*Chapter 661* increased the State admissions and amusement tax rate imposed on the net proceeds from electronic bingo and electronic tip jars from 20% to 30%, set certain limits on the total State and local admissions and amusement tax rates that may be imposed, and directed the additional revenues derived from the tax rate increase to the newly created Special Fund for Preservation of Cultural Arts in Maryland.

## Local Charitable Gaming Legislation

The most significant piece of local gaming legislation during the 2007-2010 legislative term concerned slot machines operated for charitable purposes. Slot machines may be operated for charitable purposes in eight Eastern Shore counties by “eligible organizations” – that is, nonprofit organizations that are fraternal, religious, or war veterans’ organizations and that have been located in one of the counties for at least 5 years before applying for a slot machine license. *Chapter 645 of 2007* expanded the definition of “eligible organization” to include nonprofit organizations that have been affiliated with a national fraternal organization for less than 5 years but have been located within an eligible county for at least 50 years before applying for a slot machine license.

## Horse Racing

### Night Racing

Historically, thoroughbred racing has been conducted during the day and standardbred racing in the evening. This tradition was recognized in law by statute passed in 1984 which provided that thoroughbred racing could not be conducted after 6:15 p.m., with limited exceptions. Legislation passed in 2000 extended the time in which thoroughbred racing could be conducted to 9:00 p.m., under certain conditions. A 15-year revenue sharing agreement between the thoroughbred and standardbred racing industries went into effect in 2006, providing for authorizations for both day and evening racing at Laurel Park, Pimlico Race Course, and Rosecroft Raceway. With the enactment of *Chapter 356 of 2007*, the prohibition on live thoroughbred racing after 9:00 p.m. was repealed, but live racing at Pimlico Race Course was prohibited after 10:00 p.m.

### State Purchase or Condemnation of Thoroughbred Racetracks and the Preakness Stakes

In May of each year, the Preakness Stakes, the second leg of the Triple Crown series for thoroughbreds, is run at Pimlico Race Course in Baltimore City. Pimlico and the Preakness Stakes were owned by the Magna Entertainment Corporation, which filed for Chapter 11 bankruptcy protection in March of 2009. As part of its bankruptcy filing, Magna Entertainment stated its intent to auction a group of its horse racing assets, including Pimlico and Laurel Park in Anne Arundel County. The auction was later canceled, but the bankruptcy filing raised the possibility that the Preakness Stakes could be sold and transferred out of Maryland.

In response, *Chapter 3 of 2009* authorized the State to acquire, by purchase or condemnation for public use with just compensation, some or all of the following real, tangible, and intangible private property, including any associated property or property rights:

- Pimlico Race Course;
- Laurel Park;



- Bowie Race Course Training Center in Prince George’s County;
- the Preakness Stakes trophy known as the Woodlawn Vase;
- the name, common law and statutory copyrights, service marks, trademarks, trade names, contracts, and horse racing events associated with the Preakness Stakes and the Woodlawn Vase;
- all property of the Maryland Jockey Club of Baltimore City, Inc., or its successors and assigns, including stock and equity interests associated with it; and
- all property of the Laurel Racing Assoc., Inc., the Laurel Racing Association Limited Partnership, or their successors and assigns, including stock and equity interests associated with them.

*Chapter 3* also stated that, in accordance with the Maryland Constitution, the private property may be taken immediately on payment for the property, consistent with procedures for quick-take condemnation. All condemnation proceedings must be conducted in accordance with Title 12 of the Real Property Article and Title 12, Chapter 200 of the Maryland Rules.

### **Maryland Horse Racing Act – Sunset Extension and Program Evaluation**

*Chapter 196 of 2009* extended the termination date of the Maryland Racing Commission, the Maryland-Bred Race Fund Advisory Committee, and the Standardbred Race Fund Advisory Committee from July 1, 2011, to July 1, 2014. In addition, the bill required full evaluations of these entities to be conducted by the Department of Legislative Services no later than July 1, 2013.

### **Purse Dedication Account**

Under the statute authorizing VLTs in the State, 7% of VLT proceeds, not to exceed \$100 million annually, are to be paid into a Purse Dedication Account. The money in the account is to be used for the Maryland-Bred Race Fund, the Standardbred Race Fund, and thoroughbred and standardbred purses.

*Chapter 447 of 2009* reduced the amount of funds to be distributed from the Purse Dedication Account to the Maryland-Bred Race Fund and the Standardbred Race Fund while increasing the amount to be allocated to thoroughbred and standardbred purses. *Chapter 447* decreased the revenue allocation to the respective bred funds from 15% to 11% and increased the revenue allocation to purses from 85% to 89%.

## Economic and Community Development

During the 2007-2010 term, the General Assembly continued to seek new ways to address the growing need for affordable housing, both rental and owner-occupied, while also considering more innovations with financing programs and community revitalization. In addition, the General Assembly expanded the State's tax credit programs, expanded special taxing district authority to transit-oriented development (TOD) projects and State hospital redevelopment, and took action to address and manage the impact of the Base Realignment and Closure (BRAC) process by establishing several BRAC coordinating bodies. Also during the term, the General Assembly continued to place a high priority on small business development, tourism promotion, and life science and technology support and began to focus on alternative energy promotion through the creation of the Jane E. Lawton Conservation Loan Program and the Maryland Clean Energy Center.

### Housing

#### Department of Housing and Community Development – Housing Programs

The Department of Housing and Community Development (DHCD) operates several different programs to expand housing opportunities in both rental housing and homeownership and to revitalize communities. Several measures were passed during the term to enhance some of these programs.

**Disaster Relief Housing Program:** In response to the housing problems created by Hurricane Isabel in 2003, the General Assembly approved Chapter 8 of 2004, emergency legislation that established the Hurricane Isabel Housing Rehabilitation and Renovation Program. This program allowed DHCD to issue loans and provide credit enhancement or interest rate buy downs to qualified borrowers. While the program terminated on May 31, 2005, the program was used as a model for *Chapter 66 of 2008*, which established the Disaster Relief Housing Program. This new, permanent program was designed to address emergency housing needs resulting from any disaster, not just a hurricane, by enabling the department to quickly and efficiently assist homeowners in a government-declared disaster area with repairing or replacing their primary residences through below market or zero percent interest rate financing.

**Rental Allowance Program:** The Rental Allowance Program authorizes the State to provide fixed, flat-rate grant subsidies to counties to assist low-income families who are homeless or have an emergency housing need. The program was utilized in the past to provide other forms of emergency housing needs, such as for evacuees afflicted by Hurricane Katrina. *Chapter 60 of 2008* repealed the former program and added a similar but expanded framework of rental assistance programs. The Act indicated that it was the intent of the General Assembly to preserve the existing network of resources and services dedicated to rental assistance.

**State Financed Housing Loans – Sale and Servicing:** In early 2008, there was a slowdown in repayments on State funded housing loans. To keep pace with the demand for such loans, DHCD required additional sources of funding. *Chapter 528 of 2008* responded to this

problem by authorizing DHCD and the Community Development Administration (CDA) in DHCD to sell any mortgage or other obligation that it holds, retain the servicing rights, and charge servicing fees for any obligation it sells. The measure authorized the proceeds from any sale and servicing fees earned to go to the Homeownership, Rental Housing, Partnership Rental Housing, Special Loan, and Workforce Housing funds.

**Group Home Financing:** The Group Home Financing Program (GHFP) provides loans to group home sponsors to finance the costs of acquiring, constructing, and rehabilitating buildings as group homes for low-income individuals, elderly households, individuals with disabilities, and other State residents with special housing needs. *Chapter 218 of 2010* expanded this program by authorizing DHCD to use a GHFP loan to refinance an existing mortgage loan on a group home and use the loan proceeds to finance certain closing costs, and allowed DHCD to modify the terms of a GHFP loan that is at risk of being in default.

### **Department of Housing and Community Development – Other Programs**

**Local Government Infrastructure Program:** The Local Government Infrastructure Program (LGIF program) is 1 of the 18 units established in the Division of Development Finance at DHCD. Another unit, CDA, is authorized to purchase local government debt obligations for the financing of infrastructure projects. CDA is the bond issuing entity of DHCD. Local government infrastructure financing projects are often initiatives that cannot be funded through limited State resources, including municipal public works facilities and trucks, town halls, fire stations, police cars, and communication, water, and sewer infrastructure systems. The LGIF program is particularly suitable for local governments that do not issue bonds routinely, for those with limited access to the capital marketplace, or for those for which managing the complexities of public financing on their own is inconvenient or expensive.

The LGIF program previously used private municipal bond insurers to provide credit enhancements to achieve affordable interest rates for local government sponsors. Prior to the 2009 legislative session, however, many bond insurers had gone out of business, stopped insuring small issues, or had rates that were not affordable to local governments. Two measures were enacted in 2009 in response to this downturn. To overcome the loss of bond insurers, *Chapters 627 and 628 of 2009* authorized the creation of a capital debt reserve fund to back bonds issued by the LGIF program. The capital debt reserve fund would be replenished through the use of operating reserves as well as existing authority to intercept local government payments from the State should a payment fail. As a final contingency, these measures authorized the use of State bond funds to recapitalize the debt reserve fund. *Chapter 719 of 2009* authorized up to \$2 million to replenish the debt reserve fund. The authority to issue the bonds was enabling only, and the proceeds would serve as a loan to CDA that would be repaid within five years.

**Mortgage Revenue Bonds:** DHCD has traditionally financed mortgages through the issuance of mortgage revenue bonds that are then used to purchase qualifying mortgage loans from lender partners. These loans are held in the CDA's portfolio, and mortgage loan repayments are used to repay bondholders. This method of financing mortgages has allowed CDA to offer safe, competitive mortgage products for many years. However, DHCD, like many

other housing agencies, has encountered challenges with declining investor confidence. **Chapters 647 and 648 of 2009** authorized CDA to purchase mortgage-backed securities from a government-sponsored enterprise (GSE), such as the Federal National Mortgage Association (“Fannie Mae”), the Federal Home Loan Mortgage Corporation (“Freddie Mac”), and the Federal Home Loan Bank. CDA would still issue tax-exempt mortgage revenue bonds and would purchase loans from its lender partners, but the offering statement for the bonds would indicate that the loans would immediately be packaged and sold to a GSE in exchange for mortgage-backed securities (MBS). Payments on the MBS are guaranteed by the GSE; therefore, investors would be willing to offer a better price on the bonds since the investors are not relying on mortgage repayments that could default. This was expected to allow CDA to be more competitive in the marketplace and increase its volume of loans. **Chapters 647 and 648** also granted CDA the authority to exchange bond-funded mortgage loans currently in its portfolio for AAA-rated MBS supported by GSEs. In essence, the legislation allowed DHCD to take an asset of lower quality, as determined by the rating agencies, and exchange it for AAA-backed securities.

**Community Legacy Program:** Chapter 657 of 2001 established the Community Legacy Program to create a process and funding source for several types of revitalization projects. Community legacy projects include those that help create or preserve housing opportunities, support demolition of buildings or improvements to enhance land use, and develop public infrastructure (e.g., parking, landscaping) related to a community legacy project. Chapter 314 of 2003 required no less than 10% of the Community Legacy Financial Assistance Fund to be used for neighborhood intervention projects. **Chapter 726 of 2009** altered this framework further by making three changes to the neighborhood intervention project component of the Community Legacy Program. The measure:

- reorganized the application process for three similar neighborhood intervention projects into one;
- altered, from a minimum of 10% to a maximum of 15%, the total amount of funding from the Community Legacy Financial Assistance Fund that may be directed to the neighborhood projects; and
- in case of an emergency or when urgent approval is required, authorized the Secretary of Housing and Community Development to approve a project without the approval of the Community Legacy Board and capped at 10% the money in the fund that may be reserved for such projects.

**Linked Deposit Program:** Chapter 396 of 2006 established a Linked Deposit Program in DHCD to provide low-interest loans to State-certified minority business enterprises (MBEs). Banks that participate in the program make loans to certified MBEs as long as the loan period does not exceed 10 years, and the criteria used for making the loans are the same used for other loans. The loans made to MBEs must carry interest rates 2% below market rates for similar loans. **Chapter 740 of 2009** allowed borrowers under the program to apply for loans directly

from participating lenders rather than through DHCD. The measure also exempted decertified MBEs from having their loans reduced if their decertification was due to revenue or employment growth. The Act terminates September 30, 2021.

**Microenterprise Loans:** The Neighborhood Business Development Program, also referred to as the Neighborhood Business Works Program, provides gap financing for small businesses in designated areas approved by local governments with the concurrence of the Secretary of Housing and Community Development. *Chapter 118 of 2010* established a new initiative within the Neighborhood Business Development Program to authorize DHCD to partner with intermediary organizations to facilitate better access to capital by microenterprises within designated neighborhoods. A microenterprise is a business of no more than five employees, requiring no more than \$35,000 in start-up capital, and which does not have access to the traditional commercial banking sector.

### **Affordable Housing**

The generally accepted definition of “affordable” housing is when housing costs do not exceed 30% of a household’s annual income. Families who pay more than 30% for housing are considered cost-burdened and may have difficulty affording necessities such as food, clothing, transportation, and medical care. The U.S. Department of Housing and Urban Development has estimated that 12 million households (renter and homeowner) pay more than 50% of their annual income for housing. The 2004 final report of the Governor’s Commission on Housing Policy stated that, as of 2000, one-third of Maryland households pay more than 30% of their income on rent. The report also stated that over the 10 years 2005 to 2015, there would be a shortage of 157,000 workforce or affordable rental units in the State.

In Maryland, the median price for owner-occupied real property was \$318,000 in fiscal 2006, up \$52,500, or 19.8%, from the previous year. For comparison purposes, the median household income increased by 3.7% over the same period. The median sale price ranged from \$87,775 in Allegany County to \$425,000 in Montgomery County.

**Local Government Programs:** *Chapters 299 and 300 of 2007* authorized a county or municipality to support, foster, or promote an affordable housing program for low- or moderate-income households by specified means, including providing funding or property, supporting payment in lieu of taxes (PILOT) programs, or enacting legislation to restrict prices or require development of affordable housing as part of a subdivision in return for added density. *Chapters 386 and 387 of 2008* added an additional tool to this list. The measures expressly allowed a county or municipality to waive or modify building permit or development impact fees and charges that are not mandated under State law for the construction or rehabilitation of lower-income housing units (1) in proportion to the number of lower-income housing units of a development; and (2) that are financed, in whole or in part, by public funding that restricts the rental or sale of the housing units to lower-income residents or are developed by a tax-exempt nonprofit organization that requires the homebuyer to participate in the construction or rehabilitation of the housing unit.

## State Government Programs

**Workforce Housing Grant Program:** The Workforce Housing Grant Program (WHGP) in DHCD was established by Chapter 483 of 2006 to provide flexible capital funds to qualifying local governments for development costs of workforce housing located in a priority funding area. **Chapter 603 of 2007** established the Workforce Housing Grant Fund in DHCD to facilitate the funding of WHGP. The measure provided that WHGP was not limited to providing funds for capital costs for the development of workforce housing units. In addition, WHGP was authorized to provide funds to workforce housing programs, including ones that finance development costs.

**Maryland Mortgage Program:** **Chapter 481 of 2007** authorized CDA to make, participate in making, and undertake commitments for residential mortgage loans to limited-income families outside of a community development project or a public purpose project:

- for a family that has a disabled member who will reside in the dwelling;
- for an emergency housing need;
- for settlement and down payment costs; or
- that is made in conjunction with a loan that consists of at least 20% of State appropriated funds.

According to DHCD, this measure allowed CDA, under its Maryland Mortgage Program, directly to lend to families who may not otherwise have qualified for the standard loan.

**Maryland Housing Rehabilitation Program:** The Maryland Housing Rehabilitation Program (MHRP) provides financing assistance to families of limited income for the acquisition and rehabilitation of single and multifamily housing. To qualify for a loan, the program requires a mortgage or deed of trust as security in the event of a default on the loan. Members of a housing cooperative, however, had been unable to utilize this loan program because they do not acquire a traditional ownership interest when they purchase a home in the housing cooperative but rather acquire a “membership interest” which is a form of a leasehold interest. **Chapter 485 of 2008** added a member of a housing cooperative to those eligible for a loan under MHRP by allowing the member to use the membership interest as collateral for the loan, if DHCD and the housing cooperative reach an agreement regarding the creation of this security interest.

**Maryland Affordable Housing Land Trust Act:** **Chapters 609 and 610 of 2010** established the Affordable Housing Land Trust Act as a new means to create and maintain permanently affordable housing in the State. The measures authorized an affordable housing land trust to acquire residential real property or an interest in property; make improvements on residential real property; and enter into affordable housing land trust agreements with qualified persons. For an additional discussion of **Chapters 609 and 610**, see the subpart “Real Property” of Part F – Courts and Judicial Proceedings of this *Major Issues Review*.

## **Lead Paint**

Although the number of children with elevated blood lead levels in Maryland has decreased significantly and the number of children tested continues to grow, lead paint still remains a significant health issue in Maryland. **Chapter 444 of 2008** required a person acquiring an occupied and affected property to come into compliance with provisions of the Reduction of Lead Risk in Housing laws. **Chapters 420 and 421 of 2008** required an application form for a contractor’s license issued by the Maryland Home Improvement Commission to contain accreditation information for use by the Maryland Department of the Environment. For a more detailed discussion of lead poisoning prevention generally, see the subpart “Public Health – Generally” of Part J – Health and Human Services of this *Major Issues Review*.

## **Tax Credit Legislation**

### **Heritage Structure Rehabilitation Tax Credit**

The Heritage Structure Rehabilitation Tax Credit Program provides a credit for qualified expenditures for rehabilitating a certified historic structure. **Chapters 566 and 567 of 2007** extended the Heritage Structure Rehabilitation Tax Credit Program until July 1, 2010. The measures also altered how credits are awarded and altered other administrative aspects of the credit. **Chapter 487 of 2010** altered the program to be the Sustainable Communities Tax Credit Program and extended the program through fiscal 2014. For a more detailed discussion of this tax credit, see the subpart “Income Tax” of Part B – Taxes of this *Major Issues Review*.

### **Tax Credits for Qualified Distressed Counties**

Maryland counties that qualify as “distressed” are eligible for targeted assistance under the Maryland Economic Development Assistance Authority and Fund, for waiver of certain insurance premiums under the Maryland Industrial Development Financing Authority, and for the One Maryland tax credits, which are typically between \$500,000 and \$5 million in value. However, certain criteria used in determining county eligibility for the tax credit have been found not to assess a county’s actual need accurately. Therefore, in **Chapter 498 of 2008**, the General Assembly altered the definition of a “qualified distressed county” by making the historical measuring periods for a county’s unemployment rate and per capita personal income more appropriately reflect a county’s economic well-being measured over a uniform 24-month period, and by making allowance for 12-month seasonal variations.

### **Job Creation Tax Credit**

The Job Creation Tax Credit provides a tax credit to businesses that create new jobs in Maryland by expanding or establishing new facilities. In any one year, the credit may be applied against any one of the following taxes: corporate or personal income; insurance premium; and public service franchise. **Chapter 517 of 2008** extended this tax credit and the deadline for eligible projects by an additional four years to January 1, 2014. For an additional discussion of this tax credit, see the subpart “Income Tax” of Part B – Taxes of this *Major Issues Review*.

## **Job Creation and Recovery Tax Credit**

*Chapter 1 of 2010* created a tax credit against the State income tax for employers who hire qualified individuals between March 25 and December 31, 2010. The Act authorized the Department of Labor, Licensing, and Regulation to award \$20 million in credits on a first-come, first-served basis. For a more detailed discussion of this tax credit, see the subpart “Income Tax” within Part B – Taxes of this *Major Issues Review*.

## **Tax Credits for Enterprise Zones**

Businesses located within a Maryland enterprise zone are eligible for local property tax credits and State income tax credits for 10 years after the designation of the enterprise zone. Prior to the 2010 legislative session, the Secretary of Business and Economic Development was authorized to designate up to six enterprise zones during one calendar year, and a county may not receive more than one designation in that calendar year. *Chapter 459 of 2010* expanded the amount of enterprise zones that may be designated per county in a calendar year from one to two.

## **Research and Development Tax Credits**

The Department of Business and Economic Development (DBED) is authorized to award \$6 million in research and development tax credits in each year. *Chapter 20 of 2010* extended the termination date for the research and development tax credits from June 30, 2012, to June 30, 2021. For a more detailed discussion of this issue, see the subpart “Income Tax” within Part B – Taxes of this *Major Issues Review*.

## **Special Taxing Districts**

The General Assembly has granted 12 counties (Anne Arundel, Baltimore, Calvert, Cecil, Charles, Garrett, Harford, Howard, Prince George’s, St. Mary’s, Washington, and Wicomico) and Baltimore City broad authority to create special taxing districts. This authority allows these jurisdictions to levy *ad valorem* taxes and issue bonds and other obligations for purposes of financing certain infrastructure improvements including storm drainage systems, water and sewer systems, roads, sidewalks, lighting, parking, park and recreational facilities, libraries, schools, transit facilities, and solid waste facilities. Special taxing districts may utilize tax increment financing (TIF), which is a method of funding public projects under which the increase in the property tax revenue generated by new commercial development in a specific area, the TIF district, repays bonds issued to finance site improvements, infrastructure, and other project costs located on public property.

## **Transit-oriented Development**

*Chapter 182 of 2009* expanded the special taxing district authority of these counties and specified municipalities to include using special taxing districts to finance the costs of infrastructure improvements located in or supporting an area designated as a transit-oriented development (TOD), including the cost for operation and maintenance of infrastructure improvements. The measure also authorized the Maryland Economic Development Corporation



(MEDCO) to enter into agreements with these counties and municipalities to use proceeds from a special taxing district, including TIF, to repay debt service on bonds issued by MEDCO on behalf of TOD projects. In addition, *Chapter 182* allowed local tax revenues generated within, or that are otherwise attributable to the district, to be used by the district to pay bond debt service or MEDCO obligations or to pay for certain activities within the special taxing district.

### **State Hospital Redevelopment**

*Chapter 726 of 2010* extended the municipality and county special taxing district and bonding authority for a TOD granted in *Chapter 182 of 2009* to an area designated as a State hospital redevelopment. A State hospital redevelopment is any combination of private or public commercial, residential, or recreational uses, improvements, and facilities that is part of a comprehensive coordinated development plan or strategy involving property that was formerly occupied by a State-owned or State-operated hospital or other institution that provided services to individuals with mental disorders, or a State residential center; or property that is adjacent or reasonably proximate to the “former hospital” property. The State hospital redevelopment must be designated by the Smart Growth Subcabinet and the local government or multicounty agency with land use and planning responsibility for the relevant area.

### **Business Improvement Districts**

The purpose of establishing a business improvement district is to promote the general welfare of residents, employers, property owners, and others within the district. *Chapter 461 of 2010* authorized a county or municipality to create a business improvement district and established the process under which a district corporation may be created. Except as limited by its articles of incorporation or a local law, a district corporation may (1) receive money from its incorporating local government, the State, or nonprofit organizations; (2) charge fees for its services; (3) employ individuals and hire consultants; and (4) use the services of other governmental units. A local government establishing a business improvement district is required to impose a tax within the business improvement district to provide for district operations; however, the tax imposed may not count against a county or municipal corporation tax cap. At least 80% of the owners of the total number of parcels of nonexempt property in the geographic area of the proposed district must express the intent to establish a district corporation.

### **Base Realignment and Closure**

In order to address an excess capacity of military facilities, the U.S. Congress created a process in 1990 known as BRAC. The most recent round of federal plans regarding military installations nationwide became effective in November 2005.

Significant federal and private-sector job growth in the State is anticipated as a result of the 2005 BRAC plans. An estimated 27,400 new direct jobs are expected to be created through 2011 at Aberdeen Proving Ground, Andrews Air Force Base, Fort Detrick, Fort Meade, and the National Naval Medical Center. In addition to direct job growth, thousands of indirect and induced jobs are expected to be created for an estimated total of up to 60,000 new federal and private-sector jobs statewide through 2020. It is further estimated that Maryland will gain more

than 25,000 households as a result of the BRAC process and other military growth. In an effort to manage the impact of BRAC on the State, the General Assembly established several BRAC-coordinating bodies.

### **Maryland Military Installation Council**

In 2003, Maryland created the Maryland Military Installation Strategic Planning Council (Chapter 335 of 2003), consisting of 19 representatives of State agencies and federal military installations, to serve as an advocate for military facilities located in Maryland and coordinate State agency planning in response to changes caused by BRAC. After the approval of the 2005 BRAC plans, the State renamed the council the Maryland Military Installation Council (MMIC) and extended the termination date of the council through December 31, 2011, (Chapter 634 of 2006). *Chapter 15 of 2010* (1) repealed the December 31, 2011 termination date for the council; (2) increased membership of the council to 24 by including the Secretary of Veterans Affairs, the Adjutant General of the Maryland National Guard, and the President of the Indian Head Defense Alliance; and (3) established four-year, staggered terms for appointed members.

### **BRAC Subcabinet**

*Chapter 6 of 2007* created a 10-member BRAC subcabinet in State government chaired by the Lieutenant Governor. The subcabinet was charged with several tasks, including:

- coordinating and overseeing the implementation of all State action to support the mission of military installations affected by BRAC;
- coordinating and overseeing the development of BRAC-related initiatives in various areas, including education, workforce readiness, community infrastructure and growth, health care facilities and services, workforce housing, and transportation; and
- working with local jurisdictions affected by BRAC to facilitate planning, coordination, and cooperation with the State.

The subcabinet held a number of public meetings throughout the State beginning in May 2007 and released a statewide plan for legislative and budgetary BRAC priorities in late 2007. The subcabinet is required to report annually and is scheduled to terminate on December 31, 2011.

### **Joint Committee on Base Realignment and Closure**

*Chapter 469 of 2007* established the Joint Committee on Base Realignment and Closure consisting of 6 members of the House of Delegates and 6 members of the Senate. Later, the membership of the subcabinet was increased by *Chapters 339 and 340 of 2008* to 16 members, with 8 from each chamber. The committee is charged with providing legislative oversight of the State's response to BRAC-related opportunities and changes. In cooperation with local and State

units, it is also required to oversee and participate in developing systems and processes that fast track the approval of BRAC-related:

- infrastructure, including transportation, water and sewer, and health care;
- State and local planning processes;
- affordable housing options; and
- health care facilities and education facilities, including public school and community college construction.

### **BRAC Revitalization and Incentive Zones**

*Chapter 338 of 2008* authorized the Secretary of Business and Economic Development to designate BRAC Revitalization and Incentive Zones (BRAC Zones) in the State. A local government may apply to have one of these BRAC Zones located within its jurisdiction. Among the factors to be considered by the Secretary in designating a BRAC Zone are the smart-growth and mixed-use characteristics of the area, the area's population density, whether the area is designated as an enterprise zone, the area's transportation options, and the overall State fiscal impact of the designation. The measure authorized up to six BRAC Zones to be designated each year. The designation process was modeled on that for enterprise zones.

The benefits of a BRAC Zone designation are primarily tax-related financial incentives, including State support of up to 100% of the increase in the State property tax of any qualifying property and 50% of the local property tax for any increase in the local tax revenues collected on the increased value of qualifying property. These financial incentives began in fiscal 2010 and are limited to \$5 million per year. Local jurisdictions and businesses in the BRAC Zone may also receive priority consideration for financial assistance projects in the BRAC Zone from DBED, the Maryland Department of Planning, DHCD, or any other appropriate State program.

An additional benefit developed under *Chapter 338* was explicit authorization of a PILOT agreement for privately developed facilities in federal military reservations, also known as "federal enclave property." The Act established a negotiation process for State, local, federal, and private development interests to engage in to structure a PILOT agreement. Under federal law, in the absence of such an agreement, privately developed facilities in federal military reservations are subject to the full real property tax in effect in the local jurisdiction.

*Chapter 728 of 2009* changed the effective date of a 10-year BRAC Zone from the date the Secretary of Business and Economic Development designated a zone to the date the first property in a zone became a qualified property. The measure also changed the annual date by which local jurisdictions must notify the State Department of Assessments and Taxation (SDAT) regarding qualified properties from November 1 to February 1, and the annual date that SDAT calculates payments to local jurisdictions from December 1 to March 1. In addition, the

Secretary of Business and Economic Development was required to notify the General Assembly delegation when a county submits an application for designation of a BRAC Zone.

### **Maryland Economic Adjustment Fund**

The Maryland Economic Adjustment Fund (MEAF), established in 1994 in response to the pending 1995 BRAC process, provides funds to new or existing companies in communities affected by defense adjustments. *Chapter 14 of 2010* made several changes to MEAF including (1) eliminating the MEAF Committee; (2) altering eligibility requirements under the loan program and eliminating the priority currently provided to defense contractors; (3) eliminating the minimum interest rate that must be charged on loans; and (4) altering application requirements.

## **Economic Development**

### **Maryland Small Business Development Financing Authority**

The Maryland Small Business Development Financing Authority (MSBDFFA) was established to provide financing incentives to create and expand small businesses, focusing on businesses owned by socially or economically disadvantaged persons. From 1995 to 2004, MSBDFFA created approximately 3,224 direct jobs and 2,044 indirect jobs and generated \$121.4 million in State tax receipts.

In response to a number of applicants requesting higher financing or benefits than were available, the General Assembly passed *Chapter 635 of 2007* which substantially raised the limits of assistance that MSBDFFA may offer under its contract financing, long-term guaranty fund, surety bond, and equity participation investment programs. For example, under the contract financing program, a loan or guarantee of a loan may not exceed \$2 million, increased from the previous \$1 million cap. Under the long-term guaranty program, a guarantee up to 80% of a loan may not exceed \$2 million, increased from the previous \$1 million cap. The measure also authorized MSBDFFA to issue or guarantee bid, performance, or payment bonds on contracts financed by a private entity and required an enterprise that seeks to acquire an existing business, or the principals of the acquiring enterprise, to have an equity investment of at least 5% of the total cost of the acquisition.

### **DBED Enforcement Rights**

One concern common to many economic development programs has been the ability of the State to protect its investment when projects go awry. *Chapter 73 of 2008* specified the rights and strengthened the enforcement capability of DBED in its collection efforts through its economic assistance lending capacity. The Act also simplified the transfer of title to projects undertaken by local governments with financial assistance from the Maryland Economic Development Assistance Authority and Fund.

## Tourism

**Maryland Tourism Development Board:** The Maryland Tourism Development Board in DBED advertises Maryland and Maryland tourism in print publications, on television, and on the Internet. In addition, it produces the *Destination Maryland* guide and a calendar of events that lists tourism events throughout the State. The board is supported through general fund and special fund revenue generated from advertisements in magazines that the board produces.

**Chapter 152 of 2007** added five members to the board; three appointed by the Governor, one appointed by the President of the Senate, and one appointed by the Speaker of the House of Delegates. The measure increased the number of board members who must be senators or delegates from one from each chamber to two from each chamber. The three board members appointed by the Governor are nonvoting members who are directors or chief executive officers from among the 25 destination marketing organizations recognized by the Maryland Office of Tourism Development. These destination marketing members must represent the interest of all destination marketing organizations in the State, not merely their own areas.

**Tourism Promotion:** The Maryland Tourism Development Board promotes Maryland tourism through various media by administering a program of local matching grants for local tourism development. In addition, many local governments support destination marketing organizations. **Chapter 181 of 2008** required the Comptroller to calculate the amount in sales tax revenue that is generated by Maryland's tourism industries and to report this amount to the Governor for consideration of inclusion within the annual appropriation for the board. However, the Act stated the intent of the General Assembly that any year-on-year appropriation increase not exceed \$5.0 million. In addition, the measure mandated an appropriation of at least \$2.5 million in annual grants to the destination marketing organizations beginning in fiscal 2011. However, due to the State's financial situation, only \$2.35 million was allocated to the destination marketing organizations in fiscal 2011.

**Maryland Heritage Areas Program:** The Maryland Heritage Areas Program was created in 1996 to help communities use heritage tourism to build their economies while protecting, developing, and promoting their cultural, historical, and natural resources. The program does so by providing targeted financial and technical assistance to a limited number of areas designated across the State as "certified heritage areas."

**Chapter 93 of 2007** required the Maryland Heritage Areas Authority to provide acquisition and development grants only to projects in "target investment zones" within certified heritage areas, with certain exceptions. A "target investment zone" is a specific area located within a certified heritage area that is identified as a priority area intended to attract significant private investment in order to encourage demonstrable results and return on investment within the area in a relatively short period of time. The Act extended to 10 years the time period during which projects in target investment zones are eligible for grants, up from the former 5 years.

**Baltimore Convention Center:** The Baltimore Convention Center hosted 166 events and 545,000 event attendees in fiscal 2007. However, like convention centers generally, the Baltimore Convention Center is not a fiscally self-sustaining entity. The convention center's

operating deficit is covered by an arrangement under which Baltimore City funds one-third of the necessary support, and the Maryland Stadium Authority contributes two-thirds. **Chapter 320 of 2008** extended the duration of this funding arrangement through December 31, 2014.

**Film:** The Maryland Film Office of the Division of Tourism, Film, and the Arts in DBED was established to attract feature film, television, commercial, and video production companies to Maryland. The office's Film Production Employer Wage Rebate Grant Program, established in 2005, offered a 50% rebate of the first \$25,000 of each qualified employee's wages, up to a total maximum of \$2 million. To qualify for the rebate, a film production activity had to be intended for nationwide distribution and have direct costs in the State of at least \$500,000, which could include wages and benefits, fees for services, and any other necessary expense.

**Chapter 87 of 2007** renamed the program to be the Film Production Rebate Fund and simplified grant eligibility requirements. The Act altered the value of the subsidy a company may receive under the program. Formerly, a company could receive a rebate of 50% of the direct costs of the film production activity subject to specified limitations. The Act allowed the program to grant the company up to 25% of the total direct costs of the film production activity. The total amount of the award to each company is not capped, specific qualifying employee wage limitations were repealed, and the actual amount disbursed was left to the discretion of DBED.

**Task Force to Study the Boating Industry in Maryland:** According to a study by the University of Maryland (Maryland Sea Grant Extension Program), the recreational boating impact on the Maryland economy in 2000, including indirect and induced effects of recreational boaters' spending, was approximately \$1.6 billion. **Chapter 523 of 2007** established a Task Force to Study the Boating Industry in Maryland to evaluate and make recommendations regarding growing the boating industry in the State. The task force was charged with several tasks including determining ways to encourage and promote tourism throughout waters of the State and researching the economic impact that marine industries and recreational boaters contribute to the State's economy. Needing more time for its work, the task force was extended under **Chapters 11 and 12 of 2008** from July 31, 2008, to June 30, 2009.

The major recommendations of the task force in its December 31, 2008 final report, included requesting (1) the Department of Legislative Services to explore options for new potential fund sources for the Waterway Improvement Fund as means to extend the stay for transient boaters in Maryland; (2) the Maryland boating industry to support the Marine Trades Association of Maryland's effort to create a comprehensive consumer web site marketing the State's recreational boating opportunities; (3) DBED to identify development sites for marinas or marine manufacturers; and (4) the Maryland congressional delegation to expand the definition of "commerce" to include marinas and tourism to facilitate inclusion in the cost/benefit analysis for maintaining existing and completing U.S. Army Corps of Engineers projects.

### **Life Science and Technology**

According to MdBio, Inc., a regional trade association, in 2006 an estimated 360 private bioscience companies were located in Maryland, employing approximately 23,200 people. According to DBED, in 2007 Maryland had the third or fourth largest State cluster of bioscience companies in the nation and the second largest per capita in the nation. In 2008, Maryland supported a bioscience industry of 370 firms with \$450 million in State investment in addition to \$12.2 billion in federal funds. In addition, DBED had identified 36 nanotechnology companies in Maryland. However, there is fierce competition, globally and nationally, to grow, expand, and attract the bioscience industry.

***Life Sciences Advisory Board: Chapter 304 of 2007*** established a 15-member Life Sciences Advisory Board (LSAB) in DBED. Life sciences include biotechnology, pharmaceuticals, biomedical technologies, life systems technologies, food sciences, environmental sciences, and biomedical devices. LSAB was required to assist DBED in several tasks, including promoting life science research, development, commercialization, and manufacturing in the State; and developing a strategy to coordinate State and federal resources to attract private-sector investment and job creation.

***Coordinating Emerging Nanobiotechnology Research:*** The Maryland Technology Development Corporation (TEDCO) runs the Maryland Technology Incubator Program, a leading source of funding for seed capital and entrepreneurial business assistance. ***Chapters 445 and 446 of 2008*** established the Coordinating Emerging Nanobiotechnology Research in Maryland Program (CENTR) and Fund in TEDCO. The CENTR was created to provide grants specifically for nanobiotechnology research projects to support advanced nanobiotechnology research at higher education institutions and promote Maryland as a key location for private-sector firms in the industry.

***Joint Information Technology and Biotechnology Committee: Chapter 140 of 2009*** codified the Joint Information Technology and Biotechnology Committee and charged the committee with working to broaden the support, knowledge, and awareness of information technology and biotechnology to benefit the people of Maryland. The committee is required to submit an annual report of its findings and recommendations.

***Task Force to Study Nanobiotechnology: Chapter 163 of 2010*** established a task force to study the benefits of nanobiotechnology as it relates to job creation, the development of lifesaving treatments, reductions in health care costs, the development of commercial products, the generation of State revenue, and improvements to the quality of life for State residents. The task force was also charged with studying the State's role in supporting Maryland's leadership in nanobiotechnology and with making recommendations regarding actions that the State should take to promote the growth of nanobiotechnology industries in the State.

### **Alternative Energy Promotion and Environment Promotion**

***Jane E. Lawton Conservation Loan Program:*** Jane E. Lawton, a two-term member of the House of Delegates serving District 18 of Montgomery County, passed away on

November 29, 2007. Lawton was widely recognized as a vigorous advocate for environmental protection and energy conservation. In tribute to Lawton's work on behalf of energy efficiency and conservation causes, *Chapters 466 and 467 of 2008* created the Jane E. Lawton Conservation Loan Program. This program merged and consolidated the previously existing Community Energy Loan Program and Energy Efficiency and Economic Development Loan Program. The new program provides low-interest loans to nonprofit organizations, local jurisdictions, and eligible businesses undertaking energy efficiency and conservation projects.

*Chapter 169 of 2009* expanded the purposes of the Jane E. Lawton Conservation Loan Program and eligible projects under the program to include the development and use of renewable energy resources, including installation of infrastructure for renewable energy generation by local jurisdictions and nonprofit organizations. The Act also specified additional local government entities eligible to receive loans under the program; allowed a loan to be deposited in a revolving loan fund of a county's economic development commission to provide capital for renewable energy infrastructure projects; and authorized local jurisdictions to offer excess electricity generated from a project financed under the program for trade on the wholesale market.

*Maryland Clean Energy Center: Chapter 137 of 2008* established a Maryland Clean Energy Center as a body politic and corporate and as an instrumentality of the State to (1) generally promote and assist the development of the clean energy industry in the State; (2) promote the deployment of clean energy technology in the State; and (3) collect, analyze, and disseminate industry data. The center is required to coordinate with the Maryland Energy Administration (MEA) and is prohibited from duplicating MEA's programs or activities without its consent. The Act also established a Maryland Clean Energy Technology Incubator Program to promote entrepreneurship and the creation of jobs in the clean energy technology-related industry. The measure provided for the composition, powers, responsibilities, and function of a board of directors charged with managing the center and exercising its corporate powers.

State law relating to the center was altered by *Chapter 713 of 2010*. The Act specified that a majority of the appointed and qualified members of the board of directors is a quorum and that the board may act with an affirmative vote of a majority of the appointed and qualified members of the board. The measure specified that the center, its board, and employees are subject to provisions of the State Finance and Procurement Article that establish requirements of units and contractors aimed at achieving specified levels of participation by minority business enterprises in procurement contracts. The measure also included an employee or official of the center under the definition of "State personnel" under the Maryland Tort Claims Act, who have specified immunity from suit in courts in the State and from liability in tort.

*Chesapeake Conservation Corps Program:* The Chesapeake Bay Trust is a private, nonprofit grant-making organization established by the General Assembly in 1985 to promote public awareness and participation in the restoration and protection of the water quality and aquatic and land resources of the Chesapeake Bay and other aquatic and land resources of the State. *Chapters 275 and 276 of 2010* established a Chesapeake Conservation Corps Program within the trust to, among other purposes, provide young adults with meaningful service



opportunities and promote, preserve, protect, and conserve the environment. The Corps Program is designed to (1) mobilize, educate, and train young individuals to work with communities and schools to promote energy conservation and mitigate and prevent threats to the environment; (2) provide opportunities to young individuals, especially disadvantaged youth, to be trained for “green collar” careers; and (3) channel available public and private resources to the protection, conservation, and preservation of the State’s environment.

In fiscal 2011 through 2015, \$250,000 annually from the Department of Natural Resources’ Environmental Trust Fund must be allocated to the trust for specified energy conservation projects through the Corps Program. In addition to those funds, the Corps Program is required to be funded with up to \$250,000 in additional funds that may be allocated by the trust through its annual budget process. Further, for long-term funding of the Corps Program, the trust and the Advisory Board of the Corps Program, which was established by the measures to advise the trust in the development and implementation of the Corps Program, must seek federal and private funds.

The trust is also required to provide grants to qualified organizations for the creation or expansion of full- and part-time programs that involve citizens of all ages throughout the State. Such programs must engage and develop volunteers and stipend volunteers in environmental and energy projects. A “qualified organization” is a nonprofit organization; a school; a community association; a service, youth, or civic group; an institution of higher education; a county or municipality; or a unit of State government.

### **Other Economic Development**

***Military Personnel and Service-disabled Veterans No-interest Loan Program:*** Chapter 389 of 2006 established the Military Service-related Loan Program to assist military reservists and National Guard personnel called to active duty, service-disabled veterans, and businesses that employ or are owned by such persons. The program is administered by DBED in consultation with the Maryland Department of Veterans Affairs. ***Chapter 730 of 2009*** renamed the program to be the Military Personnel and Service-disabled Veterans No-interest Loan Program. The measure also added two new eligible classes of recipients of loans (businesses owned by service-disabled veterans and businesses employing a service-disabled veteran) and stated a preference for funding service-disabled veterans if funds are scarce.

***Maryland Not-for-profit Development Center Program:*** Although new not-for-profit entities have many of the same organizational issues and concerns as other start-ups, they have not historically been eligible for the same sorts of government-sponsored support as for-profit small businesses and minority-owned enterprises. ***Chapter 313 of 2008*** sought to provide organizational support for newly formed not-for-profit entities organized for charitable purposes, funded by a \$50 surcharge on the articles of incorporation of these types of entities through the Not-for-profit Development Center Program and Fund under DBED. ***Chapters 105 and 106 of 2009*** clarified the requirements that a not-for-profit entity must meet to qualify to receive assistance from the program by defining the terms “not-for-profit entity” and “qualified not-for-profit entity.”

**Baby Boomer Initiative Council:** Individuals born between 1946 and 1964 are generally referred to as the “baby boomer” generation. The U.S. Census Bureau estimated that there were 78 million baby boomers in the United States as of July 1, 2005. This generation is expected to have a significant impact on how retirement and aging is perceived and treated in the United States. **Chapters 506 and 507 of 2007** established a Baby Boomer Initiative Council staffed by the University of Maryland’s College of Health and Human Performance. The council was charged with developing recommendations for addressing the needs of the baby boomer population, and the two representatives from the University of Maryland and Johns Hopkins University on the council were required to jointly initiate a study documenting the economic and social impact of older workers’ roles in the economy and in the community. The council terminates December 31, 2011.

## **Code Revision**

As part of the General Assembly’s ongoing process of code revision, which updates existing law without making any substantive changes, **Chapter 306 of 2008** created the new Economic Development Article. **Chapter 306** revised, restated, and recodified the laws of the State that relate to economic development. The new article is a nonsubstantive revision of the statutes that pertain to DBED, its component parts and programs, and independent economic development units and programs. The article consists of Division I which is the Department of Business and Economic Development and Division II which is Independent and Regional Development Units and Resources. The companion bill, **Chapter 307 of 2008**, corrected cross-references to the new article in other provisions of the Annotated Code, made nonsubstantive corrections to the new article, and addressed several matters brought to the attention of the General Assembly by the Economic Development Article Review Committee.

## **Workers’ Compensation**

During the 2007-2010 term, the General Assembly passed several measures concerning who is considered a covered employee. The Workers’ Compensation Commission (WCC) was tasked with administering the program to address employee misclassification. In addition, a number of measures were passed to expand benefits, streamline the process for the release of medical records, and increase the penalties assessed on uninsured employers. Bills related to the regulation of and board term limits for the Injured Workers’ Insurance Fund (IWIF) were also enacted.

### **Covered Employees**

#### **Misclassification of Employees as Independent Contractors**

**Chapter 188 of 2009** established, for the purpose of enforcement only, a presumption that work performed by an individual paid by an employer creates an employer-employee relationship, subject to specified exemptions. To overcome the presumption of covered employment under workers’ compensation, an employer must establish that the individual

performing the services is an independent contractor in accordance with common law or is specifically exempted under the workers' compensation law. WCC must pay, through an assessment on insurers, the costs of administering the workplace fraud program by the Commissioner of Labor and Industry. If an employer has failed to properly classify an individual as an employee, WCC must order the employer to secure workers' compensation coverage for the employee. If an employer has knowingly failed to properly classify an individual as an employee, the employer is subject to a civil penalty of up to \$5,000 per employee. For a more detailed discussion of the Workplace Fraud Act of 2009, see the subpart "Labor and Industry" of this Part H.

### **Unpaid Work-based Learning Experiences**

Employers of public school students who participate in an unpaid work-based learning experience must secure workers' compensation coverage for these students. *Chapter 229 of 2007* required employers to likewise provide coverage to private school students participating in an unpaid work-based learning experience. Students are eligible for medical benefits, but not indemnity, as they work without pay.

A local school board may choose to provide coverage for its participating students. In that event, the participating employers are required to reimburse the local school board the lesser of the cost of the coverage or \$250. The Cecil County Board of Education was the only local school board authorized to waive the requirement that participating employers reimburse the local school board until *Chapter 363 of 2008* authorized the Allegany County Board of Education to also waive that requirement.

*Chapter 209 of 2010* established that individuals placed in unpaid work-based learning experiences by the Maryland State Department of Education's (MSDE) Division of Rehabilitation Services (known as DORS) are considered "covered employees" under the workers' compensation law. As covered employees, these individuals are eligible for medical services and treatment for work-related injuries. Employers sponsoring "DORS consumers" must maintain workers' compensation coverage for these individuals throughout the course of their employment. MSDE has to reimburse employers, up to \$250 per participant, for premium increases associated with adding DORS consumers to their workers' compensation insurance policies.

### **State Government Volunteer Workers**

Prior to January 8, 2008, volunteer workers employed by units of State government were provided Volunteer Accident Coverage under a policy through the State Treasurer's Office, which then decided to cancel such coverage. Accordingly, *Chapter 541 of 2008* specified that any volunteer worker for a unit of State government is entitled to workers' compensation benefits under the Maryland Workers' Compensation Act. However, the benefits are limited to specified medical services and treatment, and they do not include disability or lost income.

### **Auxiliary Officers**

Howard County auxiliary police officers are private citizens trained to provide uniformed volunteer services. *Chapter 52 of 2007* clarified that an auxiliary police officer in that county, while on duty, is a covered employee for purposes of workers' compensation coverage.

*Chapters 539 and 540 of 2009* established that auxiliary volunteers of the Charles County Sheriff's Office are covered employees while performing work assigned by the sheriff and specified how the average weekly wage is to be computed for such auxiliary volunteers.

### **Domestic Workers**

*Chapter 230 of 2007* increased the minimum earning threshold for workers' compensation coverage for domestic workers. The measure exempted employers from providing workers' compensation coverage for domestic workers who earn less than \$1,000 per quarter (the minimum threshold had been \$750 per quarter). A domestic worker earning less than the prescribed amount may jointly elect with the employer to become a covered employee.

## **Benefits**

### **Compensation for Permanent Partial Disability**

Compensation for permanent partial disability is divided into three tiers, depending on the severity of the injury.

- Compensation for a period of less than 75 weeks is generally available for lesser injuries or the loss of a finger or a toe. The maximum benefit for claims arising prior to 2009 is \$114 per week and is lower for claims arising prior to 2000. Maximum first-tier awards are higher for certain disabilities and for specified public safety employees.
- Compensation for a period equal to or greater than 75 weeks but less than 250 weeks is generally available for the loss of a thumb, partial hearing loss, or disfigurement. These claimants are entitled to compensation equal to two-thirds of the employee's average weekly wage, not to exceed one-third of the State average weekly wage.
- Compensation for a period of 250 weeks or more is generally available for the most serious injuries, such as loss of a hand, arm, foot, leg, eye, or total loss of hearing. These claimants are entitled to compensation equal to two-thirds of the employee's average weekly wage, not to exceed 75% of the State average weekly wage.

*Chapter 85 of 2008* incrementally increased the maximum benefit for first-tier claims (fewer than 75 weeks) for a permanent partial disability occurring on or after January 1, 2009, until it reaches one-sixth of the State average weekly wage. The maximum weekly benefit amount increases over three calendar years to 14.3% of the State average weekly wage in calendar 2009, 15.4% in calendar 2010, and 16.7% in calendar 2011 and thereafter.

### **Enhanced Benefits and Occupational Disease Presumptions**

*Chapter 434 of 2007* added Montgomery County correctional officers to the list of public safety officers eligible for enhanced benefits for a compensable permanent partial disability, and *Chapter 109 of 2008* added Prince George's County correctional officers to that list. Thus, in those counties, correctional officers awarded claims of fewer than 75 weeks are instead compensated at the rate for awards of 75 to 250 weeks. Accordingly, both counties must pay a correctional officer two-thirds of the correctional officer's average weekly wage, not to exceed one-third of the State average weekly wage.

Until 2008, Allegany County deputy sheriffs were eligible for the occupational disease presumption available under workers' compensation law; however, they became ineligible when the responsibility for patrol duty in the county was moved to another law enforcement agency. *Chapters 75 and 76 of 2010* restored the occupational disease presumption for an Allegany County deputy sheriff who suffers from heart disease or hypertension that results in death or partial or total disability. Such an individual is also eligible for enhanced workers' compensation benefits for compensable permanent partial disabilities. A deputy sheriff who is awarded a claim of fewer than 75 weeks for permanent partial disability is compensated by Allegany County at the higher rate for awards of 75 to 250 weeks, which is two-thirds of the deputy sheriff's average weekly wage, not to exceed one-third of the State average weekly wage.

*Chapter 98 of 2008* specified that Maryland-National Capital Park and Planning Commission (M-NCPPC) park police officers who suffer from Lyme disease are presumed to have a compensable occupational disease if the condition was not preexisting. The presumption applies only while the officer is assigned to a position that regularly places him or her in an outdoor wooded environment, or for three years following such an assignment. *Chapter 709 of 2009* extended that presumption to other employees of M-NCPPC who suffer from Lyme disease if they did not have the disease before being assigned to work regularly in an outdoor wooded environment and meet other specified criteria.

### **Death Benefits for Dependents**

Surviving spouses who were partially dependent at the time of the covered employees' death are entitled to a death benefit for the period of partial dependency or until \$60,000 has been paid for claims filed prior to September 1, 2007. However, *Chapters 616 and 617 of 2009* increased the maximum workers' compensation payment to partially dependent or partially self-supporting individuals to \$75,000 for any claims filed on or after September 1, 2007.

*Chapters 350 and 351 of 2007* restored the practice of allowing dependents of public safety personnel who die from an occupational disease to collect workers' compensation benefits in addition to retirement benefits. Thus, dependents of firefighting personnel, police officers, correctional officers, and deputy sheriffs may collect retirement benefits, as well as workers' compensation benefits, when the covered employee's death resulted from heart disease, hypertension, lung disease, or certain cancers. Workers' compensation benefits are adjusted so that the weekly total of both sets of benefits does not exceed the weekly salary that was paid to the deceased public safety personnel.

## **Release of Medical Information**

Chapter 503 of 2005 prohibited health care providers from providing medical information without an injured person's authorization unless the person had been given notice of the request (in a subpoena) and had 30 days to object that the medical information was not relevant to the issues of the workers' compensation case or the request unduly invaded the person's privacy or caused the person specific harm. An unintended consequence of the 2005 measure was that parties to a workers' compensation case were not always able to obtain a medical record prior to a hearing on the case before WCC and the hearing may have had to be postponed. *Chapter 167 of 2007* streamlined the process for the release of medical information by requiring a health care provider to disclose a medical record on receipt of an authorization for the release of medical information. A claim application form filed for accidental personal injury or occupational disease has to include an authorization by the claimant for the release of medical information, including information on the injured body part and a description of how the injury occurred. Even so, if the medical provider determines that information being requested is not relevant to the injured body part, the requestor still has to obtain a subpoena from WCC in order for the information to be provided by the medical provider.

## **Assessments for Uninsured Employers**

The Uninsured Employers' Fund (UEF) pays workers' compensation benefit awards ordered by WCC in cases where uninsured employers default on payments. UEF derives its revenue from assessments on awards and settlements against employers or insurers. UEF also collects penalty assessments from sanctions on uninsured employers and recovers benefits and medical expenses paid by UEF on uninsured claims.

UEF is authorized to institute a civil action to recover money paid under an award for workers' compensation of an uninsured employer. When WCC makes a decision on a claim against an uninsured employer, it may impose a penalty assessment against the uninsured employer. *Chapter 731 of 2010* increased the penalty assessment to at least \$500 but not more than \$1,000, as well as 15% of any award made in the claim, up to \$5,000 in any one claim. The penalty assessment had been capped at \$500 (with a corresponding minimum of \$150), as well as 15% of any award made, up to \$2,500 for any one claim.

## **Injured Workers' Insurance Fund**

### **Regulation**

IWIF administers workers' compensation claims for the State (for injured State employees) and provides workers' compensation insurance to firms that are unable to procure insurance in the private market. IWIF is the exclusive residual workers' compensation insurer in the State and cannot decline businesses seeking coverage. IWIF is a major insurer in the State, with almost one-third of the market share. Chapter 567 of 2000 placed IWIF under the oversight of the Maryland Insurance Administration for examinations and other provisions; however, it did not subject IWIF to rate review by the Insurance Commissioner.

Under *Chapter 612 of 2008*, the Commissioner was given the authority to examine IWIF's compliance with policy forms and provisions and unfair trade and other prohibited practices, but the Commissioner still did not have authority to examine IWIF's rates. *Chapter 336 of 2009* specified that, with certain exceptions, IWIF is subject to the same insurance law requirements as any authorized domestic workers' compensation insurer in the State. However, IWIF is not required to pay the premium tax charged to other insurers in the State or join the National Council on Compensation Insurance, an organization that analyzes workers' compensation data. Also, although IWIF's rates are not subject to regulation by the Commissioner, the Commissioner is required to examine IWIF at least once every five years to determine whether its rate-making practices produce actuarially sound rates that are not excessive, inadequate, or unfairly discriminatory.

### **Board – Term Limits**

The IWIF board consists of nine members appointed by the Governor with the advice and consent of the Senate. Terms are five years in length and are staggered to prevent simultaneous appointments. Board members are permitted to serve two five-year terms, but a partial term of a year or more had counted as a full term. As a result, board members appointed to a partial term of, for example, 13 months may have only been able to serve a total of 6 years. *Chapter 204 of 2009* altered the term limits and specified that a member of the board may not serve for more than either two full terms or a total of 10 years.

## **Unemployment Insurance**

During the 2007-2010 term of the General Assembly, unemployment insurance (UI) underwent significant changes affecting the Unemployment Insurance Trust Fund (UITF), eligibility requirements, benefits, and coverage. The General Assembly also passed legislation to assist employers having difficulty making UI contributions, clarified the taxable wage base calculation, and codified the administrative practice for appeals. Additionally, the General Assembly made the Joint Committee on Unemployment Insurance Oversight a permanent committee with additional responsibilities.

### **Joint Committee on Unemployment Insurance Oversight**

In 2005, the General Assembly tasked the Joint Committee on Unemployment Insurance Oversight with studying the impact of various legislation and reporting its recommendations prior to termination year-end 2006. *Chapters 50 and 51 of 2007* reestablished the joint committee to continue study of the UI system until its termination year-end 2010 and expanded membership to include a second representative of the labor community and a representative of the National Federation of Independent Business.

*Chapters 515 and 516 of 2010* established the joint committee as a permanent statutory committee and required it to study State and federal UI law as it relates to employers engaged in seasonal industries.

In addition to making significant changes to the UI system as discussed below, *Chapter 2 of 2010* directed the joint committee to study changes and make recommendations on a cost-neutral plan to implement a graduated increase of the maximum weekly benefit to equal 54% of the average weekly wage.

### **Unemployment Insurance Trust Fund**

The balance of UITF has fluctuated historically, growing in strong economic times to over \$1.0 billion in each of calendar 2007 and 2008. On September 30, 2009, the balance in UITF fell to \$301.7 million. This significant decline, combined with a recent decline of over \$1.0 billion of the taxable wage base to \$17.8 billion, placed Maryland employers in the highest tax rate table (Table F) beginning in January 2010. The main driver of the decline of UITF, and therefore the increase in UI charges to employers, has been the increased claims for UI benefits resulting from the economic downturn. Unemployment benefits remain an important factor in the decline of UITF balances, as payment rates have been slow to decrease.

*Chapter 2* mitigated the impact of increased UI contributions charged to employers. For calendar 2010 and 2011, the Department of Labor, Licensing, and Regulation (DLLR) must offer a variety of payment plan options to employers, allowing contributions due on taxable wages for the first nine months of the calendar year to be paid through December. DLLR also has to adopt regulations offering employers a payment plan for any calendar year after 2011 in which employer contributions are to be calculated using the highest tax rate table. These payment plans must allow payments for contributions due for the first six months of the year to be spread through August of that year.

*Chapter 2* also reduced the interest rate charged to businesses that fail to make employer contributions or reimbursement when payment is due under certain circumstances. The monthly interest rate is reduced from 1.5% to 0.5% of the outstanding balance for calendar 2010 and 2011 and any year thereafter in which employer contributions are calculated using tax rate Table F. This equates to reducing the interest penalty from 18% to 6% on an annualized basis.

### **Unemployment Insurance Modernization**

The federal American Recovery and Reinvestment Act of 2009 (ARRA) included \$7 billion in federal incentives to be provided to states that enact specified UI system alterations. Maryland's allotment of the total funding has been estimated at \$126.8 million; however, these funds are only available to the State UITF if UI benefits are expanded in specified ways. To qualify for the full amount of federal stimulus funds, Maryland had to alter the eligibility requirements by adopting use of an alternative base period. Even so, adopting an alternative base period only qualified the State for one-third of the federal incentive. The remaining two-thirds of the funds may only be allocated if a state also adopts two of the following four options: (1) make part-time workers eligible for benefits; (2) provide coverage to individuals who separate from work for compelling family reasons; (3) provide Workforce Investment Act (WIA) training benefits for at least 26 weeks in high demand industries; or (4) add a \$15 weekly allowance to UI payments for dependents.



## Eligibility

*Chapter 2* allowed an individual who does not qualify for UI benefits under the traditional base period to use an “alternative base period” for determining eligibility. The alternative base period, which consists of the four most recently completed calendar quarters preceding the start of the benefit year, may be used for calculation of benefits beginning March 1, 2011, for claims filed on or after March 6, 2011. The traditional base period consists of the first four of the five most recently completed calendar quarters preceding the start of the benefit year.

*Chapter 2* also made minor changes to *Chapters 5 and 6 of 2009* to qualify for the federal stimulus funding. *Chapters 5 and 6* made an individual whose availability to work is restricted to part-time work eligible for unemployment benefits, if the individual works predominantly throughout the year on a part-time basis for at least 20 hours per week. A part-time worker is eligible for benefits based on wages predominantly earned from part-time work; must be actively seeking part-time work; must be available for part-time work for at least the number of hours worked at the part-time worker’s previous employment; cannot impose any other restrictions on the part-time worker’s ability or availability to work; and must be in a labor market in which a reasonable demand exists for part-time work.

The change in eligibility determination is in addition to another change under *Chapter 669 of 2008*, which established that an individual is eligible for UI benefits if the individual voluntarily quits employment to follow a spouse (as a valid circumstance) if the individual’s spouse serves in the U.S. military *or* is a civilian employee of the military or of a federal agency involved in military operations. However, the employer of the individual’s spouse has to require the spouse’s mandatory transfer to a new location.

## Expansion of Unemployment Insurance Benefits

*Chapter 2 of 2010* allowed an individual who is unemployed and has exhausted all rights to UI benefits under State and federal law to seek the equivalent of up to 26 times the individual’s average weekly benefit amount by enrolling in an employment training program authorized by WIA that prepares the individual for entry into a “demand occupation.” This change, in addition to the others noted above, makes Maryland eligible for the federal stimulus funding.

Other expansions of benefits were adopted during the 2007 and 2009 legislative sessions. *Chapter 298 of 2007* increased the maximum allowed weekly benefit amount from \$340 to \$380 for claims establishing a new benefit year on or after October 7, 2007. *Chapters 287 and 288 of 2009* further increased the maximum allowed weekly benefit amount from \$380 to \$410 for claims establishing a new benefit year on or after October 4, 2009. For claims establishing a new benefit year on or after October 3, 2010, the maximum weekly benefit is again increased from \$410 to \$430.

### **Other Changes to Unemployment Insurance Benefits**

To offset the cost of expanding UI benefits to attain the federal stimulus funding, *Chapter 2* also reduced UI benefit eligibility to certain claimants by increasing the minimum amount of qualifying wages an individual must earn during the base period to be eligible for UI benefits from \$900 to \$1,800. Accordingly, the minimum weekly available benefit amount is increased from \$25 to \$50, reflecting the amount available to a claimant with at least \$1,800 in qualifying earnings.

*Chapter 2* also (1) abolished UI benefits for claimants who become ill or disabled and are unable to seek work after filing for benefits due to the illness or disability; (2) increased the disqualification penalty for claimants who are dismissed for misconduct or gross misconduct; and (3) reduced the amount of earnings a claimant who becomes partially employed may receive that do not affect a claimant's weekly benefit. This amount is decreased from \$100 to \$50 effective March 1, 2011, for claims filed on or after March 6, 2011.

*Chapter 383 of 2009* specified that *all* severance and dismissal payments are deductible from UI benefits, regardless of whether the unemployment is a result of job abolition. Making all severance payments deductible from UI benefits may result in the reduction of the overall number of weeks in which claimants receive UI benefits since weekly UI benefits generally would not be paid until weekly severance and dismissal payments are exhausted. This measure was passed by the General Assembly to offset a portion of the cost of expanding benefits to part-time workers in 2009.

### **Exemptions from Coverage**

*Chapter 548 of 2009* exempted officiating services performed by recreational sports officials from UI coverage. Recreational sports officials include individuals who contract to perform officiating services at sporting events sponsored by a county government, municipal government, or government-affiliated entity. A recreational sports official does not include any individual who performs officiating services directly for a nonprofit or governmental organization and is considered covered for purposes of unemployment insurance.

*Chapter 468 of 2009* exempted work performed by a home worker from UI coverage as long as certain conditions are met. The Secretary of Labor, Licensing, and Regulation must be satisfied that (1) the work is performed according to specifications furnished by the person for whom the services are performed; (2) the work is performed on textiles furnished by the person for whom the services are provided; and (3) the textiles must be returned to the person for whom the services are performed or that person's designee. A similar exemption is provided in federal law.

### **Taxable Wage Base Calculation – Clarifications**

*Chapter 471 of 2007* clarified the calculation of the taxable wage base under UI law, depending on whether the employer is determined to be a reorganized employer, successor employer, or new employer. When an employer is determined to be a reorganized or successor

employer, and the UI rate of the predecessor employer is transferred to the reorganized or successor employer, the wages and taxes for employees which have already been paid in that calendar year are also transferred. When an employer is determined to be a new employer, and a new employer is assigned a new UI rate, the new employer pays taxes on the first \$8,500 of each employee's wages and does not get credit for prior wages on which taxes were paid.

### **State Collection of Federal Unemployment Insurance Tax**

Under the Federal Unemployment Tax Act (FUTA), the Internal Revenue Service is authorized to collect a federal employer tax used to fund state workforce agencies. *Chapter 74 of 2008* authorized DLLR to directly collect from employers the FUTA tax if the U.S. Department of Labor authorizes or directs the State to collect the tax. Funds derived by the State from the collection of taxes may only be used for programs administered by the State's Division of Unemployment Insurance and the Office of Employment Services.

### **Misclassification of Employees as Independent Contractors**

*Chapter 188 of 2009* established, for the purpose of enforcement only, a presumption that work performed by an individual paid by an employer creates an employer-employee relationship, subject to specified exemptions. To overcome the presumption of covered employment under UI law, an employer must establish that the individual performing services is an independent contractor in accordance with a test (the "ABC" test) specified under UI law or is specifically exempted under it. For a more detailed discussion of the Workplace Fraud Act of 2009, see the subpart "Labor and Industry" of this Part H.

### **Appeals of Claims Decisions – Lower Appeals Division**

*Chapter 660 of 2008* codified the administrative practice for appeals to UI claims within DLLR. A first level of review is created in the Lower Appeals Division, which hears and decides appeals of UI determinations. Under *Chapter 660*, the division is a separate and independent entity from the Board of Appeals; thus, the chief hearing examiner appoints the hearing examiners and other personnel.

### **Private-sector Labor and Industry**

During the 2007-2010 term, the General Assembly passed legislation concerning employee leave and wages and workplace fraud and health. Specifically, the term saw legislation requiring employers to allow employees to use paid leave to take care of ill family members, as well as legislation requiring shift breaks for retail employees. The State Wage Payment and Collection Law was modified by altering the payment of accrued leave at the termination of employment and the administrative procedures for claims made under the law. The General Assembly also prohibited the misclassification of employees as independent contractors and prohibited smoking in indoor places of employment. In addition, measures were

passed relating to workforce development, employee date reporting, and the State Apprenticeship Training Fund.

### **Use of Paid Leave for Family Illness**

The Federal Family Medical Leave Act of 1993 (FMLA) generally applies to entities engaged in commerce that employ more than 50 employees; public agencies are considered covered employers irrespective of the number of individuals employed.

FMLA provisions require covered employers to provide eligible employees with up to 12 work weeks of unpaid leave during a 12-month period for:

- the birth and care of an employee's newborn child;
- the adoption or placement of a child with an employee for foster care;
- care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- medical leave when the employee is unable to work due to a serious health condition.

Since 1999, Maryland law has required employers providing paid leave to employees following the birth of a child to also provide the same benefit after the adoption of a child. This law is also applicable to a unit of State or local government, with the exception of units that employ individuals subject to the State Personnel Management System leave policy due to the existence of a similar policy.

**Chapter 644 of 2008** required specific employers to allow an employee to take leave with pay to care for a child, spouse, or parent with an illness. Under **Chapter 644** and as clarified under **Chapter 560 of 2009**, the purpose of the law is to allow an employee to use leave with pay to care for an immediate family member under the same conditions and policies that would apply if the employee took leave for their own illness. The law applies to private-sector employers employing 15 or more individuals and that provide paid leave under a collective bargaining agreement or an employment policy. Private-sector employers that do not provide paid leave to an employee and leave that is granted under FMLA are exempted.

An employee may only use the paid leave that the employee has earned and that is available to the employee based on hours worked, or as an annual grant of a fixed number of days of leave for performance of service. If an employer offers more than one type of paid leave to an employee, the employee may elect the type and amount of leave with pay to use for caring for the sick family member. Lastly, employers are prohibited from taking disciplinary actions against an employee, or threatening to do so, because the employee used authorized leave; opposed an unlawful practice; or made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing related to the law.

## **Retail Employee Shift Breaks**

Beginning on March 1, 2011, employees who work at retail establishments with 50 or more employees will be entitled to shift breaks. The provisions of **Chapters 612 and 613 of 2010** only applied to employers who are either retail establishment businesses in the State or employers that own one or more retail establishment franchises with the same trade name. Wholesalers and restaurants are exempted from the Acts' provisions. Employees covered by collective bargaining agreements or employment policies that included shift breaks equal to or greater than those in the Acts are also excluded. Other exemptions include employees who are exempt from the overtime pay requirements of the Fair Labor Standards Act; work for State, county, or municipal governments; work in a corporate office or other office location; or work at least four hours at a single location with five or fewer employees.

Specifically, for retail employees that work between four to six hours, employers are required to provide nonworking shift breaks of at least 15 minutes, unless the requirement is waived in writing. If employees work for more than six consecutive hours, employers must provide nonworking shift breaks of at least 30 minutes. Finally, for employees working at least eight consecutive hours, employers are required to provide nonworking shift breaks of at least 15 minutes for each additional four-hour period an employee works. Certain breaks may be considered a “working shift break” if the type of work prevents an employee from being relieved or an employee is allowed to consume a meal and the time is counted towards an employee’s work hours. The working shift break requires a written agreement between the employee and the employer.

Employees may file complaints with the Commissioner of Labor and Industry for violations of the shift break requirements. If the commissioner receives a complaint, the commissioner is required to either try to resolve the issue informally or determine whether the employer has violated the shift break requirements. If the commissioner determines that the shift break requirements have been violated, the commissioner, subject to certain hearing and notice requirements, must issue an order compelling compliance and, in the commissioner’s discretion, assess a civil penalty.

## **Wage Payment and Collection Law**

### **Termination of Employment – Wage Payment for Accrued Leave**

An employer is required to pay an employee all wages due for work that the employee performed before the termination of employment. The payment is due by the date on which the employee would have been paid had the employment not terminated. In a 2007 unpublished decision, the Maryland Court of Special Appeals ruled in *Catapult Technology, LTD v. Paul Wolfe*, No. 997 (2007) that accrued leave constitutes a wage under the Maryland Wage Payment and Collection Law and is payable to the employee when employment has terminated. In the case, when employer Catapult Technology lost a federal contract, 14 employees resigned without providing the required two weeks’ notice under Catapult Technology’s employee handbook. The Court of Special Appeals ruled that because the employees’ accrued leave was

based on hours worked, the employees were entitled to be paid for the value of their unused leave. As a result of the court's unpublished decision, the State's Division of Labor and Industry issued a guideline consistent with the court's decision.

**Chapter 220 of 2008** was an emergency Act that required an employer to provide to an employee at the time of hiring, notice of the leave benefits available to the employee. Further, the Act also exempted an employer from the requirement of paying accrued leave to an employee upon termination of employment if:

- the employer has a written policy limiting compensation of accrued leave to employees;
- the employer notified the employee of the employer's leave benefits; and
- the employee is not entitled to payment for accrued leave at termination under the terms of the employer's written policy.

Additionally, the Act applied retroactively such that an employee whose employment terminated between November 1, 2007, and April 24, 2008 (the date the Act became effective), was entitled to payment of accrued leave only if the employee was eligible under the terms of the employer's written policy, as communicated to the employee prior to the termination of employment.

### **Administration Procedures for Claims**

If the Commissioner of Labor and Industry determines that an employer has violated the provisions of the Wage Payment and Collection Law, the commissioner is authorized to try to resolve the issue informally; with the written consent of the employee, ask the Attorney General to bring an action on behalf of the employee; or bring an action on behalf of the employee. **Chapter 151 of 2010** established an administrative procedure for resolving wage complaints if the failure to pay wages involves \$3,000 or less. The commissioner was also authorized to review and investigate the complaint and could either issue an order requiring the employer to pay the wages, or dismiss the claim. In response to the commissioner's decision, the employer may request a *de novo* hearing before the Office of Administrative Hearings, but without a hearing request, the commissioner's finding is final.

### **Misclassification of Employees as Independent Contractors**

When a company hires an employee, the company is responsible for paying half of that employee's Social Security and Medicare taxes, as well as premiums for workers' compensation and unemployment insurance coverage. Employers also withhold federal, State, and local income taxes from their employees' wages. By contrast, independent contractors pay all of their own Social Security and Medicare taxes and are responsible for paying income taxes in full. Independent contractors are not covered by workers' compensation or unemployment insurance, nor do they receive overtime compensation or benefits such as health insurance. Further, employees are provided with labor protections, such as the wage laws. These laws do not apply

to independent contractors. Employers save money by avoiding the above overhead costs when workers are classified as independent contractors instead of employees.

*Chapter 188 of 2009* prohibits an employer in the construction services or landscaping services industries from failing to properly classify an individual who performs work for remuneration paid by the employer. For purposes of enforcing the State’s various wage and employee protection laws, including minimum wage, living wage, and overtime work, work performed by an individual is presumed to create an employer-employee relationship unless the individual is specifically exempt under the Act or the individual is an independent contractor as determined by a specific test identified in the Act.

The Commissioner of Labor and Industry is authorized to enter a place of business or work site to observe work, interview individuals, and copy records and has general authority to investigate as necessary to determine compliance with the Act. If an investigation by the commissioner reveals that an employer failed to properly classify an individual as an employee, a citation is issued. An employer has the opportunity to appeal any actions by the commissioner.

The commissioner is required to consider whether an employer (1) sought and obtained evidence, before a complaint was filed or the commissioner began an investigation, that the individual was an exempt person or, as an independent contractor, withheld, reported, and remitted payroll taxes on behalf of all individuals working for the independent contractor, paid unemployment insurance, and maintained workers’ compensation insurance; or (2) classified all workers who perform the same or substantially the same tasks for the employer as independent contractors and received a determination from the Internal Revenue Service that the individual or a worker who performs the same or substantially the same tasks as the individual is an independent contractor. The commissioner has the burden of proof to show that the employer knowingly failed to properly classify an individual as an employee.

If the employer requests a hearing, the Office of Administrative Hearings has the authority to hold the hearing and a decision of the office is a final order of the commissioner. An employer found in violation is required to, within 45 days of the final order, pay restitution to any individual not properly classified and to otherwise come into compliance with all applicable laws, including those related to income tax withholding, unemployment insurance, workers’ compensation, and wage laws. An employer who did not knowingly fail to classify an individual as an employee may not be assessed a civil penalty, unless the employer fails to comply with a final order. An employer who knowingly fails to classify an individual as an employee is subject to civil penalties, but harsher penalties may be assessed on an employer with a previous violation.

For a further discussion of the unemployment insurance and workers’ compensation aspects of *Chapter 188*, see subparts “Unemployment Insurance” and “Workers’ Compensation” under this Part H.

## Statewide Smoking Ban

In 2007, Maryland followed 11 other states in passing a comprehensive, statewide smoke-free law. *Chapters 501 and 502 of 2007* prohibited smoking in indoor places open to the public and indoor places of employment throughout Maryland beginning February 1, 2008. The smoking ban included government buildings, restaurants, bars, residences used as a business or place of employment by a licensed family child care provider, and government-owned or government-operated public transportation facilities. Exceptions for hotels, motels, and retail tobacco businesses were allowed, but under limited circumstances. There were also exceptions for facilities of a manufacturer, importer, wholesaler, or distributor of tobacco products or a tobacco leaf dealer or processor, and research or educational laboratories conducting scientific research into the health effects of tobacco smoke. Penalties for violating the workplace smoking ban included written reprimands for a first violation, a civil penalty of \$100 for a second violation, and a civil penalty of not less than \$250 for subsequent violations.

As required by the Acts, the Department of Labor, Licensing, and Regulation (DLLR) adopted regulations that prohibited smoking in indoor places of employment not normally open to the general public. DLLR must report annually to the General Assembly on its enforcement efforts to eliminate smoke from indoor places of employment. Additional civil penalties also apply to employers that discharge or discriminate against employees because the employee has taken an action against the employer suspected of violating the smoking ban; however, an employee is prohibited from making groundless, malicious, or bad faith action against an employer.

For a more detailed discussion of these Acts, see Part J – Health of this *Major Issues Review*.

## Workforce Development

### Maryland Workforce Corporation

Employers seeking to train their workforce may avail themselves of several State and federal programs, through the Department of Business and Economic Development or DLLR, to assist in increasing workers' skills for new technologies and production processes. *Chapter 476 of 2009* established the Maryland Workforce Corporation to work with State agencies to:

- develop a plan and framework for workforce development and training programs;
- secure public and private funds for the programs;
- provide grants and other assistance to support its programs;
- contract with training providers to conduct education and skills training programs; and



- act as a research and development resource in finding solutions for new and emerging workforce issues.

The Maryland Workforce Corporation may only offer or provide educational or skills training unless no other training providers are available. The Secretary of Labor, Licensing, and Regulation may allocate funds to the corporation for its expenses, as provided in the State budget.

### **Adult Education and Workforce Development Services**

Maryland’s adult education, literacy services, and correctional institutions’ education programs and resources were consolidated and transferred to DLLR under the provisions of *Chapter 134 of 2008*. The Act established a Workforce and Adult Education Transition Council to make recommendations for the integration of these programs. The council’s recommendations were submitted in December 2008. For a further discussion, see the subpart “State Agencies, Offices, and Officials” under Part C – State Government and the subpart “Miscellaneous” under Part L – Education of this *Major Issues Review*.

### **Miscellaneous**

#### **Employee Data Reporting**

The Commissioner of Labor and Industry is authorized to require employers, including State and local governments, to maintain records of the wages and job classification of employees, and other conditions of employment under the State’s Equal Pay for Equal Work law. A 2006 report of the Equal Pay Commission, created in 2004, recommended that a statewide wage data reporting system be created and that a State agency be assigned to enforce equal pay requirements. *Chapter 114 of 2008* expanded the type of employee data that an employer should maintain. Specifically, the Act authorized the commissioner to require that employers maintain a record on the racial classification and gender of each employee. The commissioner may analyze employee records on wages, job classification, racial classification, gender, and other conditions of employment maintained by the employer for the purpose of studying pay disparity issues. The commissioner must report to the General Assembly by October 1, 2013, on the pay disparity analysis conducted under the provisions of the Act. The Act terminates on December 31, 2013.

#### **State Apprenticeship Training Fund**

Contractors working on designated public works projects must pay their employees the State prevailing wage rate for particular job classifications. Eligible public works projects are those valued at more than \$500,000 and carried out by the State, or a political subdivision, agency, person, or entity for which at least 50% of the project cost is paid for by the State.

*Chapter 687 of 2009* created the State Apprenticeship Training Fund, which is a special nonlapsing fund within DLLR. Contractors on projects subject to the prevailing wage law and

subcontractors on projects worth \$100,000 or more are required to participate in an apprenticeship training program; make payments to a registered apprenticeship program or to an organization that operates a registered program; or contribute to the fund. A contractor or subcontractor that elects to make payments to the fund must make payments not exceeding 25 cents per hour for each employee in each covered craft.

The purpose of the fund is to promote pre-apprenticeship programs and other workforce development programs in the State's public secondary schools and community colleges and to cover the cost of implementing the program. An employer that willfully made a false or fraudulent representation or omission regarding a material fact in connection with prevailing wage records is liable for a civil penalty of up to \$1,000 for each employee.

## Alcoholic Beverages

### Wine

#### The Maryland Winery Modernization Act

The number of licensed wineries in the State has grown significantly in the past five years, from 17 to 41. Statistics compiled by the Comptroller's Office, which issues licenses for wineries, indicate that the amount of wine sold by Maryland wineries has more than tripled in 10 years.

In keeping pace with this growth, *Chapter 355 of 2010* changed the State winery laws in several ways. While simplifying the licensing process for limited wineries (that is, wineries that in general use only available Maryland agricultural products), the Act greatly broadened the scope of operations and activities of a limited winery licensee. Further, the measure established a permit for liquor stores and certain other alcoholic beverages licensees, enabling them to sell wine at farmer's markets that are listed by the Maryland Department of Agriculture.

Under *Chapter 355*, a limited winery is allowed to use available Maryland agricultural products to (1) ferment and bottle wine; (2) distill and bottle pomace brandy; (3) sell and deliver the wine and pomace brandy to a wholesale licensee or permit holder in the State or a person outside the State that is authorized to acquire the wine and pomace brandy; and (4) sell its wine and pomace brandy in limited quantities to persons participating in a guided tour of the winery.

*Chapter 355* significantly expanded the ability of a limited winery to sell its product to visitors to its facility. Under *Chapter 355*, not only may a limited winery sell or provide on its premises samples of wine and pomace brandy that it produces, the limited winery may also sell or serve its visitors a wide variety of food items, including soup, cured meat, bread, chili, and ice cream.

## Winery Special Event Permits

Winery special permits enable wineries in the State to sell their product at retail at special events, such as fairs and farmers' markets. Normally, a winery may use a winery special permit for up to three consecutive days. Under *Chapter 156 of 2009*, a winery may use a winery special permit throughout the nine-day Montgomery County Agricultural Fair.

In addition, the Comptroller may issue a farmer's market permit to a holder of a license (1) other than a Class 4 limited winery license, such as a liquor store, that allows the holder to sell alcoholic beverages to the public for consumption off the licensed premises; and (2) that was issued by the local licensing board of the jurisdiction in which the farmer's market will be held.

*Chapter 355* addressed another wine-related issue that proved controversial over the course of several recent sessions – that of the direct shipment of wine from out-of-state wineries to Maryland consumers. The Act required the Comptroller to submit a report to the General Assembly by December 31, 2010, on the viability and efficacy of instituting the policy of permitting the direct shipment of wine to consumers in the State. The report must include (1) an evaluation of the best practices used by the states and the District of Columbia that allow direct wine shipment; (2) an evaluation of related fiscal, tax, and other public policy and regulatory issues; and (3) determinations regarding specified factors, including the benefits and costs to consumers and the best practices for preventing access by underage wine drinkers.

Finally, *Chapter 355* required the Comptroller to report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee on the impact that the limitation of special event permits has had on the growth of the Maryland wine industry. This report is due by December 1, 2012.

## Beer and “Alcopops”

### Flavored Malt Beverages

For regulatory and tax purposes, the State Comptroller's Office had treated alcoholic beverages, commonly referred to as “flavored malt beverages” (FMBs) or “alcopops,” as though they fit the definition of beer under State law. A March 8, 2008 opinion of the Attorney General, however, concluded that FMBs fall within the State definition of distilled spirits rather than beer. Among its findings, the opinion noted that the flavors of FMBs, which are popular among young people, are derived from added sweeteners rather than from malt and other material used in fermentation and that most FMBs contain very little actual beer base. Overriding this opinion, *Chapter 702 of 2008* expanded the definition of “beer” to include FMBs. Under *Chapter 702*, persons now need to possess only a beer license, as opposed to a beer, wine, and liquor license, to sell FMBs. In addition, FMBs are taxed at the 9 cents per gallon rate for beer and not the \$1.50 per gallon rate for distilled spirits. The provisions of *Chapter 702* were applied to beverages that fit the FMB designation by the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury. Beverages of that nature contain 6% or less alcohol by volume, derived primarily from the fermentation of grain, with not more than 49% of the volume

of the finished product consisting of alcohol derived from flavors and other added nonbeverage ingredients containing alcohol.

### **Manufacturer and Distributor Agreements**

A “successor beer manufacturer” is a beer manufacturer that replaces a beer manufacturer, acquiring the former manufacturer’s right to sell, distribute, or import a particular brand of beer. *Chapters 369 and 370 of 2008* provided that before a successor beer manufacturer may terminate a distribution agreement and enter into a contract with a new beer distributor, the old beer distributor and the new beer distributor shall negotiate to determine the fair market value of the affected distribution rights that the new distributor should pay the old distributor. If negotiations do not result in an agreement, nonbinding mediation and, as a last result, court action follow.

### **Special Brewery Promotional Event Permit**

A Special Brewery Promotional Event Permit for a holder of a Class 5 manufacturer’s license was established by *Chapter 86 of 2008*. A Class 5 manufacturer may not receive more than four such permits in a calendar year, and each single promotional event may not exceed three days. A permit holder may provide samples of beer produced by the permit holder and may sell beer produced by the brewer by the glass at a promotional event held on the premises of the brewery.

### **Resident Dealer’s Permit**

*Chapter 205 of 2009* established a resident dealer’s permit for alcoholic beverages. The bill authorizes the Comptroller to issue the permit to an alcoholic beverages importer who has been a resident of the State for at least two years immediately before filing an application, who does not own a warehouse or hold or have an interest in a wholesaler or retailer license, and who sells directly through a licensed Maryland wholesaler. Resident dealers are subject to a \$200 annual permit fee. The Act also increased the annual fee, from \$100 to \$200, for public storage and transportation, nonresident dealer, and bulk transfer permits issued by the Comptroller.

### **Alcohol without Liquid Machines**

An alcohol without liquid (AWOL) machine is a device that mixes spirits with pure oxygen, creating a cloudy alcohol vapor that can be inhaled. Bypassing the stomach and liver, the vapor is absorbed through blood vessels in the nose or lungs, thereby creating a quicker and more intense effect on the brain than drinking. *Chapter 249 of 2007* prohibited (1) the use of AWOL machines to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or (2) with the intent to introduce alcohol into the human body, the possession, purchase, transfer, or offer for sale or use an AWOL machine. A person who violates this prohibition is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

## **Unlicensed Establishments – Sexually Provocative Entertainment or Attire**

In the large majority of counties, establishments licensed to serve alcoholic beverages are prohibited from allowing on their premises specified forms of sexually provocative entertainment or attire that are listed in the Maryland Code. *Chapter 589 of 2007* applied to businesses in certain counties that do not have alcoholic beverages licenses but that do allow patrons to bring, store, or consume their own alcoholic beverages on the premises while at the same time allowing the same type of sexually provocative entertainment or attire banned in licensed establishments. It prohibited an unlicensed establishment that features this type of entertainment or attire from serving, dispensing, keeping, or allowing to consume alcoholic beverages in Caroline, Dorchester, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, and Worcester counties.



# Part I

## Financial Institutions, Commercial Law, and Corporations

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### Financial Institutions

During the 2007-2010 term, the General Assembly passed legislation that impacted the regulation of banking institutions, credit unions, and nondepository trust companies; streamlined procedures for establishing bank branches and for converting from a federal savings bank to a Maryland-chartered savings bank; prohibited the use of a bank's name in a deceptive manner; authorized intergovernmental information sharing about financial institutions; and extensively revised the State's mortgage lender and mortgage loan originator licensing laws.

### Regulation and Supervision

#### Banking Institutions – Regulatory Reforms

State-chartered banking institutions often are subject to State law requirements and regulations that do not apply to their federal or out-of-state counterparts that do business in the State. *Chapter 89 of 2008* instituted several regulatory reforms to reduce unnecessary requirements that placed State-chartered banking institutions at a competitive disadvantage with respect to out-of-state financial institutions. The measures were intended to (1) expedite installations of automated teller machines by banks and credit unions; (2) streamline the procedures a bank must comply with to acquire or establish an affiliate or conduct a new activity at an affiliate; and (3) relax requirements for filling vacancies on a bank's board of directors.

*Chapter 89* also brought fingerprinting and capital requirements into closer conformity with federal law and increased the penalty for banks that fail to meet reporting requirements. In addition, the Act streamlined the requirements for approving foreign banking permits and required banks to obtain sufficient financial information from a person in order to support an unsecured loan of \$10,000 or more.

### **Establishment of Bank Branches**

Expanding on *Chapter 89* which streamlined procedures a bank must comply with to acquire or establish an affiliate, *Chapter 741 of 2009* created an expedited process for the establishment of a bank branch in the State. The Act also allowed an out-of-state bank to open a *de novo* branch in Maryland if the bank's home state has reciprocal laws.

### **Nondepository Trust Companies and Savings Banks**

*Chapter 457 of 2010* granted the Office of the Commissioner of Financial Regulation the express authority to take immediate action when emergency conditions threaten the continued safe and sound operations of a nondepository trust company. The Act required a nondepository trust company to pledge securities or a surety bond of up to \$3,000,000 to defray the costs of a potential receivership. In addition, *Chapter 457* authorized the commissioner to appoint any agents, counsel, employees, and assistants and to retain any officers or employees needed to effectively undertake a receivership.

In response to a growing interest among federal savings banks to convert to a Maryland-chartered savings bank, *Chapter 457* also established a streamlined process for converting from a federal savings bank to a Maryland-chartered savings bank and set fees for the conversion.

### **Banking Institution and Credit Union Regulation Fund**

*Chapter 293 of 2008* established the Banking Institution and Credit Union Regulation Fund to receive all fees, assessments, and revenues received for the chartering and regulation of banking institutions and credit unions in the State. The fund is used to pay all costs and expenses incurred by the Commissioner of Financial Regulation related to the regulation of these institutions. The fund was established in response to the preference of State-chartered banking institutions to have their State assessments used exclusively for the regulation and supervision of depository institutions. *Chapter 293* also increased existing fees and established new fees and assessments for State-chartered depository institutions.

### **Deceptive Use of Bank Name**

*Chapter 154 of 2007* prohibited a person, except with a bank's consent, from using the name, trade name, trademark, service mark, logo, or tagline of a bank or any form or design that is similar to that used by a bank in specified marketing material provided to, or in solicitation of, another person in a manner that may cause a reasonable person to be confused, mistaken, or deceived as to the origin of the marketing material or solicitation. *Chapter 154* also allowed an affected bank to bring a civil action to recover (1) actual damages; (2) either all profits attributable to the violation or \$1,000 for each violation; and (3) court costs and reasonable attorney's fees.



## Intergovernmental Information Sharing

Government agencies that regulate financial institutions have experienced a growing need to share information in order to prevent terrorist financing and money laundering. The federal USA PATRIOT Act provides financial institutions with a liability umbrella when they properly disclose private financial information to law enforcement agencies and to other financial institutions and encourages financial institutions to share information with each other if they suspect illegal activity. *Chapter 499 of 2008* authorized the Commissioner of Financial Regulation to enter into cooperative and information-sharing agreements with any federal or State regulatory agency that has authority over financial institutions, provided the agreements prohibit the agency from disclosing shared information without the commissioner’s prior written consent.

## Mortgage Lenders and Loan Originators

*Chapters 7 and 8 of 2008*, in addition to revising laws relating to mortgage lending and the regulation of mortgage lenders (see discussion under subpart “Credit Regulation” of this part), also authorized the Commissioner of Financial Regulation to participate in the establishment and implementation of a multistate automated licensing system for mortgage lenders and mortgage loan originators and to adopt regulations that waive or modify licensing requirements in order to facilitate the implementation of the multistate system.

In accordance with that authorization, *Chapter 4 of 2009* revised the State’s mortgage lender and mortgage loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act). *Chapter 4* (1) altered the licensing requirements, initial license terms, and renewal license terms for mortgage lenders and mortgage loan originators; (2) required applicants and licensees to submit certain information and fees to the Nationwide Multistate Licensing System and Registry (NMLSR); (3) increased civil penalties for violations of the mortgage lender and mortgage loan originator laws; and (4) authorized the commissioner to issue interim mortgage loan originator licenses and affiliated insurance producer-mortgage loan originator licenses.

*Chapter 4* also required an applicant for a mortgage lender or mortgage loan originator license to provide NMLSR with fingerprints for a criminal history background check and established prelicensing education, prelicensing testing, and surety bond requirements for mortgage loan originators. To comply with the federal SAFE Act, *Chapter 4* changed the initial and renewal terms of a mortgage lender license and a mortgage loan originator license from two years to one year. Mortgage lender and mortgage loan originator licensees are being transitioned to NMLSR under regulations that became effective January 1, 2009.

## Mortgage Lending Regulation

### Regulatory Reforms

Since 2007, changes in the real estate market and the economy had negative effects on lenders and borrowers. One of the most significant effects was a marked increase in the number of foreclosures. Initially, many foreclosures involved residential properties financed through sub-prime loans and nonbank loan originators, which led to increased concerns regarding the lending practices that surrounded these nontraditional financing methods. To address these and other issues relating to the mortgage foreclosure crisis, *Chapters 7 and 8 of 2008* made a number of substantive changes to the laws relating to mortgage lending and the regulation of mortgage lenders.

***Prepayment Penalties:*** Except for a reverse mortgage loan, *Chapters 7 and 8* prohibited lenders from requiring or authorizing the imposition of penalties, fees, premiums, or other charges for a mortgage loan in the event the loan is prepaid in whole or in part. The Acts also raised the maximum amount of a commercial loan that may be assessed a prepayment charge or penalty on a prepayment of the unpaid principal balance from \$5,000 to \$15,000, and prohibited the imposition of any prepayment penalty on a loan to a consumer borrower.

***Proof of Ability to Repay Loan:*** *Chapters 7 and 8* prohibited a lender from making a mortgage loan without giving due regard to the borrower's ability to repay the loan in accordance with its terms, including the fully indexed rate of the loan, if applicable, as well as property taxes and homeowner's insurance. Due regard must include (1) consideration of the borrower's debt to income ratio; and (2) verification of the borrower's gross monthly income and assets by review of third-party documentation, including W-2 forms, income tax returns, payroll receipts, records of a financial institution, or other third-party documents that provide reasonably reliable evidence of the borrower's income or assets. The Acts exempted from the income and asset verification requirements mortgage loans approved for government guaranty by the Federal Housing Administration, the Veterans Administration, or the Community Development Administration.

***Net Asset Requirements for Mortgage Lenders:*** *Chapters 7 and 8* added to the statutory required qualifications for obtaining a mortgage lender's license a requirement an applicant for a new mortgage lender's license, or for renewal of a current license, maintain a specified minimum net worth. Required net worth ranges in amount from \$25,000 to \$250,000 depending on the amount of money lent by the mortgage lender. Under the Acts, net worth must be completed according to generally accepted accounting principles (GAAP). However, because using GAAP to compute net worth can be costly, particularly for smaller firms that simply broker and do not make mortgage loans, *Chapter 106 of 2010* allowed a mortgage lender to comply with the minimum net worth requirements by using an alternative basis of accounting approved by the Commissioner of Financial Regulation.

### **Proof of Ability to Repay Loan – Exemptions**

As discussed above, *Chapters 7 and 8 of 2008* required a lender to verify a borrower's ability to repay a mortgage loan, with exemptions for certain government guaranteed loans. However, due to the downturn in the economy and the deteriorating residential real estate market, many homeowners were unable to refinance their mortgages at lower rates because of high loan-to-value ratios on their homes. In response to that situation, *Chapters 114 and 115 of 2009* expanded the exemptions under *Chapter 7 and 8* from the income and asset verification requirements to include (1) refinancing mortgage loans offered under the federal Homeowner Affordability and Stability Plan and made available by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; and (2) loans approved for government guaranty by the U.S. Department of Agriculture and the Maryland Department of Housing and Community Development.

### **Mortgage Fraud**

*Chapters 3 and 4 of 2008* created the Maryland Mortgage Fraud Protection Act (see discussion under the subpart “Real Property” of Part F – Courts and Civil Proceedings of this *Major Issue Review*), a comprehensive mortgage fraud statute that authorizes the Attorney General, a State's Attorney, and the Commissioner of Financial Regulation to take action to enforce the Act, including the imposition of criminal penalties. *Chapter 126 of 2009* expanded the definition of “mortgage fraud” under the Maryland Fraud Protection Act to include knowingly creating or producing a document for use during the lending process that contains a deliberate misstatement, misrepresentation, or omission with the intent that the document be relied on by a mortgage lender, borrower, or any other party to the lending process. *Chapter 126* was intended to clarify that the Maryland Mortgage Fund Protection Act applies to the preparers of documents, such as appraisals, used in the lending process.

### **Reverse Mortgages**

Although Maryland passed comprehensive residential lending reform laws during the 2008 and 2009 sessions, prior to the 2010 session, the State did not have any consumer protections specifically governing reverse mortgage loans. To address this gap, *Chapters 622 and 623 of 2010* prohibited a lender or an arranger of credit from requiring a borrower to purchase an annuity, a long-term care insurance policy, or other financial or insurance product as a condition of receiving a reverse mortgage loan. The Acts also prohibited a lender or an arranger of credit from referring a borrower to a third-party to purchase an annuity or any other financial or insurance product before the later of the loan closing date or the expiration of the borrower's right to rescind the loan agreement. On receiving a prospective borrower's application for a reverse mortgage loan, a lender or an arranger of credit must provide the prospective borrower with a checklist advising the borrower to discuss certain issues with a housing counselor.

For a more detailed discussion of *Chapters 622 and 623*, see the subpart “Consumer Protection” within this Part I.

## Homebuyer Education or Counseling

*Chapter 736 of 2010* required a lender that makes a first mortgage loan secured by owner-occupied residential property in the State to provide a borrower with a written recommendation that the borrower complete homebuyer education or housing counseling. The Act prohibited a lender from closing on a mortgage loan unless the lender has provided the borrower with the notice required under the Act. *Chapter 736* also repealed provisions of law that required a lender or credit grantor to provide a borrower with information on homebuyer education or counseling in connection with specified high-interest or high-fee mortgage loans.

## Mortgage Broker Fees

*Chapters 111 and 112 of 2010* authorized a mortgage broker to charge a borrower for the actual cost of specified goods and services obtained by the mortgage broker at the written request of the borrower. Specifically, the Acts allowed a mortgage broker to recover the costs of obtaining a condominium document or subordination agreement document at the written request of the borrower. *Chapters 111 and 112* also allowed a mortgage broker to charge a borrower for third-party fees paid by the mortgage broker for goods or services that are approved by the Commissioner of Financial Regulation and required to complete the loan application process.

## Consumer Credit Regulation

### Loan Prepayment

On December 13, 2007, the Court of Appeals concluded in *Bednar v. Provident Bank of Maryland*, 402 Md. 532 (2007) that the practice of closing cost “recapture” violated the Maryland Credit Grantor law. Under a closing cost recapture plan, a lender pays the borrower’s loan closing costs and agrees to defer collection of these costs from the borrower as long as the borrower keeps the loan open for a specified period of time. If the borrower keeps the loan open for the specified time, the lender forgives the closing costs, but if the borrower prepays and closes the loan, the borrower is required to pay those costs to the lender. Closing cost recapture programs are a standard practice of lenders across the nation, offering an initial incentive to the borrower in exchange for an increased assurance that the borrower will not repay the loan before a certain time, as would occur if the borrower refinanced with another lender.

The court in *Bednar*, however, concluded that a recapture charge is a prepayment penalty and, therefore, prohibited by statute. The court’s decision placed Maryland-chartered banks, credit unions, and independent mortgage lenders at a competitive disadvantage compared to federally chartered financial institutions and their affiliated lenders because, due to federal preemption, the latter continued to be able to offer closing cost recapture programs to borrowers in Maryland.

In response to the court’s decision, the General Assembly passed *Chapters 34 and 35 of 2008*. The Acts altered the Maryland Credit Grantor law to provide that fees and charges permitted by statute with respect to unsecured open end and closed end credit plans may be imposed, charged, and collected at any time. *Chapters 34 and 35* thus allowed State-chartered

banks and independent mortgage lenders to continue the practice of “recapturing” loan closing costs, initially paid for by the lender, in the event that the borrower prepays the loan before a specified time.

### **Debt Management Services**

The debt management services industry has experienced significant nationwide growth since the early 1990s, and it received a boost in 2005 from amendments to the federal Bankruptcy Act which required most filers to receive credit counseling before filing for bankruptcy. The industry in Maryland became extensively regulated when the General Assembly passed the Debt Management Services Act in 2003 and made adjustments to the Act in 2005. *Chapters 605 and 606 of 2008* repealed the State law requirement that a licensed debt management services provider be a nonprofit entity, thus, allowing a for-profit entity to become licensed in the State.

Additional consumer protections also were provided under the Acts, including a requirement that a debt management services provider may not provide services to a consumer unless (1) the provider makes a determination based on analysis of information provided by the consumer that debt management services are suitable and that the consumer will be able to meet the payment obligations under the debt management services agreement; (2) the provider gives the consumer a written summary of the counseling options and strategies for addressing the consumer’s debt problems; (3) the consumer signs an acknowledgment stating that the consumer has reviewed the summary and has decided to proceed with entering into an agreement with the provider; and (4) the provider gives the consumer a notice stating that if the consumer files for bankruptcy, the consumer will be required under federal law to receive counseling from a nonprofit credit counseling agency. The Acts also required debt management counselors to receive comprehensive training in counseling skills, personal finance, budgeting, and credit and debt management before providing counseling to a consumer.

### **Automobile Loan Financing**

*Chapters 632 and 633 of 2010* authorized a balloon payment on an installment automobile loan that exceeds \$30,000. The Acts gave Maryland automobile dealers the ability to offer the same financing products to customers that are available in several surrounding jurisdictions, including Virginia, Delaware, and the District of Columbia. Specifically, car dealers in these jurisdictions may offer a hybrid form of automobile financing that combines a traditional automobile loan with elements of a lease agreement. At the end of the loan term, the consumer may return the car to the dealer or elect to purchase the automobile at the agreed on price – the “balloon” amount due on the loan.

### **Credit Services Businesses – Fees**

Under Maryland law, the maximum permissible interest rate a person may charge on a loan of up to \$6,000 is 33%. The maximum interest rate that may be charged on a loan of over \$6,000 is 24%. However, the Office of the Commissioner of Financial Regulation received complaints that certain companies in the business of making short-term, high-interest loans

employed a new business model to circumvent the State's interest rate limit (known as the usury rate limit). Under this model, a lender would transfer its loans through a licensed credit services business. Although the lender would charge a permissible interest rate, the credit services business also would charge the consumer a fee for arranging the extension of credit. When combined, the interest and fee greatly exceeded State interest limits. **Chapter 385 of 2010** addressed this practice by prohibiting a credit services business from charging or receiving a fee in connection with a loan that, when combined with an interest charge, exceeds the interest rate permitted by law.

### **Credit Card Blacklisting Act**

In light of reports indicating that, in some cases, credit card companies made credit determinations based on where a cardholder had shopped or which mortgage lender a cardholder had used, **Chapter 309 of 2010** established the Credit Card Blacklisting Act which prohibited a consumer credit provider from using such criteria to trigger a default under, or alter the terms of, a consumer credit contract without the consumer's prior written consent. A more detailed discussion of **Chapter 309** may be found under the subpart "Consumer Protection" within this Part I.

### **Credit Card Marketing to Students**

To help college students be better informed about credit card usage, **Chapter 312 of 2008** required each institution of higher education in the State to develop policies regarding credit card marketing and merchandising activities conducted on its campus. For a more detailed discussion of **Chapter 312**, see the subpart "Higher Education" of Part L – Education of this *Major Issues Review*.

## **Commercial Law**

During the 2007 to 2010 term, the General Assembly passed a number of measures aimed at protecting Maryland consumers, including measures to give consumers greater control over their credit reports; protect consumers from the unauthorized disclosure of personal information; impose restrictions on refund anticipation loans and checks; regulate reverse mortgage loans; address the fraudulent telephone billing practice known as "cramming"; regulate motor vehicle warranties and related products; and prohibit consumer credit providers from using certain information to trigger a default or to alter the terms of a consumer credit contract. Other consumer protection provisions included the regulation of advertisements for mail-in rebates; the regulation of the sale of halal food products; a prohibition on certain telephone directory listings and advertisements; and a requirement that Internet access providers offer parental controls.

Credit regulation laws that passed during the term strengthened the mortgage lending laws, including requiring a consumer to provide proof of ability to repay a loan; expanded the types of fraud under the Maryland Mortgage Fraud Production Act; required a borrower to receive a notice that recommends homebuyer education or counseling; authorized mortgage brokers to change specified fees; allowed lenders to "recapture" loan closing costs; allowed debt

management services to be provided by for-profit entities; authorized balloon payment on large automobile loans; and clarified the usury rate amount.

The General Assembly also clarified the application of the Maryland Antitrust Act; made it a misdemeanor for a person to file a fraudulent Uniform Commercial Code financing statement; expanded the scope of the Equipment Dealer Contract Act; and prohibited a person from advertising a live musical performance by using a false or misleading association with a musical recording group.

## **Consumer Protection**

### **Consumer Privacy Protections**

***Credit Report Security Freezes: Chapters 307 and 308 of 2007*** allowed a consumer to “freeze” or restrict access to the consumer’s consumer report, commonly known as a credit report. The Acts authorized a consumer to place a security freeze on the consumer’s consumer report by telephone or by sending a written request by certified mail, electronic mail, or over the Internet under specified circumstances. While a freeze is in place, a consumer’s report and any information in or derived from it may not be released without the consumer’s express prior authorization.

When a consumer elects to place a security freeze, a consumer reporting agency must require a consumer to provide proper identifying information. The consumer reporting agency must place the freeze within three business days after receiving a consumer’s request. If the request is made by telephone, the consumer reporting agency may require the consumer to return confirmation of the request by mail. A consumer reporting agency is required to send written confirmation of the placement of the freeze to the consumer, provide the consumer with a unique personal identification number or password to be used when authorizing the release of the report, and provide the consumer with a written statement of the procedures for requesting the removal of the freeze or temporary lifting of it.

If a consumer wants to temporarily lift a security freeze to allow access to the consumer’s credit report while a freeze is in place or remove a security freeze, the consumer must follow specified procedures to notify the consumer reporting agency. The consumer reporting agency must comply with the request within three business days after receiving the request. However, if a consumer requests a temporary lift of a security freeze by telephone, electronic mail, or a secure connection on the consumer reporting agency’s web site, the consumer reporting agency must comply with the request within 15 minutes. The exclusive remedy for a violation of a consumer’s request for a temporary lift of a security freeze by telephone, electronic mail, or a secure connection on the consumer’s reporting agency’s web site is a complaint filed with the Commissioner of Financial Regulation.

While in general a consumer reporting agency may remove or temporarily lift a security freeze only on the consumer’s request, ***Chapters 307 and 308*** authorized a consumer reporting agency to remove a freeze if the placement of the freeze was based on a material misrepresentation of fact by the consumer or if the consumer failed to return required

documentation after requesting a freeze by telephone. If a consumer reporting agency intends to remove a freeze, the agency must notify the consumer in writing at least five business days before removing the freeze.

A consumer reporting agency may charge a fee of up to \$5 for placement, temporary lift, or removal of a security freeze. A fee may not be charged for placement, lift, or removal of a freeze if the consumer presents, at the time of the request, a police report alleging that the consumer is a victim of identity theft or an identity theft passport.

If a consumer reporting agency violates a freeze by releasing, without authorization, a consumer report or any information derived from the report, the consumer reporting agency must notify the affected consumer in writing about the specific information released and provide contact information of the recipient of the consumer report within five business days after discovering or being notified of the release.

**Security Breaches:** The General Assembly also passed measures to protect individuals from the unauthorized disclosure of their personal information. **Chapters 531 and 532 of 2007** required a business to take certain measures to protect an individual's personal information and to notify a consumer if the consumer's personal information was acquired as a result of a security system breach. "Personal information" means an individual's first name or first initial and last name in combination with an individual's unencrypted, unredacted, or otherwise unprotected Social Security number, driver's license number, financial account number in combination with any required security or access code or password, or Individual Taxpayer Identification Number. Personal information does not include publicly available information lawfully made available to the general public or information that is disseminated or listed in accordance with the federal Health Insurance Portability and Accountability Act.

**Chapters 531 and 532** required a business, when destroying customer records containing a customer's personal information, to take reasonable steps to protect against unauthorized access or use of the personal information. The Acts also required a business that owns or licenses personal information of a Maryland resident to implement and maintain reasonable and appropriate security procedures and practices to protect personal information from unauthorized access, use, modification, or disclosure. A business that contracts with a nonaffiliated third party as a service provider must require by contract that the third party implement and maintain reasonable security procedures and practices that are appropriate to the nature of the disclosed personal information and reasonably designed to help protect the information from unauthorized access, use, modification, disclosure, or destruction.

A business that owns or licenses computerized data that include personal information of a Maryland resident must conduct a reasonable and prompt investigation of any breach of the security of a system to determine the likelihood that personal information of the individual has been or will be misused as a result of the breach. The Acts required the business to notify an individual about the breach if, after the investigation, the business determines that misuse of the individual's personal information has occurred or is reasonably likely to occur as a result of the breach.



A violation of *Chapters 531 and 532* is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

### **Refund Anticipation Loans and Checks**

A 2010 report of the National Consumer Law Center found that, nationwide, fees on refund anticipation loans and refund anticipation checks cost taxpayers over \$1 billion in 2008. Refund anticipation loans, also called tax refund loans, are short-term, high-cost loans secured by a taxpayer's anticipated income tax refund. The loans are marketed by, and facilitated through, income tax preparers. Some income tax preparers also offer refund anticipation checks, a nonloan alternative to a refund anticipation loan. A refund anticipation check is a payment device, such as a paper check or prepaid debit card, issued by a bank that is authorized to receive the taxpayer's income tax refund electronically from the Internal Revenue Service.

*Chapter 730 of 2010* established consumer protections in connection with refund anticipation loans and refund anticipation checks. The Act required that a person who facilitates a refund anticipation loan or refund anticipation check provide the consumer with specified written and oral disclosures. In the case of a refund anticipation loan, the required disclosures include the amount of any loan fee; a statement that the product is a one- to two-week loan; and a notice that the consumer is liable for the full amount of the loan, even if the consumer's tax refund is less than expected. The required disclosures in connection with a refund anticipation check include a statement that the consumer may receive a tax refund in the same amount of time without paying any fee if the consumer's tax return is filed electronically and the refund is deposited directly into the consumer's bank account.

Beyond the required disclosures, *Chapter 730* established restrictions on refund anticipation loans and checks. Specifically, the Act prohibited a facilitator from requiring a consumer to take out a refund anticipation loan as a condition to obtaining tax preparation services, charging any fee other than the fee imposed by the lender, or arranging for any third party to charge a fee in connection with a refund anticipation loan or check.

A violation of *Chapter 730* is an unfair or deceptive trade practice under the Maryland Consumer Protection Act, and subject to its enforcement and penalty provisions. In addition, a facilitator who willfully fails to comply with *Chapter 730* is liable for actual and consequential damages, statutory damages of \$1,000, and reasonable attorney's fees.

### **Reverse Mortgages**

Approximately 90% of reverse mortgages are insured under the federal Home Equity Conversion Mortgage (HECM) program, which is administered by the U.S. Department of Housing and Urban Development. The remainder of the reverse mortgage market is comprised of proprietary reverse mortgages, which are underwritten by private lenders. Federally insured HECM loans are subject to federal regulation. However, proprietary reverse mortgages were largely unregulated prior to 2010.

As the Reverse Mortgage Loans Act, *Chapters 622 and 623 of 2010* addressed the lack of regulation in the proprietary loan market by requiring lenders making proprietary reverse mortgages to comply with federal regulations governing HECM loans. For example, federal regulations require housing counseling in connection with a HECM loan. By incorporating federal regulations regarding HECM loans, the Acts required housing counseling for proprietary reverse mortgages as well. The Acts also required a lender, upon receiving an application for a reverse mortgage loan, to provide a prospective borrower with a checklist advising the borrower to discuss with the housing counselor specific issues that may affect the borrower's ability to manage a reverse mortgage loan. The checklist requirement applies to both HECM and proprietary reverse mortgage loans.

Beyond the loan itself, there are consumer risks associated with the cross-selling of financial products to a reverse mortgage borrower, a practice that many consumer advocates consider predatory. Similar to federal law, *Chapters 622 and 623* prohibited any lender from requiring a borrower to purchase an annuity, long-term care policy, or other financial or insurance product as a condition to obtaining a reverse mortgage loan. The Acts also prohibited a lender from referring a borrower to any person for the purchase of an annuity or other insurance product before the closing date of the loan or the expiration of the borrower's right to rescind the loan, whichever is later.

A lender or arranger of financing for a federally insured HECM loan that violates *Chapters 622 and 623* is subject to federal penalties. A lender or arranger of financing for a reverse mortgage loan that violates *Chapters 622 and 623* is subject to the enforcement and penalty provisions of the Maryland Consumer Protection Act, except for the criminal penalty provisions.

### **Telephone Bills – Third-party Charges**

The General Assembly passed *Chapters 89 and 90 of 2010* to address the practice of "cramming," in which a third party adds a charge to a telephone customer's bill for a service the customer did not order, agree to, or use. Although third-party billing is used for legitimate charges, it has been widely used for fraudulent charges as well. In many cases, these fraudulent charges are small, generally ranging from \$2 to \$3, and the description that appears on a customer's bill makes it difficult for the customer to recognize the charges as fraudulent.

*Chapters 89 and 90* prohibited a third-party vendor from submitting charges to a telephone company unless the third-party vendor first obtains authorization from the customer. The authorization must include, among other things, the customer's name and telephone number, an explanation of the product or service being purchased and all applicable charges, and an affirmation from the customer that the charges may be billed to the customer's telephone bill.

The Acts further provided that a customer is not liable for third-party vendor charges unless the customer (1) receives notice that the telephone company allows third-party billing; (2) receives an itemization of third-party charges, identifying them separately from other charges; and (3) is provided with the name and telephone number of the third-party vendor. Finally, the Acts provided that a customer is not liable for any third-party charges that the

customer disputes within a reasonable time, unless the third-party vendor has provided a copy of the customer's authorization to the telephone company and the customer.

A violation of *Chapters 89 and 90* is subject to the enforcement and penalty provisions of the Maryland Consumer Protection Act, except for the criminal penalty provisions.

### **Motor Vehicle Warranties and Related Products**

During the 2007-2010 term, the General Assembly passed several measures regarding motor vehicle warranties and vehicle protection products. The General Assembly also extended the required warranty period under the State's "lemon law."

***Vehicle Manufacturer Warranty Adjustment Programs:*** Under a manufacturer warranty adjustment program, a motor vehicle manufacturer (1) extends a warranty beyond its stated limit; or (2) undertakes or offers to pay or reimburse a consumer for all or part of the cost of repairing a condition that may substantially affect the durability, reliability, or performance of a motor vehicle.

*Chapters 342 and 343 of 2007* required a motor vehicle manufacturer to (1) establish procedures for providing notice to Maryland consumers who own or lease a motor vehicle that is subject to a manufacturer's warranty adjustment program; and (2) provide information on each warranty adjustment program to its dealers in a format that facilitates disclosure to the consumer. The Acts also required a manufacturer to implement procedures to ensure reimbursement of eligible consumers for any expenses incurred to repair a covered condition before the consumer was aware of the adjustment program.

A violation of *Chapters 342 and 343* is a violation of the Maryland Consumer Protection Act and subject to the Act's enforcement and penalty provisions.

***Vehicle Protection Products: Chapter 407 of 2007*** established a program for regulating "vehicle protection products." A vehicle protection product means a vehicle protection device, system, or service that (1) is sold with a written warranty; (2) is installed or applied to a vehicle; and (3) is designed to prevent loss or damage to a vehicle from a specific cause.

*Chapter 407* prohibited the sale of vehicle protection products in the State unless the seller and warrantor of the product, and the warrantor's administrator, comply with the provisions of the Act. The Act also required that a warrantor of a vehicle protection product register with the Consumer Protection Division within the Office of the Attorney General. A "warrantor" of a vehicle protection product is a person that is contractually obligated to pay specified incidental costs to the warranty holder under the terms of the vehicle protection product agreement if the product fails to perform as provided in the warranty.

Under *Chapter 407*, the seller or warrantor must provide the purchaser with a written copy of the vehicle protection product warranty or a receipt or other written evidence of the purchase at the time of the sale. The warranty may provide for reimbursement of a consumer's

“incidental costs” in a specified fixed amount or according to a formula itemizing specific incidental costs incurred by the warranty holder.

A warrantor is liable to the warranty holder for any wrongful breach of the warranty. The warrantor is also under a duty to comply with the Act’s requirements and to compensate the warranty holder for all reasonable expenses incurred as a result of a wrongful breach. A violation of *Chapter 407* is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

***Automotive Warranty Enforcement Act (“Lemon Law”):*** The Automotive Warranty Enforcement Act, or “lemon law,” provides legal remedies to purchasers of new cars, small trucks, and multipurpose vehicles (including motorcycles). Under the Lemon Law, a manufacturer must replace a vehicle or provide a refund, minus an allowance for use, if the manufacturer or its agent, after a reasonable number of attempts, is unable to repair a defect or condition that arises during the required warranty period and substantially impairs the vehicle’s use and market value.

*Chapter 512 of 2009* extended the warranty period under the Lemon Law for a vehicle from the earlier of 15,000 miles or 15 months to the earlier of 18,000 miles or 24 months. The extension of the warranty period does not extend a manufacturer’s express warranty but merely extends the period during which the Lemon Law’s legal remedies are available to a consumer.

### **Consumer Credit Blacklisting**

The 2009 federal Credit Card Accountability Responsibility and Disclosure Act modified credit card industry practices to provide consumer protections. The Act, among other things, (1) requires credit card companies to give 45 days advance notice of all interest rate increases and bans certain retroactive rate increase; (2) ends “double cycle” billing; (3) requires payments to be allocated proportionally to balances with different interest rates; and (4) prohibits the issuance of credit cards where yearly fixed fees exceed 25% of the credit limit and are charged to the credit card itself.

Despite the federal consumer protections, news reports indicated that credit card companies, in some cases, made consumer credit determinations based on where a cardholder shopped or which mortgage lender a cardholder used. In response to these practices, the General Assembly passed *Chapter 309 of 2010*, which prohibited a consumer credit provider, including a credit card company, from using such criteria without the consumer’s prior written consent to (1) trigger a default under a consumer credit contract or (2) alter the terms of a consumer credit contract. A provision in a consumer credit contract that triggers a default or authorizes the credit provider to alter the terms of the contract based on such criteria, and without the consumer’s consent, is unenforceable. A violation of *Chapter 309* is a violation of the Maryland Consumer Protection Act and subject to its enforcement and penalty provisions.

### **Mail-in Rebates**

Under the Maryland Consumer Protection Act, an unfair or deceptive trade practice includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind that has the capacity, tendency, or effect of deceiving or misleading consumers. *Chapter 539 of 2008* expanded the scope of the law by requiring a merchant to include a disclosure in certain advertisements for rebates on consumer goods. Specifically, *Chapter 539* required that advertisements for rebates that are redeemable only by mail must clearly state that fact in the advertisement.

### **Halal Food Products**

“Halal” is an Arabic term that means “permissible,” and in the English language it most frequently refers to food that is permissible according to Islamic law. *Chapter 112 of 2008* prohibited the false representation of food as halal. The Act also required the prominent and conspicuous display of a specific disclosure statement by establishments that publicly represent the service or sale of halal food products. A violation of the provisions of *Chapter 112* is an unfair or deceptive trade practice under the Maryland Consumer Protection Act and subject to its civil and criminal penalty provisions.

### **Misrepresentations in Telephone Listings and Advertisements**

In response to concerns about nonlocal businesses advertising in local telephone directories using local telephone numbers and false local addresses, the General Assembly passed *Chapters 10 and 11 of 2009*. The Acts prohibited a person from causing to be published in a telephone directory any business telephone listing or advertisement that misrepresents the address of the business. The Acts specifically exempted banks, trust companies, savings banks, savings and loan associations, and credit unions, and the Acts did not apply to a publisher, printer, or distributor of a telephone directory.

A person who violates the provisions of *Chapters 10 and 11* is subject to a maximum civil fine of \$500 for each violation. A separate violation is committed for each edition of a local telephone directory or local telephone advertising directory in which a prohibited advertisement or telephone listing is published.

### **Parental Controls for Internet Access**

*Chapter 557 of 2009* required Internet access providers with subscribers in the State to create parental controls and to make the features available to each subscriber in the State at or near the time of subscription. Under the Act, an Internet access provider must allow a subscriber, in a commercially reasonable manner, to block all access to the Internet, as well as:

- block a child’s access to specified web sites or a category of web sites;
- restrict a child’s access to subscriber-approved web sites;

- restrict a child's access to web sites approved by the parental control provider; or
- monitor a child's Internet use by reporting to the subscriber each web site a child visits or web site the child was denied access to by the parental control.

**Chapter 557** also allowed an Internet access provider or a third party to charge a subscriber a fee to use the parental control features. The Act is limited to Internet access providers that offer direct Internet access to residential customers in exchange for consideration. It does not apply to libraries or educational institutions. A violation of **Chapter 557** is an unfair or deceptive trade practice under the Maryland Consumer Protection Act and subject to its civil and criminal penalty provisions.

## **Commercial Law – Generally**

### **Maryland Antitrust Act**

The United States Supreme Court overruled 97 years of jurisprudence when it held, in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 127 S.Ct. 2705 (2007), that the federal Sherman Antitrust Act requires courts to apply a “rule of reason” standard rather than a “*per se* illegal” standard when considering the legality of minimum vertical price-fixing arrangements, also known as minimum resale price maintenance. Minimum vertical price-fixing involves an agreement between a manufacturer and retailers to establish a minimum price below which goods may not be sold.

Because the General Assembly has directed Maryland courts to look to federal court interpretations of federal antitrust laws when construing the Maryland Antitrust Act, the Supreme Court's decision could have influenced how Maryland courts interpret and apply the State's antitrust laws. **Chapters 43 and 44 of 2009** ensured that Maryland courts will not follow the Supreme Court's *Leegin* decision. The Acts codified existing Maryland case law by providing that the practice of minimum vertical price-fixing is a *per se* violation of the Maryland Antitrust Act.

### **Uniform Commercial Code – Fraudulent Financing Statements**

When a borrower uses personal property as collateral for a loan, the lender may protect its interest in the property by filing a Uniform Commercial Code (UCC) financing statement with the State Department of Assessments and Taxation (SDAT). Financing statements filed with SDAT provide public notice of the lender's interest in the property and establish priority among the borrower's creditors.

However, in rare instances, individuals have misused the UCC filing system by filing fraudulent financing statements to harass another person. Although a fraudulent financing statement does not create any legal liability for the named debtor, it can cause the named debtor economic harm. When a fraudulent financing statement purports to relate to a large outstanding debt, a prospective lender that discovers the financing statement may be unwilling to extend

credit to the person named in the financing statement. A fraudulent financing statement, therefore, can impair an individual's capacity to obtain credit. Also, it can be costly and time consuming for a person named in a fraudulent financing statement to remove the financing statement from the public records.

*Chapter 397 of 2010* made it a misdemeanor for a person to file a financing statement or amendment to a financing statement that the person knows to contain false information. A person who violates the Act's provisions is subject to a maximum fine of \$500 for each fraudulent financing statement or fraudulent amendment filed with SDAT.

### **Equipment Dealer Contract Act**

The Equipment Dealer Contract Act provides statutory protections for dealers of certain equipment, such as construction, farm, utility, and industrial equipment. Among other things, it prohibits a wholesaler, supplier, or distributor of such equipment from cancelling, failing to renew, or substantially altering a dealer's supply contract without good cause. The law also requires that a wholesaler, supplier, or distributor, at the option of the dealer, repurchase the dealer's inventory upon the termination of a supply contract.

During the 2007-2010 term, the General Assembly twice expanded the scope of the law to cover dealers that were not previously covered. *Chapters 109 and 110 of 2009* expanded the law to cover dealers of commercial heating, ventilation, and air conditioning equipment or repair parts. *Chapter 55 of 2010* expanded the law to cover dealers of outdoor power sports equipment. Outdoor power sports equipment includes all-terrain vehicles, dirt bikes, and snowmobiles, as well as attachments and repair parts for such equipment.

### **Musical Performances**

*Chapter 617 of 2008* prohibited a person from advertising or conducting a live musical performance or production in the State through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. The Act defines a "recording group" as a vocal or instrumental group with at least one member who has previously released a commercial sound recording under that group's name and has a legal right to use the group's name without having abandoned the name or affiliation with the group. A "performing group" is defined as a vocal or instrumental group seeking to use the name of a recording group.

The general prohibition in *Chapter 617* against false, deceptive, or misleading advertisements and performances does not apply if (1) the performing group is the authorized registrant and owner of a service mark for that group that is registered with the U.S. Patent and Trademark Office; (2) at least one member of the performing group was a member of the recording group and the member has a legal right to the recording group name due to the member's use of or operation under the group name without having abandoned the recording group name or affiliation with the recording group; (3) the live musical performance or production is identified in all advertising and promotion as a salute, tribute, parody, or satire, and the performing group name is not so closely related or similar to that used by the recording group

that it would tend to confuse or mislead the public; (4) the advertising does not relate to a live musical performance or production in the State; or (5) the performance or production is expressly authorized by the recording group.

**Chapter 617** authorized the Attorney General to seek an injunction prohibiting a person from engaging in a violation of the Act's provisions if the Attorney General believes that a person has engaged in or will engage in a violation and that an injunction would be in the public interest. A court, upon issuing a permanent injunction, may enter a judgment to restore to a person any money or real or personal property acquired from the person by means of a violation. In addition, a violator is subject to a civil penalty of at least \$5,000 but not more than \$15,000 for each violation. Each performance or production in violation of the Act's provisions is considered a separate violation.

## Corporations and Associations

During the 2007 to 2010 legislative term, the General Assembly made numerous changes to the Maryland General Corporation Law; authorized the establishment of a benefit corporation; made changes to the laws governing professional corporations, publicly traded corporations chartered in Maryland, real estate investment trusts, business trusts, and foreign business entities; and revised State securities laws to better protect senior investors.

### Maryland General Corporation Law

Legislation adopted during the 2008, 2009, and 2010 legislative sessions modernized and clarified various provisions of the Maryland General Corporation Law, including those relating to corporate stock, stockholders, officers and directors, charter documents, corporate records, and corporate dissolutions.

**Chapter 292 of 2008** made changes in the following areas:

- **Subscriptions for Stock:** The Act repealed the requirement that a corporation, in connection with a subscription for stock, give at least 10 days written notice to each subscriber of the amount, time, and place of payment.
- **Shares Issued without a Stock Certificate:** **Chapter 292** repealed the requirement that a corporation, at the time of issuance or transfer of shares without certificates, send the stockholder a written statement containing specific information about the corporation and the stock and required instead that the written statement be sent, without charge, only on the stockholder's request.
- **Resignations of Directors and Delegation of Powers:** The Act (1) specified that the resignation of a director given in writing or by electronic transmission may provide for the effective time of the resignation and the circumstances under which the resignation is



irrevocable; (2) expanded the authority of a board of directors to delegate its powers to a committee of the board by authorizing the delegation to a committee of the power to recommend to the stockholders the election of directors; and (3) expanded a committee's authority to authorize or fix certain terms of stock.

- **Indemnification of Directors and Officers:** Generally, a corporation may indemnify any director made a party to any proceeding by reason of service as a director. For purposes of indemnification, “director” includes any person who, while a corporate director, is or was serving at the corporation’s request as a director, officer, partner, trustee, employee, or agent of another corporation and certain other business entities. **Chapter 292** expanded the indemnification provisions to include corporate directors who serve, at the corporation’s request, in any of these capacities for a limited liability company.
- **Stockholder Meetings:** **Chapter 292** altered provisions governing the timing of an annual meeting of a corporation’s stockholders to simply require that it be held at the time or in the manner provided in the bylaws.
- **Informal Action by Stockholders:** Maryland law provides that, if authorized by the corporate charter, common stockholders entitled to vote generally in the election of directors may take action or consent to any action by delivering a consent of at least the minimum number of votes that would be necessary to authorize or take the action at a stockholders meeting if the corporation gives notice of the action to each holder of the class of common stock no later than 10 days after the action’s effective date. **Chapter 292** required that the corporation also give notice to each stockholder who, if the action had been taken at a meeting, would have been entitled to notice of the meeting.
- **Contents of Charter Documents:** Articles of consolidation, merger, or share exchange must contain (1) the terms and conditions of the transaction; and (2) the manner of carrying it into effect, including certain information regarding the transaction. **Chapter 292** provided that these charter documents also may include the number and names of those directors or trustees, and the titles and names of those officers, of the successor who will hold those positions as of the effective date of the consolidation, merger, or share exchange if the persons serving in those positions will be changed as a result of the transaction.

**Chapters 295 and 296 of 2009** made additional changes in the following areas:

- **Location of Bylaws and Statement of Affairs:** The Acts eliminated the requirement that the original or a certified copy of a corporation’s bylaws be kept at the corporation’s principal office and allowed the annual statement of affairs of a corporation to be placed on file at any office or agency specified in the corporation’s bylaws.

- ***Elimination of Fractional Shares: Chapters 295 and 296*** allowed a corporation to eliminate a fractional interest in shares of stock by rounding up to a full share, rather than rounding off – whether up or down – to a full share.
- ***Redemption of Shares by Open-end Investment Companies:*** The Acts increased from \$500 to \$1,000 the net asset value of shares that may be redeemed by an open-end investment company to allow for the elimination of small investment accounts that are not economical for the company to maintain.
- ***Distributions from Net Assets:*** Generally, a corporation may not make a distribution or pay a dividend to stockholders if, after the distribution or payment, the corporation (1) would not be able to pay its debts as they become due in the usual course of business; or (2) the corporation's total assets would be less than the sum of its total liabilities plus the amount needed to satisfy the preferential rights of stockholders if the corporation were dissolved. ***Chapters 295 and 296*** altered this prohibition by authorizing a corporation to make distributions from the corporation's net earnings for (1) the fiscal year in which the distribution is made; (2) the preceding fiscal year; or (3) the immediately preceding eight fiscal quarters, provided the corporation can pay its debts in the usual course of business.
- ***Inspection Rights:*** Under the Maryland General Corporation Law, a stockholder, a holder of a voting trust certificate, or an agent of a stockholder or certificate holder has a right to inspect specified corporate documents including a corporation's bylaws, minutes of stockholder meetings, and a corporation's annual statement of affairs. ***Chapters 295 and 296*** required that a request to inspect the records be made in writing and that the corporation have the requested documents available for inspection at its principal office within seven days after a request is presented.

Finally, ***Chapters 95 and 96 of 2010*** made changes in the following areas:

- ***Execution of Charter Documents:*** The Acts expanded the individuals who may sign and acknowledge and witness or attest specified charter documents for a corporation, business trust, or real estate investment trust, as well as the individuals who may verify under oath the contents of the charter documents.
- ***Delegation of Powers of Board of Directors:*** The Acts authorized a board of directors to delegate to an executive or other committee of the board the power to authorize dividends on stock but repealed the authority of the board to delegate to a committee of the board the power to fix the amount and other terms of a distribution.
- ***Stockholder Proposals, Meetings, and Notices:*** A corporation's charter or bylaws may require a stockholder proposing a nominee for election to the board of directors or any other matter to be considered at a stockholders meeting to provide advance notice to the

corporation before a date or within a period of time specified in statute, or another time specified in the charter or bylaws. **Chapters 95 and 96** repealed the specific time periods established by statute and authorized a meeting of stockholders, before it is convened, to be postponed from time to time to a date not more than 120 days after the original record date set for the meeting.

In addition, the Acts altered the requirements for providing notice to stockholders by (1) allowing a corporation, for any notice it is required to give to stockholders, to provide a single notice to all stockholders who share the same address unless otherwise requested by a stockholder; and (2) providing that a notice of a charter amendment, instead of including a copy of the amendment or a summary of the changes it will effect, may identify a web site at which the amendment or summary may be accessed.

- **Dissolution of Corporations:** In general, stockholders entitled to vote in the election of a corporation's directors may petition a court to dissolve the corporation on the grounds that the stockholders are so divided that directors cannot be elected. **Chapters 95 and 96** excluded stockholders of a corporation that has a class of equity securities registered under the federal Securities and Exchange Act of 1934 from provisions of law establishing this right.

## **Benefit Corporations**

Maryland law recognizes both a C corporation that elects to be taxed under Subchapter C of the Internal Revenue Code and an S corporation that elects to be taxed as a small business corporation under Subchapter S of the Internal Revenue Code. **Chapters 97 and 98 of 2010** authorized a Maryland corporation to elect to be a benefit corporation which, unlike a traditional C or S corporation, must have as its purpose the creation of one or more public benefits.

Under **Chapters 97 and 98**, a corporation may elect to be a benefit corporation by amending or including in its charter a statement that the corporation is a benefit corporation. A benefit corporation must have the purpose of creating a general public benefit, defined in the Acts as a “material, positive impact on society and the environment ... through activities that promote a combination of specific public benefits.” Specific public benefits are defined to include preserving the environment, improving human health, and promoting the arts, sciences, or advancement of knowledge. The election of benefit corporation status and the termination of that status must be approved by the corporation's stockholders, and clear reference to the fact that a corporation is a benefit corporation must appear prominently at the head of each charter document and on each certificate representing outstanding stock of the benefit corporation.

**Chapters 97 and 98** also (1) established specific duties of the directors of a benefit corporation; (2) provided for immunity from liability for directors who perform their duties in accordance with required standards of care; (3) required annual benefit reports to be delivered to each stockholder; and (4) provided for the termination of benefit corporation status.

## Professional Corporations

The Maryland Professional Service Corporation Act authorizes members of specified professions to organize their practice as a professional corporation. This business form allows licensed individuals to obtain the benefits of limited liability and other advantages that only are available to corporations under federal tax law. Ownership of stock in a professional corporation is limited to individuals who hold licenses in the profession. In general, services rendered through a professional corporation must be within a single profession.

*Chapters 31 and 32 of 2007* added physical therapists to the list of individuals providing a professional service who may form a professional corporation to provide those services. *Chapter 88 of 2009* altered the conditions under which a professional corporation may render services within two or more professions. The Act authorized a corporation to be a professional corporation for the purpose of rendering the same, similar, or related professional services within two or more professions, instead of requiring that the combination of professional purposes be authorized by the State licensing law applicable to each profession in the combination. Finally, *Chapter 399 of 2009* exempted a professional corporation in which a majority of the stockholders are physicians licensed by the State Board of Physicians from the general rule that the corporate name of a professional corporation must contain the surname of one or more of the stockholders of the corporation.

## Publicly Traded Corporations – Stock Appraisal Rights

*Chapter 191 of 2008* granted stock appraisal rights to the stockholders of a publicly traded corporation chartered in Maryland in the event of a merger, consolidation, or share exchange of the corporation under three scenarios:

- If, with respect to the merger, consolidation, or share exchange, stock of the corporation is required to be converted into or exchanged for anything of value *except* (1) stock of the corporation surviving or resulting from the transaction, or depository receipts for the stock; (2) stock of any other corporation, or depository receipts for the stock; (3) cash in lieu of fractional shares of the stock or depository receipts under items (1) or (2); or (4) any combination of the preceding items.
- If the directors and executive officers of the corporation were the beneficial owners, in the aggregate, of 5% or more of the outstanding voting stock of the corporation at any time within the one-year period ending on either the day the stockholders voted on the transaction or, with respect to certain mergers of a subsidiary corporation with or into a parent corporation, the effective date of the merger.
- If, within the one-year period described above, and as part of or in connection with the merger, consolidation, or share exchange, any stock held by a director or executive officer of the corporation is converted into or exchanged for the stock of a person who is a party to the transaction, or an affiliate of the person, on terms that are not available to all holders of stock of the same class or series. However, appraisal rights do not apply in

this scenario if the stock in question is held in accordance with a compensatory plan or arrangement approved by the board of directors of the corporation and the treatment of the stock in the merger, consolidation, or share exchange is approved by the board.

## **Real Estate Investment Trusts**

A real estate investment trust (REIT) is an unincorporated trust or association in which property is acquired, held, managed, administered, controlled, invested, or disposed of for the benefit and profit of any person who may become a shareholder. A REIT is formed by filing a declaration of trust with the State Department of Assessments and Taxation (SDAT). Unless the declaration of trust provides otherwise, the trustees of a REIT may authorize the issuance of some or all of the shares of a REIT without certificates.

*Chapters 418 and 419 of 2008* clarified the definition of a REIT to mean an unincorporated *business* trust or association. The Acts also repealed the requirement that a REIT, at the time of issuance or transfer of shares without certificates, send the shareholder a written statement containing specific information about the shares, and required instead that the statement be sent, without charge, only on the shareholder's request.

*Chapters 79 and 80 of 2010* added a definition of "declaration of trust" to the provisions of law governing REITs to clarify that the term refers to the document as originally accepted for record by SDAT and that document as subsequently amended, corrected, or supplemented by specified articles or a certificate of correction. The Acts also (1) clarified that a REIT may provide in its declaration of trust that the holders of one or more classes or series of shares have exclusive voting rights on an amendment to the declaration of trust that would alter only the contract rights of the specified class or series; (2) authorized the board of trustees of a REIT, under specified circumstances, to amend the REIT's declaration of trust to authorize a reverse stock split without shareholder action; and (3) specified the circumstances under which a REIT may file a certificate of notice for record with SDAT.

## **Business Trusts (Statutory Trusts)**

Chapter 452 of 1999 enacted the Maryland Business Trust Act (MBTA) which authorized the establishment of business trusts in Maryland. Under MBTA, a business trust is defined as an unincorporated business, trust, or association created by a governing instrument under which property is held, managed, administered, controlled, invested, reinvested, or operated by a trustee, or business or professional activities for profit are carried on by a trustee, for the benefit of persons who have a beneficial interest in the trust property.

Maryland law requires the charter documents of a corporation and a REIT, including articles of amendment, restatement, consolidation, merger, share exchange, and transfer to be signed and acknowledged, witnessed or attested, and verified under oath by specified officers, directors, trustees, or agents of the corporation or REIT. *Chapter 457 of 2007* made the requirements for the execution of charter documents by a business trust the same as the requirements for a corporation or REIT.

**Chapter 611 of 2010** extensively revised MBTA and renamed it as the Maryland Statutory Trust Act. For consistency with corresponding statutes in other states, the Act repealed the definition of “business trust,” defined a “statutory trust,” and made conforming terminology changes where appropriate throughout the Annotated Code. Under the Act, a “statutory trust” means an unincorporated business, trust, or association that is (1) formed by filing an initial certificate of trust with SDAT; and (2) governed by a governing instrument. The term includes a business trust formed under MBTA.

While many of the changes made are technical or stylistic, **Chapter 611** also (1) clarified the requirements for formation and governance of a statutory trust; (2) clarified the general powers of a statutory trust; (3) authorized the governing instrument of a statutory trust to contain provisions relating to the nature and division of beneficial interests in the statutory trust; (4) clarified the types of consideration that may be contributed for a beneficial interest in a statutory trust; (5) clarified the powers, duties, and liabilities of trustees of a statutory trust and the procedures by which trustees and beneficial owners may take specified actions; and (6) altered the procedures for the merger or consolidation of a statutory trust. In addition, the Act established registration and other requirements for foreign statutory trusts that do business in the State as well as penalties for failing to register.

### **Foreign Business Entities – Proof of Good Standing**

Foreign limited liability companies, foreign limited liability partnerships, foreign limited partnerships, and foreign corporations are required to register with SDAT before doing any intrastate, interstate, or foreign business within Maryland. **Chapter 355 of 2009** required these business entities to provide proof of good standing from the entity’s home jurisdiction when registering. The law was intended to prevent a foreign business entity that is out of compliance with the laws of its home jurisdiction to use its registration in Maryland as an indication that it is a legitimate business and to allow SDAT to verify that the business entity was lawfully formed in another jurisdiction.

### **Securities – Senior Investment Protection Act**

Under the Maryland Securities Act, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, to engage in a fraudulent or deceptive act or practice. A person who violates the Act is subject to administrative, civil, and criminal penalties, including the denial, suspension, or revocation of the person’s registration to do business in the State.

To address the growing use of senior-specific certifications or professional designations that misleadingly imply expertise in advising or servicing senior investors, **Chapters 301 and 302 of 2009** made it unlawful for any person to use a senior or retiree credential or designation in a way that is or would be misleading in connection with (1) the offer, sale, or purchase of securities; (2) receiving any consideration from another person for advice about the value of securities or their purchase or sale; or (3) acting as a broker-dealer, agent, investment adviser, or investment adviser representative. **Chapters 301 and 302** also required the Maryland Securities

Commissioner to define what constitutes a misleading use of a senior or retiree credential or designation and establish enhanced criminal penalties for a willful violation of the law.





## **Part J**

### **Health and Human Services**

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#### **Public Health – Generally**

##### **Medicaid**

##### **Funding Overview**

The Medicaid budget increased 26% from \$4.9 billion in fiscal 2008 to almost \$6.2 billion in fiscal 2011. A key assumption in the fiscal 2011 budget is that the enhanced federal matching rate available under the federal American Recovery and Reinvestment Act of 2009 will continue until the end of fiscal 2011 rather than expire December 31, 2010, a saving of \$389 million in general funds. At the time of writing, that extension had not yet been enacted.

The major driver of growth in the Medicaid budget continues to be enrollment. Since the summer of 2008, enrollment in Medicaid (excluding the Maryland Children’s Health Program (MCHP) and the Primary Adult Care program (PAC)) has increased steadily from just over 500,000. Enrollment growth was estimated at 15.6% in fiscal 2009. Department of Legislative Services (DLS) projections anticipate average monthly enrollment topping 700,000 in fiscal 2010 (a 16.5% increase over fiscal 2009) and continuing to increase, albeit at a lesser rate, to approaching 740,000 in fiscal 2011 (a 4.3% increase over fiscal 2010).

This enrollment increase is primarily driven by the State’s 2007 health care reform expansion (discussed immediately below) of Medicaid to parents and the deteriorating economy. In fiscal 2009 enrollment growth was evenly fuelled by health care reform and the economy (as evidenced by the growth of Temporary Cash Assistance (TCA) enrollees, especially children). Beginning in fiscal 2010, the impact of health care expansion on enrollment, while still significant, is less important than the economy. DLS anticipates that in fiscal 2011 most of the enrollment growth will continue to be from TCA enrollees.

### **Working Families and Small Business Health Care Coverage Act of 2007**

*Chapter 7 of the 2007 special session* enacted the Working Families and Small Business Health Coverage Act, which affected access to health care in the following ways:

- expanded Medicaid eligibility to parents and caretaker relatives with household income up to 116% of federal poverty guidelines (FPG), implemented in fiscal 2009;
- incrementally expanded PAC program benefits over three years to childless adults with household income up to 116% FPG, phased in from fiscal 2010 through 2013 and subject to budget constraints; and
- established a Small Employer Health Insurance Premium Subsidy Program, administered by the Maryland Health Care Commission.

During the first year of the expansion approximately 48,000 parents enrolled. However, due to severe budget constraints, extension of full Medicaid benefits has been delayed for the PAC population which, prior to *Chapters 331 and 332 of 2009*, was limited to primary care, outpatient mental health, and pharmacy services. *Chapters 331 and 332* added coverage for substance abuse services beginning January 2010 and emergency room visit coverage began at the same time. Hospital stays and specialty care are still not covered under the program.

### **Efforts to Increase Enrollment**

*Chapter 692 of 2008* required taxpayers, beginning with tax year 2008, to indicate on their income tax return whether each dependent child for whom an exemption is claimed has health care coverage. Taxpayers may not be penalized for not providing this information or providing information that is inaccurate. The Comptroller must send taxpayers with a dependent child a specified income notice that the dependent child may be eligible for Medicaid or MCHP and, in specified instances, Medicaid and MCHP application with instructions. *Chapter 692* was scheduled to terminate June 30, 2011.

*Chapter 734 of 2010* extended the termination date on the requirement for taxpayers to indicate on their income tax return whether each dependent child for whom an exemption is claimed has health insurance and continued the penalty prohibition for not providing this information or providing inaccurate information from June 30, 2011 to June 30, 2014. The Act also extended through tax year 2012 the requirement for the Comptroller to send applications and enrollment instructions to a taxpayer who indicates that a dependent child does not have health care coverage and who does not exceed the highest income eligibility standard for Medicaid or MCHP.

*Chapter 734* required the Comptroller to add a box on income tax returns that allows a taxpayer to “opt in” to sharing their information with the Department of Health and Mental Hygiene (DHMH) for the purpose of enrolling their dependent children into Medicaid or MCHP. The Act also required DHMH and the Comptroller to enter into a data-sharing agreement for this

purpose to allow the Comptroller to better target the mailings of applications and enrollment instructions and help evaluate the effectiveness of using the tax system to increase enrollment of low-income children into Medicaid and MCHP.

Youth in State foster care receive medical care through Medicaid. However, this coverage often terminates when the individual turns 18 and leaves the foster care system. Many continue to qualify for Medicaid or MCHP through their 19th or 21st birthdays. **Chapter 681 of 2009** required Medicaid to provide coverage for independent foster care adolescents who are not otherwise eligible for Medicaid benefits and who have annual household incomes up to 300% FPG. Independent foster care adolescents are individuals younger than age 21 who, on their 18th birthday, were in State foster care.

### **False Claims Act**

The federal Deficit Reduction Act of 2005 established incentives for states to enact certain antifraud legislation modeled after the federal False Claims Act (FCA). States that enact qualifying legislation are eligible to receive an increase of 10% of the recovery funds (by a corresponding 10% reduction in the federal share). To qualify, a state false claims act must provide (1) liability to the state for false or fraudulent claims; (2) provisions for *qui tam* actions to be initiated by whistleblowers and for the rewarding of those whistleblowers in amounts that are at least as effective as those provided by the federal FCA; (3) the placing of *qui tam* actions under seal for 60 days for review by the state Attorney General; and (4) civil penalties not less than those provided in the federal FCA, to be imposed on those who have been judicially determined to have filed false claim acts.

**Chapter 4 of 2010** (the Maryland False Health Claims Act of 2010) (1) prohibited a person from making a false or fraudulent claim for payment or approval by the State or DHMH under a State health plan or program; (2) authorized the State to file a civil action against a person who makes a false health claim; (3) established civil penalties for making a false health claim *qui tam* action; (4) permitted a private citizen to file a civil action on behalf of the State against a person who has made a false health claim; (5) required the court to award a certain percentage of the proceeds of the action to the private citizen initiating the action; and (6) prohibited retaliatory actions by a person against an employee, contractor, or grantee for disclosing a false claim or engaging in other specified false claims-related activities. The statute of limitations for any action brought under the Act is six years from the date of the violation or three years after the date when material facts were known or reasonably should have been known by the private party initiating the action on behalf of the State, the State's Inspector General, or the director of the State's Medicaid Fraud Control Unit, but in no event more than ten years after the date on which the violation is committed.

The fiscal 2011 budget includes \$20 million in reductions (\$9 million in general funds and \$11 million in federal funds) contingent on enactment of the Maryland False Health Claims Act of 2010. According to DHMH, these savings will result due to associated damages in the civil process that cannot be awarded under current law and additional volume of false claims cases.

## **Environmental Health**

### **Lead-containing Children's Products**

The number of children with elevated blood lead levels decreased in 2006 at both the State and national level compared to 2005. From 2006 to 2008, three children in Maryland were tested and found to have elevated blood lead levels specifically traceable to lead-containing products. *Chapter 483 of 2008* prohibited a person from manufacturing, selling, offering for sale, importing, or distributing a lead-containing children's product. A "lead-containing product" is a product or a component of a product containing or coated with lead in a concentration of more than 0.06% of the product's total weight or the standard established under federal law. This prohibition includes products such as accessories and jewelry, clothing, decorative objects, furniture, lunch boxes and eating utensils, toys, and any other item specified by the Maryland Department of the Environment (MDE) in regulation. *Chapter 483* also required a manufacturer of a children's product to test whether the product is a lead-containing product by using an independent, accredited third-party testing entity. The manufacturer is required to issue a certificate that certifies that the product is not a lead-containing product and must ensure that the certificate is transmitted with the product to any distributor or retailer.

*Chapter 129 of 2009* altered the definition of a child, for purposes of regulating lead-containing children's products, to include individuals younger than age 13. *Chapter 129* also incorporated the federal Consumer Product Safety Act of 2008 into the State's framework for the regulation of children's products containing lead.

### **Bisphenol-A**

Bisphenol-A (BPA) is a compound found in many plastics. In January 2010 the U.S. Food and Drug Administration (FDA) released findings stating that the FDA had some concern about the effects of BPA on the brain behavior and prostate gland in fetuses, infants, and young children. *Chapters 46 and 47 of 2010* prohibited a person from manufacturing, distributing, or knowingly selling child care articles that contain BPA on or after January 10, 2012. The Act defines "child care article" as an empty bottle or cup to be filled with food or liquid that is designed or intended by a manufacturer to be used by a child under the age of four years.

### **Biomonitoring**

Environmental factors have been linked to numerous diseases such as asthma, leukemia, learning disabilities, cancer, and developmental disabilities. Through biomonitoring, the federal Centers for Disease Control and Prevention (CDC) collects annual data on human exposure to 212 chemicals, including pesticides, polychlorinated biphenyls, mercury, and second-hand smoke. However, the survey design does not permit CDC to estimate exposure to environmental chemicals on a state-by-state basis. *Chapter 394 of 2010* required DHMH and MDE to conduct a study to determine the feasibility of establishing a biomonitoring program in the State. DHMH must report its findings to specified legislative committees by June 30, 2011.

## **Oral Health Safety Net Program**

*Chapters 527 and 528 of 2007* established an Oral Health Safety Net Program within DHMH's Office of Oral Health to award grants to local health departments, federally qualified health centers, and entities providing dental services within State facilities to increase dental provider capacity for the underserved. *Chapter 352 of 2009* repealed the September 30, 2011 termination date for the program.

## **Dental Action Committee**

In 2007, DHMH formed a Dental Action Committee. The fiscal 2009 budget included \$16.1 million to implement a number of recommendations made by the committee.

***Medicaid Oral Health Initiative:*** The Medicaid budget for fiscal 2009 included \$14.0 million to increase dental reimbursement rates as part of a plan to raise Medicaid dental rates up to the fiftieth percentile of the dental association's South Atlantic charges.

***Improve the Public Dental Infrastructure:*** DHMH's Office of Oral Health received \$1.4 million in the fiscal 2009 budget to improve access to dental care. Funds were provided as grants to local health departments, federally qualified health centers, or nonprofit community health organizations and targeted to the Upper Eastern Shore and Southern Maryland.

***School-based Dental Services:*** The Office of Oral Health received \$700,000 for school-based dental health services. The office plans to purchase a dental van outfitted with the equipment and supplies needed to provide comprehensive dental services. Remaining funds will be used to establish two school-linked portable dental programs that will consist of portable dental equipment staffed by a full-time dental hygienist and a full-time dental assistant.

## **Tobacco and Smoking**

### **Cigarette Restitution Funds for Tobacco Programs**

The Tobacco Use Prevention and Cessation Program aims to reduce the use of tobacco products and to reduce the burden of tobacco-related morbidity and mortality in the State. Cigarette Restitution Funding (CRF) for statewide Academic Health Centers supports grants to State institutions for the purpose of enhancing cancer research that may lead to a cure for a targeted cancer and increases the rate at which cancer research translates into treatment protocols in the State. However, during the time period encompassed by this *Major Issues Review*, the State fiscal crisis prompted reductions to the mandated funding levels for various CRF programs. Exhibit J-1 details the distribution of funds in fiscal 2009 through 2011.

*Chapter 484 of 2010*, the Budget Reconciliation and Financing Act, further adjusted these funding levels. Specifically, the Tobacco Use Preventions and Cessation Program is funded at \$6 million in fiscal 2011 and 2012 and \$10 million in fiscal 2013 and thereafter. The Act also consolidated funding for the statewide Academic Health Centers into Cancer Research Grants, repealing the Tobacco Disease Research and Network Grants. The Act sets funding for

Academic Health Center grants at \$2.4 million for fiscal 2011 and 2012 and \$13 million in fiscal 2013 and thereafter.

**Exhibit J-1**  
**Cigarette Restitution Fund Budget**  
**Fiscal 2009-2011**  
**(\$ in Millions)**

	<u>2009 Actual</u>	<u>2010 Working</u>	<u>2011 Budget</u>
Beginning Fund Balance	\$9.6	\$9.1	\$0.8
Settlement Payments	150.3	144.0	139.1
Nonparticipating Manufacturers and Other			
Shortfalls in Payments	-11.6	-12.0	-12.0
Awards from Disputed Account	12.2	0.0	12.0
Other Adjustments	37.6	36.9	36.9
<b>Subtotal</b>	<b>\$198.1</b>	<b>\$178.0</b>	<b>\$176.7</b>
Prior Year Recoveries	\$3.7	\$1.0	\$0.5
<b>Total Available Revenue</b>	<b>\$201.8</b>	<b>\$179.0</b>	<b>\$177.2</b>
<b>Health</b>			
Tobacco	\$16.3	\$4.1	\$4.0
Cancer	21.8	11.5	14.4
Substance Abuse	17.1	17.1	19.5
Medicaid	125.4	117.5	112.2
Administration	0.9	1.0	1.0
Breast and Cervical Cancer		14.6	15.2
<b>Subtotal</b>	<b>\$181.6</b>	<b>\$165.8</b>	<b>\$166.3</b>
<b>Other</b>			
Aid to Nonpublic School	\$3.7	\$4.5	\$4.5
Crop Conversion	7.0	7.0	5.0
Attorney General	0.4	1.0	1.0
<b>Subtotal</b>	<b>\$11.1</b>	<b>\$12.5</b>	<b>\$10.5</b>
<b>Total Expenses</b>	<b>\$192.7</b>	<b>\$178.3</b>	<b>\$176.9</b>
<b>Ending Fund Balance</b>	<b>\$9.1</b>	<b>\$0.8</b>	<b>\$0.4</b>

**Clean Indoor Act of 2007**

The significant momentum to prohibit smoking in bars and restaurants in Maryland culminated in the passage of a statewide smoking ban. The statewide ban does not preempt a county or municipal government from enacting and enforcing more stringent measures to reduce

involuntary exposure to environmental tobacco smoke. *Chapters 501 and 502 of 2007* prohibited smoking in an indoor area open to the public; an indoor place where public meetings are held; a government-owned or -operated means of mass transportation including buses, vans, trains, taxicabs, and limousines; or an indoor place of employment. The prohibition does not apply to most private homes, residences, and private vehicles, up to 25% of hotel or motel rooms, tobacco stores, industrial facilities that involve processing, manufacturing, or distribution of tobacco products, or a research or educational laboratory for scientific research into the health effects of smoking.

Smoking ban waivers may be granted by the health officer of a county if a waiver applicant meets all conditions required under regulations adopted by the Secretary of Health and Mental Hygiene. A waiver applicant must establish in writing that compliance with a specific provision of the Act would cause undue financial hardship or other factors would render compliance unreasonable. Any waiver granted under the bill terminates January 31, 2011, and no waivers may be granted on or after January 31, 2011.

For additional discussion of the clean indoor air act, see subpart “Labor and Industry” of Part H – Business and Economic Issues of this *Major Issues Review*.

## **Prescription Drugs**

The Maryland Medbank Program assists low-income individuals who lack prescription drug coverage by accessing medically necessary prescription drugs through patient assistance programs sponsored by pharmaceutical drug manufacturers. Since its inception, Medbank has provided over \$123 million in free medicine to approximately 44,000 patients. *Chapter 636 of 2007* authorized up to \$425,000 in funds remaining from the Senior Prescription Drug program that had accrued to the account of the Senior Prescription Drug Assistance Program of the Maryland Health Insurance Plan Fund to be transferred and appropriated to DHMH for a grant to the Maryland Medbank Program. *Chapters 452 and 453 of 2008* authorized a similar transfer. It should be noted that no State funding was provided to Medbank in fiscal 2010 or 2011.

## **Prescription Drug Monitoring**

Prescription drug abuse makes up almost one-third of all drug abuse in the United States, and treatment admission rates have more than doubled in the past ten years. State prescription drug monitoring programs give health care providers and law enforcement agencies a tool for preventing misuse of controlled substances. *Chapter 276 of 2008* established an Advisory Council on Prescription Drug Monitoring. As required by statute, the council met for two years and submitted the *Maryland Advisory Council on Prescription Drug Monitoring Legislative Report* to the Governor and the General Assembly in 2009. The report included recommendations for establishing a program that assists health care providers and law enforcement professionals regarding prescription drug abuse and unlawful prescription drug diversion; promoting a balanced use of prescription drug monitoring data; and promoting appropriate and real-time access to prescription drug monitoring data.

Legislation to implement the council's recommendations (*HB 918 of 2010 (failed)*) was unsuccessful. However, DHMH and the Maryland Health Care Commission indicated they would investigate how to incorporate elements of the recommendations with existing tools.

## **Mental Health and Developmental Disabilities**

### **Autism**

Autism is the most common condition in a group of developmental disorders known as autism spectrum disorders. Children with autism have trouble with social interaction as well as verbal and nonverbal communication, and they exhibit repetitive behaviors or narrow, obsessive interests. There is no known cure or cause, but both genetics and environment likely play a role. *Chapters 337 and 338 of 2009* established the Maryland Commission on Autism, staffed by DHMH and the Maryland State Department of Education, to investigate the need for additional planning and service needs.

### **Closure of Facilities**

Three State facilities and residential centers that serve mentally ill and developmentally disabled individuals closed during the time period encompassed in this *Major Issues Report*.

- In January 2008, the Governor announced the closure of Rosewood Center amid repeated findings by the Office of Health Care Quality concerning safety issues related to the buildings and grounds of the facility, as well as behavioral issues between clients and staff. The facility officially closed in June 2009.
- As part of a plan to move mentally ill and developmentally disabled individuals out of State psychiatric facilities into community and other placements and to utilize State-run psychiatric hospital capacity for more complex cases requiring longer stays, the Walter P. Carter Center was closed in October 2009 and the Upper Shore Community Mental Health Center was closed in February 2010. Capacity at other facilities was also reduced.

### **Providers and Reimbursement Rates**

The Community Services Reimbursement Rate Commission (CSRRC) was created in 1996 as an independent unit within DHMH. *Chapters 572 and 573 of 2008* extended the termination date for CSRRC from September 30, 2008, to September 30, 2011, and altered CSRRC's required duties, scope of issues to assess, and the information required in CSRRC's annual report. The Acts also required the Maryland Board of Nursing to provide CSRRC copies of any regulations that may impact the costs incurred by community service providers paid for by the Mental Hygiene Administration or Developmental Disabilities Administration.

*Chapters 497 and 498 of 2010* required that, beginning in fiscal 2012, rates paid by DHMH to a community developmental disabilities services provider and a community mental health services provider for approved services rendered to an eligible individual be aligned with



annual cost adjustments for units of State government in the Governor’s proposed budget. The inflationary cost adjustments used to establish the inflationary cost adjustment for providers may not exceed 4%. The Acts repealed language that make the adjustment contingent on the limitations of the State budget and required CSRRC to determine a weighted average cost structure of providers. In addition, the Acts required DHMH, in consultation with specified community services stakeholders, to conduct a study for purposes of recommending a plan to develop a rate-setting methodology for providers. The study must also include an analysis of the future role of CSRRC and other entities involved in the rate-setting process. The Acts terminate June 30, 2016.

### **Medication for Inmates with Mental Illness**

*Chapter 595 of 2007* required Division of Correction facilities in the State to provide an inmate with a mental illness with a 30-day supply of medication upon release. *Chapters 347 and 348 of 2010* required the managing official at a local correctional facility to provide an inmate diagnosed with a mental illness upon release access to a 30-day supply of medication for his or her mental illness. The requirement only applies to an inmate who has been incarcerated in a local correctional facility for at least 60 days, and only if a treating physician determines that the possession of medication will be in the best interest of the inmate. A local correctional facility, facility employee, or agent may not be held liable for issuing or prescribing medication to an inmate on his or her release.

## **HIV/AIDS**

### **Name-based Reporting System**

In December 2006, Congress reauthorized the Ryan White Comprehensive AIDS Resources Emergency Act and changed the requirements for federal funding from a formula based on AIDS surveillance to a formula based on HIV surveillance and requiring submission of name-based rather than code-based HIV data. *Chapters 212 and 213 of 2007* repealed Maryland’s code-based HIV reporting system and established a name-based HIV reporting system. The Acts preserved \$37.5 million in federal funding for DHMH beginning in fiscal 2009. Further, the Acts established criminal penalties for any person who knowingly or willfully discloses personal identifying health information acquired for the purposes of HIV and AIDS reporting to any person who is not authorized to receive such information or otherwise is in violation of the Acts or for any person who obtains information on HIV and AIDS under false pretenses or through deception.

### **HIV Testing**

The Centers for Disease Control and Prevention recommends HIV screening for all patients in health care settings, including pregnant women, after the patient is notified that testing will be performed *unless* the patient declines. *Chapters 222 and 223 of 2008* required a health care provider to inform an individual that an HIV test will be administered and advise the individual that the individual may refuse without penalty. Providers of prenatal care must notify each patient that she will be tested for HIV and that she may refuse without penalty. The Acts

also specified additional testing requirements as well as referral requirements for women who test positive.

## **Alcohol and Drug Abuse**

The need for alcohol and drug abuse treatment services in Maryland and the State's approach to drug treatment were re-shaped by two bills. Specifically, *Chapter 82 of 2007* required the Alcohol and Drug Abuse Administration to conduct a needs assessment every three years that identifies financial and treatment needs in each jurisdiction in the State. *Chapter 145 of 2007* required the Maryland State Drug and Alcohol Abuse Council to include in its two-year strategic plan a review of the State's approach to drug treatment, including a review of the appropriate location of treatment services and the use of employment and housing services for individuals in treatment.

## **Behavioral Health Services for Veterans**

*Chapters 555 and 556 of 2008* established a program for behavioral health services for Maryland veterans of the Afghanistan and Iraq conflicts. *Chapter 736 of 2009* extended behavioral health services benefits to *all* Maryland veterans of foreign wars who have been discharged or released from service under conditions other than dishonorable and are not receiving services from the U.S. Department of Veterans Affairs, rather than to veterans only of the Iraq and Afghanistan conflicts. In addition, the Act broadened the geographic coverage area for short-term behavioral services provided to these veterans, where existing federal and State services are determined by DHMH to be inadequate, from rural areas to any area in the State. Total funding for the Veteran's Behavioral Health Program in fiscal 2011 is almost \$1.3 million.

## **Minority Health**

### **Sickle Cell Disease**

*Chapter 435 of 2007* established the Statewide Steering Committee on Services for Adults with Sickle Cell Disease. Among other things, the committee was charged with educating those with sickle cell disease, health care providers, and the public about State care and treatment.

### **Collection of Racial and Ethnic Data**

*Chapter 25 of 2007* authorized an insurer that provides health insurance, nonprofit health service plan, or HMO to inquire about race and ethnicity for specified purposes. A more detailed discussion of *Chapter 25* may be found under the subpart "Health Insurance" of this Part J.

### **Cultural Competency of Mental Health Professionals**

The Mental Health Transformation Working Group, in collaboration with the Mental Hygiene Administration and the Office of Minority Health and Health Disparities, was required by *Chapter 412 of 2007* to convene a Workgroup on Cultural Competency and Workforce

Development for Mental Health Professionals to examine and make recommendations regarding certain barriers to access to culturally competent mental health services and providers.

## **Laboratories**

*Chapter 270 of 2008* removed the specified list of reportable diseases and conditions, along with the 48-hour time limit on reporting that was required of the State's public laboratory system. Rather, the Secretary must specify reportable diseases and conditions and timeframe requirements in State regulations. *Chapter 270* also authorized the Secretary of Health and Mental Hygiene to require laboratories to submit clinical material when necessary, alter the format of disease reports made by laboratories, and make various other technical changes relating to reporting requirements and dissemination of reported information.

## **Health Occupations**

### **Regulation of Health Care Providers**

#### **In General**

In May 2007, the Governor directed the Department of Health and Mental Hygiene Office of the Inspector General (OIG) to audit the State Board of Dental Examiners with the goal of determining whether the disciplinary operations and sanctioning outcomes of the board incorporated bias and inequities. OIG found no evidence that the board had exceeded its statutory or regulatory authority in sanctioning licensees. However, OIG did make recommendations to improve board functions regarding vacancies, discipline, and data collection and suggested that all health occupations boards may need to review their handling of similar functional activities.

*Chapters 211 and 212 of 2008* incorporated some of these recommendations and applied them to the State Board of Dental Examiners. Additionally, *Chapters 211 and 212* established the Task Force on the Discipline of Health Care Professionals and Improved Patient Care to study the adequacy of all the health occupation boards' disciplinary systems and potential changes to improve the systems.

The task force submitted its report on February 2, 2009, which included 24 recommendations. *Chapters 533 and 534 of 2010* provided statutory authority for many of the task force's recommendations by setting standardized guidelines for all health occupations boards' policies and procedures including the composition of the boards, the appointment of specified board staff, and the disciplinary and sanctioning procedures of the boards. Significant provisions included:

- requiring the establishment of disciplinary subcommittees for complaint investigation, determination of whether to bring charges, and participation in preadjudication case resolution conferences;

- setting a statute of limitations of six years after which time a board may not bring charges against a licensee except under specified circumstances;
- requiring a board that uses peer review in standard of care cases to provide the individual being reviewed with a copy of the final peer review report and an opportunity to submit a written response to the final report before the board takes action against the individual; and
- authorizing training, mentoring, or other forms of remediation for licensees in lieu of formal hearings under specified circumstances.

### **Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists**

*Chapter 391 of 2007* made revisions to the title governing the State Board of Examiners of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists. These revisions included changing qualifications for membership on the board, requiring speech-language pathologists employed by educational institutions to be licensed by the board, licensing speech-language pathology assistants, updating educational and experience requirements, updating grounds for discipline, and updating hearing and appeal procedures.

### **Electrologists**

*Chapters 48 and 49 of 2010* made changes to the practice of electrology in the State which is regulated by the State Board of Nursing with the guidance of the Electrology Practice Committee. Specifically, *Chapters 48 and 49* required applicants for licensure to pass both a national certification examination and a clinical examination given by the board, extended the date by which renewal applicants must have had a criminal history records check until 2011, and thereafter required an additional criminal history records check every 12 years, rather than every 10 years.

### **Massage Therapy Examiners**

Chapters 673 and 678 of 1996 gave the State Board of Chiropractic Examiners responsibility for regulating massage therapy. *Chapters 242 and 243 of 2008* required massage therapists to be licensed rather than certified by the board in order to practice massage therapy in the State. *Chapters 242 and 243* also added three massage therapists to the board and renamed the board to be the State Board of Chiropractic and Massage Therapy Examiners.

### **Morticians and Funeral Directors**

*Chapter 532 of 2008* created the Family Security Trust Fund within the State Board of Morticians and Funeral Directors to reimburse consumers for losses that occurred on or after January 1, 2010, regarding a transaction related to preneed contract services based on the acts or omissions of a licensee or an employee of a licensed funeral establishment. The fund is financed through fees imposed on licensed funeral establishments.

**Chapter 450 of 2010** required the board and the Office of Cemetery Oversight to establish a process for regulating crematories. A crematory would be regulated either by the office or the board based on the crematory's ownership. The operation or ownership of a crematory incinerator at a licensed medical facility or educational institution is exempt from the bill's provisions. By October 1, 2011, the office and the board must adopt identical regulations in numerous specified areas and must determine whether to adopt financial stability requirements for crematories.

### **Nurses, Nursing Assistants, Medication Technicians, and Medicine Aides**

**General Licensure Requirements: Chapters 585 and 586 of 2010** required applicants to the State Board of Nursing for licensure or certification to submit to an examination by a board-designated health care provider if the board has objective evidence that an applicant under review may cause harm to a patient. **Chapters 585 and 586** also removed skilled nursing assistants from the list of certified professionals regulated by the board.

**Criminal Background Checks:** The board began requiring criminal history records checks of all new nurses and certified nursing assistant applicants in January 2007. **Chapter 598 of 2007** required an individual applying for reinstatement of a lapsed nursing license or other certificate regulated by the board to submit to a criminal history records check. **Chapter 653 of 2008** extended to July 2009 the date on which the board began checking the criminal history records of existing certificate and license holders and authorized the board to accept an alternative method other than fingerprints for a check if two attempts to obtain legible fingerprints have failed. **Chapters 585 and 586 of 2010** exempted from licensure applicants who have passed a board-approved examination but are waiting for the completion of the required criminal history records check and, thereafter, required an additional check every 12 years, rather than every 10 years.

**Renewals: Chapters 585 and 586 of 2010** established biennial license renewal beginning in January 2013 and provided for the staggering of license renewal so that licensees born in even-numbered years would renew in even-numbered years and licensees born in odd-numbered years would renew in odd-numbered years. **Chapters 585 and 586** also required the board to send renewal notices to licensees and certificate holders three months before a license expires. Specific to certified medication technicians and medicine aides, in order to renew a certificate, **Chapter 598 of 2007** required these individuals to successfully complete 100 hours of practice in their respective fields and required medicine aides to complete a continuing education program within the two-year period before the date of renewal.

**Temporary Practice Letters:** Extensions of temporary licenses or temporary practice letters may be granted by the board for 90 days pending receipt of criminal history records information under **Chapter 653 of 2008**. In all other instances, under **Chapter 301 of 2008**, temporary licenses or temporary practice letters may be extended every 90 days for up to 12 months if the applicant does not meet specified practice requirements.

## Pharmacists

**Remote Automated Medication Systems:** *Chapters 215 and 216 of 2008* authorized a pharmacist to dispense medication from a remote location for the benefit of a nursing home that uses a remote automated medication system. The remote automated medication system must meet specified requirements including the use of bar code technology, electronic reporting, and pictorial or written descriptions of the medications. The pharmacist operating a system must implement a comprehensive system training program and a quality assurance program.

**Medication Errors:** Regulations of the State Board of Pharmacy require a pharmacy permit holder to provide patients with information regarding the patient's role and responsibility in preventing medication errors and how to report medication errors. *Chapter 45 of 2009* required pharmacy permit holders to inform consumers of the process for resolving incorrectly filled prescriptions by posting a readable sign in a conspicuous location at the point where prescriptions are dispensed to consumers or by including that information with each filled prescription. Licensed dentists, physicians, or podiatrists who prepare and dispense their own prescriptions must comply with these requirements; however, an exemption exists for a pharmacy to which the public does not have access that is owned or operated by specified facilities, such as a hospital.

**Wholesale Distributors:** The Wholesale Distributor Permitting and Prescription Drug Integrity Act, established by *Chapters 352 and 353 of 2007*, imposed additional permitting requirements for wholesale prescription drug distributors. Among other requirements, *Chapters 352 and 353* required a pedigree, or history of the distribution chain, for prescription drugs that are distributed in Maryland. *Chapters 239 and 240 of 2010* clarified the conditions under which the board may exempt wholesale distributors under "deemed status" from initial and routine inspection requirements and exempted purchases and distributions made for public health purposes by the Department of Health and Mental Hygiene from the Act. Under *Chapters 239 and 240*, wholesale distributors in states that do not qualify for reciprocity and that seek a permit in the State must be accredited by an organization approved by the board. Out-of-state wholesale distributors that receive a permit by reciprocity are subject to criminal history record checks and surety bond requirements.

**Drug Therapy Management:** The Drug Therapy Management Program, established by Chapter 249 of 2002, authorizes a physician and a pharmacist to enter into a therapy management contract that specifies treatment protocols that may be used to provide disease specific care to a patient. The termination date of the Therapy Management Contract Program was extended from May 31, 2008, to September 30, 2010, by *Chapter 650 of 2008*. Subsequently, *Chapters 44 and 45 of 2010* repealed the termination date for the authorization of therapy management contracts, making the program permanent.

## Physicians

*Chapters 195 and 196 of 2008* required a clinical laboratory or a physician that provides anatomic pathology services for a patient in this State to either bill the patient directly; a responsible insurer or other third-party payor, hospital, public health clinic, or nonprofit health

clinic that ordered the services; a referring laboratory; or a governmental agency. In 2009, it was brought to the attention of the General Assembly that many laboratories offer OB-GYNs volume-based discounts for anatomic pathology services on Pap test specimens that can only be realized by patients if they are charged by the OB-GYN. **Chapter 163 of 2009** authorized a clinical laboratory, a physician, or a group practice that provides anatomic pathology services for a patient in Maryland to bill the health care practitioner who orders but does not supervise or perform an anatomic pathology service on a Pap test specimen provided that the health care practitioner complies with specific disclosure and ethics requirements.

To address the workforce shortage of physicians in the State, **Chapters 575 and 576 of 2009** altered the eligibility for the Janet L. Hoffman Loan Assistance Repayment Program (LARP) by removing primary care physicians from the program and establishing a separate Maryland Loan Assistance Repayment Program for these health care practitioners. A more detailed discussion of these bills may be found under Part L – Education of this *Major Issues Review*.

### **Professional Counselors and Therapists**

**Psychological Testing:** **Chapter 508 of 2008** altered the definition of “appraisal” to authorize a counselor or therapist licensed by the State Board of Professional Counselors and Therapists to engage in psychological testing if the counselor or therapist has completed training including the earning of a specified degree, the completion of 500 hours of supervised assessment testing, and passage of a national examination.

**Marriage and Family Therapists:** **Chapter 708 of 2010** clarified that an applicant for licensure to practice clinical marriage and family therapy must hold a master’s or doctoral degree in a marriage and family field from an accredited educational institution approved by the board.

**Alcohol and Drug Counselors:** **Chapter 630 of 2008** authorized the board to waive the practical experience requirements for qualification as a certified alcohol and drug counselor if the applicant obtained a minimum of five years of clinically supervised experience in alcohol and drug counseling approved by the board prior to obtaining the required educational experience. **Chapter 708 of 2010** increased the requisite credit hours for certification as a professional alcohol and drug counselor and an associate alcohol and drug counselor.

### **Psychologists**

**Chapters 329 and 330 of 2009** altered the definition of a doctoral degree in psychology to expand the types of doctoral programs the State Board of Examiners of Psychology may recognize as qualifying an applicant for a license to practice psychology in the State. **Chapters 329 and 330** also repealed the requirement that at least one year of required supervised professional experience occur after a doctoral degree has been awarded.

**Chapters 647 and 648 of 2010** required an applicant for licensure as a psychologist to submit to a State and national criminal history records check. The State Board of Examiners of

Psychologists may not issue a license if the criminal history records information for an applicant has not been received.

### **Respiratory Care Practitioners, Radiation Therapists, Radiographers, Nuclear Medicine Technologists, and Radiologist Assistants**

*Chapter 328 of 2008* updated the titles relating to respiratory care practitioners, radiation therapists, radiographers, and nuclear medicine technologists regulated by the State Board of Physicians to reflect nomenclature used in the professions and required the professionals to be licensed rather than certified. Additionally, the legislation required the board to establish a licensure program for radiologist assistants in order to have them perform fluoroscopy and selected radiology procedures, patient assessment, and patient management.

### **Social Workers**

The scope of practice for social workers was brought into question during discussion on Senate Bill 808 of 2006, Juvenile Law – Competency – Services. The discussion led to an Attorney General letter which provided the opinion that as defined by § 19-101(m) of the Health Occupations Article a certified social worker-clinical could not diagnose mental retardation. *Chapter 235 of 2007* clarified the scope of practice for an individual licensed as a certified social worker-clinical to allow the evaluation, diagnosis, and treatment of mental and emotional conditions and impairments. A subsequent Attorney General letter provided the opinion that the language in *Chapter 235* would permit a social worker to diagnose mental retardation.

*Chapters 86 and 87 of 2009* required the State Board of Social Work Examiners to establish a workgroup to examine issues affecting the status of clinical social workers in the workforce. The General Assembly had concerns that many highly qualified employment candidates, specifically experienced licensed social workers from other states, were lost because of certain board statutes and regulations. *Chapter 715 of 2010* is a product of the workgroup. *Chapter 715* provided that to become licensed as a certified social worker or a certified social worker-clinical in Maryland, an out-of-state applicant must be of good moral character, be at least 18 years old, pay an application fee, be licensed in another state at a specified level of licensure, have passed an examination in that other state as a condition of licensure, and have performed a specified number of clinical hours.

## **Regulation of Newly Designated Health Care Practitioners**

### **Athletic Trainers**

*Chapters 529 and 530 of 2009* required that on or after October 1, 2011, an individual be licensed by the State Board of Physicians before practicing athletic training in the State. The practice of athletic training is defined as applying the principles and methods of prevention; clinical evaluation and assessment; immediate care; and treatment, rehabilitation, and reconditioning to the management of athletic injuries for athletes in good overall health under the direction of a licensed physician. *Chapters 529 and 530* established an Athletic Trainer



Advisory Committee within the board to develop and recommend regulations, continuing education requirements, and practice protocols for athletic trainers.

### **Funeral Directors**

*Chapters 185 and 186 of 2007* changed the name of the State Board of Morticians to be the State Board of Morticians and Funeral Directors and established a license for funeral directors. A licensed funeral director may operate a funeral establishment, prepare a dead human body for disposition, excluding embalming, and arrange for or make final disposition of a dead human body. To become licensed as a funeral director, an individual is required to complete all of the training required to become a licensed mortician except for the practical experience of embalming. *Chapter 396 of 2010* required an applicant for a funeral director's license to pass the arts and sciences state board examinations administered by the Conference of Funeral Service Examining Boards (CFSEB) of the United States rather than the national board examination administered by CFSEB.

### **Polysomnographic Technologists**

Chapter 595 of 2006 required the State Board of Physicians to license and regulate the practice of polysomnography – the monitoring and recording of physiologic data during sleep, including sleep-related respiratory disturbances. *Chapters 261 and 262 of 2009* delayed the date by which a polysomnographic technologist must be licensed by the board in order to practice in the State until October 1, 2011, and extended the date by which licensure applicants can fulfill the requirements for a waiver of education requirements.

## **Increased Access to Health Care**

### **Dental Hygienists**

During the 2007 session, *Chapters 164 and 165* authorized a dental hygienist practicing under the general supervision of a licensed dentist to apply fluoride, mouth rinse, or varnish without first requiring a dentist to evaluate the patient's medical history or diagnose and approve the treatment plan. Still, rising concerns regarding a lack of access to oral health care services led the Secretary of Health and Mental Hygiene to form a Dental Action Committee in June 2007. The committee found that only 13 jurisdictions had dental clinical services in local health departments, and only 11 jurisdictions were served by Federally Qualified Health Centers (FQHCs) with dental clinics. To alleviate this access problem, the committee recommended that "public health dental hygienists" be authorized to increase preventive dental services. In response to the committee findings, *Chapter 316 of 2008* authorized dental hygienists who are employees of the federal government, a State or local government, or FQHC, and working in specified facilities, to apply fluoride and sealants under the general supervision of a licensed dentist.

Additionally, *Chapter 185 of 2008* exempted dental hygiene students who are engaged in an approved dental hygiene education program from the requirement that a person must have a license issued by the board before practicing dental hygiene.

The scope of practice of dental hygienists was expanded again by *Chapter 565 of 2009*, which authorized a dental hygienist to perform specified manual curettage (removal of dead tissue from gums) and the administration of local anesthesia. *Chapter 565* also allowed more flexibility in the unsupervised clinical hours that dental hygienists may work by making the 60% threshold currently applicable to any given calendar week applicable to a three-month period instead.

Finally, *Chapter 733 of 2010* authorized dental hygienists to practice in a nursing home or an assisted living facility under the general supervision of a dentist. The dental hygienist is authorized to practice in accordance with a written agreement between the hygienist and the dentist and if specified consultation requirements, patient needs assessments, and assurances relating to the facility are met.

### **Military Health Care Personnel**

In 2006, the Statewide Commission on the Shortage in the Health Care Workforce reported that gaps exist between projected demand and reported supply from Maryland postsecondary health care programs. To address the gap, *Chapter 441 of 2007* required the Secretary of Health and Mental Hygiene, with the Governor's Workforce Investment Board and appropriate health care provider regulatory boards, to identify barriers under the Health Occupations Article to licensing or certifying individuals with training and experience in providing health care through military service that is equivalent to training and experience required for licensure or certification.

In 2007, the Secretary of Health and Mental Hygiene reported that the lack of standardization among the various branches of the military has made it difficult for educational institutions and health occupations boards to determine a veteran's level of clinical and course work training, thus making it more difficult for a veteran to obtain the necessary credentials to pursue a career in health care in Maryland. *Chapters 511 and 512 of 2010* sought to address this concern by requiring the Department of Veterans Affairs to develop a Military Health Care Provider Transition Plan to increase the number of veterans, including current and former members of the Reserve forces and National Guard, with expertise in health care workforce shortage areas to transition into civilian health care provider positions. The plan must be completed and reported to the General Assembly by January 1, 2012.

### **Nurse Practitioners**

In order to provide more independence from physician supervision, *Chapters 77 and 78 of 2010* altered the scope of practice for nurse practitioners. The Acts required a nurse practitioner to have an approved attestation of a collaboration agreement with a licensed physician and to both refer to, and consult with, physicians and health care providers as needed. Further, *Chapters 77 and 78* defined a nurse practitioner's scope of practice, authorized temporary practice letters under specified circumstances, and provided title protection for nurse practitioners.

### **Pharmacists**

*Chapters 618 and 619 of 2008* authorized a pharmacist to administer a vaccination for pneumococcal pneumonia or herpes zoster if the adult patient has a prescription, the vaccination is administered in accordance with regulations, and the pharmacist informs the prescribing physician and the primary care physician – if different than the prescribing physician – of the administration of the vaccination.

*Chapter 304 of 2009* expanded the types of vaccinations that may be administered by a pharmacist to any vaccination that the Board of Pharmacy, Board of Physicians, and Board of Nursing determines is in the best interest of the community and is administered in accordance with regulations adopted jointly by the three boards. The vaccinations may only be administered by a pharmacist who has verified successful completion of a certification course that included instruction in the Centers for Disease Control and Prevention’s guidelines and recommendations regarding vaccinations and who is certified in basic cardiopulmonary resuscitation.

### **Physician Assistants**

*Chapters 273 and 274 of 2010* required physician assistants to be licensed rather than certified by the State Board of Physicians to practice in the State. The Acts removed the requirement for a delegation agreement between a physician and a physician assistant to be approved by the board before a physician assistant may practice under certain circumstances. Specifically, *Chapters 273 and 274* clarified the supervisory roles of the primary and alternate supervising physicians, increased the number of physician assistants a physician may supervise in specified settings from two to four, and established an approval process for delegation agreements containing advanced duties that:

- allowed physician assistants to begin performing advanced duties in credentialed facilities on submission of a delegation agreement to the board while providing the board 90 days to approve, reject, or alter the delegation agreement; and
- required the board to approve delegation agreements before physician assistants may practice advanced duties in noncredentialed facilities or administer general or neuroaxial anesthesia.

### **Sunset Evaluations**

Approximately 70 entities, including each of the boards regulated under the Health Occupations Article, are subject to periodic evaluation conducted by the Department of Legislative Services (DLS) in accordance with the Maryland Program Evaluation Act (Sunset Law).

**Physicians:** During the 2005 interim, DLS conducted a full evaluation of the State Board of Physicians in accordance with the Sunset Law. However, legislation introduced during the 2006 session in response to the DLS recommendations did not pass. Instead,

*Chapter 539 of 2007* extended the termination date of the board until July 1, 2013, specified that the next program evaluation of the board will be a full review without the necessity of a preliminary review, and incorporated many of the DLS recommendations. Major components of *Chapter 539* were:

- **Peer Review Services:** authorizing the board to contract directly with peer reviewers; repealing the requirement for the use of a third peer reviewer in the instance that two peer reviewers do not agree; and requiring the board to report to the General Assembly regarding how often two peer reviewers disagreeing over a complaint results in the dismissal of charges;
- **Rehabilitation Services:** requiring the board to contract with a nonprofit entity for rehabilitation services or, if unable to contract with a nonprofit entity, for the board to provide the rehabilitation services directly;
- **Diversion of Fees:** reducing the diversion of physician and physician assistant licensure fees for loan repayment and scholarship funding from 14% of fees received to 12%;
- **Medical Malpractice Settlement Information:** repealing the requirement that medical malpractice settlement information be posted as part of a licensee's online profile and instead requiring the board to provide notification on its web site that settlement information within specified parameters would be available upon request; and
- **Office of Administrative Hearings:** requiring the Chief Administrative Law Judge to designate a pool of administrative law judges (ALJs) to hear board complaints and requiring the board to provide annual training to the ALJs.

In addition to the State Board of Physicians, the General Assembly reauthorized the State Board of Morticians and Funeral Directors (*Chapter 583 of 2008*), the State Board of Professional Counselors and Therapists (*Chapter 505 of 2008*), the State Board of Physical Therapy Examiners (*Chapter 40 of 2010*), the State Board of Examiners in Optometry (*Chapter 236 of 2010*), the State Board of Chiropractic and Massage Therapy Examiners (*Chapter 133 of 2010*), and the State Board of Dental Examiners (*Chapter 542 of 2010*).

## Health Care Facilities and Regulation

### Nursing Homes

Prompted by a purchase of a major nursing home chain in Maryland by a private investment firm, several bills were considered by the General Assembly in 2008 that addressed the effect that purchase, and subsequent purchases, could have on the industry as a whole, and the quality of care provided in nursing homes in the State. *Chapter 686 of 2008* required that information on who owns and who will operate the facility be included in applications for

licensure as a nursing home. The Secretary of Health and Mental Hygiene was authorized to approve, deny, or approve subject to conditions applications for licensure as a nursing home or the renewal of a license. Nursing homes were also required to submit changes in financial condition that could affect quality of care. Finally, the Act required the Secretary to convene a workgroup to develop regulations to implement the expanded licensing requirements.

**Chapter 672 of 2008** established a task force to study financial matters relating to long-term care facilities, including studying ownership trends of long-term care facilities and the impact on quality of care, and whether there should be limitations or restrictions on certain types of ownership.

Nursing personnel are consistently listed as 1 of the top 10 occupations for work-related musculoskeletal disorders, with incidence rates of at least 13.5 per 100 in nursing home settings and 8.8 per 100 in hospital settings. While there has been a steady decline in the rates of most occupational injuries since 1992, work-related musculoskeletal disorders in nursing continue to rise. **Chapter 80 of 2008** required each nursing home in the State to establish by December 1, 2008, a safe patient lifting workgroup and a safe patient lifting policy by July 1, 2009, to reduce employee injuries associated with patient lifting.

Typically, **Chapter 503 of 2007** imposed a quality assessment on nursing homes for the purpose of increasing Medicaid nursing home reimbursement rates. That is, revenues from a provider tax are matched with federal funds and then returned to nursing facilities through increased Medicaid payments. The assessment was not to exceed 2% of the revenues for nursing facilities in the State or the amount necessary to fully fund the nursing facility payment system. Beginning July 1, 2008, a portion of the revenues from the assessment was also to be distributed to nursing facilities based on accountability measures that indicate quality of care or a commitment to quality of care.

**Chapters 199 and 200 of 2008** repealed the requirement that the Department of Health and Mental Hygiene (DHMH) develop accountability measures relating to the nursing home quality assessment and instead required the department to develop a plan for accountability measures to use in a pay-for-performance (P4P) program. Implementation of the program was delayed by one year from July 2008 to July 2009. In December 2008, DHMH submitted a plan under which eligible providers receive a composite score based on five specific scoring criteria. **Chapter 417 and 418 of 2009** required DHMH to phase in the distribution of revenues to nursing facilities under the P4P program beginning July 1, 2010.

The Budget Reconciliation and Financing Act (**Chapter 484 of 2010**) increased the maximum nursing home quality assessment from 2% to 4%. In addition to providing for some increase in Medicaid nursing home payments, this action also allowed the State to supplant general fund support for nursing home reimbursements and altered the distribution of assessment revenue that accrues to an incentive program.

## Continuing Care Retirement Communities

Continuing care retirement communities (CCRCs) offer a full range of housing, residential services, and health care in order to serve older residents as their medical needs change over time. CCRCs are required to establish internal grievance procedures to address subscriber grievances. *Chapter 694 of 2009* expanded the required components for internal grievance procedures and allowed subscribers and providers to seek nonbinding mediation within 30 days after the conclusion of an internal grievance procedure. Internal grievance procedures must at least allow a subscriber or group of subscribers to submit a written complaint, require the provider to assign personnel to investigate the grievance, and give a subscriber the right to meet with management within 30 days after submission of a written grievance.

The Maryland Department of Aging regulates CCRCs, including providing approval of continuing care agreements – an agreement between a provider and a subscriber to provide continuing care. *Chapter 750 of 2009* required the department to review continuing care agreements or any other related agreements within 120 days of receipt, instead of 180 days. However, if the department submits comments or requests additional information from the provider, the 120-day review period is frozen until the requested information is received. If a provider seeks to modify an approved agreement, the department must limit its review to that modification.

## Hospitals

The Maryland Hospital Bond Program was established to provide for the payment and refinancing of public obligation bonds of a hospital in the event of closure, delicensure, or conversion. *Chapter 641 of 2008* expanded requirements for payment and refinancing of public obligation bonds under the Maryland Hospital Bond Program and clarified the authority of the Health Services Cost Review Commission (HSCRC) to assess a fee on all regulated hospitals to finance the program. Finally, *Chapter 641* repealed the prohibition on the annual percentage increase in commission user fees exceeding the annual update factor provided to hospitals for the same fiscal year.

## Financial Assistance and Debt Collection Policies

In February 2009, HSCRC released a report on the financial assistance and credit and collection practices of Maryland hospitals. HSCRC found that while Maryland hospitals generally adhere to voluntary standards for financial assistance, the State lacked standards for hospital credit and collection policies, hospitals' policies were ambiguous and varied, and oversight of third-party collection agencies may have been insufficient.

In response, *Chapters 310 and 311 of 2009* required hospitals to provide free care to patients with family incomes up to 150% of federal poverty guidelines (FPG) and reduced-cost care to low-income patients with higher family incomes. Each hospital must develop a financial assistance information sheet for patients and submit to HSCRC a debt collection policy that

adheres to specified standards. A hospital that knowingly violates any financial assistance policy or regulation is subject to a fine of up to \$50,000 per violation.

*Chapters 310 and 311* also required HSCRC to establish a workgroup on patient financial assistance and debt collection to review the need for uniform policies among hospitals and to study and make recommendations in this area by October 1, 2009, on incentives for hospitals to provide free and reduced-cost care to patients without the means to pay their hospital bills.

The subsequent report included 36 recommendations. *Chapters 60 and 61 of 2010*, largely based on those recommendations, further altered the requirements for hospital financial assistance and debt collection policies and made the requirements applicable to chronic care hospitals that are subject to rates set by HSCRC. The Acts also, among other things, required hospitals to provide reduced-cost medically necessary care to patients with family incomes below 500% FPG who have a financial hardship. However, hospitals may seek and HSCRC may approve a different income threshold based on specified factors.

### **Prince George’s County Health System**

The Prince George’s County Health System, which includes Prince George’s Hospital Center, has been faced with financial difficulties for the past several years, experiencing lost market share, revenue losses, low liquidity, significant deferred capital needs, poor bond ratings, and a disadvantageous payor mix. Both the State and Prince George’s County have provided significant financial support to help the hospital meet its financial needs.

*Chapter 680 of 2008* established the Prince George’s County Hospital Authority to implement a competitive bidding process for transferring the system to new ownership. To support the authority’s efforts, the State and county agreed to each provide \$15 million in operating support each year for five years (for a total of \$150 million). The State also agreed to provide \$8 million in capital support each year for three years (for a total of \$24 million). Under *Chapter 680*, an agreement to transfer the system was to be reached prior to the beginning of the 2009 session. This did not occur. To support ongoing efforts to transfer the system, *Chapters 116 and 117 of 2009* altered the scope of the authority, including authorizing an extension of the bidding process, clarifying the duration of State and county funding commitments, and authorizing the Maryland Health Care Commission (MHCC) to issue an exemption from the certificate of need process and waive requirements of the State Health Plan. The authority was required to complete its obligations prior to the expiration of the authority on May 22, 2010, and certain State agencies were to designate consultants to advise the authority.

Under *Chapters 116 and 117*, the State and Prince George’s County are relieved of some or all of their long-term funding obligations to support the system only to the extent that any fund balance remains after the transfer of all of the system’s components to a new owner(s), or after the authority has expired without agreement on the transfer of all of the system’s components to a new owner(s).

In May 2010, the authority released its final report stating that the sale of the whole health care system was not feasible and that no interested party was willing to assume the long-term obligations as well as the operating deficits of the system. On the other hand, the sale of individual health system assets would not improve the health care services in the county. Therefore, the report cited the need for a transitional period as the assets are made market-ready and included a number of recommendations that the authority believes would reconfigure, rebase, and modernize health care services for the region by 2015.

### **Bon Secours**

Bon Secours Hospital is a 125-bed community hospital located in West Baltimore that ran a deficit in nine years of the past decade. From fiscal 2004 through 2008, Bon Secours lost a cumulative amount of \$33.0 million with a significant portion (\$19.5 million) of the losses attributable to fiscal 2008. To assist the hospital in the short-term, the fiscal 2010 budget included authorization for a one-time \$5.0 million operating grant. To receive the grant, Bon Secours was required to report on a long-term, comprehensive, and sustainable solution to the hospital's financial issues.

In fiscal 2009, the hospital's financial picture improved substantially to an unaudited loss of \$9.5 million. The financial improvement was the result of a few different actions, including operational improvements implemented by Bon Secours and rate enhancement support from HSCRC. Bon Secours also improved the hospital's financial situation by working with different entities to increase the volume of emergency room, medical, and surgical services.

### **Trauma Centers**

The Maryland Trauma Physician Services Fund was established in 2003 to subsidize:

- uncompensated and under-compensated care incurred by trauma physicians;
- costs incurred by a trauma center to maintain trauma physicians on-call; and
- the costs to administer and audit reimbursement requests to assure appropriate payments are made from the fund.

Payments from the fund had not approached anticipated amounts after three years, resulting in a significant surplus. *Chapter 238 of 2008* allowed the fund balance to be spent down over several years through the awarding of grants. Specifically, the Act expanded and specified eligibility for reimbursement from the Maryland Trauma Physician Services Fund and required MHCC, which administers the fund, to develop a grant process to fund equipment for Level II and III trauma centers. *Chapter 238* allowed up to 10% of any fund balance to be used to award the grants and prohibited expenditures from the fund from exceeding revenues in any given fiscal year. Finally, the Act increased by \$25,000 the cap on annual reimbursement to emergency physicians from the fund and increased the amount of an annual grant from the fund to an out-of-state pediatric trauma center if the trauma center has an agreement with the Maryland Institute for Emergency Services Systems.



*Chapters 546 and 547 of 2009* expanded eligibility for reimbursement for Level III trauma centers from the Maryland Trauma Physician Services Fund by doubling the maximum number of reimbursable trauma on-call hours annually and authorizing reimbursement for costs incurred to maintain trauma physicians on-call in plastic surgery, major vascular surgery, oral or maxillofacial surgery, and thoracic surgery. Reimbursement is contingent upon availability of funds. As the Budget Reconciliation and Financing Act (*Chapter 487 of 2009*) transferred the bulk of the fund surplus to the general fund and *Chapter 238* was effective in increasing annual expenditures from the fund, no funds have been available for the purposes of *Chapters 546 and 547 of 2009*.

### **Freestanding Medical Facilities**

In 2005, the General Assembly established a new category of “freestanding medical facility” and required licensure of such facilities by DHMH. MHCC was required to adopt regulations to establish a process for reviewing any facilities seeking a license to operate as a freestanding medical facility. A freestanding medical facility pilot project was also established in Montgomery County, which is exempt from the above mentioned MHCC regulations but is subject to the licensing standards adopted by DHMH.

*Chapter 574 of 2007* added a second project, located in Queen Anne’s County, to the freestanding medical facility pilot project. The project must be established by and operated administratively as part of an acute-care general hospital located in Talbot County, operate in Queen Anne’s County, meet current certificate of need (CON) requirements for capital expenditures, and meet DHMH licensing requirements specified in regulation. Carriers and managed care organizations must reimburse the project at contract rates, while Medicaid must pay fee-for-service claims at a rate at least equal to the rate paid by Medicare. Language in the Act also specified that a hospital in Talbot County is not exempt from CON requirements and may not be viewed as authorization to move a hospital from Talbot County to Queen Anne’s County.

With the exception of the freestanding medical facility in Bowie, HSCRC did not set rates for freestanding medical facilities. *Chapters 505 and 506 of 2010* required HSCRC to set rates for hospital services provided at freestanding medical facilities issued a CON by MHCC after July 1, 2015; a freestanding medical facility licensed prior to July 1, 2007; and freestanding medical facility pilot projects. The Acts required all payors subject to the rate-setting authority of HSCRC, including insurers, nonprofit health service plans, health maintenance organizations (HMOs), managed care organizations (MCOs), and the Medical Assistance Program (Medicaid), to pay HSCRC rates for hospital services at a freestanding medical facility issued a CON after July 1, 2015, and freestanding medical facility pilot projects. However, the Acts limit HSCRC’s fiscal 2011 rate-setting authority to hospital services provided at the freestanding medical facility pilot project in Queen Anne’s County and requires that those rates be set in a manner that does not impact the State budget in fiscal 2011.

DHMH must issue a license to a freestanding medical facility that meets licensure requirements and, after July 1, 2015, receives a certificate of need from MHCC. *Chapters 505*

*and 506* essentially prohibit the licensure of any additional freestanding medical facilities before that date.

## Health Regulatory Commissions

In 2006, the Department of Legislative Services (DLS) conducted full sunset evaluations of two of Maryland's three independent health care commissions. Legislation was adopted during the 2007 session to implement DLS's recommendations regarding the regulatory scope and activities of MHCC and HSCRC.

*Chapter 627 of 2007* extended the evaluation date for MHCC to July 1, 2017, and increased MHCC's user fee cap from \$10.0 to \$12.0 million. The bill also made permanent DHMH's authority to assess an administrative charge on MHCC to cover administrative, or indirect, costs incurred by DHMH for providing overhead services to MHCC.

Based on DLS's recommendations, the Act standardized quorum and voting requirements; authorized MHCC to collect data on payments to hospitals; required MHCC to report on plans to collect data on facility costs and insurance product design; modified the due date for MHCC's annual report on the Maryland Trauma Physician Services Fund to November 1 and required the 2007 report to include options for reducing the trauma fund surplus; repealed the requirement that MHCC annually determine the full cost of mandated benefits and, instead, required an assessment of the full cost of mandated benefits as a percentage of premiums every four years; and required several studies and reports, including reporting on alternatives for individuals enrolled in the State's Limited Health Benefit Plan.

*Chapter 628 of 2007* extended HSCRC's evaluation date to July 1, 2017, and maintained the authorization for DHMH to assess an administrative charge on HSCRC to fund overhead services provided by DHMH to HSCRC. HSCRC user fees may be used to cover these costs, and HSCRC's user fee cap was increased from \$4.0 to \$5.5 million.

Based on DLS's recommendations, *Chapter 628* required HSCRC's annual report to include an update on the status of the State's Medicare waiver, a summary of HSCRC's role in hospital quality of care activities, and fund balance information.

*Chapter 7 of the 2007 special session* expanded eligibility for Medicaid to parents, caretaker relatives, and childless adults with incomes up to 116% of federal poverty guidelines, effective July 1, 2008. If the expansion of health care coverage resulting from *Chapter 7* reduced hospital uncompensated care, HSCRC was to determine the savings realized in averted uncompensated care for each hospital individually and could assess an amount in each hospital's rates equal to a portion of the savings realized for that hospital. During the 2008 session, legislation was passed to revise funding of expansion efforts. *Chapters 244 and 245 of 2008* repealed the assessment of hospital uncompensated care savings established under *Chapter 7* and replaced it with a new assessment. Whereas the original assessment was hospital specific, retrospective, and nonuniform, the new assessment is broad-based, prospective, and uniform. The new assessment accelerates access to uncompensated care savings thereby increasing

available special funds, allowing higher federal matching funds, and reducing general fund obligations. For an additional discussion of *Chapter 7*, see the “Public Health” subpart of this Part J.

## Health Care Rights for Domestic Partners

Nationally, many local jurisdictions recognize domestic partnerships for purposes such as health insurance coverage, family leave, adoption rights, and health care decision making. At least nine states and the District of Columbia have laws that confer state-level benefits to same-sex or unmarried couples: California, Connecticut, Hawaii, Maine, New Hampshire, New Jersey, Oregon, Vermont, and Washington.

*Chapter 590 of 2008* defined domestic partnerships and conferred rights regarding health care facility visitation and medical decisions in certain circumstances. A domestic partnership is defined as a relationship between two individuals who:

- are at least 18 years old;
- are not related to each other by blood or marriage within four degrees of consanguinity under civil law rule;
- are not married or in a civil union or domestic partnership with another individual; and
- agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship.

However, *Chapter 590* did not affect specified provisions of law that provide that only a marriage between a man and a woman is valid in the State. In addition, under the Act, individuals who assert a domestic partnership may be required to provide an affidavit by two individuals stating that they have established a domestic partnership, as well as proof of any two of a list of specified documents.

Visitation and medical decision making rights afforded under *Chapter 590* included those in such areas as health care facility visitation; nursing homes; medical emergencies; certain health care decisions; tissue and organ donation; and final disposition of a body.

## Forensic Laboratories

*Chapter 147 of 2007* required the Secretary of Health and Mental Hygiene to license, set standards and requirements for, and inspect forensic laboratories. The regulatory scheme established is similar to regulatory requirements for clinical laboratories, which are already regulated by DHMH. After December 31, 2011, a laboratory must be licensed by DHMH to offer or perform forensic analysis in Maryland. The Secretary must issue a letter of exception to a laboratory that only performs limited forensic analysis and meets exception requirements adopted under regulation. The Secretary may also grant an out-of-state forensic laboratory a waiver from licensure requirements if specific conditions are met. The Act’s regulatory

provisions only apply to 12 forensic laboratories in Maryland; field tests and other similar investigations conducted by police forces are exempted.

## **Health Insurance**

In the 2007-2010 term, major trends for health insurance legislation included increasing access to care, efforts to improve participation in the small group health insurance market, efforts to enhance consumer protections through increased regulation of health insurance products, and strengthening regulation of the business practices of health insurers and other entities. Toward the end of the term, in March 2010, the federal government enacted the Patient Protection and Affordable Health Care Act, which will require significant changes to the State's regulation of health insurance in the coming years.

### **Access to Care**

During the 2007-2010 term, the General Assembly passed legislation that created a subsidy program to assist small businesses in paying for health insurance. The General Assembly also passed legislation that required, under specified circumstances, health insurance coverage of child dependents up to the age of 25 and of domestic partners and their children. Finally, the General Assembly made a number of changes to two of the State's access programs – the Maryland Health Insurance Plan and the Senior Prescription Drug Assistance Program.

### **Small Employer Health Benefit Plan Premium Subsidy Program**

*Chapter 7 of the 2007 special session* established the Small Employer Health Benefit Plan Premium Subsidy Program (“program”) administered by the Maryland Health Care Commission (MHCC), in consultation with the Department of Health and Mental Hygiene, to provide subsidies to small employers and their employees if the employer has *not* offered a small employer health benefit plan for at least 12 consecutive months. To be eligible for the subsidy under *Chapter 7*, a small employer must, at the time of initial application for the subsidy:

- have from two to nine eligible employees;
- meet salary and wage requirements determined by MHCC;
- offer a small employer health benefit plan to its employees;
- establish a certain payroll deduction plan;
- agree to offer a wellness benefit, as required by MHCC; and
- meet any other requirements established by MHCC.

A subsidy may not exceed the lower of 50% of the employer or employee contribution or an amount established by MHCC. Subsidies may be calculated on a sliding scale and altered according to the number of employees. The total amount of subsidies provided through the program is subject to the limitations of the State budget.

*Chapter 7* also required prominent carriers and permits other carriers to offer a wellness benefit in the small group market. Small employers receiving a subsidy under the program must purchase a wellness benefit.

The program, known as the Health Insurance Partnership, began offering subsidies to small employers in October 1, 2008. As of May 10, 2010, there were 260 businesses enrolled in the partnership, with a total of 725 enrolled employees and 1,230 covered lives. The average annual subsidy per enrolled employee was \$2,300; the average age of all enrolled employees was 39; the group average wage was approximately \$28,000; the average number of employees per policy was 3.9; and the total subsidy amount allocated was almost \$1.7 million. While these numbers were below original expectations, they reflect the difficult economic circumstances in which the program was launched.

### **Continuation of Coverage for Child Dependents**

Before 2007, the general practice of health insurers in the State was to allow children to remain on the policy of a parent until age 19 or until age 23 if the child was a full-time student. However, after reaching the limiting age of the policy, many young adults would lose access to insurance. *Chapter 639 of 2007* required individual and group health plans to allow a child dependent to remain on an insured's plan until age 25.

### **Access to Coverage for Domestic Partners**

*Chapter 639* also required individual and group health insurance policies and contracts that allow family coverage to provide, at the request of an insured or group policyholder, the same benefits and eligibility guidelines that apply to other covered dependents for a domestic partner or the child dependent of a domestic partner of the insured.

### **Changes to the Maryland Health Insurance Plan**

The Maryland Health Insurance Plan (MHIP) was created by Chapter 153 of 2002 as a high-risk pool to provide health insurance coverage to medically uninsurable individuals in the State. MHIP is funded primarily by an assessment on hospitals and enrollee premiums. In December 2006, MHIP had 9,951 enrollees. By March 2010, MHIP had 13,740 subscribers and 18,292 total enrollees.

*Creation of MHIP as an Independent Agency: Chapter 259 of 2008* removed MHIP from the Maryland Insurance Administration (MIA), making it an independent unit of State government. Among other changes, *Chapter 259* removed the Insurance Commissioner from MHIP's board and added the Secretary of Health and Mental Hygiene and a hospital representative. *Chapter 259* provided that MHIP is subject to regulation by the Insurance

Commissioner. However, MHIP is only subject to State insurance laws related to MIA examinations, provider panels and provider reimbursement, continuation coverage provisions, specialist referrals, prescription drug coverage, utilization review, the complaint process for adverse decisions or grievances, private review agents, the complaint process for coverage decisions, and unfair trade practices. If the Insurance Commissioner finds that MHIP has violated specified provisions, the Insurance Commissioner may require MHIP to make restitution to each claimant who has suffered actual economic damages.

**Coverage of Preexisting Conditions:** MHIP is authorized by law to impose a preexisting condition limitation on enrollees who have not maintained continuous insurance coverage. This limitation is intended to discourage individuals from purchasing insurance only when they are sick and need the coverage. In March 2007, the MHIP board voted to impose a preexisting condition limitation (at that time a two-month limitation, now six months). **Chapter 467 of 2007** authorized MHIP to offer members an optional endorsement to remove a preexisting condition limitation. MHIP may charge an actuarially justified additional premium amount for the endorsement, subject to approval by the Insurance Commissioner.

**Funding Mechanism:** MHIP is funded primarily through an assessment on hospital rates and enrollee premiums. Prior to 2008, MHIP's funding from hospital rates was limited to 0.8128% of hospital rates. **Chapters 244 and 245 of 2008** removed this limit on funding and allowed the assessment to be increased, within specified parameters. The assessment is currently set at 1%. For an additional discussion of **Chapters 244 and 245**, see the subpart "Health Facilities" of this Part J.

**Authorization of Separate Plan for Governmental Payers:** Some MHIP members have premiums paid for by third-party governmental units, including the Maryland AIDS Drug Assistance Program and some county governments. Placing individuals in MHIP and paying their premiums is advantageous for the governmental units because it allows them to shift medical and prescription drug costs to MHIP; however, these members tend to have substantially higher plan costs compared to average plan members.

**Chapter 166 of 2010** authorized MHIP to establish a plan option for members whose premiums are paid by a governmental unit. **Chapter 166** also authorized MHIP, in setting premium rates and cost-sharing arrangements for this plan option, to include amounts to limit cost shifting from another governmental unit to the plan as long as they are not set at a level that would make it cost-prohibitive for the governmental unit. Finally, **Chapter 166** authorized MHIP to limit plan option eligibility and limit or eliminate any premium subsidy based on income for a member whose premiums are paid by a governmental unit.

### **Changes to the Senior Prescription Drug Assistance Program**

The Senior Prescription Drug Assistance Program (SPDAP), which is overseen by MHIP, offers a State subsidy toward out-of-pocket costs under Medicare Part D and Medicare Advantage Prescription Drug Coverage to Medicare beneficiaries with incomes at or below 300% of the federal poverty level. To be eligible for SPDAP, the individual cannot be eligible for a full federal low-income subsidy. Once enrolled in the program, the individual still pays a

premium and copayments or coinsurance to participate. CareFirst is required by statute to subsidize SPDAP as part of its role as the State’s nonprofit health service plan.

**Termination Date Extensions and Modifications:** Various laws extended the termination date of SPDAP. The latest of these, *Chapter 119 of 2010*, extended the termination date to December 31, 2012.

**“Donut Hole” Coverage: Chapters 557 and 558 of 2008** required CareFirst, beginning January 1, 2009, to annually provide an additional \$4 million to SPDAP. These funds must be provided only if CareFirst’s surplus exceeds 800% of the consolidated risk-based capital for the preceding calendar year. The additional funds must be used to subsidize the Medicare Part D coverage gap. *Chapters 557 and 558* required SPDAP to provide an annual subsidy up to the full amount of the Medicare Part D coverage gap, subject to the availability of funds.

**Clarifying Changes: Chapter 734 of 2009** made clarifying changes to SPDAP and specified how CareFirst must provide a subsidy for assistance with the Medicare Part D coverage gap for individuals enrolled in SPDAP.

**Marketing: Chapter 121 of 2010** required insurance producers who market SPDAP or assist a Medicare beneficiary in enrolling in SPDAP to receive continuing education that directly relates to SPDAP.

## **Small Group Market Regulation**

### **Background and Trends**

In the small group health insurance market, all carriers must offer at a minimum a standard package called the Comprehensive Standard Health Benefit Plan. Health insurance carriers must establish a community rate and then may only vary the rate charged to a group based on age and geography between specified percentages above or below the community rate. Prior to 2009, carriers in the small group were prohibited from imposing preexisting condition exclusions or rating on health status. These protections ensured access to the insurance market for small employers, but also made the product offered through the small group increasingly expensive. Between 2007 and 2009, the percentage of small businesses in the State participating in the small group market dropped from 41.4% in 2007 to 37.6% in 2009. During the 2007-2010 term, the General Assembly passed legislation that made changes to the rating of small group health insurance policies intended to give additional flexibility to health insurers participating in the small group market in an effort to increase participation and enrollment. In addition, the General Assembly passed legislation that addressed issues facing sole proprietors and issues regarding federal subsidies for continuation coverage.

### **Changes to the Comprehensive Standard Health Benefit Plan**

**Age Rating Change and Wellness Discount: Chapter 600 of 2007** increased the range of rates a carrier may charge by authorizing carriers in the small group market to charge a rate that is between 40% above and 50% below the community rate. *Chapter 600* also allowed

carriers to offer a discount of up to 20% to a small employer for participation in a wellness program.

**Administrative Discounts and Study:** *Chapter 243 of 2007* authorized health insurance carriers to offer an administrative discount to a small employer if the small employer elects to purchase for its employees additional types of insurance through the carrier. The administrative discount must be offered under the same terms and conditions for all qualifying small employers.

*Chapter 243* also required MHCC to conduct a study of the Comprehensive Standard Health Benefit Plan and report by December 1, 2007, on options available to encourage more employers to enter the small group market.

**Other Significant Changes:** To fulfill the study required by *Chapter 243*, MHCC asked its actuary, Mercer, to examine the plan and make recommendations to encourage participation, retention, prudent use of benefits, maintenance of a healthy lifestyle, and the use of care management.

*Chapters 577 and 578 of 2009* made several changes to small group market regulation as a result of the recommendations by Mercer. Specifically, the bills:

- permitted preexisting condition limitations to the extent that they are allowed in the large group;
- repealed the floor on the Comprehensive Standard Health Benefit Plan;
- permitted the use of health status in rating in a specified manner upon entry of a small employer into the small group, phased out over a period of three years;
- authorized health insurance carriers to vary a rate charged for a health benefit plan in the small group up to 50% above or below the community rate based on age and geography; and
- required MHCC to maintain on its web site an application that small businesses may use to compare premiums for health benefit plans offered through the small group market.

#### **Required Extended Election Period for Federal Subsidy**

The American Recovery and Reinvestment Act of 2009 (ARRA) provided certain individuals involuntarily terminated by their employer a premium subsidy (65% of the premium for up to nine months) to help cover the costs of continuation of their group health benefits available under the Consolidated Omnibus Budget Reconciliation Act (COBRA). ARRA provided this subsidy both to those individuals who qualify for COBRA under federal law (employers with 20 or more employees) and to those who qualified for continuation coverage under State law (employers with less than 20 employees).



ARRA made this subsidy available to individuals who were involuntarily terminated after September 1, 2008, and before December 31, 2009. For those individuals who became eligible for COBRA before February 16, 2009, the date of enactment of ARRA, but who declined coverage, ARRA provided a second election period. However, while this second election period was automatic for those who qualify for COBRA under federal law, states were required to act in order to provide this second election period to those who qualified for continuation coverage under state law. *Chapter 22 of 2009* made those necessary changes to Maryland law.

## **Individual Market Regulation**

### **Preexisting Conditions**

In the individual market, carriers may medically underwrite policies. Prior to 2009, a carrier could inquire about conditions for which the applicant has received medical care or advice during the seven years immediately preceding the date of application. An insurer or nonprofit health service plan must cover any condition revealed in the application or add an exclusionary rider for that particular condition. However, the insurer or nonprofit health service plan may exclude coverage for a preexisting condition identified in the look back period that is not revealed in the initial application for up to two years.

*Chapters 509 and 653 of 2009* altered preexisting condition provisions for individual health benefit plans by providing that a health insurance application form or nonprofit health service plan application form for specified individual health benefit plans may not contain inquiries about (1) a preexisting condition, illness, or disease for which the applicant has not received medical care or advice during the five years immediately before the date of application; or (2) medical screening, testing, monitoring, or any other similar medical procedure that the applicant received during the five years immediately before the date of application.

Under *Chapters 509 and 653*, a carrier may not attach an exclusionary rider to an individual health benefit plan unless the carrier obtains the prior written consent of the policyholder. A carrier may impose a preexisting condition exclusion or limitation on an individual for a condition that was not discovered during the underwriting process only if the exclusion or limitation (1) relates to a condition for which medical care was received during the 12-month period immediately preceding the effective date of the individual's coverage; (2) extends for a period of not more than 12 months after the effective date of the coverage; and (3) is reduced by the aggregate of any applicable periods of creditable coverage.

Finally, a preexisting condition exclusion or limitation may not be imposed on an individual who is covered under any creditable coverage as specified but may be imposed on or after the end of the first 63-day period during which the individual was not covered for the entire period under any creditable coverage.

### **Out-of-state Association Contracts**

Individuals may purchase health insurance through an association that has been issued a group contract for its members. Association health plans provide an alternative to individual

policies for those who do not have access to employer-based group coverage; however, they are not group insurance plans and, therefore, are not subject to the same regulation. Generally, Maryland law does not apply to contracts sold through associations in other states, even when coverage is provided to residents of Maryland.

*Chapters 509 and 654 of 2009* required carriers that require evidence of individual insurability and offer coverage under an out-of-state association contract to Maryland residents to disclose certain information to applicants for coverage under the contract. A carrier must disclose (1) that coverage is conditioned on association membership; (2) all costs related to joining and maintaining membership in the association; (3) that membership fees or dues are in addition to the premium for coverage; (4) that the terms and conditions of coverage are determined by the association and carrier; (5) the health insurance benefits otherwise mandated in Maryland that are not included in the contract; (6) that the Maryland resident may purchase an individual health benefit plan that includes the mandated benefits that are not included in the contract; (7) that the contract is not regulated by the Maryland Insurance Commissioner; and (8) that the terms and conditions of coverage may be changed without the consent of a member. Carriers that collect membership fees or dues on behalf of an association must disclose this information on the enrollment application. *Chapters 509 and 654* also authorized the Insurance Commissioner to require a carrier that provides coverage under an out-of-state association contract to report annually to the Commissioner on the number of State residents covered under the out-of-state association contract.

### **Restrictions on Rescission of Contracts and Certificates**

*Chapters 509 and 663 of 2009* prohibited health insurance carriers that condition coverage on evidence of individual insurability from rescinding coverage on the basis of written information submitted on or with or omitted from an application, unless the carrier completed medical underwriting and resolved all reasonable medical questions related to the written information before issuing the health benefit plan.

### **Frequency of Premium Increases**

*Chapter 703 of 2010* prohibited health insurance carriers from increasing an individual's premium for an individual health benefit plan more frequently than once every 12 months, unless the increase is solely due to the enrollment of a new family member in the plan.

### **Provisions of Health Insurance Bills Relating to Federal Health Reform**

On March 23, 2010, the federal Patient Protection and Affordable Care Act was enacted. The Act significantly expands Medicaid and makes many changes to insurance regulation. As a result, the General Assembly passed several bills in the 2010 session that dealt with various provisions of federal health reform.

### **MHIP and Ability to Apply for National High-risk Pool Funds**

The Patient Protection and Affordable Care Act made \$5 billion available to states to create high-risk pools meeting federal standards that will operate until the significant insurance reforms enacted in federal health care reform take effect in 2014. *Chapter 173 of 2010* authorized the board of directors for MHIP to elect for MHIP to administer a national temporary high-risk pool program for the State and enter into any necessary administration agreements. *Chapter 173* authorized the MHIP board to limit enrollment based on the amount of federal funding available to the program and to establish a separate benefit package delivery system and premium rate for enrollees according to standards for benefit packages and premium rates established under federal law for the program.

### **Authority of Insurance Commissioner to Enforce Federal Insurance Reforms**

Some provisions in the Patient Protection and Affordable Care Act relating to insurance regulation took effect in 2010, including:

- prohibiting health plans from denying coverage to children with preexisting conditions;
- banning insurance companies from dropping people from coverage when they get sick;
- requiring health plans to allow young people up to the age of 26 to remain on their parents' insurance policy; and
- banning lifetime caps on health coverage.

*Chapter 17 of 2010* made these provisions applicable to health insurance plans in the State and gave the Insurance Commissioner the authority to enforce these provisions against regulated health insurance plans in the State. This applicability and authority terminate on June 30, 2011.

### **Effect of State Health Insurance Laws on Grandfathered Health Plans**

The Patient Protection and Affordable Health Care Act exempted grandfathered health plans from certain aspects of health reform. A grandfathered health plan is any health plan that was in effect on March 23, 2010. However, in the 2010 session, it was not clear whether State insurance laws enacted after March 23, 2010, would impact the grandfathered status of a health plan. *Chapter 17* provided that a State insurance law enacted after January 1, 2010, does not apply to a grandfathered health plan if the law would prevent a group health plan or health insurance coverage from being considered a grandfathered health plan.

## **Mandated Coverage and Benefits**

### **Background**

Every four years, MHCC examines the fiscal impact of mandated health insurance benefits. In 2008, MHCC found that these benefits account for 15.4% of total premium costs for group health insurance. During the 2007-2010 term, the General Assembly passed several bills that added to the list of the State's mandated health insurance benefits or modified existing mandated health insurance benefits.

### **Amino Acid-based Elemental Formula**

Amino acid-based elemental formula is hypoallergenic formula designed for infants and children with milk protein and/or multiple food allergies or intolerance. *Chapter 510 of 2008* required health insurance carriers to provide coverage for amino acid-based elemental formula, regardless of the delivery method, for the diagnosis and treatment of specified allergies, syndromes, or disorders. A physician must issue a written order stating that the formula is necessary for the treatment of a disease or disorder. A private review agent, acting on behalf of a carrier, may review the physician's medical necessity determination.

### **Breast Cancer Screening**

*Chapter 670 of 2009* altered the health insurance mandate regarding coverage of mammograms by requiring insurers, nonprofit health service plans, and health maintenance organizations to provide coverage for breast cancer screening in accordance with the latest screening guidelines issued by the American Cancer Society.

### **Hospitalization and Home Visits Following a Mastectomy**

*Chapters 516 and 517 of 2009* required specified health insurance carriers to provide coverage for a minimum 48-hour inpatient hospital stay following a mastectomy. A patient may request a shorter length of stay.

### **Coordination with Federal Mandated Benefit Requirements**

*Chapter 17 of 2010* conformed State law to the new federal Mental Health Parity and Addiction Equity Act of 2008 by requiring that large group contracts that offer mental health or substance abuse disorder benefits offer the benefits in parity with medical and surgical benefits. *Chapter 17* also conformed the State's reconstructive breast surgery mandate to federal law.

### **Prosthetic Parity Act**

*Chapters 243 and 244 of 2009* required specified health insurance carriers to provide coverage for prosthetic devices, components of prosthetic devices, and repair of prosthetic devices. Prosthetic devices may not be subject to a higher copayment or coinsurance requirement than those required for any primary care benefits. A carrier may not impose an

annual or lifetime dollar maximum on coverage for prosthetic devices, separate from any maximum that applies in the aggregate to all covered benefits. A carrier may not establish requirements for medical necessity or appropriateness for prosthetic devices that are more restrictive than those under the Medicare Coverage Database.

### **Expansion of Child Wellness Benefit Mandate**

Maryland's child wellness benefit mandate requires insurers and nonprofit health service plans to provide coverage for a package of child wellness benefits that includes a specified list of services. *Chapters 595 and 596 of 2010* required health insurers and nonprofit health service plans to include in the minimum package of child wellness services coverage for visits for obesity evaluation and management and visits for and costs of developmental screening as recommended by the American Academy of Pediatrics.

### **Regulation of Business Practices of Health Insurers**

#### **Relationship Between Health Insurance Carriers and Health Care Providers**

During the 2007-2010 term, the General Assembly passed several pieces of legislation intended to address a perceived disparity in negotiating power between health care providers and health insurers. This legislation included requiring carriers to honor a patient's assignment of benefits to a physician under specified circumstances. In 2007, legislation creating a Task Force on Health Care Access and Reimbursement was enacted. Legislation that resulted from recommendations from the task force is noted below. The General Assembly also passed legislation in the 2007-2010 term to streamline the credentialing process and require incentives for the use of electronic health records.

**Assignment of Benefits:** An assignment of benefits, in the context of health insurance, is when an insured assigns the right to receive payment from a health insurance plan to a provider. Some health insurance plans do not honor the assignment of benefits by an insured to a provider that does not participate in a health insurer's provider panel, instead sending payment directly to the insured. In the 2009 interim, the Joint Committee on Health Care Delivery and Financing studied issues relating to the assignment of benefits and issued a report on recommendations for legislation that would require health insurers to honor an assignment of benefits by an insured to a nonparticipating physician.

*Chapter 537 of 2010* required preferred provider insurance policies (PPOs) issued by health insurers to honor an assignment of benefits by an insured to a nonpreferred physician. If the assignment is made to a nonpreferred on-call physician or a hospital-based physician, the physician may not balance bill an insured for the difference between the insurer's payment and the physician's billed charges. *Chapter 537* specified formulas for rates that health insurers must pay nonpreferred on-call physicians and hospital-based physicians that receive an assignment of benefits from an insured of a PPO. Nonhospital-based physicians that seek assignment of benefits must first give an insured a disclosure specified in the bill.

**Task Force on Health Care Access and Reimbursement: Chapter 505 of 2007** established the Task Force on Health Care Access and Reimbursement. The task force was required to study reimbursement rates and total payments to health care providers; the impact of changes in reimbursement on access to health care, health care disparities, volume of services, and quality of care; the effect of competition on payments to health care providers; trends for health care provider shortages; the amount of uncompensated care provided by health care providers and trends in uncompensated care; the extent to which current reimbursement methods recognize and reward higher quality of care; methods used by large purchasers of health care to evaluate adequacy and cost of provider networks; and the practice by certain carriers of requiring providers who join a provider network to also serve on the provider network of a different carrier.

**Chapter 265 of 2008** extended from June 30 to December 1, 2008, both the termination date and the date by which the task force was required to submit a final report of its findings and recommendations. Also, **Chapters 447 and 448 of 2008** required the task force to develop recommendations regarding (1) whether there is a need to provide incentives for physicians and other health care practitioners to be available to provide care on evenings and weekends; and (2) the ability of primary care physicians to be reimbursed for mental health services provided within their scope of practice.

**“Cram Down” Provisions:** Some health insurance carriers required health care providers, as a condition of participating on one provider panel, to participate on other provider panels. This practice has been referred to as “cram down.” **Chapter 688 of 2008** addressed the practice of “cram down” by specifying that a provider contract may not contain a provision that requires a provider, as a condition of participating in a non-HMO provider panel, to participate in an HMO provider panel or dental provider panel. **Chapter 688** also prohibited a provider contract that includes more than one schedule of fees from containing a provision that requires a provider, as a condition of participation on a provider panel, to accept each schedule of applicable fees included in the provider contract. Several exceptions apply.

**Chapter 131 of 2009** prohibited an insurer from using an insurance provider panel if the provider contract for the insurer provider panel requires a provider to participate on the insurer provider panel as a condition of participating on an HMO or non-HMO provider panel. An entity arranging an insurer provider panel must provide a health care provider with a schedule of applicable fees for up to the 50 most common services billed by a provider in that specialty at the time of contract, 30 days prior to a change, or upon request.

Other laws were enacted to address “cram down” practices with regard to dentists. **Chapters 549 and 550 of 2009** prohibited a provider contract from requiring a provider, as a condition of participating in a fee-for-service dental provider panel, to participate in a capitated dental provider panel. **Chapter 702 of 2010** prohibited a provider contract from containing a provision that requires a participating dental provider, as a condition of continued participation in a capitated dental provider panel or a fee-for-service dental provider panel, to accept an added, revised, or amended fee schedule that contains a lower fee.

**Credentialing:** In the 2007-2010 term, the General Assembly adopted legislation designed to streamline the credentialing process for health care providers wishing to be credentialed to serve on a carrier's provider panel.

Finding that credentialing of health care providers is time consuming and expensive for hospitals and health plans, the Task Force on Health Care Access and Reimbursement recommended that MIA and the Office of Health Care Quality align their standards using the Council for Affordable Quality Healthcare provider data source. **Chapters 90 and 91 of 2009** authorized the Insurance Commissioner to designate as the uniform credentialing form a credentialing application developed by a nonprofit alliance of health plans and trade associations for an online credentialing system if the application is available to providers at no charge and use of the application is not conditioned on submitting the application to a carrier online.

**Chapter 598 of 2008** addressed the situation of a health care provider in a group practice who treats patients of a health insurance carrier during the period while the provider is undergoing the carrier's review of the provider's credentials prior to signing a contract. **Chapter 598** required a carrier to reimburse a group practice on the carrier's provider panel at the participating provider rate for covered services provided by a nonparticipating provider if the provider meets certain requirements. A nonparticipating provider eligible for reimbursement may not hold an enrollee liable for the cost of any covered services provided except for any deductible, copayment, or coinsurance amount owed. A group practice must disclose certain information in writing to an enrollee at the time services are provided.

**Payments by HMOs to Nonparticipating Providers:** In its final report, the Task Force on Health Care Access and Reimbursement recommended changes to the formula used to determine what an HMO must pay to a nonparticipating provider for covered services provided to an enrollee of an HMO. **Chapter 664 of 2009** altered these rates in line with the recommendations of the task force, specifying separate formulas for reimbursement of covered evaluation and management services and nonevaluation and management services.

**Use of Physician Rating Systems by Health Insurance Carriers:** The Task Force on Health Care Access and Reimbursement also recommended that the General Assembly pass legislation requiring that health plans licensed by MIA fully disclose to consumers and physicians important aspects of their physician rating systems. **Chapters 585 and 586 of 2009** established requirements for MHCC to approve ratings examiners to review physician rating systems, and prohibited health insurance carriers from using a physician rating system unless the system is approved by a ratings examiner. Health insurance carriers must establish an appeals process for physicians to contest a rating in the system and to disclose any changes in evaluations to physicians at least 45 days before making the information available to enrollees.

**Bonus Payments for After Hours and Weekend Care:** The Task Force on Health Care Access and Reimbursement also recommended that carriers pay primary care providers a premium for routine care provided after hours in the workday or on weekends. **Chapter 673 of 2010** required health insurance carriers to pay a bonus to primary care providers for services provided in the office after 6 p.m. and before 8 a.m. or on weekends and national holidays. A

carrier must provide for and describe the terms of the required bonus payment in a separate clause in the carrier's contract with the primary care provider.

**Required Incentives for Electronic Health Records:** *Chapter 689 of 2009* required MHCC to adopt regulations, on or before September 1, 2011, that require State-regulated payors to provide incentives to health care providers to promote the adoption and meaningful use of electronic health records. Prior to the adoption of these regulations, MHCC must submit multiple reports to the legislature.

### **Authorization of Additional Health Insurance Products**

*Chapter 243 of 2007* authorized new types of health insurance products to be sold in the State. *Chapter 243* authorized health insurance carriers to offer a product that provides for payment of services rendered only by preferred providers if the product meets specified access standards and does not restrict payment for emergency services. Carriers that offer this type of product must also offer an option to include preferred and nonpreferred providers as an optional additional benefit for an employee or individual and provide a disclosure to the policyholder regarding the optional additional benefit. A group policyholder may require the employer or individual to pay a greater premium for the optional additional benefit.

*Chapter 243* also authorized health insurance carriers to offer limited benefit plans to employees that do not qualify for group coverage, such as seasonal, temporary, and part-time employees. The limited benefit plans need not comply with most health insurance mandates but must provide coverage for specified services, including mental health services. A carrier must disclose in a policy that the limited benefit product does not provide comprehensive health coverage.

### **Wellness Incentives and Programs**

*Chapter 591 of 2007* authorized health insurance carriers to provide reasonable incentives to an insured for participation in a bona fide wellness program offered by the carrier. *Chapter 591* defined a bona fide wellness program as a program designed to prevent or detect disease or illness, reduce or avoid poor clinical outcomes, prevent complications from medical conditions, or promote healthy behaviors and lifestyle choices. *Chapter 591* prohibited carriers from making participation in a wellness program a condition of coverage or imposing a penalty on an insured for nonparticipation, and also provided that insureds could not be required to achieve any specific outcome in order to receive an incentive for participation in a wellness program. *Chapter 591* provided that any incentive offered for participation must be reasonably related to the program and may not have a value that exceeds any limit established in regulations adopted by the Insurance Commissioner.

*Chapters 682 and 683 of 2009* broadened the types of bona fide wellness programs that health insurance carriers could offer in the State. The definition of "bona fide wellness program" was expanded to include programs designed to promote health or prevent and control injury. The definition of "wellness benefit" in the small group health insurance market was also altered to conform to the provisions of *Chapters 682 and 683*.



### **Discriminatory Practices**

***Inquiries Regarding Race and Ethnicity:*** Generally, insurance carriers are prohibited from making any inquiry about the race or ethnicity of their insureds. ***Chapters 25 and 26 of 2007*** authorized health insurance carriers to inquire about race and ethnicity in an insurance form, questionnaire, or other manner requesting general information, provided the information is used solely for the evaluation of quality of care outcomes and performance measurements. ***Chapters 25 and 26*** prohibited these carriers from using race or ethnicity data to in any way affect the terms or conditions of a health insurance policy or contract. The Insurance Commissioner may refuse to renew, suspend, or revoke a certificate of authority or issue a cease and desist order to a carrier that uses racial or ethnic variations data in a prohibited manner.

***Long-term Care Insurance and Genetic Discrimination: Chapters 631 and 632 of 2008*** prohibited a carrier or an insurance producer that provides long-term care insurance from requesting or requiring a genetic test or using specified genetic information to (1) deny or limit long-term care insurance coverage; or (2) charge a different rate for the same long-term care insurance coverage. ***Chapters 631 and 632*** permitted long-term care insurers to use genetic information or the results of a genetic test if the use is based on sound actuarial principles.

### **Drug Therapy Management in Group Model Health Maintenance Organizations**

***Chapters 314 and 315 of 2009*** allowed licensed physicians and licensed pharmacists participating in a group model HMO to provide drug therapy management to patients under specified circumstances. ***Chapters 314 and 315*** also exempted group model HMOs that wish to provide drug therapy management to a patient from having to enter into a therapy management contract with the patient. The drug therapy management must be provided under a physician-pharmacist agreement that is approved by the State Board of Pharmacy and State Board of Physicians and must also be provided through the internal pharmacy operations of the HMO.

For an additional discussion of drug therapy management, see the subpart “Health Occupations” of this Part J.

### **Coordination of Health Insurance Benefits with Personal Injury Protection Insurance**

In general, an insurer that issues, sells, or delivers a motor vehicle liability insurance policy in the State must provide personal injury protection coverage, known as PIP, for the medical, hospital, and disability benefits to individuals injured in a motor vehicle accident. If an insured has both PIP coverage and collateral coverage, the insurer or insurers may coordinate the policies to ensure nonduplication of benefits, subject to appropriate reductions in premiums for one or both of the policies. The insured may choose to coordinate the policies by indicating which policy will be the primary policy, or reject the coordination of policies and nonduplication of benefits.

A decision by the Maryland Special Court of Appeals in October 2009 upheld a health insurer's right to exclude liability for medical expenses covered by an auto insurer's PIP coverage. The legislature effectively overruled that decision in **Chapters 340 and 341 of 2010** which prohibited health insurance policies, policies of nonprofit health service plans, and health maintenance organization contracts from containing a provision that requires PIP benefits to be paid before benefits under the health insurance policy or contract.

## **Regulation of Entities Other Than Health Insurers**

Several laws were enacted during the 2007-2010 term that established regulatory schemes for health care entities by the Maryland Insurance Commissioner. Though the entities regulated in these laws are not health insurers, they administer health care benefits or provide some form of health care coverage.

### **Discount Medical and Drug Plans**

Prior to 2007, medical and pharmacy discount plans were not subject to State regulation. **Chapter 629 of 2007** required registration with MIA as a discount medical plan organization or a discount drug plan organization before selling, marketing, or soliciting a discount medical plan (DMP) or discount drug plan (DDP). **Chapter 629** authorized MIA to deny registration or refuse to renew, suspend, or revoke the registration if the applicant or registrant engages in specified activities. **Chapter 629** also specified limits on advertising, plan access, payment to medical providers, and termination of plan membership and required various disclosures to plan members. **Chapter 629** authorized MIA to examine the affairs, transactions, accounts, records, and assets of a DMP or DDP organization; issue a cease and desist order for violations; require corrective action, including restitution; and impose penalties.

### **Pharmacy Benefits Managers**

Pharmacy benefits managers (PBMs) are businesses that administer and manage prescription drug benefit plans either through health insurance products or separately. Approximately 95% of all patients with prescription drug coverage receive benefits through a PBM.

Several laws were passed during the 2008 session to regulate PBMs. In the laws, PBMs were defined as entities that provide pharmacy benefits management services for beneficiaries of health insurers that are regulated by the State or the State Employee and Retiree Health and Welfare Benefits Program. PBMs that provide services for employer plans that are subject to federal regulation under ERISA were exempted from the laws.

**Registration: Chapters 201 and 202 of 2008** required a PBM to register with the Maryland Insurance Commissioner before providing pharmacy benefits management services in the State. Registration is effective for two years and may be renewed for an additional two years. Subject to hearing provisions, the Insurance Commissioner may deny, suspend, revoke, or refuse to renew a registration under specified circumstances. **Chapters 201 and 202** authorized the Insurance Commissioner to assess a civil penalty of up to \$10,000 against a person that

violates the registration requirements or require PBMs that violate the Act to cease and desist; take specific affirmative corrective action; or make restitution of money, property, or other assets.

**Transparency: Chapters 205 and 206 of 2008** established what a PBM must disclose to a purchaser both before and after entering into a contract for pharmacy benefits management services. PBMs must inform a purchaser that the PBM may solicit and receive manufacturer payments, pass through or retain the manufacturer payments, sell aggregate utilization information, and share aggregate utilization information. A PBM must offer to provide the purchaser a report containing information about net revenues and manufacturer payments. If a purchaser has a rebate sharing contract, a PBM must offer to provide the purchaser a report for each fiscal quarter and each fiscal year that contains information regarding net revenues, prescription drug expenditures, manufacturer payments, and rebates.

**Pharmacy and Therapeutics Committees: Chapter 279 of 2008** established requirements for a PBM's pharmacy and therapeutics (P&T) committee, which is a committee that advises a PBM regarding the composition of a prescription drug formulary. A PBM's P&T committee must include clinical specialists that represent the needs of a purchaser's beneficiaries and at least one practicing pharmacist and one practicing physician who are independent of any developer or manufacturer of prescription drugs. Members of a P&T committee must sign a conflict of interest statement updated at least annually. A majority of members must be practicing physicians or pharmacists. PBMs must ensure that a P&T committee has policies and procedures to address conflicts of interest, processes to evaluate medical and scientific evidence concerning the safety and efficacy of prescription drugs, and a process to enable the P&T committee to consider the need to recommend a formulary change to a purchaser at least annually. On request of a purchaser, a PBM must disclose information about the composition of its P&T committee to the purchaser. PBMs may not require a pharmacy to participate on a P&T committee.

**Therapeutic Interchanges: Chapters 203 and 204 of 2008** established guidelines for therapeutic interchanges (any change from one prescription brand-name drug to another, excluding specified circumstances) by PBMs. A PBM may only request a therapeutic interchange for medical reasons that benefit the beneficiary or if the interchange will result in financial savings and benefits to the purchaser or the beneficiary. Before making a therapeutic interchange, a PBM must obtain authorization from a prescriber and make specified disclosures to the prescriber. If a therapeutic interchange occurs, the PBM must make specified disclosures to the beneficiary and include with the new dispensed prescription drug a patient package insert about potential side effects and a toll-free number to communicate with the PBM. A PBM must cancel and reverse a therapeutic interchange on instruction from a prescriber, beneficiary, or the beneficiary's representative. If a therapeutic interchange is reversed, the PBM must obtain a prescription for and dispense the originally prescribed drug and charge the beneficiary no more than one copayment. A PBM may not be required to cancel and reverse a therapeutic interchange if the beneficiary is unwilling to pay a higher copayment or coinsurance.

**Contracts with Pharmacies:** *Chapter 262 of 2008* required PBMs to disclose to a pharmacy or pharmacist their reimbursement policy, the process for verifying beneficiary eligibility, the dispute resolution and audit appeals process, and the process for verifying the prescription drugs that are included on the PBM's formulary. *Chapter 262* also required PBMs to follow specified procedures when auditing a pharmacy. Finally, *Chapter 262* required PBMs to adopt specified review processes to allow a pharmacy or pharmacist to request review of a discrepancy or disputed claim in an audit and to allow a pharmacy to request a review of a failure to pay the contractual reimbursement amount of a submitted claim.

### **Public-private Health Care Programs**

In 2007, Howard County proposed establishing a public-private partnership to offer basic health care coverage to uninsured county adults with incomes up to 300% of federal poverty guidelines on a sliding scale basis. As the program did not fit the traditional definition of health insurance and would have been unable to meet financial requirements placed on health insurance carriers such as capital reserves, *Chapters 626 and 627 of 2008* was intended to regulate this type of health care program without placing an undue burden on the ability of a program to operate.

### **Patient Centered Medical Homes and Improved Coordination of Care**

As health care costs continued to rise more quickly than inflation, providers, insurers, and policymakers continued to examine in the 2007-2010 term ways to coordinate care in an effort to improve quality and control costs.

#### **Patient Centered Medical Homes**

The medical home model is one way to provide comprehensive care that is designed around the patient's needs. The Maryland Health Quality and Cost Council studied ways to implement a medical home demonstration project in the State. A workgroup established by the council found several legal issues that needed to be overcome before moving forward with a demonstration project, including potential antitrust issues, State laws regarding incentive payments, and State standards for confidentiality of medical records.

*Chapters 5 and 6 of 2010* addressed issues raised by the council as barriers to implementing a medical home demonstration project in the State. *Chapters 5 and 6* required MHCC to establish the Maryland Patient Centered Medical Home Program (the program) if MHCC concludes that the program will likely result in the delivery of more efficient and effective health care services and is in the public interest. Prominent health insurance carriers in the State must participate in the program, while other carriers may participate. MHCC is also permitted to authorize single carrier medical homes. Health insurance carriers that participate in the program or that implement a single carrier medical home may pay a patient centered medical home, including specified incentives, for coordinated covered medical services provided to covered individuals. These carriers may also share medical information about a covered individual who elects to participate in a medical home with the individual's medical home and other treating providers.

MHCC must conduct an independent evaluation of the program's effectiveness in reducing health care costs and improving health care outcomes, and report its findings to specified committees by December 1, 2014. *Chapters 5 and 6* are scheduled to terminate December 21, 2015.

### **Clinically Integrated Organizations**

TriState Health Partners (TriState), a physician-hospital organization based in Hagerstown, Maryland, has worked to integrate and coordinate the provision of health care to patients by TriState's physician members and the Washington County Hospital. The Federal Trade Commission's Bureau of Competition advised TriState in April 2009 that it would not raise an antitrust challenge to the organization's clinical integration program because the proposed cooperation among doctors and a hospital had the potential to lower health care costs and improve quality of care.

*Chapters 598 and 599 of 2010* authorized contracts between health insurance carriers and clinically integrated organizations (CIOs) to include a provision to pay for coordination of care services and bonuses or incentives to promote efficient, medically appropriate delivery of medical services. The Insurance Commissioner may adopt regulations that specify the types of payments and incentives that are permissible. *Chapters 598 and 599* required health insurance carriers to share medical information about covered individuals with a CIO and its members if there is a written agreement specifying how medical information will be shared, the information is used by the CIO to promote efficient, medically appropriate health care delivery or to coordinate care, and there are procedures for disclosing to individuals how information will be shared. A CIO is defined as a joint venture between a hospital and physicians (such as TriState) that has received an advisory opinion from the Federal Trade Commission and has been established to improve the practice patterns of the participating health care providers and promote the efficient, medically appropriate delivery of covered services, as well as a joint venture that the Insurance Commissioner determines meets the federal criteria for an accountable care organization.

### **Nonprofit Health Service Plans**

Nonprofit health service plans are typically regulated as health insurers; however, the plans are subject to additional requirements beyond what is required of typical insurers. The State's largest nonprofit health service plan is CareFirst of Maryland.

### **Compensation of Board Members**

*Chapter 609 of 2007* removed limits on compensation for board members of nonprofit health service plans. Instead, *Chapter 609* specified that board members may receive reimbursement for ordinary and necessary expenses, an amount of base compensation, and compensation for attendance at meetings proposed by the Compensation Committee of the board. *Chapter 609* required the Compensation Committee to develop proposed guidelines for compensation of board members that is reasonable in comparison to compensation for board members of similar nonprofit health service plans. A copy of the guidelines must be provided to

each board member and the Insurance Commissioner. The Insurance Commissioner must annually review board member compensation and may issue an order prohibiting payment if the Commissioner finds that the compensation exceeds the amount authorized under the guidelines. By June 30 of each year, each nonprofit health service plan must submit a report to the Commissioner with various compensation and reimbursement data.

### **Hearings and Orders on the Impacts of Out-of-state Laws**

In December 2008, the Council of the District of Columbia approved the Medical Insurance Empowerment Amendment Act of 2008. This Act required the Commissioner for the Department of Insurance, Securities, and Banking of the District of Columbia to determine whether the portion of CareFirst's surplus attributable to the District of Columbia is excessive and order CareFirst to divest itself of excessive surplus through community health reinvestment. The Act also required CareFirst to offer, set specified affordability and adequacy standards for, and advertise the availability of an open enrollment program. The Act also required CareFirst to make an open enrollment program available to a minimum of 2,500 subscribers from the District of Columbia and not charge a premium that exceeds 125% of standard market rates.

*Chapters 348 and 349 of 2009* authorized the Maryland Insurance Commissioner to hold a hearing if another state enacts a law that requires a nonprofit health service plan operating in Maryland to provide a program or benefits for the residents of another state. The hearing must review and evaluate the impact of the law on the nonprofit health service plan, including the impact on surplus, premium rates for policies issued or delivered in Maryland, and solvency. The Commissioner must determine whether the impact on the nonprofit health service plan is harmful to the interests of subscribers covered by policies issued or delivered in Maryland and issue an appropriate order to protect the subscribers, where necessary. The order may prohibit the nonprofit health service plan from subsidizing the program or benefits for the residents of another state through premiums charged to subscribers under policies issued or delivered in Maryland or use of any surplus earned through policies issued or delivered in Maryland.

### **Managed Care Organizations**

Managed care organizations (MCOs) are entities that provide health care coverage to enrollees of the State's Medicaid managed care program. Since the establishment of the Medicaid HealthChoice program in 1998, there was uncertainty about the extent to which State insurance laws apply to MCOs. *Chapter 452 of 2007* provided that MCOs are not subject to the insurance laws of the State or to the provisions of Title 19 of the Health – General Article, with the exception of laws relating to appropriate risk-based capital standards, payment for hospital services on the basis of approved rates, annual financial reporting and submission of business plans, medical loss ratios, and retroactive denial of claims. MCOs may retroactively deny a claim submitted for services provided to a Medicaid enrollee during a time period for which Medicaid has permanently retracted the capitation payment for the recipient from the MCO.

## **Medical Stop-loss Insurance**

Prior to 2008, although stop-loss insurance was regulated by the State, MIA had difficulty enforcing the law. *Chapter 264 of 2008* replaced the definition of “stop-loss insurance” in the Health Insurance Title of the Insurance Article with “medical stop-loss insurance.” *Chapter 264* defined “medical stop-loss insurance” as insurance purchased by a person other than a carrier or a health care provider to protect the person against losses incurred by that person’s obligations to a third party under the terms of a health benefit plan. *Chapter 264* also prohibited medical stop-loss insurance from being sold on the surplus lines market; prohibited the sale of medical stop-loss insurance by unauthorized carriers; and clarified that medical stop-loss insurance may only be sold, issued, or delivered by a carrier that holds a certificate of authority issued by the Insurance Commissioner that authorizes the insurer to engage in the business of health insurance or to act as a nonprofit health service plan.

## **Annuity Contracts and Qualified State Long-term Care Insurance Partnership**

The federal Qualified State Long-Term Care Insurance Partnership began in the early 1990s. The program allows individuals to retain a greater portion of their assets under Medicaid if the individual purchases a long-term care insurance policy and exhausts the benefits of the policy. States benefit because Medicaid becomes the last payor of long-term care services rather than the first. Final regulations for Maryland’s Qualified Long-Term Care Insurance Partnership program were effective in December 2008. The Department of Health and Mental Hygiene received approval for the program from the federal Centers for Medicare and Medicaid Services in March 2009. Three carriers had received approval from MIA to sell products that were certified by the program in 2009 and were expected to begin sales in 2010.

*Chapters 597 and 598 of 2009* repealed the requirement that the outline of coverage, which carriers must provide to long-term care insurance applicants, include a statement as to whether the policy or contract is approved under the Qualified State Long-Term Care Insurance Partnership. *Chapters 597 and 598* also required a certificate issued under group long-term care insurance to include a statement as to whether the policy or contract is intended to qualify as a partnership policy under the Qualified State Long-Term Care Insurance Partnership.

*Chapters 597 and 598* also authorized an annuity contract to include a rider or supplemental contract provision that offers a contract holder reimbursement or payment for long-term care. Beginning January 1, 2010, the federal government treated long-term care coverage included with an annuity contract as tax qualified. Therefore, the provisions in *Chapters 597 and 598* regarding annuities allowed State residents to take advantage of the option of purchasing long-term care insurance coverage through an annuity policy on a tax-qualified basis.

## Social Services

### Welfare

The federal Office of Family Assistance administers the Temporary Assistance for Needy Families (TANF) program. TANF provides assistance and work opportunities to families in need by granting States the federal funds and the flexibility to develop and implement their own welfare programs. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created TANF as a block grant program to assist recipients to become employed and turn welfare into a temporary assistance program. The federal Deficit Reduction Act of 2005 reauthorized the TANF program through fiscal 2010. The American Recovery and Reinvestment Act of 2009 established the Emergency Contingency Fund for State TANF Programs. The fund provides up to \$5 billion in fiscal 2009 and 2010 to help states that had an increase in assistance caseloads and basic assistance expenditures, or in expenditures related to short-term benefits of subsidized employment. The Department of Human Resources (DHR) administers the Family Investment Program (FIP) to assist temporary cash assistance (TCA) applicants and recipients to become self-sufficient. TCA provides financial assistance to dependent children and other family members deprived of support due to the death, incapacitation, underemployment, or unemployment of one or both parents.

The fiscal 2008 budget for TCA included an increase in the grant level necessary to meet the statutory requirement that the combined TCA and food stamp benefit amount equal at least 61% of Maryland's Minimum Living Level. The Governor must either include sufficient funds in the budget to meet the 61% level or must notify the General Assembly in writing that the requirement is not being met. For fiscal 2009 through 2011, no increase in the TCA grant level was necessary due to sufficient increases in the food stamp benefit level.

As a condition of receiving TCA, a recipient must assign child support rights to the State. *Chapter 469 of 2009* brought the State in compliance with the federal Deficit Reduction Act of 2005 by repealing a provision that requires TCA applicants and recipients to assign to the State the right to receive child support accrued prior to receiving TCA. The legislation required the applicant or recipient to assign to the State all right, title, and interest in support, only for the period that the family receives TCA.

The law governing TCA benefits includes a provision known as the child-specific benefit, which was enacted to remove any perceived incentive for having additional children while receiving TCA. As enacted, the provision prohibited payment of an incremental TCA benefit to a welfare recipient following the birth of a child 10 months after the recipient has been determined eligible for assistance. Instead, the value of increased assistance for the additional child was transferred to a third-party payee, which may have included an extended family member or a faith-based or nonprofit organization, to manage the benefit on behalf of the child. Efforts to recruit third-party payees were largely unsuccessful, and fees were high for participating organizations. In addition, DHR determined that families receiving TCA were not expanding. In December 2002, because of the costs associated with administering the child-specific benefit, the Secretary of Human Resources granted waivers to local departments of



social services for implementing the child-specific benefit. Accordingly, increments in cash benefits for additional children have been paid to TCA recipients since 2002. *Chapters 459 and 460 of 2008* codified current practice by repealing the child-specific benefit.

*Chapter 385 of 2009* required the Secretary of Budget and Management, with the assistance of the Secretary of Human Resources, to develop and implement a plan to hire FIP recipients, children of current or former recipients, foster youth, and child support obligors in various State agencies. In addition, similar FIP hiring programs for local governments and entities that contract with the State were amended to add children of current or former recipients, foster youth, and child support obligors. *Chapter 385* also established that current job skills enhancement programs within the FIP must target job training for the above mentioned individuals for employment in energy and environmental industries and construction.

### **Home Energy Assistance**

The Office of Home Energy Programs (OHEP) within DHR provides home energy assistance to Maryland residents through local agencies in each jurisdiction. The Electric Universal Service Program (EUSP) helps Maryland's vulnerable populations and other traditionally underserved populations pay their electric bills, minimize crises, and reduce their electric costs. EUSP, which is administered by DHR and overseen by the Public Service Commission, helps make electric bills more affordable to low-income customers through bill payment assistance, arrearage retirement, and energy efficiency measures. *Chapters 305 and 306 of 2009* made changes to EUSP by eliminating the \$1.5 million limit on the total amount of assistance that DHR may provide annually for the retirement of arrearages. In addition, a household may benefit from arrearage retirement every seven years, rather than once in a lifetime.

EUSP and the Maryland Energy Assistance Program have seen dramatic growth in recent years, both in the number of households served and the level of funding and expenditures of the programs. The total fiscal 2011 budget for OHEP, excluding funding for OHEP's data system, is approximately \$128.9 million. Of this total funding, approximately \$9.9 million will be used for administration of the energy assistance programs. Despite anticipated continued growth in the number of households served through these programs, the funding available for the energy assistance bill payment benefits and EUSP arrearage assistance decreases in the fiscal 2011 budget by approximately \$40.6 million. This decrease is primarily the result of an anticipated return to historic levels of federal Low Income Home Energy Assistance Program (LIHEAP) funding. In federal fiscal 2009 and 2010, LIHEAP was funded at \$5.1 billion nationally, the highest level in program history. This increased the amount the State had available in these years for energy assistance benefits to approximately \$108.9 million in fiscal 2009 and \$84.5 million in fiscal 2010. However, the fiscal 2011 budget includes only \$43.9 million in LIHEAP funding. Other funding sources for energy assistance benefits are relatively stable between the fiscal 2010 and 2011 budgets.

Beginning in fiscal 2009, funding from the Strategic Energy Investment Fund (SEIF) has been available for use for energy assistance benefits. Although *Chapters 127 and 128 of 2008*

required 17% of revenue received into the fund to be used for EUSP and other electricity assistance, *Chapter 487 of 2009* and *Chapter 484 of 2010* (the Budget Reconciliation and Financing Act of 2009 and 2010) increased the share of revenue received into the fund to be used for electricity assistance (up to 50%) for carbon dioxide emission allowances sold between March 1, 2009, through June 30, 2012. The fiscal 2011 budget provides \$42.7 million of funds from SEIF for energy assistance. In addition, approximately \$32.4 million is available for bill payment and arrearage assistance benefits from ratepayer funding through EUSP.

## **Immigration**

During the 2007-2010 legislative term, immigration emerged as a major issue in the U.S. Congress, state legislatures, and at the local level. Maryland continues to be a major destination for immigrants. The impact of immigration varies greatly among Maryland's local jurisdictions. *Chapter 553 of 2008* established a Commission to Study the Impact of Immigrants in Maryland, which included studying the demographic profile of immigrants in the State and the economic and fiscal impacts of immigrants on the State. *Chapter 553* required the commission to report its findings and recommendations to the Governor and the General Assembly by January 1, 2011. A more detailed discussion of immigration issues may be found under subpart "State Agencies, Offices, and Officials" within Part C – State Government of this *Major Issues Review*.

## **Local Departments of Social Services**

Financial and compliance audits of local departments of social services are required at least once every two years. However, staffing levels of the Office of the Inspector General of DHR does not permit a two-year audit cycle. *Chapter 147 of 2010* altered the frequency of these audits from at least once every two years to at least once every three years. This change ensures adequate audit coverage and is consistent with the three-year audit cycle utilized by the Office of Legislative Audits and most other State audit agencies.

## **Referral to Services**

"2-1-1" is the abbreviated dialing code assigned by the Federal Communications Commission for consumer access to community information and referral services. *Chapters 310 and 311 of 2010* replaced four self-funded pilot programs used to administer the Health and Human Services Referral System with "2-1-1 Maryland," a State nonprofit information network that may approve up to five nonprofit call centers to provide 2-1-1 services in the State. *Chapters 310 and 311* also altered the membership, term limits, and duties of the Health and Human Services Referral Board.

## **The Elderly**

### **Aging in Place**

The General Assembly acted favorably on legislation during the past legislative term to expand services for senior citizens, including legislation supporting seniors aging-in-place.

Maryland is home to several examples of a new aging-in-place model called the Naturally Occurring Retirement Communities supportive services program, which combines public, nonprofit, and private-sector entities to provide a comprehensive array of housing, social, medical, and transportation services to help seniors age in place. *Chapters 511 and 512 of 2007* established the Statewide Empowerment Zones for Seniors Commission in the Maryland Department of Aging (MDoA). The purpose of the commission was to recommend a plan to develop a program that directed financial and regulatory incentives to local communities that develop a plan to enhance aging-in-place services and facilitate the personal independence and civic and social engagement of seniors in the community. The commission terminated on September 30, 2009, but *Chapter 10 of 2010* reestablished the commission as the Maryland Communities for a Lifetime Commission.

### **Long-term Care**

With the intent of reforming the provision of long-term care services under the Medical Assistance program, *Chapters 308 and 371 of 2009* required the Secretary of Health and Mental Hygiene to report to the General Assembly on the feasibility of creating a coordinated care program. The goal is to improve and integrate the care of individuals, including health care services, and to meet the various needs of seniors and adults with disabilities in the State.

The Maryland Long Term Care Ombudsman Program within MDoA receives and resolves complaints made by or for residents of long-term care facilities. In order to align State law with the long-term care provisions of the federal Older Americans Act (OAA) and to ensure continued federal funding, *Chapter 155 of 2010* conformed State law regarding the State's Long Term Care Ombudsman Program to the OAA. In response to the recommendations contained in a March 2009 consultant report regarding how to improve ombudsman services among local jurisdictions in the State, *Chapter 155* established the Office of the Long Term Care Ombudsman in MDoA and the selection process for a State Long Term Care Ombudsman. In addition to other responsibilities, the ombudsman must personally, or through designated ombudsmen, identify, investigate, and resolve complaints from any source made by, or on behalf of, a resident of a long-term care facility in the State relating to any action, inaction, or decision that may adversely affect a resident under specified circumstances.

### **Continuing Care Retirement Communities**

Legislation enacted in the past four years sought to strengthen the oversight of continuing care retirement communities (CCRCs) in the State. CCRCs offer a full range of housing, residential services, and health care in order to serve older residents as their medical needs change over time. *Chapter 108 of 2007* established a Continuing Care Fund within MDoA to

defray the costs of administering continuing care statutory requirements. The fund consists of fees collected from CCRCs, money appropriated in the State budget to the fund, investment earnings of the fund, and any other money appropriated to the fund's benefit. The establishment of this fund generally codifies a former practice of not reverting unspent special fund revenues from CCRC fees to the general fund.

Legislation to strengthen internal grievance procedures for CCRCs was adapted during the 2008 and 2009 sessions. *Chapter 690 of 2008* required registered CCRCs, by December 1, 2008, to submit to MDoA and the Health and Advocacy Unit in the Office of the Attorney General (1) the number of written grievances submitted to the provider during calendar 2007; (2) a brief summary of each grievance filed during calendar 2007 using only nonindividually identifiable information; and (3) any action taken by the provider regarding the resolution of each grievance filed during calendar 2007. *Chapter 694 of 2009* expanded the components that a CCRC must include in its internal grievance procedures and allows subscribers and providers to seek mediation within 30 days after the conclusion of an internal grievance procedure.

### **Baby Boomers**

*Chapters 506 and 507 of 2007* established a Baby Boomer Initiative Council staffed by the University of Maryland's College of Health and Human Performance, in cooperation with the Johns Hopkins Institutions. The University of Maryland and Johns Hopkins Institutions' representatives on the council were required to initiate a study documenting the economic and social impact of older workers' roles in the economy and in the community. *Chapters 506 and 507* terminate on December 31, 2011.

### **The Disabled**

#### **Home- and Community-based Services**

Similar to prior terms, legislative action regarding the developmentally disabled during the 2007-2010 legislative term sought to expand home- and community-based services and supports for individuals with disabilities. The Department of Health and Mental Hygiene (DHMH) continued its focus on the expansion of these services. The number of individuals served in the community service program within the Developmental Disabilities Administration (DDA), which provides residential, day, and support services, increased by 21% between fiscal 2006 and 2009. In fiscal 2009, DDA served 21,192 individuals in the community. DDA expects that number to increase to over 22,715 by fiscal 2011.

During the 2007-2010 legislative term, the General Assembly made funding for the expansion of home- and community-based services a priority. While other areas of the State budget faced significant reductions, the budget for DDA continued to include funds for expanding services to developmentally disabled individuals. From fiscal 2009 to 2011, approximately \$90.3 million was allocated through the State budget to expand the availability of home- and community-based services for targeted groups including transitioning youth,

emergency and waiting list placements, court-involved individuals, and individuals moving from State residential centers into the community.

In order to enable a family to provide for the needs of a child or an adult with a developmental disability living in the home or support an adult with a developmental disability living in the community, *Chapters 503 and 504 of 2010* established a Low Intensity Support Services Program in DDA. Under the program, the services must be flexible to meet the needs of individuals or families. DDA is required to establish a cap of no less than \$3,000 of services per individual per fiscal year to a qualifying individual; however, DDA may waive the cap under specified circumstances.

The federal Deficit Reduction Act of 2005 created the Money Follows the Person demonstration project. States selected to participate in the project received funding to provide long-term care to individuals in their homes or communities. The program targeted Medicaid-eligible individuals who have resided in an institutional setting for at least six months. In January 2007, the Centers for Medicare and Medicaid Services (CMS) awarded Maryland an initial \$1.0 million Money Follows the Person grant. Maryland's five-year funding commitment from CMS is \$67.2 million. *Chapters 542 and 543 of 2007* required DHMH to report on the status of the State's Money Follows the Person grant to specified legislative committees by January 1 of each year. The report must include an update on grant communications between DHMH and CMS; CMS grant funding; the number of individuals moved out of institutional settings under the grant, by type of institution; and any DHMH plans or policies to move individuals out of institutional settings. *Chapters 542 and 543* terminate on June 30, 2013.

DDA provides direct services to individuals in institutions operated by DDA and through funding of a service delivery system supporting individuals in the community. In order to clarify an appeals process that is currently required by federal law as part of the State's Medicaid waiver agreement for home- and community-based services, *Chapters 501 and 502 of 2010* required the Secretary of Health and Mental Hygiene to provide a recipient of Medicaid-waiver services who has been denied services, according to his or her plan of habilitation, with specified written notice within 30 days after the denial and an opportunity for a Medicaid fair hearing.

### **Employment Discrimination**

Employers are prohibited from discriminating in various aspects of employment because of an individual's disability. For purposes of employment discrimination, a disability is defined as a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy, or a mental impairment or deficiency. *Chapters 299 and 300 of 2009* expanded this definition of a disability to include a record of having a physical or mental impairment or being regarded as having a physical or mental impairment. *Chapters 299 and 300* prohibited an employer from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee. However, an employer is not required to accommodate an employee's disability if doing so would cause undue hardship on the employer's business. In addition, the law prohibited an employer from retaliation against an employee, applicant, or member who has opposed any prohibited

employment practice or participated in an investigation, proceeding, or hearing relating to a discrimination charge.

### **Public Accommodations**

Blind, visually impaired, deaf, and hard of hearing individuals, including individuals using a service animal, have the same rights of access to public places, accommodations, and conveyances, including housing, as individuals without disabilities. *Chapters 594 and 595 of 2008* extended these rights to all individuals with disabilities and to parents of a minor child with a disability. *Chapters 594 and 595* provided that physical modifications of places or vehicles are not required for individuals who are authorized to use a service animal and who are accompanied by a service animal. The law defined “service animal” as a guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability.

According to the National Institute on Deafness and Other Communication Disorders, approximately 17% of American adults say that they have some degree of hearing loss. These numbers are likely to increase as the baby boomer generation ages, as roughly one-third of Americans 65 to 74 years of age and 47% of those 75 and older have hearing loss. In addition, hearing damage is the most common disability for veterans. *Chapters 213 and 214 of 2010* required a place of public accommodation, on request, to keep closed captioning activated on any closed-captioning television receiver that is in use during regular hours in any public area. *Chapters 213 and 214* excluded places of public accommodation from this requirement if (1) no television receiver of any kind is available in the public area; or (2) the only public television receiver available is not a closed-captioning television receiver.

### **Assistive Technology Loan Program and Fund**

The Assistive Technology Guaranteed Loan Program in the Department of Disabilities provides financial assistance to individuals with disabilities to purchase assistive technology to help these individuals become more independent or more productive members of the community with an improved quality of life. *Chapter 62 of 2008* renamed the program as the Assistive Technology Loan Program and renamed the Assistive Technology Guaranteed Loan Fund as the Assistive Technology Loan Fund. *Chapter 62* authorized the program’s board of directors to provide borrowers of loans to purchase assistive technology with interest rates equivalent to guaranteed rates by either guaranteeing the loan or subsidizing the interest rate on nonguaranteed loans. The law also required the program’s board of directors to set the total aggregate amount of loan guarantees provided from the fund each year.

### **Children**

The General Assembly acted favorably on legislative proposals concerning children during the 2009 and 2010 sessions.

### **Child Welfare Caseworkers**

In most instances, newly employed child welfare casework staff are hired provisionally and must complete a training program and pass a competency test before being granted permanent employment status. In order to streamline the hiring process for experienced caseworkers, fill vacancies with experienced workers, and assign cases sooner, **Chapter 360 of 2009** required the Secretary of Human Resources to develop and implement mandatory standards that would exempt newly hired individuals who (1) have documented and verified casework experience; or (2) hold appropriate State licensure and pass a competency test before being granted permanent employment status. However, the Secretary must require a caseworker who was exempted from the training program and who failed the competency test to participate in the program and take and pass the competency test before being granted permanent employment status.

### **Disclosures**

Health care providers are prohibited from disclosing medical information without a person's authorization, unless the person has received notice of the request and has 30 days to object to the disclosure. These requirements may result in the postponement of hearings in civil and criminal matters. **Chapter 300 of 2008** authorized the expedited disclosure of medical records in Child in Need of Assistance Proceedings. **Chapter 300** reduced from 30 to 15 days the timeframe that a person in interest has to object to the disclosure of a medical record that is requested for these proceedings.

As part of efforts to protect children of abusive parents, **Chapters 259 and 260 of 2009** required the Secretary of Health and Mental Hygiene to notify the Executive Director of the Social Services Administration in DHR when an individual whose parental rights have been terminated and who has been identified in a central registry as responsible for child abuse or neglect has a subsequent child. If the executive director receives birth record information for an individual whose parental rights have been terminated, the executive director must (1) verify the identity of the birth parent; and (2) notify the local department of social services so that the department may review its records and, when appropriate, provide an assessment of the family and offer any needed services.

**Chapters 185 and 186 of 2010** authorized an individual to notify the local department of social services or the appropriate law enforcement agency if the individual had reason to believe that a parent, guardian, or caregiver of a child allows the child to reside with or be in the regular presence of an individual, other than the child's parent or guardian, who (1) is registered on the sexual offender registry based on the commission of an offense against a child; and (2) based on additional information, poses a substantial risk of sexual abuse to the child. For a more detailed discussion of this issue, see the subpart "Family Law" within Part F – Courts and Civil Proceedings of this *Major Issues Review*.

**Chapters 637 and 638 of 2010** required the director of a local department of social services or the Secretary of Human Resources to disclose, on request, specified information regarding child abuse or neglect if (1) the information is limited to actions or omissions of the

local department, DHR, or an agent of DHR; (2) the child named in a report has suffered a fatality or near fatality; and (3) the State's Attorney's Office has consulted with and advised the local director or the Secretary that disclosure of the information would not jeopardize or prejudice a related investigation or prosecution. For a more detailed discussion of this issue, see the subpart "Family Law" within Part F – Courts and Civil Proceedings of this *Major Issues Review*.

In order to provide the Division of Parole and Probation in the Department of Public Safety and Correctional Services with information about sex offenders in close contact with children, **Chapters 629 and 630 of 2010** required the disclosure of a report or record concerning child abuse or neglect to the Division of Parole and Probation if, as a result of a report or investigation of suspected child abuse or neglect, the local department of social services has reason to believe that an individual who lives in or has a regular presence in a child's home is registered on the sexual offender registry based on the commission of an offense against a child. For a more detailed discussion of this issue, see the subpart "Family Law" within Part F – Courts and Civil Proceedings of this *Major Issues Review*.

### **Child Advocacy Center**

A child advocacy center is a child-focused entity within or outside a health care facility that investigates, diagnoses, and treats children who may have been abused or neglected. **Chapter 453 of 2010** required the Governor's Office of Crime Control and Prevention to establish and sustain child advocacy centers in the State. For further discussion of this issue, see the subpart "Criminal Procedure" within Part E – Crimes, Corrections, and Public Safety of this *Major Issues Review*.

### **Child Support**

In order to ensure that State law conforms with regulations adopted by the federal Office of Child Support Enforcement and to avoid a substantial loss of federal funds, **Chapter 508 of 2009** required a court to include in any support order that is established or modified a provision requiring one or both parents to include the child in the parent's health insurance coverage if (1) the parent can obtain health insurance coverage through an employer or any form of group health insurance coverage; (2) the child can be included at a "reasonable cost" to the parent; and (3) the health insurance coverage is "accessible" to the child. If health insurance coverage at a reasonable cost is not available at the time a support order is established or modified, the court (1) may require one or both parents to include the child in the parent's health insurance coverage if health insurance coverage at a reasonable cost becomes available in the future; and (2) shall require one or both parents to provide cash medical support in an amount not to exceed 5% of the actual income of the parent ordered to provide cash medical support. The grant for Child Support Enforcement Services to the State, which totaled \$81.8 million in fiscal 2009, and the grant for TANF, which totaled approximately \$229.1 million in fiscal 2009, were at risk of being suspended in Maryland if State law did not conform to federal requirements.

Maryland had not updated its child support schedule since it, under mandate from the federal government, adopted guidelines in 1989. **Chapters 262 and 263 of 2010** revised the



schedule of basic child support obligations used to calculate child support amounts under the State’s child support guidelines. *Chapters 262 and 263* established that the adoption or revision of the child support guidelines is not a material change of circumstance for the purpose of a modification of a child support award. For a more detailed discussion of this issue, see the subpart “Family Law” within Part F – Courts and Civil Proceedings of this *Major Issues Review*.

The Child Support Enforcement Administration (CSEA) is authorized to certify to the State Comptroller that any obligor is in arrears in paying child support if the amount of the arrearage exceeds \$150. The State Comptroller may withhold the amount of the arrearage from any payment or tax refund due to the obligor and forward the amount to CSEA. *Chapter 717 of 2010* extended the interception program to include the value of any abandoned property that is held by the State Comptroller. For further discussion of this issue, see the subpart “Family Law” within Part F – Courts and Civil Proceedings of this *Major Issues Review*.

### **Medicaid Rehabilitation Services**

The Medicaid Rehabilitative Services Option (Rehab Option) authorizes states to tailor community-based care to address specific physical and/or mental disabilities with the goal of ensuring that individuals covered by the benefit may achieve their best functioning level. Funding for the Rehab Option was affected by cost containment actions in the first two years it was budgeted. The fiscal 2008 allowance included \$20.5 million in funding but was reduced to \$12.5 million in a series of cost containment reductions. The fiscal 2009 allowance of \$18.7 million was similarly reduced to \$6.5 million. The fiscal 2010 allowance funded the program at the reduced 2009 level of \$6.5 million. In fiscal 2011, the Rehab Option funding was consolidated with other programs to form a new program called Wraparound Maryland, which will fund services for children in all jurisdictions and which will serve both children in State custody and those not in State custody. Funding for Wraparound Maryland totals \$14.4 million in fiscal 2011.

### **Out-of-home Placements**

Legislation enacted during the past four years continued to increase State oversight of residential child care programs. DHMH, DHR, the Department of Juvenile Services (DJS), and the Governor’s Office for Children (GOC) are involved in the licensure, monitoring, and placement of children in these programs.

*Chapter 133 of 2007* required GOC, in cooperation with specified stakeholders, to develop recommendations for certification of direct care staff employed by residential child care programs. The recommendations included professionalizing the role of direct care workers to attract and retain dedicated individuals to this field of work. *Chapter 133* required DHMH, DHR, DJS, and GOC to jointly adopt regulations related to residential child care program direct care staff. Specifically, each direct care staff member must be at least 21 years old and complete a training program that is approved by the licensing agency.

*Chapter 18 of 2010* added employees and employers of a licensed home health or residential service agency, authorized to provide home- or community-based health services for

minors, to the list of entities that must apply for a national and State criminal history records check. **Chapter 18** also expanded this requirement to include employees and employers of privately operated recreation centers or programs. For further discussion of this issue, see the subpart “Family Law” within Part F – Courts and Civil Proceedings of this *Major Issues Review*.

In order to redirect focus from the responsibilities of residential child care program providers to the rights of children served in these facilities, **Chapter 207 of 2008** required a residential child care provider, including those licensed by DDA, to conspicuously post a “Residents’ Bill of Rights” in the facility. The bill of rights established a resident’s right to be treated fairly and receive appropriate educational and guidance services in an environment that is free of discrimination or abuse. The resident and the resident’s family have a right to communicate with each other, as appropriate, and express their opinion of the services provided. **Chapter 207** required residential child care providers to develop and distribute a handbook that included specified information regarding the provider’s policies and procedures and to document the receipt of the handbook by each child receiving care and the child’s parents or guardians.

With the goal to promote the growth of residential child care programs (e.g., group homes) in underserved areas, while limiting further expansion in areas with greater concentrations of existing providers, **Chapter 454 of 2008** required DHR and DJS to issue a county-specific statement of need before (1) a residential child care program is issued a license; (2) an existing program is relocated; (3) an existing site is expanded; or (4) the number of placements in an existing program is increased. **Chapter 454** required DHR and DJS to consider the special needs of the affected children and consult with relevant stakeholders when developing a statement of need.

Chapter 536 of 2004 required GOC, in cooperation with DHR and DJS, to plan for and determine the cost of an objective and standardized system of outcomes evaluation for out-of-home placements used by State agencies. **Chapter 133 of 2007** required DHR, DJS, and GOC to develop, coordinate, and implement a system for outcomes evaluation by July 1, 2008, to measure the effectiveness of residential child care programs. GOC managed the ongoing work of the group and develop a data collection system known as the Children Services Outcome Measurement System. **Chapters 591 and 592 of 2009** required GOC to measure the effectiveness of “treatment foster care homes” based on the existing “systems for outcomes evaluation” process currently used for residential child care programs. Beginning July 2011, this requirement will expand to include residential programs operated by or under contract with DJS and foster care homes approved by a local department of social services.

Due to the various incident reporting systems used by DHR, DJS, and DHMH, there is concern that the best interests of children in out-of-home placements are not being met because treatment decisions may be made without knowledge of all of the relevant incident reports that have generated on a particular child. **Chapter 567 of 2010** required DHMH, DJS, and DHR, in conjunction with licensed providers of residential child care services, to establish an interagency workgroup to develop a uniform reporting system to be used by any State agency that licenses or purchases care and services for children who are placed in State-licensed residential facilities. The workgroup must also recommend regulations that require the interagency sharing of certain

incident reports and that require any department that licenses or monitors residential child care facilities to adhere to specific incident reporting policies and practices. **Chapter 567** required the workgroup to report its findings and recommendations on or before September 1, 2011, to GOC, the Governor, and the General Assembly.

Chapter 438 of 2004 created the State Board for Certification of Residential Child Care Program Administrators within DHMH. In general, child care program administrators are required to be certified on or after October 1, 2007. Certificates may be renewed for two-year periods. The number of administrators the board has certified is significantly less than the estimate at the time of the board's establishment. Since special-fund boards have to set fees to cover their costs, this reduction in the estimated number of certified administrators would have necessitated a significant increase in the certification fee. To avoid this occurrence, **Chapters 204 and 205 of 2007** required the board to be supported by general funds instead of special funds by repealing the State Board for Certification of Residential Child Care Program Administrators Fund. Although the board retains its fee-setting authority, it no longer has to set its fees to cover its direct and indirect costs. **Chapter 218 of 2008** expanded the purview of the State Board for Certification of Residential Child Care Program Administrators to include the certification of residential child and youth care practitioners, and required practitioners to be certified by the board no later than October 1, 2013, and renamed the board as the State Board for Certification of Residential Child Care Program Professionals. **Chapter 218** also required the certification of an individual assigned to perform direct responsibilities related to activities of daily living, self-help, and socialization skills in a residential child care program licensed by DDA.

**Chapter 644 of 2007** extended the tuition waiver program for children in foster care homes to foster care children in out-of-home placements. In order to provide an incentive for foster parents to adopt an entire family of children, and accordingly, keep families together, **Chapters 251 and 252 of 2009** expanded eligibility for tuition and mandatory fee waivers for public institutions of higher education in Maryland to younger siblings of foster care recipients who have been adopted by the same family. To be eligible, the foster care children must share one or both parents before the adoption and be adopted from an out-of-home placement, at the same time, by the same family. **Chapters 251 and 252** also expanded eligibility to foster care recipients who were adopted from an out-of-home placement after their thirteenth, rather than fourteenth, birthday.

### **State Citizens Review Board for Children**

The State Citizens Board of Review of Foster Care for Children examines the policies, procedures, and cases of State and local agencies to evaluate the extent to which State and local agencies are effectively discharging their child protection responsibilities. A local board of review monitors cases of children who live in an out-of-home placement under its jurisdiction. A local government may establish a local citizens review panel to assist and advise the State board and the State Council on Child Abuse and Neglect. In an effort to conform State law with changes in the federal Child Abuse Prevention and Treatment Act and to enhance implementation of the State Child Welfare Accountability Act of 2006, **Chapter 153 of 2007**

(1) renamed the State Citizen Board of Review of Foster Care for Children as the State Citizens Review Board for Children (CRBC); (2) expanded CRBC's duties to include examining the practices of State and local agencies and reviewing specific cases; (3) required local boards to monitor services provided to a child in aftercare following out-of-home placement; and (4) expanded the duties of local citizen review panels to include carrying out case reviews.

### **Post Adoption Support Services Pilot Program**

Post adoption support services are medical treatment, mental health services, parenting classes, or any other direct services provided by DHR after a child is adopted that aid an adopted child or adoptive family in which an adopted child is in crisis and assist in preventing the child from being returned to DHR's care and supervision. *Chapter 444 of 2007* established a Post Adoption Support Services Pilot Program within DHR to provide post adoption support services to adopted children and their families and to provide additional State funds for adopted children. An adopted child or adoptive family is eligible for post adoption support services if the adoption was without prior termination of parental rights and was ordered by a juvenile court.

*Chapter 411 of 2009* expanded the eligibility for post adoption support services to all adoptions in the State. In order to ensure the equitable distribution of funds, DHR (1) must allow the delivery of post adoption services to at least 125 families and may award up to \$2,000 to each family; (2) must dedicate 80% of the funds to families of children adopted through local departments and 20% of the funds to remaining adoptive families; and (3) after October 31, 2009, but before November 30, 2009, must evaluate the distribution of funds as set forth above, and may reallocate funds if necessary to achieve an equitable distribution. *Chapter 411* extended the termination date of the program until December 31, 2010.

### **Family Day Care Homes and Child Care Centers**

According to Save the Children, a nonprofit child advocacy organization, over 11 million children in the United States under the age of five are in some type of child care arrangement while their parents work, yet most states have not taken necessary steps to ensure that child care facilities are prepared to respond to the needs of children in the event of emergencies. *Chapters 247 and 248 of 2009* required the Maryland State Department of Education (MSDE) to adopt regulations requiring family day care homes and child care centers to have written emergency preparedness plans for emergency situations that require the evacuation, sheltering in place, or other protection of children. Before adopting the regulations, MSDE and the State Superintendent of Schools were required to consult with the Maryland Emergency Management Agency, the Maryland Emergency Management Association, the Maryland Institute for Emergency Medical Services Systems, and the Maryland Department of Disabilities.

In order to codify an executive order and a resulting memorandum of understanding, *Chapter 496 of 2010* established collective bargaining rights for "family child care providers" who participate in Maryland's Child Care Subsidy Program. *Chapter 496* authorized family child care providers to designate which provider organization, if any, is to be the exclusive representative of all family child care providers in the State. For a more detailed discussion of

this issue, see the subpart “Personnel” within Part C – State Government of this *Major Issues Review*.

According to the U.S. Consumer Product Safety Commission, almost once a month a child between seven months and 10 years dies from window cord strangulation and another child suffers a near strangulation. **Chapters 326 and 327 of 2010** required that all new and replacement window coverings installed in a foster home, family day care home, or child care center in the State, on or after October 1, 2010, be cordless. **Chapters 326 and 327** required window coverings in place before the law’s effective dates to meet minimum safety standards established in regulations jointly adopted by DHR and MSDE.

**Chapter 242 of 2010** altered the requirements for regulations that MSDE must adopt relating to inspections of family day care homes and child care centers. For registered family day care homes, the regulations required announced inspections prior to the issuance of an initial or continuing registration and repealed the requirement for announced inspections at least every two years afterwards. For child care centers, **Chapter 242** specified that announced inspections are to be made prior to issuing the initial or continuing license or letter of compliance and repealed the requirements for announced inspections of these child care centers every two years afterwards. For further discussion of this issue, see the subpart “Family Law” within Part F – Courts and Civil Proceedings of this *Major Issues Review*.

### **Childhood Obesity**

During the 2007-2010 legislative term, the General Assembly demonstrated its commitment to address the increasing rates of childhood obesity. **Chapter 473 of 2008** established a Task Force on Student Physical Fitness in Maryland Public Schools to study, in addition to other issues, the effects on childhood obesity and related health issues of requiring students to participate in a minimum amount of physical activity or physical education each week. In addition, **Chapter 535 of 2008** established a Committee on Childhood Obesity in DHMH. **Chapter 535** required the committee to report to the Governor and the General Assembly on or before December 1, 2009, on (1) the insurance reimbursements paid to health care providers to diagnose and treat childhood obesity; (2) a system for collecting, analyzing, and maintaining statewide data; (3) best and promising practices; (4) methods to enhance public awareness of the chronic diseases related to childhood obesity; and (5) methods to increase the rate of obesity screenings for children.

### **Joint Committee on Children, Youth, and Families**

The Joint Committee on Children, Youth, and Families is charged with identifying State policies and actions that promote conditions of well-being for Maryland’s children, youth, and families. The joint committee must report on its work and any recommendations to the General Assembly by December 1 of each year. The joint committee was scheduled to terminate on June 30, 2009. **Chapters 63 and 64 of 2009** repealed the termination date.



## Part K

# Natural Resources, Environment, and Agriculture

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### Natural Resources

#### Chesapeake Bay Restoration

The Chesapeake Bay is North America's largest and most biologically diverse estuary. It is home to more than 3,700 species of plants and animals, contains more than 11,000 miles of tidal shoreline, and is fed by more than 100,000 creeks, streams, and rivers from six watershed states (Maryland, Delaware, Pennsylvania, New York, Virginia, and West Virginia) and the District of Columbia. Over the past several decades, the health of the bay has degraded significantly as a result of nutrient (nitrogen and phosphorus) and sediment pollution from wastewater treatment plants, agricultural land, and stormwater runoff.

Regional efforts to improve water quality and restore the bay date back to the early 1980s; however, these efforts have failed to make significant progress. A flurry of federal action in 2009, including a new multi-year and multi-state compliance and enforcement strategy developed by the U.S. Environmental Protection Agency, has provided new direction to the bay restoration effort. In addition, the State has taken a variety of steps to mobilize new resources and institute programs that improve the health of the bay.

The creation of a fund to finance bay restoration efforts focused on nonpoint source pollution was proposed in both the 2007 regular and special sessions. *Senate Bill 901/ House Bill 1220 of 2007 (both failed)* would have established a dedicated fund, commonly referred to as the Green Fund, to provide funding to various State agencies and the Chesapeake Bay Trust for specified bay restoration and growth management activities. The fund would have been financed by an impervious surface fee assessed on "new impervious surface" development, including the construction of new buildings, dwelling units, roads, parking lots, driveways, and any other impervious surfaces created as a result of residential, commercial, industrial, or other development.

*Chapter 6 of the 2007 special session* established a Chesapeake Bay 2010 Trust Fund, financed with a portion of existing revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals, to implement the State's tributary strategy. However, the Act did not provide specific direction for how the funds must be spent. *Chapters 120 and 121 of 2008*

provided a framework for how the trust fund money must be spent by specifying that it be used for nonpoint source pollution control projects and expanding it to apply to the Atlantic Coastal Bays. Under the Acts, trust funds must be distributed (1) through competitive grants to counties, bi-county agencies, municipalities, forest conservation district boards, soil conservation districts, academic institutions, and nonprofit organizations having demonstrated ability to implement nonpoint source pollution control projects; (2) to the Maryland Agricultural Water Quality Cost Share Program within the Maryland Department of Agriculture (MDA); (3) to the Woodland Incentives Fund within the Department of Natural Resources (DNR); and (4) to the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, a special fund in the Maryland Department of the Environment (MDE) established by the Acts to provide financial assistance for urban and suburban stormwater management practices and stream/wetland restoration. For further discussion about the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, see the subpart “Environment” of this Part K.

### **Chesapeake and Atlantic Coastal Bays Critical Area**

Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program to minimize damage to water quality and wildlife habitat by fostering more sensitive development activity along the shoreline areas of the Chesapeake Bay and its tributaries. The law identified the “critical area” as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. Viewed as particularly sensitive were the “buffer areas” falling within 100 feet of the shoreline. Each local jurisdiction is charged with the primary responsibility for development and implementation of its own local critical area program; that local authority, however, is subject to review and approval by the Chesapeake and Atlantic Coastal Bays Critical Area Commission. In 2002, the critical area program was expanded to include the Atlantic Coastal Bays.

#### **Variations**

In some cases, before a person may develop land in the critical area, they must obtain a variance from the local jurisdiction. Local jurisdictions are required to send all applications for variances to the commission for review and comment, but the commission does not approve variances. A local hearing examiner or board of appeals generally reviews a request for a variance, and may not grant the variance unless several conditions and requirements are met. According to the commission, the vast majority of applications for variances in the critical area are approved by local jurisdictions. *Chapter 221 of 2007* clarified that the standards set out in State law apply to, and must be applied by, local jurisdictions in the consideration, processing, and decision on an application for a variance. The Act took effect June 1, 2007, but applied retroactively to any applications for critical area variances with the exception of property in the North Shore Community of Anne Arundel County for which a variance was applied for in 2003.

#### **Statute of Limitations**

State law specifies that prosecution of a misdemeanor and prosecution or suit for a fine, penalty, or forfeiture must be instituted within one year of the offense being committed. In Anne Arundel County, the one-year statute of limitations for environmental protection or conservation-related violations of local laws in the critical area hindered the county’s ability to



successfully prosecute violations when delayed discovery of violations could prevent a court action from being instituted within one year. *Chapter 550 of 2007* provided a statute of limitations of three years for the prosecution for an offense that occurs in the critical area and is a violation of a certain local law in Anne Arundel County that relates to environmental protection or natural resource conservation. In addition, the Act required that a contract for sale of the real property where the violation occurred disclose information about the violation.

### **Administration and Enforcement**

A May 2006 University of Maryland School of Law report highlighted a number of limitations of and weaknesses in the critical area law due to a lack of enforcement combined with other weaknesses in the statute. A February 2008 report released by the Chesapeake Bay Foundation recommended, among other things, that the Governor and the General Assembly reform the critical area law to ensure consistent application of the law and provide more robust and equitable enforcement. *Chapter 119 of 2008* addressed these concerns by providing greater authority to the commission, updating the basic components of the program, enhancing buffer and water quality protection, coordinating new development more closely with growth management policies and other environmental protection and planning processes, and strengthening enforcement and variance provisions. Among other things, the Act:

- provided explicit authority to the commission to adopt and amend regulations to administer and enforce the program;
- required local programs to follow the State minimum requirements for all elements of their programs;
- established reporting and notice requirements for local jurisdictions;
- recast limits for “impervious surfaces” in terms of “lot coverage” to allow for technological improvements in paving materials, while generally maintaining ceilings on development;
- established new buffer provisions (including expanding the buffer from 100 feet to 200 feet) with respect to an application for subdivision or site plan approval within the Resource Conservation Area that does not involve the use of growth allocation, with specified exceptions;
- required shore erosion control projects to be nonstructural, with some exceptions;
- enhanced enforcement and penalty provisions by requiring local programs to establish administrative enforcement procedures; and
- altered variance procedures, especially relating to after-the-fact variances.

## Program Open Space

### State Program

Program Open Space (POS), established in 1969 and administered by DNR, provides funds for State and local conservation acquisitions and development of public outdoor recreational sites, facilities, and open space. The POS State share focuses on the acquisition of land for natural resource conservation with the inclusion of low-impact recreational activities where appropriate. The POS local share is used primarily by local jurisdictions to acquire and develop high-impact recreational sites and facilities. While bond funds are sometimes provided, POS is typically funded through special funds derived from the State's transfer tax which imposes a 0.5% tax on all real property recorded in the State. *Chapter 270 of 2007* expanded the allowable uses of POS State acquisition funds to the elimination of hazards to health and safety (including the treatment and removal of hazardous materials) and implementation of water quality protection improvements (including shore erosion control measures and vegetated buffers). The cost to perform these activities may not exceed 10% of the purchase price of the land.

### Local Program

One-half of any local jurisdiction's annual POS funding allocation must be used for acquisition or development projects; and, up to 20% of these funds may be used for capital renewal. If DNR and the Maryland Department of Planning certify that acquisition goals set forth in the current, approved local land preservation and recreation plan (LPRP) have been met and that the acreage attainment equals or exceeds the minimum recommended acreage goals developed for that jurisdiction under the Maryland LPRP, a local governing body may use a portion of its future annual apportionment for development projects for five years after attainment. *Chapter 163 of 2008* increased the maximum percentage (from 75% to 100%) of POS funds that a local government may spend on development projects once it has attained its acreage acquisition goals. However, the Act terminated on May 31, 2010.

It has been DNR's longstanding practice to allow local jurisdictions to use POS funding for projects that facilitate the enjoyment of traditional outdoor recreation activities in an indoor setting, including indoor aquatic centers, community centers, golf course buildings, tennis facilities, and nature centers. During the summer of 2008, the Department of Legislative Services' Office of Legislative Audits suggested that DNR refrain from using POS to fund indoor recreational facilities that do not support outdoor recreation as a primary function until the Office of the Attorney General endorsed such use. In response, *Chapter 206 of 2009* authorized the use of local POS funds for indoor and outdoor recreation and open space purposes. The Act also established several stormwater and green building requirements for POS-funded indoor facilities. It altered State reimbursement provisions so that if a local governing body uses local POS funds for an indoor recreational facility located outside a priority funding area (PFA), the State must reimburse the local jurisdiction 50% of the total project cost. Further, if a local jurisdiction uses local POS funds for the acquisition of land inside a PFA and agrees to limit the amount of impervious surface on the land to no more than 10%, the State must reimburse the local jurisdiction 90% of the total project cost.

## Funding

As noted above, POS is typically funded through special funds derived from the State's transfer tax, which imposes a 0.5% tax on all real property recorded in the State. Over the legislative term, transfer tax revenues declined significantly due to the weakening housing market. As a result, the amount available for allocation to the programs also declined significantly. In addition, in order to help balance the fiscal 2010 and 2011 budgets, budget reconciliation legislation redirected transfer tax revenues to the general fund; however, most of the funds transferred were replaced with bond funding. Exhibit K-1 shows the distribution of annual transfer tax revenues to the various land conservation programs for fiscal 2008 through 2011 as well as the replacement of funds transferred to the general fund with general obligation (GO) bonds.

**Funds Redirected but Replaced with Bond Funding:** No transfer tax revenues were redirected to the general fund during the 2007 or 2008 legislative sessions. In order to help balance the fiscal 2010 budget, during the 2009 legislative session, **Chapter 487** redirected \$172.3 million in State transfer tax revenues to the general fund (\$70.0 million in POS State land acquisition unencumbered funds, \$71.3 million in fiscal 2009 POS State land acquisition funding, and \$31.0 million in fiscal 2010 transfer tax revenues). All but the \$70.0 million in POS State land acquisition unencumbered funds were replaced with GO bond authorizations. Instead, separate legislation (discussed below) authorized the issuance of \$70.0 million in POS revenue bonds for which debt services is paid from the State transfer tax. During the 2010 legislative session, **Chapter 484** redirected \$211.5 million in State transfer tax revenues to the general fund (\$153.1 million of unexpended fiscal 2010 funds, \$4.5 million of fiscal 2010 POS State land acquisition funding, and \$54.0 million in fiscal 2011 transfer tax revenues.) Most of the transferred funds (all but \$4.0 million) will be replaced over a multi-year period (from fiscal 2011 through 2013).

**Special Revenues Bonds:** In order to replace certain funds transferred through budget reconciliation legislation adopted during the 2009 session, **Chapter 419 of 2009** authorized \$70 million in bond funds for POS land acquisition and authorized the transfer of up to \$5 million of this amount to MDA's Maryland Agricultural Land Preservation Fund (MALPF). DNR is required to use these POS bond funds for State land acquisition that is supported by current appraisals and presents a unique opportunity due to reduced price, extraordinary location, or environmental value. MDA is required to use these POS bond funds for the purchase of easements that present a unique opportunity due to reduced price, extraordinary location, or agricultural value. Property transfer tax revenue must be used to pay principal and interest on the POS bonds prior to any other distribution. The Act specifies that transfer tax revenues allocated to only State POS land acquisition and MALPF, to the extent any debt service is attributable to MALPF, must be reduced by an amount equal to the debt service for the fiscal year.

**Exhibit K-1**  
**Distribution of Transfer Tax Revenues to Programs and GO Bond Replacement**  
(\$ in Millions)

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
<b>Revenues</b>				
Budgeted Revenue Estimate	\$188.58	\$166.30	\$114.74	\$149.89
Less Administrative Expenses	-5.66	-4.99	-4.66	-\$4.50
Attainment Adjustment	75.50	-51.96	-35.05	-52.64
Net Available for Allocation	<b>\$258.43</b>	<b>\$109.35</b>	<b>\$75.03</b>	<b>\$92.76</b>
<b>Allocations</b>				
<b>Program Open Space</b>				
POS Bonds Debt Service	\$0.00	\$0.00	\$0.00	\$6.80
POS Local	95.60	18.59	6.15	0.00
Forest and Park Service	0.00	21.00	21.00	21.00
Heritage Areas Authority	3.00	3.00	3.00	3.00
POS State Land Acquisition	61.76	20.87	10.57	0.00
POS State Rural Legacy	8.00	8.00	0.00	0.00
POS State Capital Development	24.64	9.52	0.00	0.00
POS State Park Operating	1.20	1.20	1.20	1.20
<b>POS Subtotal</b>	<b>\$194.21</b>	<b>\$82.18</b>	<b>\$41.92</b>	<b>\$32.00</b>
<b>Other Allocations</b>				
Additional State Land Acquisition	\$2.58	\$1.09	\$0.76	\$2.72
Agricultural Land Preservation	44.06	18.64	0.00	4.00
Additional Rural Legacy	12.92	5.47	0.00	0.00
Heritage Conservation Fund	4.65	1.97	1.37	0.00
<b>Other Subtotal</b>	<b>\$64.22</b>	<b>\$27.17</b>	<b>\$2.13</b>	<b>\$6.72</b>
<b>Total Transfer Tax Allocations</b>	<b>\$258.43</b>	<b>\$109.35</b>	<b>\$44.06</b>	<b>\$38.72</b>
<b>GO Bond Replacement – Fiscal 2011 and 2012 Pre-authorizations</b>				
POS State	\$0.00	\$0.00	\$0.00	\$11.41
POS Local	0.00	0.00	0.00	12.35
POS State Rural Legacy	0.00	0.00	8.00	8.00
POS State Capital Development	0.00	0.00	6.16	4.15
Agricultural Land Preservation	0.00	0.00	13.00	7.81
Additional Rural Legacy	0.00	0.00	3.81	4.64
Heritage Conservation Fund	0.00	0.00	0.00	1.67
<b>Total GO Bond Replacement</b>	<b>0.00</b>	<b>0.00</b>	<b>30.97</b>	<b>50.04</b>
<b>Total Funding</b>	<b>\$258.43</b>	<b>\$109.35</b>	<b>\$75.03</b>	<b>\$88.75</b>

**Use of Transfer Tax Revenues for the Maryland Park Service:** In recent years, budget constraints have limited funding for Maryland's State parks. **Chapter 2 of the 2007 special session** allocated the greater of 20% or \$21.0 million of the State transfer tax for the Maryland Park Service, enabling the service to, among other things, purchase equipment, contract for repairs, hire additional seasonal employees, convert existing contractual positions to permanent positions, and create a Civic Justice Corps program for at-risk youth to perform environmental restoration work in the parks.

## **Forest Conservation and Reforestation**

### **Forest Conservation Act**

Enacted in 1991, the Forest Conservation Act provides a set of minimum standards that developers must follow when designing a new project that affects forest land. Local governments are responsible for making sure these standards are met but may choose to implement even more stringent criteria. In general, the Act calls for a minimum amount of forest cover on development sites based upon the site's zoning and requires that a forest conservation plan be approved for a site before an application for sediment and erosion control or a subdivision is approved. Forest conservation plans contain several elements and generally require afforestation or reforestation of designated areas on the property.

In response to concerns regarding local enforcement of the Act, **Chapter 104 of 2008** required a local authority engaging in enforcement activity in accordance with the Act to give notice to DNR within 15 days after the start of the activity. In addition, **Chapter 104** expanded the information DNR must include in its annual statewide forest conservation report to include the number, location, and type of violations and type of enforcement activity, and to the extent practicable, the size and location of all conserved and planted forest areas submitted in an electronic geographic information system or computer aided design format.

DNR administers the State Forest Conservation Fund to facilitate the afforestation or reforestation requirements when an applicant cannot reasonably accomplish these requirements on- or off-site. In addition, a local approval authority may establish and administer a local forest conservation fund to apply in that local jurisdiction instead of the State fund. A State or local forest conservation fund consists of payments made by an applicant in lieu of performance of afforestation or reforestation requirements and penalties collected for noncompliance with specified forestry requirements.

**Chapter 466 of 2010** altered the rates for contributions to the State and local forest conservation funds by establishing higher rates for projects located outside PFAs. Project applicants paying into the State Forest Conservation Fund must pay (1) 30 cents per square foot of the area of required planting for a project inside a PFA; and (2) 36 cents per square foot of the area of required planting for a project outside a PFA. After September 30, 2014, project applicants paying into the State Forest Conservation Fund must pay (1) at a rate adjusted for inflation for a project inside a PFA; and (2) at a rate that is 20% higher for a project outside a PFA. When applicants pay into a local forest conservation fund, the rates must be (1) at least the same as the State Forest Conservation Fund for a project inside a PFA; and (2) at a rate that is 20% higher for a project outside a PFA. Local jurisdictions with contribution rates higher than

the minimum State contribution rate may use a rate for projects inside a PFA that is 20% lower than the rate for projects outside a PFA; however, they must still meet at least the State contribution rates. Additionally, local jurisdictions with contribution rates higher than the minimum State contribution rate may use a rate for projects outside a PFA that is 20% higher than the rate for projects inside a PFA.

In the past, after two years or three growing seasons, unused money deposited into local forest conservation funds had to be returned to the original contributor for specified tree planting. However, because counties with local forest conservation funds may implement even more stringent criteria, DNR advised that most counties did not return funds. *Chapters 283 and 284 of 2010* repealed the funding return requirement, effectively giving local programs the flexibility to implement tree planting efforts at the most strategic times.

### **No Net Loss of Forest Policy**

In a January 2007 report, the Maryland Transition Work Group on Environment and Natural Resources recommended that the State adopt a no net loss of forests goal through legislative and executive actions. In response, a No Net Loss of Forest Task Force was established to develop a plan, including programs and other necessary actions, to achieve and maintain a no net loss of forests. *Chapter 298 of 2009*, a result of the task force, required DNR to cooperate with forestry-related stakeholder groups to determine the meaning of no net loss of forests for any State policy and to develop proposals for creating a State policy on no net loss of forests. The Act also required DNR to submit a report on policies to achieve no net loss of forests in the State and amended several provisions of the Forest Conservation Act relating to the State and local forest conservation funds, exemptions, and requirements for special protection of specified trees, shrubs, plants, and sensitive areas. The report is due by December 1, 2011.

### **Sustainable Forestry**

In an effort to encourage sustainable forestry in the State, *Chapter 175 of 2009* modified provisions of law related to forestry operations and funding for forest conservation. Among other things, the Act required local agricultural preservation advisory boards and forest conservation district boards to meet annually with each other; modified right-to-farm provisions to include silvicultural (forestry) operations; authorized local forestry boards to impose fees to offset specified costs; encouraged the provision of incentives to promote in-state production of renewable energy; modified the allowable uses of the Forest or Park Reserve Fund to include offsetting the costs to DNR for developing and implementing a forest health emergency contingency program; and, expanded the Woodland Incentives Fund's revenue sources and uses. Finally, it modified the issues that may be addressed within the land use element of a local jurisdiction's comprehensive plan to include forestry and added the promotion of sustainable forestry management to the State Economic Growth, Resource Protection, and Planning Policy.

## Hunting and Fishing

### Hunting

Suburban development has added to an increase in the deer population because white-tailed deer thrive in habitats composed of woods and openings, and hunter access in those areas is limited. The high deer population has resulted in a marked increase in the number of human-deer conflicts, including deer-vehicle collisions, damage to crops and vegetation, and incidents of Lyme disease. In response to concerns about the growing deer population, legislation was enacted establishing two different mechanisms authorizing Sunday deer hunting with the intent of increasing the annual deer harvest.

The first Sunday hunting mechanism authorized the Department of Natural Resources (DNR) to allow for deer hunting on private property in specified counties on the first Sunday of the bow hunting season in November and the first Sunday of deer firearms season. In recent legislative sessions, legislation was adopted authorizing the use of this mechanism in additional counties, specifically Harford County (*Chapter 323 of 2008*) and Frederick County (*Chapter 291 of 2009*). In addition, *Chapter 666 of 2010* authorized a person to hunt deer on private property in Calvert, Charles, and St. Mary's counties on the first Sunday of the bow hunting season in November and *each* Sunday of the deer firearms season.

The second Sunday hunting mechanism authorized a person to hunt deer on private property in Dorchester County with a bow and arrow on the last three Sundays during open season in October and on the second Sunday in November. In recent legislative sessions, legislation was adopted authorizing the use of this mechanism in several additional counties, specifically St. Mary's County (*Chapter 346 of 2007*); Somerset, Wicomico, and Worcester counties (*Chapter 347 of 2007*); Washington County (*Chapter 94 of 2008*); Frederick County (*Chapter 291 of 2009*); Allegany and Garrett counties (*Chapter 139 of 2010*); Talbot County (*Chapter 366 of 2010*); and Calvert and Charles counties (*Chapter 666 of 2010*).

### Fishing

#### Shellfish Restoration

The Chesapeake Bay's oyster population acts as a natural filter and at its peak removed 133 million pounds of nitrogen annually. Affected by diseases, habitat loss, and harvest pressures, the oyster stock has declined to about 1% of historic levels, and the remaining oysters remove only about 250,000 pounds of nitrogen from the bay each year. Consequently, oyster restoration is an urgent priority for DNR. In fact, in December 2009, Governor Martin O'Malley proposed an Oyster Restoration and Aquaculture Development Plan designed to enhance oyster restoration for ecological purposes and encourage the development of aquaculture businesses, while continuing to support a more targeted and sustainable public oyster fishery. A number of legislative actions helped lead to the development of this plan.

**Oyster Management:** *Chapters 113 and 114 of 2007* established the Oyster Advisory Commission (OAC) within DNR to review the science and management issues relevant to oysters in the Chesapeake Bay. That legislation also required DNR to publish maps and

coordinates of areas closed to shellfish harvest and provide the publications to each tidal fish licensee who pays the oyster surcharge. Finally, the legislation repealed the license suspension authority of State courts and substituted administrative license suspensions.

**Buried Oyster Shell Dredging:** DNR is required to take measures that are best calculated to increase the productivity or utility of any part of the natural oyster bars of the State. These measures include identifying and using effective methods of cleaning diseased oyster bars, providing clean shell for the bars, and using hatchery produced oysters to replant sites. **Chapter 325 of 2008** required DNR to apply by December 1, 2008, to the Maryland Department of the Environment (MDE) and the U.S. Army Corps of Engineers for permits to dredge buried oyster shells, if recommended by OAC. Before making such a recommendation, OAC was required to review the findings of the draft Environmental Impact Statement concerning evaluation of oyster restoration alternatives for the Chesapeake Bay. Because of a delay in this review, **Chapters 211 and 212 of 2009** extended this deadline to July 1, 2009. DNR applied for and was granted a general baywide permit to recover previously placed shell and is awaiting a decision on a shell dredge permit application for a small test project at Man-O-War Shoals at the mouth of the Patapsco River.

**Oyster Shell Purchasing Program:** The 2007 interim report of OAC concluded that implementation of a large-scale oyster bar habitat rehabilitation program is necessary for oyster restoration in the bay. This program would be dependent on the availability of large quantities of oyster shell and alternate substrate materials. To make DNR more competitive in the oyster shell market, **Chapters 318 and 319 of 2009** repealed the 25 cent per bushel limit on DNR oyster shell purchases and required DNR to consult with OAC and the Tidal Fisheries Advisory Commission on the annual value DNR will pay for fresh oyster shells and for the transportation and placement of fresh oyster shells.

**Shellfish Leasing Program:** In September 2008, the Maryland Department of Agriculture, in consultation with DNR, MDE, the Department of Health and Mental Hygiene, the Maryland Aquaculture Coordinating Council, and the University of Maryland, published *Maryland Shellfish Aquaculture Plan: Enhancing the Environment through Private Sector Investment*. This report included nine recommendations about developing a sustainable fisheries industry while creating opportunity for prospective shellfish growers to establish aquaculture businesses in Maryland waters. An expanded sanctuary program, including increased aquaculture, was also recommended by OAC and in the Final Programmatic Environmental Impact Statement for Restoring Oysters to the Chesapeake Bay prepared by federal and State officials. **Chapters 173 and 174 of 2009** implement several of the recommendations in the report. Specifically, the legislation required DNR to identify and establish by regulation (1) public shellfish fishery areas on which leasing is prohibited; (2) Aquaculture Enterprise Zones for aquaculture leasing and submerged land aquaculture leases, which have no limits on proximity to natural oyster bars, county of location, corporate or out-of-state leaseholding, or acreage; and (3) aquaculture demonstration leases for educational, conservation, or ecological purposes. A leaseholder in an Aquaculture Enterprise Zone is not required to obtain water quality approval from MDE or a tidal wetlands permit.

As the State began to encourage aquaculture, concerns were raised about existing regulatory and statutory requirements that make it more difficult to establish an aquaculture



operation. For example, aquaculture operations sometimes require improved access to navigable waters and the development of working marinas. To develop a marina on State wetlands, a person must obtain a tidal wetlands license from the Board of Public Works (BPW). *Chapters 378 and 379 of 2010* authorize BPW to issue a tidal wetlands license for a specified development project to expand a marina that may not meet MDE's marina siting requirements under specified conditions. In addition, *Chapters 389 and 390 of 2010* exempt aquaculture activities for which a DNR permit has been obtained from the requirement to pay application fees when applying to MDE for wetlands and waterways permits or to BPW for a wetlands license. For further discussion of this legislation, see the subpart "Environment" within this Part K.

**License Revocation:** To strengthen the efforts of DNR to protect and enhance Maryland's native oyster population, *Senate Bill 342/House Bill 1191 of 2010 (both failed)* would have required DNR, under specified circumstances, to revoke a tidal fish license for commercial oyster harvesting for the offenses of (1) taking oysters located more than 200 feet within a closed or prohibited area; (2) taking oysters with gear prohibited in a specific area; (3) taking oysters by more than one hour outside of a time restriction; (4) taking oysters during closed seasons; and (5) taking oysters from a leased area by a person other than the leaseholder or the leaseholder's designee. The legislation also would have prohibited a person whose tidal fish license is revoked under the legislation from using or receiving a transfer of another tidal fish license to catch oysters. As passed by the Senate, *Senate Bill 342 of 2010* would have prohibited DNR from establishing any new oyster sanctuaries until April 1, 2011, reflecting concerns that DNR's Shellfish Leasing Program would take out of service a significant amount of productive bottom traditionally used for oyster harvesting.

**Dredge Devices – Oystering and Clamming in Atlantic Coastal Bays:** Maryland's coastal bays, often called the back bays, are shallow water lagoons behind Ocean City and Assateague Island. According to the Maryland Coastal Bays Program, more than 300 species of migratory waterfowl, songbirds, and birds of prey seek the shallow bays for food and shelter. Additionally, the shallow bays provide habitat for rare species of plants and animals as well as crabs, flounder, and clams. *Chapter 260 of 2007* prohibited a person from catching or attempting to catch clams or oysters by power dredge, hydraulic clam dredge, or other mechanical means in the Atlantic coastal bays.

**Update on DNR's Oyster Restoration and Aquaculture Development Plan:** In May 2010, DNR submitted regulations to the Joint Committee on Administrative, Executive, and Legislative Review (AELR) to clear the way for the implementation of the proposed plan. The proposed regulations significantly increase the State's network of oyster sanctuaries, identify areas open to leasing for oyster aquaculture, and identify areas off limits to leasing.

### **Diamondback Terrapin**

The diamondback terrapin is the only species of turtle in North America that spends its life in brackish water, which is salty but less so than sea water. Diamondback terrapins produce about 40 eggs per year and do not reach maturity until at least eight years of age. Survival rates during the first year are estimated to be as low as 20%. The low reproductive potential of terrapins indicates that females must reproduce for many years for the population to grow or

remain stable. The diamondback terrapin can live beyond 50 years. Legislation enacted in 2006 required DNR to adopt a fishery management plan for diamondback terrapin and to adopt regulations governing the harvest of diamondback terrapin that are consistent with the recommendations issued in 2001 by the Maryland Diamondback Terrapin Task Force. The regulations shortened the commercial season from nine months to three months, implemented a harvest permit system, and established a slot limit of four to seven inches for the harvest of terrapin. The slot limit was designed to protect and conserve reproducing female terrapins. Under the new regulations (effective August through October 2006), 14 permittees reported a terrapin harvest with a dockside value of approximately \$39,800.

*Chapters 117 and 118 of 2007* repealed the required fishery management plan and prohibited a person from taking or possessing diamondback terrapin for commercial purposes, but allowed a person to possess up to three for noncommercial purposes. The legislation did not prohibit (1) incidental catching of diamondback terrapin if they are immediately returned to the water; (2) the collection or possession of diamondback terrapin that is in accordance with the terms of a scientific or educational certificate or permit; or (3) the possession and breeding of diamondback terrapin by a person who holds a valid permit for aquaculture activities or captive wildlife breeding. The legislation required DNR to adopt regulations, in consultation with the Maryland Aquaculture Coordinating Council, for diamondback terrapin aquaculture and captive breeding before issuing any additional permits. The regulations were required to include verifiable safeguards to identify legally obtained diamondback terrapin, standards for husbandry, and standards for shipping diamondback terrapin.

### **Snapping Turtles**

*Chapter 269 of 2007* expanded DNR's authority with respect to snapping turtles by authorizing the Secretary of Natural Resources to adopt rules and regulations to restrict, permit, or prohibit catching, possessing, purchasing, transporting, or exporting snapping turtles.

### **Yellow Perch**

The yellow perch population in Maryland declined during the late 1970s and early 1980s. Regulations were adopted in the late 1980s restricting the size of yellow perch that could be caught by the commercial and recreational fisheries. Commercial harvesting is generally conducted during the spawning period, using fyke nets to catch the yellow perch as they congregate and migrate during the spawning process. DNR is required to prepare a fishery management plan for yellow perch. *Chapter 181 of 2007* required DNR to adopt regulations that provide a management strategy for yellow perch that enables yellow perch to migrate to historical spawning rivers and streams before spawning and that equitably allocates harvests of yellow perch between recreational and commercial harvesters. The management strategy was required to be based on objectives and management measures developed in consultation with stakeholders, and DNR was required to incorporate the management strategy into the fishery management plan for yellow perch.

## **Fishery Management Reform**

Subject to exceptions, a Chesapeake Bay sport fishing license must be obtained from DNR to fish for finfish in the Chesapeake Bay. Revenue generated from the sale of Chesapeake Bay sport fishing licenses is deposited into the Fisheries Research and Development Fund to be used for the replenishment, protection, and conservation of fish stocks caught by recreational anglers; enhancement of recreational fishing opportunities; and research regarding tidal fishery resources. A person at least 16 years old must obtain an angler's license to fish in the nontidal waters of the State. Revenue generated from the sale of angler's licenses is deposited into the State Fisheries Management and Protection Fund and used only for the scientific investigation, protection, propagation, and management of nontidal finfish.

**Licenses and Fees:** *Chapter 217 of 2007* temporarily increased the license fees for specific nontidal angler's licenses and sport fishing licenses. The legislation also urged DNR to consult with stakeholders through the Sports Fisheries Advisory Commission before spending the proceeds from fishing license fees. The legislation also established the Task Force on Fishery Management to oversee a full review of fishery management processes and develop legislative and other recommendations for methods to improve, modernize, and streamline fishery management. A number of the task force's recommendations led to the introduction of legislation. Many of these measures as discussed below.

Among other things, the task force recommended extending the temporary increase in fishing license fees and expanding the geographic scope of recreational fishing license requirements in response to federal angler registration requirements. *Chapter 465 of 2010* made the fee increases under *Chapter 217 of 2007* permanent. Additionally, to preempt a requirement for federal licensure, *Chapter 465 of 2010* expands the requirement to obtain specified recreational tidal fishing licenses to State waters of the Atlantic Ocean and the Atlantic coastal bays and tributaries. The legislation also modifies the duration, fees, and other terms of existing tidal and nontidal recreational fishing licenses and provides for a new special commercial fishing pier license. The legislation further requires specified individuals who fish recreationally in tidal waters and who are not required to obtain a license to register with DNR and provide DNR with specified information.

**Conflicting Law:** In its review, the Task Force on Fishery Management found that obsolete or contradictory laws and regulations have created management problems for DNR. *Chapter 208 of 2009* repealed and modified provisions of State fish and fisheries laws, primarily relating to the allowable manner, places, and times for harvest, and size limits for, certain species of fish (including crabs, oysters, and clams) that either are inconsistent with DNR regulations or fishery management plans, unnecessary, or obsolete.

**Recreational Fisheries Enforcement:** The task force also found that the statutory authority for recreational license suspensions differed for tidal and nontidal licenses, preventing DNR from streamlining and clarifying a process for suspending recreational fishing licenses. As a result, DNR had very rarely suspended recreational licenses. *Chapter 207 of 2009* harmonized DNR's authority to revoke or suspend recreational fishing licenses with respect to both tidal and nontidal recreational fishing licenses.

**Commercial Fisheries Enforcement:** *Chapter 453 of 2009* altered the grounds for suspension or revocation of a tidal fish license or authorization by requiring DNR to adopt regulations, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, governing the suspension or revocation of these licenses and authorizations. The regulations were required to include enhanced penalties for repeated violations of State fisheries laws and violations of provisions regulating species deemed to be in need of special protection (including striped bass, crabs, oysters, and menhaden). In addition, *Chapter 464 of 2009* increased the maximum fines applicable to misdemeanor violations of State fish and fisheries laws from \$500 to \$1,000 for a first violation, and from \$1,000 to \$2,000 for a second or subsequent violation. This legislation also allowed for restitution for the resource value of any fish injured, killed, or destroyed.

*Chapter 392 of 2010* altered the grounds for suspension or revocation of a tidal fish license to include a serious violation of a State or federal commercial fisheries law that results in a conviction or an accepted plea of *nolo contendere*. The legislation also prohibits an individual who is convicted of or receives an accepted plea of *nolo contendere* for a violation of federal or State fisheries law that results in a license suspension from using or receiving temporarily transferred tidal fish licenses during the period of suspension.

## Environment

### Water Quality

#### Bay Restoration

**Septic System Upgrades:** The Bay Restoration Fund was established by Chapter 428 of 2004 to reduce nutrient pollution in the Chesapeake Bay by upgrading the State's major wastewater treatment facilities with enhanced nutrient removal (ENR) technology and by upgrading septic systems with nitrogen removal technology. The fund is financed by a bay restoration fee (generally \$30 annually) assessed on wastewater facility users and users of septic systems and sewage holding tanks. Funds collected by wastewater facility users by the fee are used to support the issuance of bonds to provide for the capital improvements and other costs associated with upgrading wastewater treatment facilities. Of the revenue collected from users of septic systems and sewage holding tanks, 60% must be deposited into a separate account (the "Septics Account") within the fund primarily for making grants and loans to septic system owners to upgrade their systems to one utilizing the best available technology (BAT) for nitrogen removal. Statutory priority for funding from the Septics Account is given to failing systems in the Chesapeake and Atlantic Coastal Bays Critical Area and then to failing systems anywhere in the State that the Maryland Department of the Environment (MDE) determines are a threat to public health or water quality.

*Chapters 225 and 226 of 2008* expanded the uses of the Septics Account to include covering the cost of replacing multiple septic systems in the same community with a new "community sewerage system" that meets ENR standards. Under the Acts, funding may be provided if (1) the environmental impact of the septic system is documented by the local government and confirmed by MDE; (2) the community sewerage system is more cost effective

than upgrading the individual septic systems or the replacement of individual systems is infeasible; and (3) the new community sewerage system will only serve lots that have received a certificate of occupancy by October 1, 2008.

The Septics Account was tapped again for the implementation of *Chapter 280 of 2009*, which prohibits a person from newly installing or replacing a septic system on property in the critical area unless the installed system utilizes BAT for nitrogen removal. Under the Act, MDE was required to assist homeowners with money from the Septics Account if sufficient funds were available. In addition, the new law created a subtraction modification against personal income taxes for the cost of upgrading a septic system, less any assistance provided.

For a person required under *Chapter 280* to replace a failing septic system in the critical area with a system utilizing BAT, *Chapter 382 of 2010* required MDE to provide funding from the Septics Account for the *entire* cost difference between a conventional septic system and one utilizing BAT for calendar 2010 through 2012. Previously, MDE was only required to provide grants and loans for *up to* 100% of the cost difference. The Act also expressed the General Assembly's intent that MDE continue its practice of using an economic means test to determine the financial assistance awarded to a homeowner for the cost difference between a conventional septic system and one using BAT.

***Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund:*** In an effort to increase funding for bay restoration, *Chapter 6 of the 2007 special session* established a Chesapeake Bay 2010 Trust Fund financed with a portion of existing revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals. During the 2008 regular session, *Chapters 120 and 121* specified the uses of the fund and expanded the application of the fund to include the Atlantic Coastal Bays. The Acts also established a new special fund, the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, which is administered by MDE's Water Quality Financing Administration. The purpose of the fund is to provide financial assistance for the implementation of urban and suburban stormwater management practices and stream and wetland restoration. For additional discussion of *Chapter 6 of the 2007 special session* and *Chapters 120 and 121 of 2008*, see the subpart "Natural Resources" of this Part K.

### **Stormwater Management**

According to MDE, while nitrogen loading to the Chesapeake Bay from agricultural and wastewater sources in Maryland has been decreasing since 1985, stormwater runoff has been increasing from newly developed impervious surfaces. The State began reducing the adverse effects of stormwater runoff in 1982 with the passage of the Stormwater Management Act. State regulations followed in 1983, which required each county and municipality to adopt ordinances necessary to implement a stormwater management program.

Maryland's stormwater management regulations were significantly strengthened in 2000 with the adoption of the Stormwater Design Manual in State regulations. *Chapters 121 and 122 of 2007* attempted to further enhance the State's stormwater management program by requiring a new form of management practice known as environmental site design (ESD). ESD involves using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land

development on water resources. ESD is widely considered to be the leading and most stringent stormwater management framework employed in the United States today.

Because stormwater management systems and facilities are costly, *Chapters 121 and 122* also required MDE to evaluate options for a stormwater management fee system and an appropriate fee schedule necessary to improve enforcement of stormwater management laws. Subsequently, several bills were introduced to generate funding for stormwater management, including *Senate Bill 901/House Bill 1220 of 2007 (both failed)*, *Senate Bill 672/House Bill 1457 of 2009 (both failed)*, and *Senate Bill 686/House Bill 999 of 2010 (both failed)*. These bills would have established fees based on the amount of impervious surface on certain types of property. In turn, the fees would have been used to fund the remediation, upgrade, and expansion of stormwater management systems statewide.

Specifically, *Chapters 121 and 122* required MDE to promulgate regulations that require (1) the implementation of ESD to the maximum extent practicable; (2) the review and modification (if necessary) of planning and zoning or public works ordinances to remove impediments to ESD implementation; and (3) demonstration by developers that ESD has been implemented to the maximum extent practicable in a project. The law also established a comprehensive process for approving grading and sediment control plans as well as stormwater management plans to take into account the cumulative impact of both plans.

MDE was required by *Chapters 121 and 122* to seek the input of each county and municipality that operates a stormwater management program and work with interested parties to address any reasonable concern during the creation of the ESD regulations and model ordinances. Nevertheless, after the regulations were adopted on May 4, 2009, numerous concerns were raised by local jurisdictions, developers, and others. In general, the concerns related to the need for grandfathering of certain projects that have reached an advanced stage in the development process, the cost and feasibility of ESD, potential conflicts between the regulations' more stringent requirements for redevelopment projects and the State's ongoing smart growth efforts, and the costs of long-term maintenance for ESD practices.

To address some of these concerns, in March 2010 MDE submitted emergency regulations to the General Assembly's Administrative, Executive, and Legislative Review (AELR) Committee. On the grandfathering issue, the emergency regulations allowed local governments to incorporate waiver provisions into their ordinances for projects that have completed part of the development review process but have not received final approval by May 4, 2010. A grandfathered project that receives an administrative waiver may proceed with the development under the stormwater regulations in effect as of May 4, 2009. The emergency regulations also provided local governments with greater flexibility in addressing the new requirements for redevelopment projects by providing for alternative stormwater management measures under specified conditions.

In response to concerns that the emergency regulations would be substantially delayed, *House Bill 1125 of 2010 (failed)*, as amended in the House, would have generally codified the provisions of the emergency regulations. However, the AELR Committee approved the emergency regulations on April 6, 2010, and the bill's hearing in the Senate Education, Health, and Environmental Affairs Committee was subsequently cancelled.

## Wetlands and Waterways

Wetlands play a vital role in maintaining fish and wildlife habitat and migration, water quality, and the natural shorelines within the Chesapeake and Atlantic Coastal bays as well as in providing flood protection and protecting recreational opportunities. The Wetlands and Waterways Program within MDE administers the statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways, including the 100-year floodplain. The goal of the program is to avoid and minimize impacts associated with development and to mitigate those impacts that are unavoidable. Permits granted for work in privately owned wetlands are issued by MDE while licenses granted for work in State-owned wetlands are issued by the Board of Public Works (BPW).

**Fees:** Due to a significant ongoing reduction of personnel for the Wetlands and Waterways Program, the ability to process and evaluate permit applications in a thorough and timely manner had been in decline. *Chapter 142 of 2008* established application fees for various wetlands and waterways permits and licenses and a Wetlands and Waterways Program Fund to support a more efficient application process.

**Living Shorelines:** In its January 2008 interim report, the Maryland Commission on Climate Change recommended that the State begin to actively address the impacts of shore erosion induced by sea level rise. Current shore protection practices range from “hard” techniques, such as bulkheads, retaining walls, and riprap, to more soft alternatives such as “living shorelines” that combine marsh plantings with sills, grain fields, or breakwaters. Where site conditions are appropriate, living shorelines are the preferred method of shore protection because in addition to protecting the shoreline, they also trap sediment, filter pollution, and provide important habitats for both aquatic and terrestrial wildlife. *Chapter 304 of 2008* required the use of nonstructural shoreline stabilization methods in tidal wetlands except in areas designated by MDE mapping as appropriate for structural shoreline stabilization measures or in areas where a property owner can demonstrate to MDE that such measures are not feasible in accordance with regulations.

**Marine Contractors:** Generally, a person must have a contractor license issued by the Maryland Home Improvement Commission before acting as a contractor in the State. However, *Chapter 286 of 2010* established licenses specifically for marine contractors to be issued by a new Marine Contractors Licensing Board housed within MDE. Under the Act, all marine contractors will be licensed exclusively by the board and must register with the board by December 31, 2010. Marine contractors will need to qualify for licensure, apply for license renewal, and will be subject to penalties for certain violations. All fees and penalties are paid into the Wetlands and Waterways Program Fund for administration of the board.

**Aquaculture:** Generally, an individual may not engage in aquaculture unless permitted by the Department of Natural Resources (DNR). However, certain aquaculture activities may also trigger the requirement to obtain a wetlands license from BPW or a wetlands permit from MDE. *Chapters 389 and 390 of 2010* exempt aquaculture activities permitted by DNR from the requirement to pay application fees when applying for wetlands and waterways permits or licenses. In addition, the Acts require the Aquaculture Coordinating Council to report to MDE and the General Assembly by October 1, 2013, on the status of commercial aquaculture, the

fiscal impact of the fee exemption, and other findings and recommendations related to the law's implementation.

## **Air Quality**

### **Greenhouse Gas Emissions**

According to the Intergovernmental Panel on Climate Change and the U.S. Environmental Protection Agency (EPA), the world's temperatures are climbing and human activities are very likely contributing to this increase. Continued global warming is expected to affect sea levels and weather patterns, resulting in impacts on human health, the environment, and the economy.

Although several bills addressing greenhouse gas (GHG) reductions have been introduced in the U.S. Congress in recent years, to date, no federal legislation has been enacted. At the federal level, climate change policy consists largely of voluntary programs and partnerships to meet a national goal of reducing the intensity of GHG emissions. Because the federal government has not yet taken significant action on this issue, several states are moving ahead with their own efforts to reduce GHG emissions. California enacted landmark legislation in September 2006 to reduce GHG emissions in their state by 25% by 2020. A handful of other states have followed California's lead by establishing mandatory emission reductions through legislation, and several states have established statewide targets for such reductions.

In Maryland, bills to curb GHG emissions were introduced in the 2007 and 2008 sessions but were unsuccessful. *Senate Bill 409/House Bill 890 of 2007 (both failed)*, were modeled after the California legislation and would have established an Office of Climate Change within MDE to implement activities relating to the establishment of a statewide GHG emissions limit. By 2020, the State would have had to reduce statewide GHG emissions to 1990 levels. Similarly, *Senate Bill 309/House Bill 712 of 2008 (both failed)* would have established an Office of Climate Change within MDE, and MDE would have been required to adopt regulations to reduce GHG emissions by a minimum of 25% by 2020 and 90% by 2050 (from 2006 levels).

Then, in August 2008, the Maryland Commission on Climate Change issued its Climate Action Plan, which included a comprehensive assessment of climate change impacts in Maryland and a review and assessment of the costs of inaction. Most notably, the plan recommended the adoption of goals to reduce GHG emissions from 2006 levels by 10% by 2012; 15% by 2015; 25% to 50% by 2020; and 90% by 2050. These recommendations led to the enactment of *Chapters 171 and 172 of 2009*, which requires the State to develop plans, adopt regulations, and implement programs to reduce GHG emissions by 25% from 2006 levels by 2020. Under the Acts, MDE is required to implement various measures designed to ensure that the GHG reductions produce economic benefits for the State and do not adversely affect specified communities or economic interests. MDE is required to publish a GHG emissions inventory for the year 2006, a "business as usual" projection of GHG emissions for the year 2020, and a triennial inventory update beginning in 2011. The Acts require an academic study of the economic impact of the GHG emissions reductions on the manufacturing sector, with oversight provided by a newly created task force. The legislation also requires several reports on the need for, and progress toward, the 2020 GHG emissions reduction goal and any additional goal later



prescribed by law. The goal to reduce GHG emissions 25% below 2006 levels by 2020 terminates on December 31, 2016.

Exhibit K-2 provides a timeline for these activities and other key dates specified in the Acts.

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**Exhibit K-2**  
**Key Dates under the Greenhouse Gas Emissions Reduction Act of 2009**

<b><u>Date</u></b>	<b><u>Action</u></b>
June 1, 2011	Publish 2006 inventory and 2020 business as usual projection
December 31, 2011	MDE deadline to submit proposed reduction plan to Governor and General Assembly, following public workshops
Calendar 2011	MDE to publish 2011 inventory
January 1, 2012	MDE deadline to approve manufacturer GHG reduction plans for voluntary early action credits
December 31, 2012	MDE deadline to adopt final reduction plan
Calendar 2014	MDE to publish 2014 inventory
October 1, 2015	Deadline for submission of independent academic study of economic impact on manufacturing sector
October 1, 2015	MDE deadline for submission of report on progress toward 2020 reduction goal and other recommendations and analyses
December 31, 2016	Termination of the 2020 reduction goal
Calendar 2017	MDE to publish 2017 inventory
October 1, 2020	MDE deadline for submission of report on progress toward 2020 reduction goal, and toward achieving reductions needed by 2050 based on contemporary science
December 31, 2020	State deadline to reduce GHG emissions by 25% below 2006 level, unless otherwise specified
Calendar 2020	MDE to publish 2020 inventory
Calendar 2023	MDE to publish 2023 inventory
October 1, 2025	MDE deadline for submission of report on progress toward any further reduction goals required, if applicable, and toward achieving reductions needed by 2050 based on contemporary science

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Under *Chapters 171 and 172*, the final GHG emissions reduction plan may not require emissions reductions for the State's manufacturing sector or otherwise impose additional costs to the sector that are not already required under current law or associated with the Regional Greenhouse Gas Initiative (RGGI). In developing and implementing the plan, MDE must consider the impact on rural communities of any transportation-related measures, consider whether the measures would result in an increase in electricity costs to consumers in the State, and consider the impact of the plan on the ability of the State to attract, expand, and retain commercial aviation services and to conserve, protect, and retain agriculture. MDE must ensure that the GHG emissions reductions do not directly cause a loss of existing manufacturing jobs in the State.

### **Energy Conservation and Energy Efficiency**

In recent years, Maryland has taken numerous actions in an effort to reduce energy consumption and increase energy efficiency. For example, the Healthy Air Act of 2006 required the Governor to include the State in RGGI, a coalition created to reduce emissions of greenhouse gases from power plants in the region and invest in energy efficiency, renewable energy, and clean energy. The State joined RGGI in April 2007.

Despite these actions, the recent increases in the cost of electricity, warnings of electricity shortages as early as 2011, and the growing concern about the potential impacts of climate change led the Maryland Energy Administration (MEA) to develop a plan to identify various strategies to address the State's energy future. MEA released this *Strategic Electricity Plan* in January 2008. One of the central components of the *Strategic Electricity Plan* was the establishment of a Strategic Energy Investment Fund (SEIF) geared toward energy efficiency, renewable energy, and climate change reduction/mitigation.

As a result of the recommendations in the *Strategic Electricity Plan* and the work of the Maryland Commission on Climate Change, *Chapters 127 and 128 of 2008* established a Maryland Strategic Energy Investment Program and related special fund within MEA to be funded primarily with proceeds from the sale of allowances under RGGI. Among other things, MEA is directed to provide money to MDE to fund its climate change programs. In order to accommodate that provision, the Acts modified the revenue sources to MDE's Maryland Clean Air Fund and increased the cap on that fund from \$750,000 to \$2 million. As enacted, up to 10.5% of the SEIF was to be used by MEA for renewable and clean energy, energy-related public education and outreach, and climate change programs. However, this apportionment was reduced through budget reconciliation legislation up to 6.5% for fiscal 2010 through 2012. For an additional discussion of energy conservation and energy efficiency legislation, see the subpart "Public Service Companies" of Part H – Business and Economic Issues of this *Major Issues Review*.

### **Clean Cars**

Maryland programs combined with federal requirements have reduced mobile source emissions in Maryland significantly since 1990, even with a 40% increase in vehicle miles traveled. Despite this progress, much of the State remains in nonattainment of federal air quality

standards for ozone and particulate matter. Accordingly, mobile source pollution remains a concern.

Under federal law, new motor vehicles sold in the United States must be certified by the manufacturer under either Tier 2 (the federal program) or CALEV II (the current version of California's Low Emissions Vehicle (LEV) Program). Despite failed attempts during the 2003 through 2005 sessions, Maryland joined several other states in adopting the CALEV II standards with the enactment of *Chapters 111 and 112 of 2007*. The legislation required MDE, in consultation with the Motor Vehicle Administration (MVA), to establish by regulation a LEV program applicable to vehicles of the 2011 model year and each model year thereafter. The program must be authorized by Section 177 of the federal Clean Air Act. MDE, as part of the program, was required to establish motor vehicle emissions standards and compliance requirements for each model year included in the program. In consultation with the MVA, MDE was required to adopt regulations, and was authorized to adopt California's regulations, procedures, and certification data by reference and motor vehicle emissions inspection, recall, and warranty requirements. MDE was also required to adopt regulations to exempt motor vehicles from the program under specified conditions. In addition, MDE was authorized to adopt regulations to prohibit the transfer of new motor vehicles or motor vehicle engines not in compliance with the Acts. Regulations to implement the Acts were adopted in 2007.

The Acts also exempted specified zero emission vehicles from the Vehicle Emissions Inspection Program (VEIP) testing, extended the existing exemption for certain qualified hybrid vehicles, and, beginning October 1, 2012, provide that a qualified hybrid vehicle is not required to submit to VEIP until three years after the date on which the vehicle was first registered. Finally, the Acts established a Maryland Clean Car and Energy Policy Task Force to study the activities of neighboring states with respect to vehicle emissions standards, study regulatory actions by California and EPA relating to vehicle emission standards, and study emerging energy technologies. The task force terminates December 31, 2010.

### **Coal Combustion By-products**

Coal combustion by-products (CCBs) are noncombustible materials generated from burning coal which are generally either disposed of or beneficially used. According to MDE, between 2.0 million and 2.5 million tons of CCBs are generated each year in Maryland, primarily from nine coal-fired power plants. This amount is anticipated to increase as new and more effective environmental controls are installed at power plants to sequester CCBs from being emitted into the air from the combustion process. Beneficial uses of some CCBs include mine reclamation, structural fill applications, or as a substitute for cement in the production of concrete.

Under certain geologic conditions, some CCBs can produce high concentrations of potentially toxic constituents (such as arsenic, boron, cadmium, iron, lead, manganese, selenium, sulfate, and thallium) in soil that may leach into surface or groundwater. According to a 2007 report by EPA, groundwater contaminated with CCB waste poses a substantial cancer risk. In addition, without proper controls, MDE reports that coal ash released into the air in large quantities can create a public nuisance and/or cause respiratory problems.

To address these issues, MDE developed new CCB disposal regulations that took effect December 1, 2008. Generally, these regulations require CCB disposal facilities to meet the same technical standards required for industrial solid waste landfills and conform to local zoning and land-use requirements and each county's 10-year solid waste management plan. The regulations also address the use and disposal of CCBs in mine reclamation projects by imposing a number of standards that must be met at the site and by restricting such use and disposal to certain types of CCBs.

After the new regulations went into effect, MDE advised that they were not yet being fully implemented due to a lack of funds. Therefore, the General Assembly passed **Chapter 480 of 2009**, which established a fee per ton of CCBs generated each year. It also established a Coal Combustion By-Products Management Fund comprised of the fees collected. The fee must be adjusted annually by MDE to ensure that all revenues collected cover the cost to implement MDE's coal combustion management program without producing excess revenues. CCBs used for mine reclamation or beneficial uses are exempt from the fees. CCBs transported out-of-state are assessed at 50% of the fee.

In addition to developing the CCB disposal regulations, MDE began developing regulations to define beneficial uses of CCBs. **Chapter 717 of 2009** required MDE to submit these beneficial use regulations to the AELR Committee, as well as additional regulations to control fugitive air emissions from the transportation of CCBs, by the end of 2009. These regulations were proposed on September 25, 2009, and became effective on March 8, 2010.

Despite the recent regulatory actions, several bills were introduced during the 2010 session to further restrict the disposal and use of CCBs, but only one was adopted. **Chapter 741 of 2010** prohibits MDE from issuing a permit to install a new refuse disposal system that accepts CCBs for disposal or a new noncoal mine reclamation site that uses CCBs if the site is located in the critical area.

## **Environmental Standing**

Generally, a party to a civil action must be authorized to participate in the action, either by statute or by having common law "standing." "Standing" means that a party has a sufficient stake in a controversy to be able to obtain judicial resolution of that controversy.

Maryland law limits standing to those who are "aggrieved" by an agency decision. "Aggrievement" has been defined by court decisions to mean that the plaintiff has a specific interest or property right that has been affected by the disputed action or decision in a way that is different from the effect on the general public. With respect to cases involving challenges to specific types of environmental permits, Maryland courts define "aggrievement" to mean the ownership of property either adjacent to, or within sight or sound range of the property that is the subject of the complaint. The Court of Appeals has held that associations and organizations lack standing to sue where it has no property interest of its own, distinct from that of its individual members.

**Chapters 650 and 651 of 2009** expanded standing for individuals and associations and organizations in bringing challenges related to a license to dredge and fill on State wetlands, and

permits issued under the Environment Article pertaining to ambient air quality control, landfills/incinerators, discharge pollutants, structures used for sewage sludge storage or distribution, controlled hazardous substance facilities, hazardous materials facilities, low-level nuclear waste facilities, water appropriation and use, nontidal wetlands, gas and oil drilling, surface mining, and private wetlands. The Acts prohibit contested case hearing with respect to the licenses and permits described above and instead provide the right to judicial review. A person or an association may request judicial review if he/she meets the requirements for standing under federal law and is the applicant or participated in an applicable public participation process through the submission of written or oral comments. Standing is also expanded for persons to participate in certain buffer zone variance actions in the critical area.

## **Agriculture**

### **Agricultural Land Preservation**

The Maryland Agricultural Land Preservation Foundation (MALPF), which is a part of the Maryland Department of Agriculture (MDA), was established by the General Assembly in 1977 to purchase agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. In addition to funding from the State transfer tax, MALPF is funded with agricultural land transfer taxes, general obligation bonds, local matching funds, and federal funds. As of January 2010, MALPF had cumulatively purchased or had a pending contract to purchase conservation easements on 2,079 farms covering 283,169 acres. Several adjustments were made to MALPF during the 2007 through 2010 legislative sessions in order to improve program performance, diversify programmatic tools, and respond to program funding needs.

#### **Agricultural Districts**

Prior to July 1, 2007, an agricultural land owner was only eligible to sell a development rights easement to MALPF once the land had been placed within an agricultural preservation district. Requiring districts to be established prior to the transfer of an easement was originally intended to help anticipate needed funding levels and provide a supplementary mechanism for farmland protection. According to MALPF, however, many potential program participants were not willing to commit to the multiple year district agreement to restrict property to agricultural uses, particularly when there is a high level of uncertainty about program funding levels. *Chapter 650 of 2007* phased out district requirements by (1) specifying that effective July 1, 2007, districts may not be a requirement for the easement application process and (2) terminating all districts, as of June 30, 2012, except for those with easements that have been transferred to MALPF or those established by a county and a landowner for the purpose of providing a property tax credit to the landowner.

#### **Access to Records**

The Maryland Public Information Act grants the public a broad right of access to records that are in the possession of State and local government agencies. However, allowing public scrutiny of MALPF records can be problematic. Revealing landowners' asking prices provides information that allows competitors of the landowner and of MALPF to act to the detriment of

the landowner and the State. Also, revealing relative rankings during the easement acquisition cycle may create expectations, misperceptions, and possible controversy. **Chapter 17 of 2009** required that specified records related to the purchase of agricultural land preservation easements remain confidential until the end of the easement acquisition cycle.

### **Imposition of Civil Penalties**

MALPF is finding more violations on easement properties as the program matures and properties in the program are assumed by new owners. While there have been only a few willful violations, violation-related litigation and the seriousness of the violations have increased. **Chapter 24 of 2009** authorized the Board of Trustees of MALPF, after an opportunity for a hearing and a reasonable amount of time to correct the alleged violation, to impose a civil penalty on an owner of a property that is subject to an easement of up to \$2,500 per violation for specified violations, but not more than \$50,000 per administrative hearing.

### **Agricultural Land Transfer Tax**

The agricultural land transfer tax is collected by each county. In general, of the total collections, each county (except Montgomery) retains one-third of the funds and transfers the balance to the Comptroller. The Comptroller transfers up to \$200,000 of these funds to the Woodland Incentives Fund within the Department of Natural Resources and the remainder to the Maryland Agricultural Land Preservation Fund (MALPF's special fund). Montgomery County retains two-thirds of its funds and transfers the balance to the Comptroller. The monies retained by each county are generally used as local matching funds under the State agricultural land preservation easement program and for other approved county agricultural preservation programs.

**Chapter 610 of 2008** established a surcharge, equal to 25% of the agricultural land transfer tax, imposed on an instrument of writing that transfers the title to agricultural land. The surcharge, however, does not apply to transfers of two acres or less to a child or grandchild of the owner. **Chapter 610** also altered the distribution of agricultural land transfer tax revenues to include specified allocations to MALPF and to the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) for Installment Purchase Agreement (IPA) and Next Generation Farmland Acquisition programs. In addition, counties were encouraged to establish Priority Preservation Areas (PPAs) for agricultural land preservation and specified MALPF funding was restricted to use in PPAs after July 1, 2010.

**Chapter 210 of 2010** revisited several requirements set forth in **Chapter 610**. Specifically, **Chapter 210** repealed provisions requiring \$4 million to be dedicated to MARBIDCO's IPA program, expressing the General Assembly's intent that counties be encouraged to establish PPAs for agricultural land preservation and requiring new funds provided to MALPF for easement acquisitions to be used only in PPAs after July 1, 2010.

## **Reducing Nutrient Pollution**

### **Lawn Fertilizer**

Several states have adopted requirements to, at least in part, reduce the negative impact that phosphorus and nitrogen contained in fertilizer has on water quality. In 2006, the Chesapeake Executive Council (consisting of the Governors of Maryland, Pennsylvania, and Virginia; the Mayor of the District of Columbia; the U.S. Environmental Protection Agency Administrator; and the Chair of the Chesapeake Bay Commission), along with Delaware and West Virginia, signed a memorandum of understanding with members of the lawn care product manufacturing industry establishing a commitment to achieve by 2009 a 50% reduction (from 2006 levels) in the pounds of phosphorus applied in lawn care products in the bay watershed.

*Chapters 278 and 279 of 2009* prohibited, beginning on April 1, 2011, retail establishments from selling or distributing for use or sale fertilizer intended for use on established lawns or grass unless it is low phosphorous fertilizer; however, licensed landscaping contractors and their agents were made exempt. The Acts also prohibit, beginning on April 1, 2011, a lawn fertilizer with available phosphoric acid content greater than 5% from being labeled for use on established lawns or grass or with spreader settings. They also specify language concerning fertilizer application that must appear conspicuously on the fertilizer container. Seed starter fertilizer for use on newly established lawns or turf is exempt from the labeling requirements. By April 1, 2011, lawn care fertilizer manufacturers must reduce the amount of available phosphoric acid resulting from the application of their products in the State by 50% from 2006 levels; and manufacturers who begin to sell or distribute specified fertilizer in the State on or after April 1, 2010, must limit the average amount of available phosphoric acid resulting from the application within the State of the manufacturer's lawn care products to 1.5%.

### **Nutrient Trading on Agricultural Land**

Nutrient trading is a market-based approach for protecting and improving water quality that involves (1) establishing a total amount of allowable pollution in a specified area and allocating this amount among the participating sources; and (2) allowing sources to trade in ways that meet local and watershed-wide water quality goals. Once pollution allowances are allocated, sources with low-cost pollution reduction options have an incentive to reduce nutrient loadings beyond what is required of them and to sell the excess credits to sources with higher control costs. This framework allows sources facing high pollution reduction costs to purchase less costly reductions from other sources. *Chapter 447 of 2010* authorized MDA to establish requirements for the voluntary certification and registration of nutrient credits on agricultural land.

## **Promoting and Regulating Agricultural Products**

### **Farm-to-school Program**

Farm-to-school programs are designed to connect schools with local farms in order to improve student nutrition through the serving of healthy meals and educational opportunities and support local, small farmers. There has been growing interest at both the national and state level in healthy, fresh food options in schools. First Lady Michelle Obama's "Let's Move" national

campaign aimed at ending childhood obesity brought significant attention to this issue in 2009. **Chapters 371 and 372 of 2008** promoted and facilitated the sale of farm products grown in the State to Maryland schools by, among other things, requiring promotional events such as Maryland Homegrown School Lunch Week which promotes State agriculture and farm products to children through school meals, classroom programs, and student-farmer interactions.

### **Advertising Agricultural Products as Locally Grown – Regulatory Authority**

A 2009 statewide public opinion survey covering various policy issues found that 78% of Marylanders are more likely to select fresh fruit, vegetables, or other farm products in their local grocery store if the products are identified as grown by a Maryland farmer. However, advertising, particularly in retail stores, can be unclear. **Chapter 413 of 2010** authorized the Secretary of Agriculture to adopt standards to regulate the use of the terms “locally grown” and “local” to advertise or identify an agricultural product and prohibits a person from knowingly advertising or identifying any agricultural product in violation of those standards. Before adopting the standards, the Secretary must convene and consult with an advisory group of interested stakeholders to determine the definition of the term “locally grown.”



## **Part L Education**

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### **Prekindergarten through Grade 12 Education**

#### **State Education Aid**

State aid for public education increased from \$4.5 billion in fiscal 2007 to \$5.7 billion in fiscal 2011, an increase of 27.8% over the four-year term. The continued growth in State spending for public education was characterized by a very large increase in fiscal 2008 and smaller increases in fiscal 2009 through 2011. Cost containment measures adopted during the 2007 special session and the 2009 and 2010 sessions kept annual aid increases down in the more recent years, although rapid increases in teachers' retirement costs, the implementation of the geographic cost of education index (GCEI), and the establishment of new supplemental grants sustained the upward trend throughout the period. In addition, federal funds supported a total of \$719.7 million in education aid in fiscal 2010 and 2011 through the State Fiscal Stabilization Fund established under the American Recovery and Reinvestment Act of 2009 (ARRA). Without the federal dollars, funding the mandated increases in State education aid would have been very difficult given the severe economic recession.

Increases in State education aid from fiscal 2007 to 2011 are shown by major program in Exhibit L.1. In total, funding increased by more than \$1.2 billion and averaged 6.3% growth annually. However, the increases were uneven. More than half of the total increase over the four-year period (\$688.2 million) occurred in fiscal 2008 and can be attributed in large part to the final year of the phase-in of the Bridge to Excellence in Public Schools Act (Chapter 288 of 2002). Annual increases slowed considerably after fiscal 2008 due to the State's efforts to resolve a structural budget deficit and navigate the fiscal crisis brought on by the national recession. Still, education aid increased by \$553.9 million in fiscal 2009 through 2011, averaging 3.4% growth per year over the final three years of the term.

**Exhibit L-1**  
**Education Aid by Major Program**  
**Fiscal 2007-2011**  
**(\$ in Millions)**

<b><u>Program</u></b>	<b>Baseline</b>				
	<b><u>2007</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>	<b><u>2010</u></b>	<b><u>2011</u></b>
Foundation Program	\$2,493.2	\$2,782.7	\$2,791.0	\$2,726.7	\$2,763.5
Geographic Cost of Education Index	0.0	0.0	37.9	126.3	126.6
Supplemental Grants	0.0	0.0	26.6	51.2	46.5
Compensatory Education	726.7	902.1	914.4	940.2	1,041.1
Special Education Formula	231.8	280.0	272.7	267.4	264.0
Limited English Proficiency	88.8	126.2	143.9	148.6	151.2
Guaranteed Tax Base	60.5	78.9	89.9	63.8	47.4
Student Transportation	202.1	219.0	225.1	241.5	244.4
Nonpublic Special Education	116.5	120.1	127.6	112.8	112.8
Other Programs*	109.7	88.1	129.1	69.4	70.2
<b><i>Direct Aid Subtotals</i></b>	<b><i>\$4,029.3</i></b>	<b><i>\$4,597.1</i></b>	<b><i>\$4,758.2</i></b>	<b><i>\$4,747.9</i></b>	<b><i>\$4,867.6</i></b>
Teachers' Retirement	446.1	566.4	621.8	759.1	849.8
<b>Total</b>	<b>\$4,475.4</b>	<b>\$5,163.6</b>	<b>\$5,380.0</b>	<b>\$5,507.0</b>	<b>\$5,717.5</b>
Dollar Increase Over Prior Year		\$688.2	\$216.4	\$127.0	\$210.5
Percent Increase Over Prior Year		15.4%	4.2%	2.4%	3.8%

\*Fiscal 2007 includes \$19.3 million in Extended Elementary Education Program funding that was folded into the compensatory education program in 2008. Fiscal 2009 includes \$38.0 million in special grants provided to offset an equivalent Board of Public Works reduction to the Geographic Cost of Education Index.

Source: Department of Legislative Services

**Retirement Payments Increase While Growth in Direct Aid Is Constrained**

Another pattern seen in Exhibit L.1 is the rapid increase in retirement costs for teachers and other school employees. The State pays these costs on behalf of the 24 local school systems. In fiscal 2007, retirement payments made up 10.0% of total education aid. From fiscal 2007 to 2011, the increase in retirement costs amounted to \$403.7 million and made up approximately one-third of the \$1.2 billion increase in State education spending. The 90.5% increase over the four-year period was fueled by increases of 30.9% in the salary base of school personnel and 47.7% in the State's retirement contribution rate, which rose from 9.71% of salaries in fiscal 2007 to 14.34% by fiscal 2011. Although annual increases in the teacher salary base are

expected to slow, the State's contribution rate is expected to continue climbing in the coming years due to weak investment returns in fiscal 2008 and 2009 and the resultant increase in the pension system's unfunded liabilities.

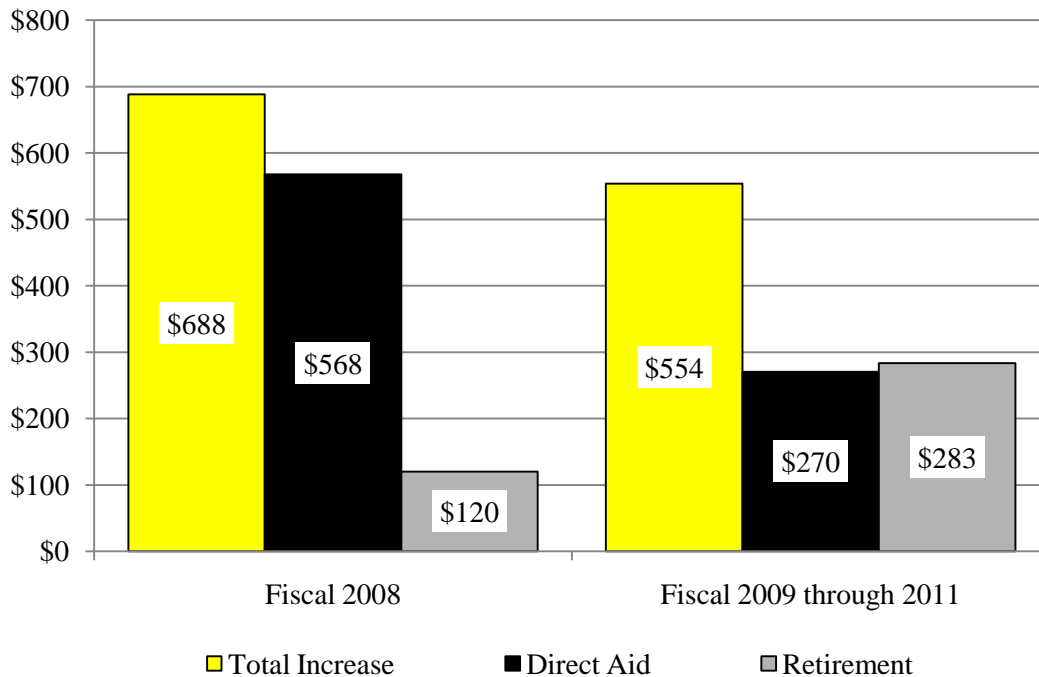
Over the same period that teachers' retirement costs increased by 90.5%, State aid provided directly to the local school systems increased by \$838.3 million, reflecting a more modest but still sizeable 20.8% growth rate. More than two-thirds of this increase, \$567.9 million, occurred in fiscal 2008 driven by the final phase-in year of the Bridge to Excellence Act. After the completion of the Bridge to Excellence phase-in, education aid was scheduled to adjust annually to reflect inflationary increases and changes in enrollment patterns. However, in response to a structural budget deficit, *Chapter 2 of the 2007 special session*, the Budget Reconciliation Act, eliminated the inflation factor used in most of the aid formulas for fiscal 2009 and 2010 in order to limit cost increases during these years.

Direct State education aid was then further constrained by *Chapter 487 of 2009*, the Budget Reconciliation and Financing Act (BRFA), which lowered the State's share of nonpublic special education placement costs and capped the fiscal 2010 rates paid to nonpublic placement providers at no more than 1% above the fiscal 2009 rates. The following year, *Chapter 484 of 2010*, the 2010 BRFA, prohibited any increases in rates for nonpublic placement providers in fiscal 2011. *Chapter 487* also reduced funding for two smaller State aid programs, the Aging Schools Program and quality teacher incentives.

With the elimination of inflation adjustments adopted in the Budget Reconciliation Act of the 2007 special session, a supplemental grant program was established to ensure that each school system received at least a 1% increase in total State funding in fiscal 2009 and 2010. In addition, the Administration agreed to begin providing funding in fiscal 2009 for GCEI, a discretionary education aid formula that had not previously received State funding. With combined funding of \$177.5 million by fiscal 2010, these two formulas helped to moderate the impact of the two-year inflation freeze and the subsequent fiscal crisis brought on by the national recession.

Annual changes in teachers' retirement payments and direct aid in fiscal 2008 and from fiscal 2009 through 2011 are contrasted in Exhibit L.2. The exhibit illustrates the large increase in fiscal 2008 aid relative to the growth seen in subsequent years and also illustrates the escalating significance of retirement payments. During the final three years of the term, funding for retirement increased by \$283.4 million, outpacing the \$270.5 million increase in direct aid.

**Exhibit L-2**  
**Increases in Education Aid**  
**Fiscal 2008 and Fiscal 2009-2011**  
**(\$ in Millions)**

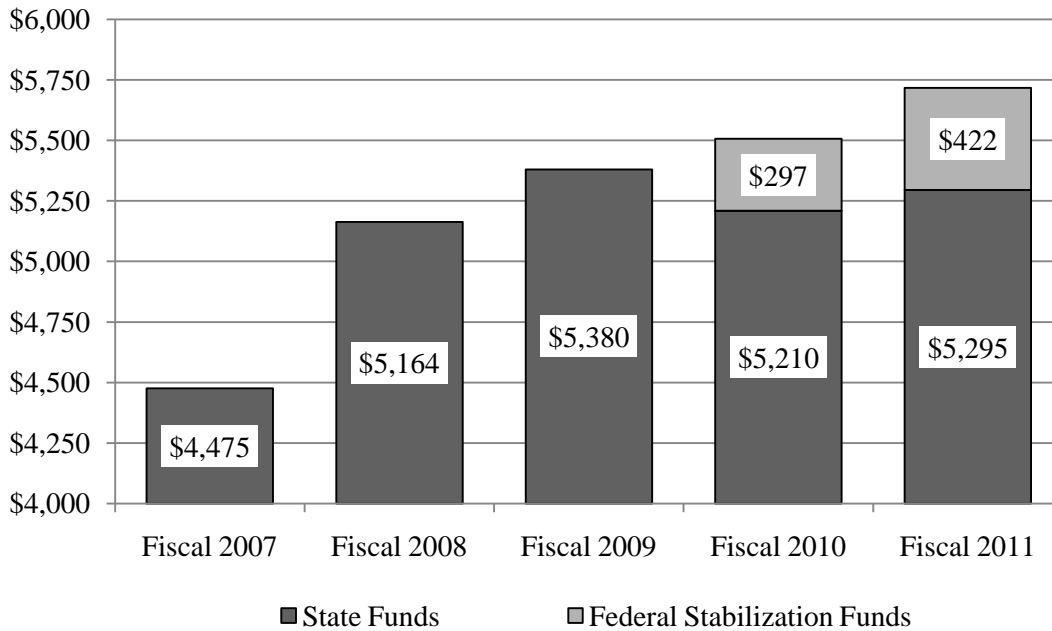


Source: Department of Legislative Services

**Federal Stimulus Funds Finance Aid Increases in Fiscal 2010 and 2011**

Another factor instrumental in maintaining growth in State education aid during the recession was the adoption of ARRA, the federal stimulus bill, in February 2009. The Act provided Maryland with \$719.7 million from the State Fiscal Stabilization Fund to be used exclusively for education. The State used the funds to support increases over fiscal 2009 funding levels in teachers' retirement costs and major direct aid formulas. As shown in Exhibit L.3, the availability of federal funding enabled the State to reduce the support it provided through State funds from \$5.4 billion in fiscal 2009 to \$5.2 billion in fiscal 2010 and \$5.3 billion in fiscal 2011. However, the federal funds run out at the end of fiscal 2011, meaning State dollars will have to replace the \$422.3 million provided with federal stimulus dollars and support any further increases if aid is to increase again in fiscal 2012.

**Exhibit L-3  
State Education Aid  
Fiscal 2007-2011  
(\$ in Millions)**



Source: Department of Legislative Services

The General Assembly took action in the 2009 and 2010 sessions to limit the impact of the fiscal 2012 “funding cliff” created by the use of federal stimulus funds. The 2009 BRFA limited inflationary increases in the major State aid formulas to 1% in fiscal 2012, and the 2010 BRFA then extended this limit through fiscal 2015. The 2010 BRFA also permanently reduced the minimum annual inflationary adjustment in the student transportation program from 3% to 1%. In addition, reductions to the Aging Schools Program originally implemented in the 2009 BRFA were made permanent in the 2010 BRFA.

To address the swift rise in retirement spending, **Chapter 484** also required a Public Employees’ and Retirees’ Benefits Sustainability Commission to examine the long-term costs of the State’s current post-retirement commitments and to evaluate the appropriate level of contributions for public education employees. Reports are due from the commission by December 15, 2010, and June 30, 2011.

## **Local Maintenance of Effort for Public Education**

Since the completion of the Bridge to Excellence phase-in in fiscal 2008, the State and local governments have been roughly equivalent partners in providing the majority of funding for public schools. Most State aid is allocated through statutory formulas, and minimum local government appropriations to boards of education are set through the maintenance of effort (MOE) requirement. To be eligible for increases in State education aid through the foundation program, GCEI, and supplemental grants, a local jurisdiction must meet MOE by providing at least as much funding per pupil to the local school system as it provided in the previous fiscal year. Economic difficulties brought on by the recession resulted in two counties, Montgomery and Prince George's, falling short of their MOE funding levels in fiscal 2010.

To avoid further fiscal strain on local school systems, *Chapters 73 and 74 of 2010* prohibited the imposition, in fiscal 2010, of the State penalty for not meeting the MOE requirements. The legislation eliminated a reduction of \$23.4 million in fiscal 2010 State aid to Montgomery County. (Although it did not meet its MOE obligation, Prince George's County was not facing a penalty.) The legislation also required the Senate Budget and Taxation Committee and the House Ways and Means Committee to study the appropriate calculation of the penalty for failing to meet the MOE requirement and the appropriate party against whom the penalty should be applied.

## **Public School Construction**

Under the Public School Facilities Act of 2004 (Chapters 306 and 307 of 2004), the State pays at least 50% of eligible costs of school construction and renovation projects, based on a formula that takes into account numerous factors, including local wealth, student populations, enrollment growth, and local effort for public school construction. The Act established the intent of the Governor and the General Assembly that a minimum of \$3.85 billion be provided to fund school facility needs by fiscal 2013. Of this amount, the State share is \$2.0 billion, and the local share is \$1.85 billion.

Meeting the objective of \$2.0 billion in State funding would require the State to spend an average of \$250.0 million annually from fiscal 2006 to 2013. As shown in Exhibit L-4, State spending on school construction exceeded that level in each year of the term, with a record-high level of \$401.8 million provided in fiscal 2008. In total, the State provided almost \$1.3 billion for public school construction over the four-year period, which represents an increase of \$460.2 million over the previous four-year term and an average of approximately \$319.8 million per year. A more detailed description of the individual projects that received State funding in each jurisdiction can be found in Part A – Budget and State Aid of this *Major Issues Review*.

**Exhibit L-4**  
**Public School Construction Funding**  
**Fiscal 2008-2011**  
**(\$ in Thousands)**

<u>County</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Total</u>
Allegany	\$412	\$0	\$0	\$842	\$1,254
Anne Arundel	27,827	27,420	25,020	26,200	106,467
Baltimore City	52,665	41,000	27,733	28,559	149,957
Baltimore	52,250	40,985	28,000	29,000	150,235
Calvert	12,644	7,824	8,181	8,450	37,099
Caroline	2,426	8,100	6,000	3,767	20,293
Carroll	8,219	11,741	10,520	8,444	38,924
Cecil	9,533	2,674	1,538	1,744	15,489
Charles	13,170	11,704	8,898	8,335	42,107
Dorchester	6,137	10,400	6,469	5,436	28,442
Frederick	18,728	14,759	16,226	14,000	63,713
Garrett	6,243	3,020	666	0	9,929
Harford	16,238	14,751	16,253	13,835	61,077
Howard	23,206	18,265	18,262	18,290	78,023
Kent	1,335	0	388	0	1,723
Montgomery	52,297	53,312	28,350	30,183	164,143
Prince George's	52,250	41,000	28,200	29,500	150,950
Queen Anne's	3,925	4,951	3,947	5,750	18,573
St. Mary's	9,806	7,266	4,028	6,600	27,700
Somerset	5,153	0	6,000	6,000	17,153
Talbot	2,038	0	436	344	2,818
Washington	8,970	9,368	7,965	7,970	34,273
Wicomico	8,143	12,960	13,170	9,975	44,248
Worcester	8,213	5,483	403	0	14,099
Statewide				500	500
<b>Total</b>	<b>\$401,828</b>	<b>\$346,983</b>	<b>\$266,653</b>	<b>\$263,724</b>	<b>\$1,279,188</b>

Note: Includes new bond and pay-as-you-go funds and reallocated funds that were previously authorized. Counties receiving \$0 did not request any eligible projects to be funded in that year. Statewide allocation in fiscal 2011 is to outsource design reviews.

Source: Public School Construction Program, Department of Legislative Services

### **Allocation of School Construction Funding Clarified**

The capital budget of 2007, (*Chapter 488*), clarified the process for allocating school construction funds to local school systems. *Chapter 488 of 2007* specified that the Board of Public Works (BPW), based on recommendations by the Interagency Committee on Public School Construction (IAC), would approve the allocation of funds to specific projects in each county after May 1, 2007. In a departure from previous years, *Chapter 488* also contained new language requiring that any construction funds not used within two years of allocation to a county must revert to the contingency fund. *Chapter 488* further prohibited BPW from allocating more than 75% of the preliminary public school construction allocation before May 1, 2008, continuing the limit imposed in 2006 and 2007. *Chapter 336 of 2008* made this limit permanent.

Additionally, *Chapter 488* codified a requirement that IAC make recommendations each year by March 1 that equal 90% of the final amount for school construction that the Governor provides in the capital budget for the next fiscal year. IAC was already required to make recommendations by December 31 each year, that equal 75% of the preliminary allocation for school construction announced for the next fiscal year.

### **State and Local Cost-share Formula Updated**

The Public School Facilities Act of 2004 required that the State and local cost-share formulas be recalculated every three years. The first recalculation occurred in 2007 for use beginning in fiscal 2010. Exhibit L-5 shows the State share of eligible school construction costs for all Maryland jurisdictions for fiscal 2006 through 2009 and for the three years beginning in fiscal 2010, following the 2007 recalculation. New rates are being phased in over two or three years for Calvert, Dorchester, Garrett, Harford, Queen Anne's, and Somerset counties because the 2007 recalculation resulted in a reduction of 5% or more in the State share of school construction costs compared with the fiscal 2006 to 2009 levels.



**Exhibit L-5**  
**State Share of Eligible School Construction Costs**  
**Fiscal 2006-2012**

<u>County</u>	<u>2006-2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Allegany	90%	91%	91%	91%
Anne Arundel	50%	50%	50%	50%
Baltimore City	97%	94%	94%	94%
Baltimore	50%	50%	50%	50%
Calvert	69%	64%	61%	61%
Caroline	89%	86%	86%	86%
Carroll	65%	61%	61%	61%
Cecil	70%	75%	75%	75%
Charles	70%	77%	77%	77%
Dorchester	77%	72%	71%	71%
Frederick	72%	72%	72%	72%
Garrett	70%	65%	60%	59%
Harford	65%	60%	59%	59%
Howard	58%	61%	61%	61%
Kent	50%	50%	50%	50%
Montgomery	50%	50%	50%	50%
Prince George's	69/75%*	73%	73%	73%
Queen Anne's	70%	65%	60%	55%
St. Mary's	72%	75%	75%	75%
Somerset	97%	92%	88%	88%
Talbot	50%	50%	50%	50%
Washington	65%	73%	73%	73%
Wicomico	81%	87%	87%	87%
Worcester	50%	50%	50%	50%

\*For fiscal 2006-2008, the State share for Prince George's County was 75% for funding allocated up to \$35 million annually and 69% for funding allocated in excess of \$35 million. The split share expired in June 2008, and for fiscal 2009, the State share for Prince George's County was 69%.

Source: Public School Construction Program

**Funding for Aging Schools Program Adjusted**

The Aging Schools Program was initially established in 1997 by the Baltimore City-State Partnership legislation, which originally provided \$4.4 million for the program and specific allocations for local school systems. The following year, program funding was increased to \$10.4 million. Eligible Aging Schools Program expenditures include asbestos and lead paint

abatement; upgrade of fire protection systems and equipment; painting; plumbing; roofing; upgrade of heating, ventilation, and air conditioning systems; site redevelopment; wiring schools for technology; and renovation projects related to education programs and services. Projects must cost at least \$10,000 to be funded through the program.

The program was initially scheduled to terminate in fiscal 2002, but the termination date was extended and then repealed in 2003. The Public Schools Facilities Act of 2004 adjusted the statutory allocations to counties beginning in fiscal 2006. Hold harmless grants were provided from fiscal 2006 to 2008 to mitigate the reductions that some school systems received. Statutory allocations to counties are currently based on their share of statewide pre-1970 square footage; beginning in fiscal 2008, those allocations were subject to inflationary adjustments. However, the 2009 BRFA “rebased” the program at \$6.1 million in fiscal 2010 and 2011, restored total funding to \$10.4 million in fiscal 2012, and suspended the inflationary adjustments until fiscal 2013. The 2010 BRFA then made the reduction to \$6.1 million per year permanent and eliminated future inflationary increases. In fiscal 2010 and 2011, the program was funded with general obligation (GO) bond proceeds instead of general funds, except that *Chapter 523 of 2010* and the fiscal 2011 capital budget as adopted replaced \$1.0 million in GO bond proceeds with \$1.0 million in Qualified Zone Academy Bond (QZAB) proceeds for fiscal 2011 only. In fiscal 2008, *Chapter 585* and the fiscal 2008 operating budget replaced \$5.5 million of general funds with QZAB proceeds for the Aging Schools Program.

### **Qualified Zone Academy Bonds Continue to Support School Renovations**

The federal Tax Reform Act of 1997 created QZABs as a new type of debt instrument to finance education projects. Financial institutions, insurance companies, and investment houses are the only entities allowed to purchase the bonds, which provide for a federal tax credit instead of interest earnings. The program has been extended several times, most recently under ARRA, which included \$1.4 billion of additional QZAB authorization. QZAB funds may only be used in schools located in a federal Enterprise or Empowerment Zone or in schools in which at least 35% of the student population qualifies for free or reduced price meals.

Maryland first authorized the sale of QZABs in Chapter 322 of 2000. Additional issuances were authorized by Chapter 139 of 2001, Chapter 55 of 2003, Chapter 431 of 2005, *Chapter 585 of 2007*, and *Chapter 523 of 2010*.

Federal law requires that QZAB projects receive a 10% private-sector match, which may be in the form of cash, in-kind goods such as equipment or technology, services such as help developing curriculum, and internships or field trips. QZAB proceeds may be used to support capital improvements, equipment, instructional materials, and technology costs under federal law. Until 2009, Maryland law authorized QZABs to be spent only on brick-and-mortar projects. However, *Chapter 707 of 2009* allowed previously authorized QZAB proceeds to be spent on school equipment. Proceeds from QZABs authorized by *Chapter 523* may be spent only on bricks-and-mortar projects.

To date, Maryland’s allocation under the federal program has totaled \$47.6 million from six bills that authorized the sale of the bonds, including interest earned on QZAB proceeds,

bringing total proceeds for the State to \$50.3 million. Of that amount, \$29.0 million (57.7%) has been spent.

### **New Schools Must Be Energy Efficient**

*Chapter 124 of 2008*, an Administration bill, required most new or renovated State buildings and new public school buildings to be constructed as high-performance buildings. High-performance buildings are those that achieve at least a silver rating under the U.S. Green Building Council’s Leadership in Energy and Environmental Design program or a comparable rating under any other nationally accepted standard. Under *Chapter 124*, the State is required to pay half of the local share of increased school construction costs associated with the construction of high-performance school buildings from fiscal 2010 through 2014. After that, local school systems will pay their full share of increased construction costs under the cost-sharing formula applied to local school construction projects. Local school systems operate the school buildings and will benefit from operating budget savings due to more efficient buildings. A more detailed description of *Chapter 124* can be found in the subpart “Procurement” within Part C – State Government of this *Major Issues Review*.

### **Air Quality Standards Required for Relocatable Classrooms**

*Chapter 223 of 2007* required BPW to adopt regulations establishing criteria designed to enhance indoor air quality in relocatable classrooms that may be purchased or leased with State or local funds. *Chapter 223* applied only prospectively and did not affect relocatable classrooms already in use around the State at the time. The new criteria added between \$3,000 and \$5,000 to the cost of a standard relocatable classroom.

### **Gymnasiums Mandated for New or Renovated Elementary Schools**

*Chapters 266 and 267 of 2010* required the Maryland State Department of Education (MSDE) to adopt regulations requiring public school buildings that are newly constructed or completely renovated and occupied on or after January 1, 2013, to include a gymnasium and support spaces for physical education instruction. Although most public middle and high schools in the State have gymnasiums, many elementary schools have only multipurpose rooms or “cafeteriums.” The regulations must include a waiver process for a local school system based on land or zoning constraints. *Chapters 266 and 267* also required MSDE to develop guidelines for facilities designed for physical education programs.

## **School Personnel Initiatives**

### **Education Reforms and Race to the Top**

The Education Reform Act of 2010, *Chapter 189 of 2010*, lengthened the amount of time until a teacher gains tenure from two to three years, required student growth to be a significant component of teacher performance evaluations, and established a program of locally negotiated incentives for highly effective teachers and principals who teach in a school in improvement, a school in corrective action, a school in restructuring, a school categorized by the local school

system as a Title I school, or a school among the 25% of schools in the State with the highest proportion of students eligible for free and reduced price meals. The Act also required nontenured teachers to be evaluated annually and to be assigned mentors promptly if they are not on track to qualify for tenure.

In part, the reforms of *Chapter 189* were responsive to Race to the Top (RTTT), the U.S. Department of Education's \$4 billion competitive grant program authorized under ARRA. The program sought to encourage and reward states that are implementing significant reforms around four specific areas, including recruiting, developing, and retaining effective teachers and principals, especially where they are needed most, and turning around the lowest-achieving schools. The State submitted its RTTT application in June 2010, and is eligible to receive up to \$250 million if its application is successful. If federal RTTT funds are awarded to Maryland, some of the money will be used to support the reforms adopted in *Chapter 189*.

### **Extended Year and Year-round Schooling**

In addition to competitive priorities set by the U.S. Department of Education for RTTT grants, guidance from the federal government also included "invitational priorities." One of these invitational priorities was school-level conditions for reform, innovation, and learning, which included implementing new structures and formats for the school day or year that result in increased learning time. *Chapters 298 and 299 of 2010* required the State Board of Education to explore the use of innovative school scheduling models, including extended year, year-round schooling, or other school scheduling models that do not allow for prolonged lapses in instructional time in low-performing or at-risk public schools. The State board was also required to encourage local boards to use the school scheduling models that were determined to be most effective in enhancing student achievement in low-performing or at-risk public schools.

### **National Board Certification**

Obtaining certification from the National Board for Professional Teaching Standards (NBPTS) – an independent, nonprofit organization that has established rigorous standards for accomplished teachers and has certified more than 55,000 teachers nationally who have achieved those standards – requires teachers to develop comprehensive portfolios of their work and accomplishments and takes one to three years to complete.

For Maryland teachers who pursue NBPTS certification, the State and local school systems pay the cost of the certification fee. *Chapter 309 of 2007* extended the program's termination date from May 31, 2008, to June 30, 2013. The legislation also expanded membership in the program to include teachers seeking recertification, raised the participation limit from 750 to 1,000 teachers, and authorized the State board to fund up to one retake of an unsuccessful entry on the NBPTS assessment. Finally, *Chapter 309* required MSDE to include in its annual budget request the total amount of money needed to fund the full number of eligible program participants.

### **Collective Bargaining for Education Employees**

In 2007, Governor Martin O’Malley signed an executive order authorizing collective bargaining for family child care providers participating in the State’s child care subsidy program. **Chapter 496 of 2010** established these rights in State law. **Chapter 496** required that only one appropriate bargaining unit of family child care providers be established in the State and that the election and certification of the exclusive representative be conducted by the State Labor Relations Board. Collective bargaining must include all matters related to the terms and conditions of participation by family child care providers in the child care subsidy program.

**Chapters 324 and 325 of 2010** established a Public School Labor Relations Board to administer and enforce the labor relations laws for local boards of education and their employees. The authority of the State Board of Education to decide public school labor relations disputes and the authority of the State Superintendent of Schools to declare labor impasses were repealed.

For further discussion of **Chapters 324, 325, and 496**, see subpart “Personnel” within Part B – State Government of this *Major Issues Review*.

### **Early Childhood Education**

The State has focused on early learning initiatives for many years, including kindergarten and prekindergarten requirements established in the Bridge to Excellence in Public Schools Act of 2002. The Act required all local school systems to provide full-day kindergarten for all students and to provide access to prekindergarten to all four-year-olds from families with incomes at or below 185% of the federal poverty guidelines by the 2007-2008 school year.

Continuing with this focus, Chapter 498 of 2006 established the Task Force on Universal Preschool Education. In its final report, *Preschool for All in Maryland*, submitted in December 2007, the task force charged MSDE with developing a business plan, including cost estimates, to expand access to quality preschool to all four-year olds in the State. MSDE published a draft version of the business plan in September 2008.

**Chapters 526 and 527 of 2009** required MSDE to consult with and accept comments from local superintendents of schools and local governing bodies regarding Maryland’s Preschool for All Business Plan before preparing and finalizing the plan. **Chapters 526 and 527** also prohibited MSDE from implementing a finalized business plan until an ongoing funding source had been identified for universal preschool programs. In December 2009, a finalized business plan was issued that recommended the establishment of a categorical fund program in which 70% of the cost for preschool would be borne by the State and 30% would be borne by local governments. Although an ongoing funding source was not identified and, therefore, the Preschool for All plan was not implemented statewide, MSDE reports that the Judith P. Hoyer Early Care and Education Enhancement Grant for Preschool Services has been used to fund 11 pilot sites.

In order to support and fund early learning initiatives, *Chapters 345 and 346 of 2010* required MSDE to seek federal funds by submitting a grant application for the Early Learning Challenge Fund, a proposed federal program that would provide competitive grants to states to improve the quality of early learning settings for children from birth to age five.

## **Student Safety, Health, and Wellness**

From 2007 to 2010, the General Assembly passed a number of initiatives designed to address student safety, health, and wellness. Priorities that were addressed included bullying, gang activity, physical education, student's mental health, and even security measures for family day care homes and child care centers.

### **Bullying**

The American Psychological Association defines bullying as “aggressive behavior that is intended to cause harm or distress, occurs repeatedly over time, and occurs in a relationship in which there is an imbalance of power or strength.” *Chapter 489 of 2008* required the State board, by March 31, 2009, to develop a model policy prohibiting bullying, harassment, and intimidation in schools. *Chapter 489* further required each local board of education, by July 1, 2009, to establish a policy prohibiting these activities at school based on the State's model policy. Each local board must publicize its policy in student handbooks and on the school system's web site and must develop educational programs for students, staff, volunteers, and parents and professional development programs that train teachers and administrators to implement the local policies. With recent concerns about the relatively new problem of “cyberbullying” – using technology such as the Internet, e-mail, text messages, or instant messages to torment others – *Chapter 489* included bullying through electronic communications in the definition of “bullying, harassment, or intimidation.”

The Safe Schools Reporting Act of 2005 (Chapter 547 of 2005) required local boards of education to report incidents of harassment or intimidation against public school students that occur on public school property, at school activities or events, or on school buses to the State board. Over the first two years that the Act was effective, MSDE compiled reports from students and their parents and guardians on more than 3,200 incidents of harassment or intimidation. *Chapter 683 of 2008* added a school staff member to the individuals who may report an incident of harassment or intimidation through the standard Victim of Harassment or Intimidation Report forms developed by MSDE. *Chapter 687 of 2008* repealed the June 30, 2009 termination date of the Act.

### **Gangs and Gang Activity**

In an attempt to be responsive to the growing prevalence of gangs and gang activity in schools, *Chapter 188 of 2010* addressed the notification of school officials of the status of certain students by courts and law enforcement agencies under specified circumstances. The authority of the courts was expanded to include notification relating to students adjudicated delinquent. *Chapter 188* also expanded the list of crimes that, when committed by a student, law

enforcement agencies must report to local superintendents, principals, and school security officers.

Under *Chapter 188*, the State board must develop a model policy to address gang activity or similar destructive or illegal group behavior in schools by March 31, 2011. Using the State board's model policy, each local school system must establish and submit a local policy or regulations to the State Superintendent by September 1, 2011, and develop educational programs to address gang activity or similar destructive or illegal group behavior. By January 1, 2011, and each year thereafter, MSDE must submit a report on implementation of the policies.

### **Access to Physical Education for Students with Disabilities**

*Chapters 464 and 465 of 2008* required the State board and each local board of education to ensure that students with disabilities have an equal opportunity to participate in mainstream physical education programs and to try out for and, if selected, participate in mainstream athletic programs. In addition, the State board and each local board must ensure the provision of reasonable accommodations to students with disabilities in order for them to be able to participate, to the fullest extent possible, in mainstream programs. Athletic programs that have been adapted for students with disabilities and programs that combine students with and without disabilities are also required to be available. Each local board was required to develop policies and procedures to implement the provisions of *Chapters 464 and 465*. The State board was required to adopt a model policy to assist the local boards and to monitor compliance with the requirements of *Chapters 464 and 465*.

### **Student Mental Health**

It has been estimated that as many as 3 million people in the United States, mostly adolescents, exhibit some form of self-injuring behavior. This most commonly involves cutting of the skin to achieve a hormonal release but can also include burning, scratching, branding, and bruising. *Chapter 450 of 2007* required MSDE, in collaboration with the Department of Health and Mental Hygiene (DHMH), to provide awareness and training on self-mutilation, including injury by cutting, for directors of student services in local school systems.

*Chapter 478 of 2007* required MSDE to collaborate with DHMH to provide awareness and training on the abuse of inhalants. Many ordinary household products can be deliberately sniffed or inhaled to achieve an intoxicated state. Common symptoms of inhalant use include slurred or disoriented speech, red or runny eyes and nose, and nausea, but more serious abuse of inhalants can cause brain damage, loss of muscle control, organ damage, or even death.

Both *Chapter 450* and *Chapter 478* required DHMH to provide MSDE with resource information to be distributed to local school supervisors of health, counseling, and psychology, as well as materials that describe local, State, and national resources to which students, parents, counselors, and school personnel may refer for more information on self-mutilation or inhalant abuse.

The federal Centers for Disease Control and Prevention reports that suicide is the third leading cause of death for youth between the ages of 10 and 24. **Chapter 446 of 2010** required each local board of education to provide each student in grades 6 through 12 with the telephone number of the Maryland Youth Crisis Hotline (1-800-422-0009) by printing the number prominently in the school handbook and printing the telephone number on a student's school identification card, if provided.

### **Emergency Preparedness for Child Care Centers**

To address the safety of children in child care and early education programs, **Chapters 247 and 248 of 2009** required family day care homes and child care centers to have written emergency preparedness plans for emergency situations that require the evacuation, sheltering in place, or other protection of children. The plans must include a designated relocation site and evacuation route; procedures for notifying parents of a relocation; procedures to address the needs of individual children, including those with special needs; procedures for the reassignment of staff duties, as appropriate; and procedures for communicating with local emergency management officials.

## **Student Discipline**

### **Truancy**

In the 2005-2006 school year, more than 20,000 public school students in Maryland were considered habitually truant, meaning they missed 20.0% or more of the school days in a marking period, semester, or school year. The statewide habitual truancy rate was 2.37%, but the rates ranged from less than 1% in 13 of the 24 local school systems to 10.6% in Baltimore City. There were also nearly 8,700 student suspensions in the 2005-2006 school year for attendance problems. In response to these figures, **Chapters 562 and 563 of 2007** prohibited the Motor Vehicle Administration from issuing a learner's instructional driving permit to an applicant under the age of 16 if the applicant's school attendance record indicates more than 10 unexcused absences during the prior school semester.

A second truancy initiative adopted the same year, **Chapter 648 of 2007** authorized the establishment of a Truancy Reduction Pilot Program in the juvenile courts in Harford and Prince George's counties and extended the authorization for existing truancy reduction programs in Dorchester, Somerset, Wicomico, and Worcester counties from June 30, 2007, to June 30, 2009. A more detailed discussion of **Chapters 562 and 563** and **Chapter 648** can be found in the subpart "Juvenile Law" in Part E – Crimes, Corrections, and Public Safety of this *Major Issues Review*.

Chapter 222 of 2004 required elementary schools with high suspension rates to implement Positive Behavioral Interventions and Support (PBIS) programs or similar behavior modification programs, and other schools, including middle and high schools, have voluntarily implemented PBIS. PBIS seeks to enhance the capacity of schools to adopt effective practices that improve a school's ability to teach and support positive behavior. **Chapters 367 and 368 of 2008** required schools with truancy rates in excess of 8% of their enrollment during the



2008-2009 school year to implement PBIS or a comparable behavior modification program. The truancy rate that triggers the requirement was scheduled to phase down each subsequent year until it reaches 1% of enrollment for the 2012-2013 school year and thereafter.

### **Suspension and Expulsion**

In the 2007-2008 school year, there were nearly 168,000 student suspensions, including 16,500 for attendance-related infractions. *Chapters 230 and 231 of 2009* prohibited the suspension or expulsion of a student from school solely for attendance-related offenses; however, *Chapters 230 and 231* included an exception from this prohibition for in-school suspensions. *Chapter 662 of 2009* authorized a juvenile court, in a county that has established a juvenile justice alternative education program, to order a student who is suspended, expelled, or identified as a candidate for suspension or expulsion from school to attend that county's program.

### **Military-related Legislation**

#### **Availability of Student Information to Military Recruiters**

*Chapter 175 of 2008* required a public school to notify each student and the parent or guardian of each student that they may request that the student's name, address, and telephone number not be released to military recruiters. *Chapter 175* applied to any public school that provides access or student information to any person or group that makes students aware of occupational or educational options. Notification of the option to not release contact information to military recruiters had to be provided on the emergency contact information form distributed by public schools and had to give the student or the student's parent or guardian the opportunity to opt out of releasing contact information by checking a box marked "Do not release contact information."

Similarly, *Chapters 104 and 105 of 2010* required any public school that administers the Armed Services Vocational Aptitude Battery (ASVAB) to choose the score reporting "Option 8," which prohibits the general release of any student information to military recruiters. Each public school must also send written notice to the ASVAB representative coordinating the school's administration of the test that the school is required to choose "Option 8" and must also notify students taking ASVAB and their parents and guardians of the requirement. A student or a student's parent or guardian may choose to release the student's personal information and ASVAB score to military recruiters by individually submitting a release form to the military services.

#### **Interstate Compact on Educational Opportunity for Military Children**

According to the Council of State Governments, on average, a child of a member of the military changes schools more than twice during high school, and most military children will be in six to nine different school systems from kindergarten to grade 12. These transfers frequently create bureaucratic problems that can disadvantage military children. *Chapters 501 and 502 of 2009* joined Maryland to the Interstate Compact on Educational Opportunity for Military

Children to facilitate for these children the timely transfers of educational records; the continuation of schooling at the same grade level and in similar programs and courses; inclusion in extracurricular activities; on-time graduation; and the provision of comparable special educational services for students with disabilities, as appropriate. With the adoption of *Chapters 501 and 502*, Maryland joined at least 14 other states in the compact.

### **Charter Schools Located on a Federal Military Base**

For a public charter school located on a federal military base, *Chapter 353 of 2010* authorized the State board to grant a waiver from the requirement that the school be open to all students on a space available basis. However, the public charter school located on the base must admit students with parents who are not assigned to the base to at least 35% of its total available space and must admit all students on a lottery basis.

### **Comprehensive Master Plans**

The development of a comprehensive master plan by each local school system was one of the major accountability components of the Bridge to Excellence in Public Schools Act (Chapter 288 of 2002). The Act provided significant enhancements to State funding for public elementary and secondary education. The Act also eliminated a large number of State aid programs that provided funding for specific purposes or initiatives and instead gave local school systems broad discretion to use the added State funding for programs, initiatives, and enhancements that would best serve local student populations.

To ensure that the new money would be used effectively, the Bridge to Excellence Act required local boards of education to submit five-year comprehensive master plans by October 1, 2003, and annual updates to the plans that would extend to the 2007-2008 school year. The plans, and subsequent updates to the plans, had to identify the strategies that would be used to improve academic performance for all students. The State Superintendent of Schools was required to review each comprehensive master plan to make certain that it included all of the required components and that the articulated strategies were aligned with the school system's budget and would improve student performance across all student populations. *Chapter 652 of 2007* required local boards of education to continue submitting updates to their comprehensive master plans in October 2008 and 2009 and to submit new five-year comprehensive master plans by October 15, 2010. After the 2010 master plan, *Chapter 652* required updates to the plan to be submitted annually, with each update covering a five-year period. *Chapter 652* also repealed the authority of the State board to withhold funds from a local school system that fails to demonstrate improvements in student performance and fails to submit an adequate master plan.

The Bridge to Excellence Act also required MSDE to conduct an evaluation of the effect of increased State aid for education on student and school performance in each local school system, and MSDE contracted with MGT of America, Inc. to do the study. The final evaluation submitted December 2008, specifically identified strategic planning as the most crucial factor in improving student performance.

**Chapter 652** required the General Assembly to review findings from the evaluation of the Bridge to Excellence Act during the 2009 legislative session and determine whether the comprehensive master plan requirements should be differentiated among the 24 local school systems, meaning some school systems would be required to submit new master plans while others would continue implementation of their existing plans. The General Assembly let the July 1, 2009 expiration date on the authorization to use preexisting comprehensive master plans take effect but passed legislation during the 2010 session (**Chapter 25 of 2010**) that allowed local boards to submit a preexisting management plan in lieu of a comprehensive master plan or update and required the State Superintendent to approve the management plan if the State Superintendent determined that the preexisting plan meets the requirements for the comprehensive master plan.

**Chapter 25** also required local boards of education to continue submitting annual updates to their master plans in October 2010 and October 2011 and delayed the requirement that local boards of education submit new five-year comprehensive master plans from October 15, 2010, until October 15, 2012. In addition, beginning in 2013, rather than in 2011, each annual master plan update is required to cover a five-year period.

## **Local Boards of Education**

### **School Board Nominating Commissions**

The Anne Arundel County Board of Education consists of nine members, of whom three members are appointed from the county at large, five members are appointed from each of the five legislative districts in the county, and one is a student member. **Chapter 454 of 2007** established a School Board Nominating Commission of Anne Arundel County to select nominees to fill vacancies on the county board of education. Beginning January 1, 2008, the commission was required to submit at least two nominees to the Governor for each vacancy on the board, unless there were fewer than two applicants for a vacancy. The Governor must select one of the nominees submitted by the commission to fill the vacancy. Once appointed to the board, a member may serve a second consecutive term if the voters in the county approve the member's continuance in office. **Chapter 454** also expanded the size of the Anne Arundel County Board of Education from eight to nine members by increasing the number of regional seats from four to five and increased compensation for board members.

The Washington County Board of Education consists of seven members elected to four-year terms from the county at-large. **Chapter 512 of 2008** established a School Board Nominating Commission for Washington County to nominate individuals to fill a vacancy on the county board of education. **Chapter 512** required the county commissioners, rather than the Governor, to appoint an individual to fill a vacancy and required that the vacancy be filled from a list of nominees provided by the commission.

### **Prince George's County Board of Education**

Chapter 289 of 2002 eliminated the then-existing Board of Education of Prince George's County and established a new Prince George's County Board of Education that consisted of nine

voting members who were jointly appointed by the Governor and the county executive. Chapter 289 also set up a structure for the election of a new board in 2006, with four members elected from the county at-large and five members elected from five different school board districts. *Chapters 348 and 349 of 2008* altered the structure of the Prince George's County Board of Education once again to elect one member from each of nine separate school board districts at the 2010 general election. *Chapters 348 and 349* also established eligibility criteria for school board members and new procedures for electing members, filling vacant positions, and appealing the removal of members.

To gauge the effectiveness of the appointed board that served from 2002 to 2006, Chapter 289 also required that a comprehensive review of Prince George's County Public Schools be conducted by a consultant jointly selected by the county board of education and MSDE. However, a consultant was never hired, and *Chapter 155 of 2008* repealed the requirement.

## **P-20 Initiatives**

Over the last four years, the State has adopted legislation to strengthen connections between early education, primary and secondary education, and higher education and to ensure consistent and smooth transition from early education through higher education.

### **P-20 Council**

The Governor's P-20 Leadership Council of Maryland, which is primarily charged with aligning prekindergarten through postsecondary education and ensuring that Maryland will produce and maintain a competitive workforce, was codified in *Chapter 191 of 2010*. Most recently, the council convened the College Success Task Force to develop a definition and implementation plan for college readiness in Maryland. *Chapter 191* established the membership of the council and added members to the council, including legislative members.

### **Maryland Longitudinal Data System**

In 2005, the *Data Quality Campaign* laid out 10 essential components of an effective educational data system that would provide policymakers and educators with information on student achievement. At that time, the State had 3 of the essential components: student-level enrollment data, student-level test data, and student-level graduation and dropout data. Between 2005 and 2008, the State added to its data set information on students not tested in statewide tests and student-level SAT, ACT, and Advanced Placement exam results. During that period, MSDE also developed a system to assess the quality, validity, and reliability of the statewide data set.

In 2008, MSDE added a State assigned student identifier (SASID) to its data set, which provided a way to follow students as they move from grade to grade and across districts within the State. SASID can be used to answer policy questions such as the academic value-added component of a program or to calculate the number of students who graduated from high school

in three years, four years, or five years. In addition to the assignment of a SASID, *Chapter 406 of 2009* authorized MSDE to assign a unique randomly generated identification number to each public school teacher, and *Chapter 407 of 2009* authorized MSDE to develop a standardized course numbering system to facilitate the collection of data on student participation in courses offered by public schools.

In order to further enhance and improve the State’s longitudinal data system, and to also be responsive to the RTTT goal of building data systems that measure student growth and success and inform teachers and principals how they can improve instruction, *Chapter 190 of 2010* established the Maryland Longitudinal Data System (MLDS). By December 31, 2014, the MLDS will serve as a statewide data system that contains individual-level student data and workforce data from all levels of education and into the State’s workforce for five years following graduation from an institution of higher education. MLDS will link student and workforce information that is already being collected by State agencies and institutions of higher education. *Chapter 190* additionally established a Maryland Longitudinal Data System Center to serve as a central repository for the data, ensure compliance with federal privacy laws, perform research on the data sets, and fulfill education reporting requirements and approved public information requests.

### **Graduation and Middle College Programs**

English 12 and Algebra II are the courses that most commonly prevent a student from graduating early from high school. In response, *Chapter 303 of 2009* required the State Superintendent of Schools to implement a credit-by-examination process for English 12 and Algebra II by the 2010-2011 school year. Additionally, *Chapter 303* required MSDE to report to the State Superintendent regarding the feasibility of, and interest in, establishing middle college programs for students in Maryland. A middle college is a secondary school located on a college campus that is authorized to grant diplomas in its own name. Middle colleges allow students to take college courses while also taking high school courses. Under *Chapter 303*, if the State Superintendent determined that there were sufficient interest and capability to implement middle college programs in the State, the State Superintendent would be required to implement middle college programs in interested school systems beginning in the 2010-2011 school year. In response to *Chapter 303*, MSDE conducted a study that found that all 24 local school systems are implementing middle college programs to the degree that they are economically feasible.

### **Financial Literacy**

In response to the nationwide financial crisis that began in 2007, the Task Force to Study How to Improve Financial Literacy in the State was created by *Chapters 186 and 187 of 2008* to study the ability of high school students to understand basic financial concepts; assess the utility of financial literacy education as part of primary and secondary education; study the ability of consumers older than age 21 who have achieved a high school diploma to understand basic financial concepts; study the problems created for the average consumer by a lack of financial literacy or knowledge; and make recommendations regarding how to address these problems. The preliminary recommendations of the task force, submitted to the State board in early 2009,

prompted the State Superintendent to direct MSDE to form a Financial Literacy Education Design Team to develop financial literacy education content standards. Concurrently, legislation (*Chapter 270 of 2009*) was passed that required the Prince George's County Board of Education to develop and implement a pilot program in three county high schools that would include a semester-long elective course in financial literacy.

Although several bills were introduced during the session of 2010 relating to the work of the task force and a requirement for a financial literacy curriculum in public schools in the State, legislation did not pass. Despite this, regulations were promulgated by the State Board of Education that require local superintendents of schools, by September 1, 2011, and every five years after that, to certify to the State Superintendent that the instructional programs in elementary, middle, and high school in their counties meet, at a minimum, the financial literacy content standards (in grade bands of 3 to 5, 6 to 8, and 9 to 12) that were developed by the design team as part of the State Curriculum for Personal Financial Literacy.

### **Credit Card Marketing Activities and Merchandising Conducted on Campus**

To enhance the financial literacy of college students and help them to be better informed about the benefits and pitfalls of credit cards, *Chapter 312 of 2008* required each institution of higher education in the State to develop policies regarding credit card marketing activities and merchandising conducted on its campus. *Chapter 312* required that the policies adopted by an institution include (1) a requirement that credit card issuers inform students about good credit management practices through a program developed in conjunction with the institution; (2) a requirement that, on request, the policy be available to all students; and (3) consideration of registering credit card issuers conducting marketing activities on campus, limiting credit card marketing activities, and prohibiting merchandising unless a student is provided credit card debt education literature.

## **Higher Education**

### **Funding**

#### **Trends in Higher Education Funding**

Despite the fiscal downturn beginning in 2008, total funding for all higher education increased over the four-year term ending in fiscal 2011. Exhibit L-6 shows State support for higher education institutions from fiscal 2007 through 2011. Major increases in fiscal 2008 and 2009 helped to mitigate the impact of budget reductions, which resulted in a year-over-year decrease of 1.0% in fiscal 2010. The decline in fiscal 2010 is mainly due to a 23.8% reduction in the funding of independent (private nonprofit) institutions. Fiscal 2010 State funding for the University System of Maryland (USM) and Baltimore City Community College (BCCC) declined 0.5% and 0.4%, respectively, while funding for Morgan State University (MSU), the community colleges, and St. Mary's College of Maryland (SMCM) increased slightly. In addition, a total of \$155.3 million was transferred from the fund balances of USM, MSU, and BCCC in fiscal 2009 and 2010. (This does not include transfers related to employee furloughs.)

In fiscal 2011, State funding for higher education institutions was essentially level with fiscal 2010. Although the American Recovery and Reinvestment Act (ARRA) funds were not used by the State to support higher education institution budgets, the use of ARRA to fund K-12 State aid increases allowed the State to limit cuts to most higher education segments. The federal maintenance of effort requirement in ARRA also required the State to level fund public degree-granting institutions of higher education at fiscal 2009 levels in fiscal 2011 in order to use all ARRA funds for K-12 aid increases.

The exhibit includes special funds from the Higher Education Investment Fund (HEIF) beginning in fiscal 2009, discussed below. Except for SMCM, all public four-year institutions received special funds from HEIF. Over the period shown in the exhibit, community colleges received the highest percent increase in State support of 24.4%. State funding for BCCC grew at the next highest rate of 16.8%, followed by MSU at 14.9%, USM at 12.9%, and SMCM at 10.1%. Independent institutions were the only segment for which State operating funding declined over the five-year period at -23.1%.

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**Exhibit L-6**  
**State Support for Maryland Institutions of Higher Education**  
**Fiscal 2007-2011**  
**(\$ in Thousands)**

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
University System of Maryland	\$939,519	\$1,010,007	\$1,064,953	\$1,059,744	1,060,504
Morgan State University	64,685	68,948	74,080	74,461	74,334
St. Mary's College	15,906	16,367	16,925	17,215	17,518
Community Colleges <sup>1</sup>	205,883	241,701	254,713	256,174	256,115
Baltimore City Community College	35,025	40,448	40,367	40,203	40,902
Independents	49,965	56,051	50,446	38,446	38,446
<b>Total</b>	<b>\$1,310,982</b>	<b>\$1,433,521</b>	<b>\$1,501,485</b>	<b>\$1,486,242</b>	<b>1,487,818</b>
Dollar Change from Prior Year		\$122,539	\$67,964	-\$15,243	1,576
% Change from Prior Year		9.3%	4.7%	-1.0%	0.1%

<sup>1</sup> Community Colleges funds include the Senate John A. Cade formula, other programs, and fringe benefits.

Note: Includes general funds and HEIF. Reflects statewide across-the-board furlough and health insurance savings. Data for the University System of Maryland and Morgan State University include funding for State grant programs that pass through the Maryland Higher Education Commission to the institutions.

Source: Maryland State Budget Books, Fiscal 2007-2011; Department of Legislative Services

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### **Higher Education Investment Fund**

HEIF was established by *Chapter 3 of the 2007 special session*, which increased the corporate income tax rate from 7.0% to 8.25% permanently, and dedicated 6.0% of corporate tax revenues to higher education for two years. *Chapters 192 and 193 of 2010* made the 6.0% distribution of corporate tax revenues to HEIF permanent beginning in fiscal 2011. *Chapters 192 and 193* also established a Tuition Stabilization Trust Account within HEIF to retain funds for stabilizing tuition costs for resident undergraduate students in response to the end of the tuition freeze, discussed below. In years of increasing corporate income tax revenues, funds must be deposited into the trust account. Additionally, a goal was established that any increase in resident undergraduate tuition and academic fees at public four-year higher education institutions in any given year should be limited to a percent not to exceed the increase in the three-year rolling average of the State's median family income. In fiscal 2011, this equates to a 4.4% cap on tuition and academic fees, which is greater than the planned average increase of 3.3% at USM institutions and MSU. Finally, SMCM was exempted from *Chapters 192 and 193*; therefore, the institution is no longer eligible to receive funds from HEIF, and the goal of limiting tuition increases also does not apply.

### **Tuition Freeze**

In response to rising tuition rates in fiscal 2002 through 2005, Chapters 57 and 58 of 2006 froze tuition for the 2006-2007 academic year at the fall 2005 rates for resident undergraduates at USM institutions and MSU and limited any tuition increase at SMCM to 4.8%. *Chapter 294 of 2007* continued the tuition freeze for USM and MSU for the 2007-2008 academic year. While the tuition freeze was not mandated in fiscal 2009 and 2010, USM and MSU continued to hold tuition at the fall 2005 rates. State funds were included in the budgets of USM institutions and MSU to offset the loss of tuition revenue for each year of the tuition freeze, with offsetting reductions for employee furloughs and other cost containment in fiscal 2010. At the start of the tuition freeze, based on the average tuition and fees at public four-year institutions, Maryland was ranked as the seventh most expensive among the 50 states, according to the College Board. Maryland's ranking has steadily improved to seventeenth by the 2009-2010 academic year.

In fiscal 2011, the tuition freeze was lifted. Institutions were allowed to increase tuition rates by 3% for the 2010-2011 academic year. In addition, State appropriations equivalent to an additional 2% tuition increase were provided to USM and MSU, again with offsetting budget reductions. SMCM, which is formula-funded and not included in the tuition limit agreement, also increased tuition by 3% but did not receive additional State funds.

### **Statutory Formulas**

Prior to the 2009 session, community colleges (through the Senator John A. Cade Funding Formula), BCCC, and independent institutions (through the Joseph A. Sellinger Program) were funded by formulas based on a specified percent of the previous year's State aid per full-time equivalent student (FTES) at selected public four-year institutions. Chapter 333 of 2006 established an enhancement to the Cade and BCCC formulas by phasing in an increase



in the specified percent of aid per FTES at selected public four-year institutions. Between fiscal 2007 and 2011, these formulas were altered several times to mitigate cost increases to the State. **Chapter 2 of the 2007 special session** delayed the planned enhancements for community colleges and BCCC. **Chapter 487 of 2009**, the Budget Reconciliation and Financing Act (BRFA) of 2009, in addition to further delaying the enhancement, changed the calculation for the Cade, BCCC, and Sellinger formulas to use current year per FTES funding at selected public four-year institutions instead of prior year funding and altered the final phase-in percentage of each formula to account for this change. **Chapter 484 of 2010**, the BRFA of 2010, again delayed the phase up of each formula so that all segments reach the full enhancement level in fiscal 2021 instead of 2013 as originally enacted in Chapter 333 of 2006. Exhibit L-7 shows the percent of State support per FTES to be used in each of the statutory formulas through 2021.

Finally, **Chapter 106 of 2007** increased the State funding limit for BCCC’s English for Speakers of Other Languages (ESOL) program so that the college may receive the full \$800 per ESOL student allotment specified in statute. A similar increase was made for the State’s other community colleges during the 2006 session.

**Exhibit L-7**  
**Percent of State Support per Student Used in Statutory Formulas**  
**Fiscal 2011-2021**

<u>Segment</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>	<u>FY17</u>	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>	<u>FY21</u>
Community Colleges	21.8%	20.0%	21.0%	22.0%	23.0%	24.0%	25.0%	26.0%	27.0%	28.0%	29.0%
Independents	9.8%	9.2%	10.0%	10.5%	11.0%	11.5%	12.0%	13.0%	14.0%	15.0%	15.5%
BCCC	66.6%	63.0%	63.5%	64.0%	64.5%	65.0%	65.5%	66.0%	66.5%	67.5%	68.5%

Source: Department of Legislative Services, **Chapter 484** – Budget Reconciliation and Financing Act of 2010

**Capital Program for Higher Education Tops \$1.5 Billion**

The capital program for all segments of higher education from fiscal 2007 to 2011 totaled nearly \$1.3 billion including general obligation bonds, academic revenue bonds (ARBs), and general and special funds spent as pay-as-you-go. This consisted of \$922.5 million for public four-year institutions and centers, \$312.6 million for the State’s 16 community colleges, and \$34.0 million for independent institutions. Exhibit L-8 shows the allocation of capital support by institution.

ARBs and auxiliary bonds are issued directly by institutions to construct or renovate academic and auxiliary facilities, with debt service supported by academic fees, auxiliary fees, or other sources established for the bonds. USM is the only segment of higher education that has

issued bonds directly between fiscal 2007 and 2011. The total amount of bonds outstanding that USM is authorized to issue was increased by \$150 million to \$2 billion by **Chapter 631 of 2010**. **Chapter 213 of 2009** increased the debt limit of BCCC to \$65 million and authorized the college to issue bonds for academic facilities. Previously, BCCC could only issue auxiliary bonds.

### **Green Buildings**

**Chapter 124 of 2008** required most new or renovated State buildings, including higher education buildings, and new public school buildings to be constructed as high-performance or green buildings. A high-performance building is defined as a building that meets or exceeds the U.S. Green Building Council's Leadership in Energy and Environmental Design criteria for a silver rating or a comparable numeric rating under any other nationally accepted standard. **Chapters 527 and 528 of 2010** require local community college capital projects that receive State funds to comply with the State's High Performance Buildings Act. A community college may apply for a waiver from this requirement under existing waiver procedures. The requirement applies prospectively to community college capital projects that have not initiated a request for proposals for the selection of an architectural and engineering consultant on or before July 1, 2011. For further discussion, see subpart "Procurement" of Part C – State Government of this *Major Issues Review*.

**Exhibit L-8**  
**Higher Education Capital Program, by Institution**  
**Fiscal 2008-2011**  
**(\$ in Thousands)**

<u>Institution</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Four-year Total</u>
UM, Baltimore	\$0	\$67,227	\$13,756	\$2,606	\$83,589
UM, College Park	30,921	36,100	17,933	56,672	141,626
Bowie State University	0	0	37,265	33,253	70,518
Towson University	13,505	27,613	35,725	38,650	115,493
UM Eastern Shore	0	0	0	3,000	3,000
Frostburg State University	0	0	0	2,681	2,681
Coppin State University	87,064	56,172	12,116	6,497	161,849
University of Baltimore	1,211	4,033	5,416	44,800	55,460
Salisbury University	13,541	0	28,000	21,869	63,410
UM University College	1,185	0	0	0	1,185
UM Baltimore County	2,725	0	0	37,400	40,125
UM Ctr. For Env. Science	9,200	1,343	0	0	10,543
UM Biotechnology Institute	0	0	0	0	0
USM Office	15,000	17,000	17,000	17,000	66,000
<b>Subtotal, USM Institutions</b>	<b>\$174,352</b>	<b>\$209,488</b>	<b>\$167,211</b>	<b>\$264,428</b>	<b>\$815,479</b>
Morgan State University	\$8,740	\$11,873	\$44,846	\$30,450	\$95,909
St. Mary's College of Maryland	1,197	4,780	1,685	0	7,662
Regional Centers	3,500	0	0	0	3,500
Community Colleges	61,300	81,028	88,332	78,745	309,405
Baltimore City Community College	0	0	3,214	0	3,214
Independents	8,000	9,000	9,000	8,000	34,000
<b>Total</b>	<b>\$257,089</b>	<b>\$316,169</b>	<b>\$314,288</b>	<b>\$381,623</b>	<b>\$1,269,169</b>

UM: University of Maryland

USM: University System of Maryland

Note: The capital appropriation to the USM Office is the total amount that is distributed to individual institutions for facility renewal needs.

Source: Department of Legislative Services; *90 Day Report*, 2007 to 2010

## Higher Education Funding Model Commission

During the 2007-2010 legislative term, the General Assembly continued its efforts to develop a framework for higher education funding. Chapters 57 and 58 of 2006 established the Commission to Develop the Maryland Model for Funding Higher Education to evaluate the relative roles of State general fund support and tuition and fee revenues at public institutions of higher education. The commission was charged with reviewing options and making

recommendations relating to the development of a statewide framework for higher education funding that would be consistent and stable and ensure that all of Maryland's public higher education institutions are affordable and accessible to the State's residents. The commission was further charged with making funding recommendations to ensure that Maryland's historically black institutions (HBIs) are comparable and competitive with other public institutions in the State.

*Senate Bill 861/House Bill 789 of 2009 (both failed)* would have implemented the recommendations of the commission by 2020, including (1) State funding for public higher education institutions at the seventy-fifth percentile of per student funding at a group of comparable institutions located in competitor states, and State funding of HBIs should be set at the eightieth percentile; (2) total in-state tuition and fees at public institutions of higher education at or below the fiftieth percentile of comparable institutions located in competitor states, and limit increases in tuition and fees to the three-year rolling average of the State's median family income; and (3) State need-based financial aid per student at the seventy-fifth percentile of competitor states.

Although the commission legislation did not pass due to fiscal constraints, intent language was added to *Chapter 487*, the BRFA of 2009, that the General Assembly should adopt the recommendations of the commission when fiscally prudent to do so. In addition, the BRFA directed the Maryland Higher Education Commission (MHEC) to incorporate the recommendations of the commission into the updated State Plan for Higher Education and to implement the recommendations that do not require legislation. MHEC was required by statute to submit a quadrennial review of the State Plan for Higher Education by July 1, 2008. In order to consider the findings of the commission and any legislation that may be enacted implementing the commission's recommendations, *Chapter 460 of 2009* extended the deadline by which MHEC must submit a quadrennial review of the State Plan for Higher Education to the Governor and the General Assembly from July 1, 2008, to July 1, 2009.

### **Base Realignment and Closure**

During the past legislative term, the General Assembly acted favorably on legislation to address the State's Base Realignment and Closure (BRAC) workforce needs through course and program development, technology upgrades, workforce training, and literacy. *Chapter 341 of 2008* authorized the use of HEIF funds for competitive BRAC-related workforce grants to institutions of higher education. The General Assembly appropriated HEIF funds for these grants in fiscal 2009 and 2010, though substantial cost containment reductions in both years reduced funding from \$3.0 million in fiscal 2009 to \$867,700 at the close of fiscal 2010, with a portion of the funds each year restricted for regional higher education centers (RHECs). In fiscal 2011, BRAC workforce grants were level funded at \$867,700 using general funds, with no RHEC funding restriction.

To further address higher education needs related to the BRAC process, *Chapter 697 of 2009* authorized community colleges and BCCC to waive out-of-state and out-of-county tuition for a student who resides in the State or county but does not meet the residency

requirement for tuition purposes and has moved to the State as an employee or a family member of an employee as part of the BRAC process. A BRAC employee or family member attending a community college who receives in-state tuition under the bill is counted as an in-state resident for purposes of calculating State aid for community colleges and BCCC using the statutory funding formulas.

### **Funding Strategy for Regional Higher Education Centers**

Eight RHECs are located throughout Maryland in areas not served by comprehensive four-year institutions. USM operates two of the centers, the Universities at Shady Grove and the Hagerstown Center, and six are funded through grants administered by MHEC. In response to a *Joint Chairmen's Report* request, MHEC submitted a report in 2005 proposing an RHEC funding strategy for the non-USM RHECs composed of a \$200,000 base allocation with additional per student, lease, and incentive funding allocations. This strategy was first implemented, though not fully funded, in fiscal 2009. The fiscal 2009 budget increased the total RHEC appropriation from \$800,000 to \$1.65 million, though \$400,000 was to be provided from BRAC HEIF, which was subsequently reduced by \$133,500 through cost containment. In fiscal 2009, each center received a \$100,000 base allocation, except the Southern Maryland Center, which received \$350,000. Remaining funds were distributed on a per student basis. In fiscal 2010, the non-USM RHECs were appropriated \$1.75 million, and intent language was added by the General Assembly that this amount become the minimum RHEC funding in future years. The fiscal 2010 appropriation was distributed using the funding strategy, including the full \$200,000 base funding appropriation. The remaining \$550,000 was allocated on a per student basis. In fiscal 2011, \$1.5 million was appropriated, and again the full base appropriation was distributed, though less per student funding was available.

### **Student Financial Assistance**

#### **Financial Aid Declines**

After significant increases in need-based student financial aid between fiscal 2003 and 2007, need-based aid declined 1.4%, or \$1.2 million, between fiscal 2007 and 2011. The decrease in need-based aid was partially offset by the tuition freeze noted above, though student fees increased over this period and in fiscal 2011 undergraduate tuition increases 3.0% at public four-year institutions. As shown in Exhibit L-9, merit- and career-based aid also declined over this period. In contrast, legislative aid increased slightly (funding for Delegate Scholarships is tied to undergraduate resident tuition and fee increases) and financial aid for unique populations nearly doubled due to the creation of the Veterans of the Afghanistan and Iraq Conflicts Scholarship, Chapter 290 of 2006, which was first funded in fiscal 2008 (discussed further below).

**Exhibit L-9**  
**State Financial Aid Appropriations**  
**Fiscal 2007-2011**  
**(\$ in Thousands)**

	<b>Baseline</b>			<b>Working</b>	<b>Allowance</b>	<b>% Change</b>
	<b><u>2007</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>	<b><u>2010</u></b>	<b><u>2011</u></b>	<b><u>2007-11</u></b>
Need-based Aid	\$83,818	\$81,892	\$83,986	\$84,479	\$82,659	-1.4%
Merit-based Aid	4,331	3,931	3,989	3,700	4,111	-5.1%
Career-based Aid	9,124	6,142	9,535	7,951	5,415	-40.7%
Legislative	11,349	11,245	11,120	11,337	11,482	1.2%
Unique Populations	785	1,466	1,701	1,538	1,520	93.6%
<b>Total</b>	<b>\$109,407</b>	<b>\$104,676</b>	<b>\$110,331</b>	<b>\$109,005</b>	<b>\$105,187</b>	<b>-3.9%</b>

Source: Maryland Higher Education Commission, Department of Legislative Services

### **New Financial Assistance Programs**

During the 2007-2010 legislative term, the General Assembly acted favorably on legislation that established new financial assistance programs and expanded existing programs.

Chapter 367 of 2006 consolidated eight workforce shortage scholarship and financial assistance programs into a single Workforce Shortage Student Assistance Grants program under which MHEC, with the advice of the Advisory Council on Workforce Shortage, is required to designate workforce shortage fields that are eligible for grant assistance. **Chapter 594 of 2007** provided more guidance to MHEC and the advisory council by defining a “public good or benefit,” which the advisory council must consider when making recommendations for workforce shortage fields that merit grant assistance. **Chapter 594** also clarified that students must earn at least 12 undergraduate credit hours or 9 graduate credit hours per year to qualify for Workforce Shortage Student Assistance grants and authorized MHEC to make awards to qualifying students during summer sessions.

Congressman Parren J. Mitchell, a Baltimore native, is one of Maryland’s distinguished sons of the twentieth century. **Chapter 317 of 2008** honored the legacy of Congressman Mitchell by establishing the Parren J. Mitchell Public Service Scholarship under the State’s Workforce Shortage Student Assistance Grant Program. Students who pledged to work as public servants in the fields of nursing and social work or in other public or nonprofit fields in workforce shortage areas in the State were eligible to receive the scholarship on completion of their studies in an amount ranging from \$1,000 to 50% of the cost of attendance at the student’s institution of higher education.

To provide an incentive for higher education students to explore careers in public service, **Chapter 490 of 2007** established the Walter Sondheim, Jr. Public Service Summer Internship Scholarship Program to be administered by the Shriver Center at the University of Maryland Baltimore County. Each participating student is placed in a summer internship with a qualifying nonprofit company, the State, or a local government and receives a \$3,000 scholarship from the Shriver Center. The program was named in honor of Walter Sondheim, Jr., a long-time leader in civic affairs, who died February 15, 2007, at the age of 98.

To provide assistance to Maryland residents who are simultaneously enrolled in high school and college and who demonstrate financial need, **Chapters 296 and 297 of 2007** established a new Dual Enrollment Grant Program for two years. MHEC was required to administer the program in cooperation with institutions of higher education and funds were allocated based on the number of dually enrolled students at each institution. **Chapter 459 of 2009** made the Dual Enrollment Grant permanent and renamed it the Early College Access Grant Program. In addition to funds allocated to the Early College Access Grants, institutions may use up to 10% of their Part-Time Grant allocation for dually enrolled students. **Chapter 459** also clarified that a dually enrolled student does not need to receive both high school and college credit from a course in order to be eligible for either grant.

### **Expanded Eligibility for Existing Financial Assistance Programs**

Created in 2006, the Veterans of the Afghanistan and Iraq Conflicts Scholarship was established to provide postsecondary education scholarships to veterans returning from Afghanistan and Iraq. **Chapter 604 of 2008** extended the deadline for awarding an initial Veterans of the Afghanistan and Iraq Conflicts Scholarship from June 30, 2012, to June 30, 2016. The Office of Student Financial Assistance (OSFA) in MHEC may continue to renew the scholarships after the June 30, 2016 deadline for individuals who received initial scholarships before the deadline. **Chapter 429 of 2009** required State scholarship and grant money retained in the State budget at the end of a fiscal year to be used to make awards to students during subsequent fiscal years under the Edward T. Conroy Memorial Scholarship Program and the Veterans of the Afghanistan and Iraqi Conflicts Scholarship in addition to need-based scholarship programs already specified.

The Edward T. Conroy Memorial Scholarship Program awards postsecondary education financial assistance to a variety of students who are related to certain members of the armed services, public safety employees, or victims of the September 11, 2001 terrorist attacks. **Chapter 232 of 2007** expanded eligibility for the scholarship by eliminating the program's Maryland residency requirement for a child or surviving spouse of a State or local public safety employee killed in the line of duty. **Chapters 607 and 608 of 2009** authorized eligible postsecondary institutions rather than OSFA to determine eligibility and award Edward T. Conroy Memorial Scholarships.

**Chapter 339 of 2007** increased the maximum annual award that a recipient may receive under the Senatorial Scholarship Program from \$2,000 to the equivalent annual tuition and mandatory fees for a full-time resident undergraduate student at the USM institution with the

highest annual expenses, excluding the University of Maryland University College and the University of Maryland, Baltimore. The bill also eliminates the \$8,000 limit on the amount a student may receive over multiple years. In addition, **Chapter 339** repealed limitations on the use of senatorial scholarship funds for summer study. With these changes, the maximum amount a senator may award to a single recipient is the same amount a delegate may award. **Chapter 339** did not impact the total annual appropriation for senatorial scholarships.

A recipient of a graduate and professional scholarship must be a Maryland resident, demonstrate a financial need, and attend one of several designated graduate and professional schools offering programs in medicine, dentistry, law, pharmacy, social work, veterinary medicine, or nursing. The University of Maryland School of Pharmacy is one of the designated graduate and professional schools at which a student may use a scholarship. **Chapter 152 of 2008** expanded eligibility under the program to include students who attend any institution of higher education in the State offering a first professional degree in pharmacy. The College of Notre Dame has added a first professional degree in pharmacy program and several other higher education institutions in the State are considering adding similar programs.

#### **New and Expanded Tuition and Loan Assistance Programs**

For institutions within USM, the Board of Regents sets tuition policies, including the determination of which students are eligible for resident tuition. The basic policy requires students to be identified as permanent residents of Maryland to qualify for resident tuition, meaning, among other factors, they have lived continuously in the State for at least 12 months immediately prior to attendance at a USM institution. The Board of Regents of MSU also has a policy that requires one year of residency in Maryland to qualify for resident tuition. Community colleges in Maryland generally have a three-month residency requirement. **Chapter 461 of 2009** required that children of certain State or local public safety employees killed in the line of duty be exempted from paying nonresident tuition at a public institution of higher education. A State and local public safety employee is specified as a person who is a career or volunteer member of a fire department, an ambulance company or squad, or a rescue company or squad; a law enforcement officer; a correctional officer; or a member of the Maryland National Guard who was a resident of Maryland at the time of death.

The State Military Department may provide tuition assistance for any active member of the National Guard attending an eligible institution in an amount equal to 50% of the cost of in-state tuition for any regularly scheduled undergraduate credit course, vocational-technical course, or trade course. To be eligible for tuition assistance, a guard member must have at least 24 months of service remaining. **Chapter 733 of 2009** expanded the types of courses for which the Military Department may provide tuition assistance to include graduate and professional credit courses. The bill also clarified that (1) tuition includes graduate, professional, vocational-technical, and trade school credit courses; (2) a member who receives assistance for an undergraduate, vocational-technical, or trade course is required to remain an active member for at least two years following the completion of the course; and (3) a member who receives assistance for a graduate or professional credit course is required to remain an active member for at least four years following the completion of the course. **Chapter 253 of 2009** exempted



members of the Maryland National Guard who are not State residents but who joined or subsequently served in the Maryland National Guard to provide a critical military occupational skill or to be a member of the Air Force critical specialty code from paying nonresident tuition at public institutions of higher education in Maryland.

*Chapter 644 of 2007* extended the tuition waiver program for children in foster care homes to foster children in out-of-home placements. In order to provide an incentive for foster parents to adopt an entire family of children and keep siblings together, *Chapters 251 and 252 of 2009* expanded eligibility for tuition and mandatory fee waivers for public institutions of higher education in Maryland to younger siblings of foster care recipients who have been adopted by the same family. To be eligible, the foster care children must share one or both parents before the adoption and be adopted from an out-of-home placement at the same time, by the same family. *Chapters 251 and 252* also expanded eligibility to foster care recipients who were adopted from an out-of-home placement after their thirteenth, rather than fourteenth, birthday.

The Janet L. Hoffman Loan Assistance Repayment Program (LARP) provides loan repayment assistance in exchange for certain service commitments to help ensure that sufficient numbers of primary care physicians, dentists, and professionals are serving underserved areas of the State or low-income families. *Chapters 575 and 576 of 2009* altered the eligibility for LARP, by removing primary care physicians from the program (known as the LARP-Primary Care Services program) and establishing a separate Maryland Loan Assistance Repayment Program for physicians. *Chapters 575 and 576* also created a Maryland Loan Assistance Repayment Program Fund, consisting of revenue generated through an increase to the rate structure of all hospitals in the State. The new special fund must be used by OSFA to administer the program. Additionally, *Chapters 575 and 576* set program eligibility standards, prioritized funding for loan repayment, and specified a role for the Department of Health and Mental Hygiene (DHMH) in identifying additional physician shortages.

The Maryland Dent-Care Program was established by Chapters 536 and 537 of 2000 in an effort to increase access to oral health services for underserved Medicaid recipients. The program provides higher education loan repayment assistance to licensed dentists who agree that at least 30% of the patients they serve will be Medicaid enrollees. To qualify for a grant, a dentist must also demonstrate a financial need. In response to reports of a child who died from an infection caused by an abscessed tooth because the child's family did not have access to a dentist, *Chapter 320 of 2007* repealed statutory limits on the number of dentists who may participate in the program and the amounts that may be awarded. *Chapter 320* required OSFA to adopt regulations to determine participation and award limits in collaboration with DHMH.

## **Maryland Higher Education Commission**

### **Partnership Agreement with the Office for Civil Rights**

Since 1969, Maryland has worked with the U.S. Department of Education, Office for Civil Rights (OCR) to eliminate the vestiges of segregation in its public higher education system

and to promote equal access for all students. In December 2000, the State and OCR entered into a partnership agreement that included a commitment from the State to further enhance its four HBIs (Bowie State University, Coppin State University, Morgan State University, and the University of Maryland Eastern Shore) and improve higher education opportunities for African American students.

The partnership agreement expired December 31, 2005, and on June 19, 2006, Maryland submitted a final report to OCR. OCR acknowledged receipt of the report in 2008 but has yet to reply or to find Maryland in compliance with the partnership agreement and federal civil rights law. Meanwhile, the State has continued to provide OCR enhancement grants to the HBIs annually since fiscal 2003 with cumulative funding of \$45.0 million. The State has also provided \$1.5 million annually in Access and Success funds in each of the individual operating budgets of the HBIs to support retention and graduation efforts.

A lawsuit is pending in the U.S. District Court that was brought by the Coalition for Equity and Excellence in Maryland Higher Education against the State alleging the State did not fulfill its commitments in the partnership agreement and violated federal equal opportunity obligations. The case is expected to go to trial in 2011.

### **Review of Duplicative Academic Programs**

Throughout the 2007-2010 legislative term, the General Assembly continued its review of legislation that would have provided an avenue of appeal for a party aggrieved by certain MHEC academic program decisions. Under current law, commission decisions are final and are not subject to judicial review. MHEC is responsible for approving or disapproving new academic programs proposed by higher education institutions in the State. When a new academic program is proposed, MHEC and other institutions may object to the new program for several reasons, one of which is that the program would unnecessarily duplicate an existing program. “Unnecessary duplication” is a federal standard set forth in *United States v. Fordice*, 505 U.S. 717 (1992) that prohibits a traditionally white institution in close geographic proximity to an HBI from offering duplicative academic programs in states that had a prior segregated system of higher education. Federal law defines “unnecessary” program duplication as “those instances where two or more institutions offer the same nonessential or noncore program. Under this definition, all duplication at the bachelor’s level of nonbasic liberal arts and sciences course work and all duplication at the master’s level and above are considered to be unnecessary” (*Fordice*). Duplicative programs may be allowed if there is sound educational justification.

A 2005 decision by the Secretary of Higher Education authorized Towson University to offer a joint masters of business administration (MBA) program with the University of Baltimore (UB). This decision resulted in an appeal to the full commission by MSU, which has had an MBA program for over 30 years and, like Towson and UB, is located in the Baltimore area. MSU claimed that the new MBA program would unnecessarily duplicate its program and would lead to further segregation in Baltimore-area universities. In November 2005, MHEC members affirmed the Secretary’s decision to allow Towson and UB to implement the new joint MBA program. Chapter 367 of 2006 would have enabled an institution directly affected by what is

believed to be an unreasonably duplicative academic program to appeal a decision of MHEC to the circuit court. However, the bill was vetoed by the Governor.

*Senate Bill 29 of 2007 (failed)* again attempted to provide a direct avenue of appeal for an aggrieved institution. *Senate Bill 29*, as amended by the Senate, required MHEC to review its decision authorizing the joint MBA program and authorized judicial review of that decision and all future decisions regarding unnecessary duplication in the circuit court. *Senate Bill 29*, as amended by the House, permitted MSU to file an appeal regarding the joint MBA program determination, which would set in motion a process of mediation and binding arbitration. If the parties were unable to resolve the dispute through mediation, a three-member arbitration panel would resolve the dispute. The House version of the bill did not permit appeals of future MHEC determinations; however, the bill required MHEC to convene a workgroup to review the academic program approval process and make recommendations to the General Assembly regarding the program approval and appeal process prior to the 2008 session.

*Senate Bill 402/House Bill 900 of 2009 (both failed)* would have required MHEC to review any determinations it made regarding unnecessary duplication of programs approved or implemented between July 1, and December 1, 2005, and after July 1, 2007, if an objection to the determination was filed by an HBI. If MHEC determined that there is unnecessary duplication, the bill would have required it to determine that the duplication is also unjustified if the program violates the State's agreement with the OCR or the State's equal educational opportunity obligations. The bill would have authorized judicial review of unnecessary program duplication determinations made by MHEC and required MSU or UB to accept students in good standing who are enrolled in a program at Towson University that is discontinued under an order of MHEC or a court.

The General Assembly considered two proposals during the 2010 session relating to MHEC review of program proposals. *Senate Bill 1115/House Bill 1550 (both failed)* would have required MHEC to review any determinations regarding a program that had been approved or implemented after January 1, 2009, and against which an objection based on unnecessary duplication was filed by an HBI. If MHEC determined that an unnecessary duplication existed, MHEC would have been required to determine that the duplication is also unjustified if the program violated the State's agreement with OCR or the State's equal educational opportunity obligations. The decision of MHEC would have been subject to judicial review in a circuit court. *Senate Bill 1084 of 2010 (failed)* would have required MHEC to review objections to proposals for new academic programs or substantial modifications to existing programs through a deliberative fact-finding process that includes the receipt of witness testimony and the weighing of evidence. *Senate Bill 1084* also would have repealed current law that makes MHEC's decision not subject to further administrative appeal or judicial review.

### **Certificates of Approval**

Most postsecondary institutions must obtain a certificate of approval from MHEC before they are allowed to operate in the State. However, MHEC grants a certificate of approval exemption to institutions under charter from the General Assembly and religious institutions

meeting certain qualifications. Unlike an approved institution, an exempt institution does not undergo review of its programs, facilities, or resources. **Chapter 465 of 2009** authorized the Secretary of Higher Education to issue a cease and desist order, issue a notice of violation, and impose a penalty of up to \$5,000 to an institution of postsecondary education operating without a required certificate of approval. **Chapter 465** also required an institution of postsecondary institution to have MHEC approval before offering certain programs and authorized the Secretary to require any institution that offers unapproved programs to refund all tuition and fees paid by students enrolled in the program and revoke the certificate of approval of any institution that fails to make a required refund within the time specified by the Secretary. **Chapter 465** further authorized MHEC to revoke or suspend a private career school's certificate of approval if the certificate of approval is sold, pledged, or transferred without prior approval from MHEC or there is a change of ownership of a school.

MHEC had received complaints from students as a result of several institutions exempt from the certificate of approval requirement improperly referring to or advertising their exempt status. **Chapter 221 of 2010** prohibited a religious institution operating without a certificate of approval from making a verbal or written statement that the institution is approved by MHEC, including a statement on any certificate, diploma, academic transcript, or other document or in any advertisement, publication, or web site. In addition, **Chapter 221** prohibited an institution from enrolling a student unless, before enrollment, written notice was given and a written acknowledgment was obtained from the student that the institution's instructional program is only designed for people seeking to learn about the particular religious faith and other specified information.

### **College Textbook Competition and Affordability**

The dramatic and continuing rise in the cost of college textbooks has gained increasing attention from policymakers and interest groups. With the 2004 release of "Rip-off 101," the U.S. Public Interest Research Group (PIRG) launched an effort to inform the public about practices by textbook publishers that, according to PIRG, resulted in higher college textbook prices. A July 2005 report from the U.S. Government Accountability Office (GAO-05-806) found that college textbook prices increased by 186% from 1986 to 2004, more than twice the rate of inflation but still less than the 240% increase in tuition over the same period. The report concluded that "the increasing costs associated with developing products designed to accompany textbooks, such as CD-ROMs and other instructional supplements, best explain price increases in recent years." The federal College Opportunity and Affordability Act became law on August 14, 2008, and required publishers to provide unbundled versions of textbooks and more pricing information to course instructors. The law also required institutions of higher education to make International Standard Book Numbers (ISBN) or other details about textbooks available to students.

Throughout the 2007-2010 legislative term, the General Assembly considered bills to address the issue of the high cost of college textbooks. **Chapter 295 of 2007** required the Department of Legislative Services (DLS) to examine the retail prices of textbooks for higher education students in the State and report on the advantages and disadvantages of posting

textbook information online as proposed in *Senate Bill 166 of 2007 (failed)*. Additionally, *Chapter 295* required DLS to conduct a survey of college bookstore and textbook adoption policies and practices at higher education institutions. DLS found that significant revenues were generated for two- and four-year colleges and universities by on-campus bookstores, including the sale of textbooks and other merchandise.

*Senate Bill 657/House Bill 1067 of 2008 (both failed)* would have required public institutions of postsecondary education to develop and implement specific practices and processes related to textbook selection and adoption. *Chapters 520 and 521 of 2009* required each public institution of higher education to inform faculty, bookstores, and students of textbook issues and information required to be disclosed and develop a best-practices process for faculty to select textbooks and course materials. Upon request of a bookstore that sells textbooks and course materials and is licensed by the Comptroller to do business in Maryland, *Chapters 520 and 521* required an institution of higher education to provide specific information on the textbooks and course materials that have been selected by faculty members, including the title, author, publisher, edition, copyright and publication date, the ISBN, the anticipated enrollments for the courses, and whether earlier editions of assigned textbooks will suffice. Publishers and campus bookstores were required to provide and sell textbooks and supplemental materials in the same manner as selected and ordered by faculty except for the purpose of providing lower-cost options to students. Publishers were also required to make bundled materials available separately, each separately priced.

### **College Savings Plans of Maryland**

The College Savings Plans of Maryland Board operates two college savings programs established under State law: the Maryland Prepaid College Trust and the Maryland College Investment Plan. Account holders may enroll directly in the programs and may subtract up to \$2,500 per year from Maryland taxable income for contributions to Maryland's college savings plans. Contributions exceeding \$2,500 may be carried over for 10 successive years. Earnings on money invested in the college savings plans are not subject to State or federal taxes as long as the funds are used for eligible college expenses. *Chapter 548 of 2008* authorized the board to establish a third plan, the Maryland Broker-dealer College Investment Plan, to enable Maryland families who invest through private investment advisors to participate in college savings plans that will result in State income tax benefits. Taxpayers may take a subtraction modification of up to \$2,500 for contributions made to the broker-dealer plan or the investment plan for the same beneficiary. Distributions from any of the plans that are used for qualified higher education expenses are tax-exempt.

### **Plans for Cultural Diversity**

A "Halloween in the Hood" fraternity party at Johns Hopkins University in the fall of 2006 caused a stir on the Hopkins campus and in the wider community with many observers suggesting that the fraternity party was offensive and possibly representative of underlying racial tensions on the campus. Ultimately, the fraternity that hosted the party was placed on social probation which resulted in it not being allowed to hold parties or other social events until

January 2008. *Chapters 579 and 580 of 2008* directed public institutions of higher education to develop and implement programs for cultural diversity and required independent institutions of higher education that receive State funding under the Sellinger formula to report on the programs at the institutions that promote and enhance cultural diversity.

## Legislative Audits

The Office of Legislative Audits distributes discussion notes relating to preliminary findings to the president of a public senior higher education institution and, in the case of a constituent institution of USM, to the director of the USM Office of Internal Audit. During the 2010 session, two institutions received findings of potential substantial fiscal impropriety about which the governing boards were unaware until issuance of the final audit report. In order to ensure that the USM Chancellor and governing boards are aware of any substantial preliminary findings prior to release of the final report, *Chapter 652 of 2010* expanded the dissemination of the discussion notes by requiring the legislative auditor to send a copy of the discussion notes relating to any preliminary findings of substantial fiscal impropriety to the USM Chancellor; the presidents of the USM institutions, MSU, and SMCM; and the governing boards of the respective institutions that were subject to the examination.

## Adult Education

For many years, the General Assembly has expressed concern about the availability of adult education and literacy services in the State and the funding for these programs. In response to committee narrative in the 2004 *Joint Chairmen's Report* and Chapter 305 of 2005, which initially required State funding in fiscal 2007 and 2008 to total at least \$4.0 million, the State Superintendent of Schools convened a Panel on Excellence in Adult Education. In its final report, issued December 1, 2005, the panel found that there were approximately 1 million individuals in Maryland with limited literacy skills, no high school diploma, or ineffective English language skills who would benefit from adult education and literacy services and recommended that a formula be used to allocate State aid for adult education.

The fiscal 2007 State budget proposed by the Governor included \$5.4 million for adult education, an amount greater than what was required by Chapter 305 of 2005. Chapter 350 of 2006 continued this trend and required the Governor to include in the fiscal 2008 State budget proposal an amount for adult education and literacy grants equal to an increase of at least \$1.5 million over the fiscal 2007 appropriation, totaling \$6.9 million. Since then, in fiscal 2008 through 2011, State funding for adult education has remained steady at \$6.9 million per year.

Prior to the adoption of *Chapter 134 of 2008*, MSDE administered and funded the Adult Education and Literacy Program in the State through competitive grants awarded in accordance with the State Plan for Adult and Family Literacy (State plan). The grants provided support for general education development (GED) instruction, adult external high school programs, instruction in English for nonnative speakers, and other literacy programs. MSDE also administered a correctional education program in conjunction with the Department of Public

Safety and Correctional Services (DPSCS). Incarcerated adults who failed to meet a minimum educational standard were provided basic education, adult secondary education, occupational preparatory programs, and library services through MSDE.

### **Transfer of Adult Education Programs**

Recognizing that significant overlap existed between the populations in need of adult education (administered by MSDE) and workforce development programs (administered by the Department of Labor, Licensing, and Regulation (DLLR)), *Chapter 134 of 2008* transferred adult education and literacy services and adult education programs for correctional institutions from MSDE to DLLR on July 1, 2009. As a result of the transfer, adult education and correctional education programs would be under the same agency as workforce development programs. *Chapter 134* also established a Workforce Creation and Adult Education Transition Council, co-chaired by the Secretary of Labor, Licensing, and Regulation and the State Superintendent of Schools, to assist in the development of a new State plan and to make recommendations on a new delivery system for services that would align adult education and adult correctional education with workforce development programs.

After the transition and the enactment of *Chapter 309 of 2009*, which further clarified the transfer of responsibility, it was determined that not all adult students would be served by DLLR. DLLR became responsible for the development of the new State plan and its submission to the U.S. Department of Education as well as the offering of examinations as part of the Adult External High School Diploma program. The State Board of Education would continue to issue Maryland high school diplomas to graduates of this program, and students who complete the GED program would be issued diplomas pursuant to regulations developed by both the Secretary of Labor, Licensing, and Regulation and the State Board of Education.

For an additional discussion of the transfer of adult education programs, see the subpart “State Agencies, Offices, and Officials” of Part C – State Government of this *Major Issues Review*.

### **Promotion of Available Adult Education Services**

Some adults who would benefit from adult education services are not aware of how to obtain services and where programs are offered in their local area. *Chapter 451 of 2008*, as amended by *Chapter 60 of 2009*, required DLLR to annually compile a list by county of adult education and literacy services offered to the public. DLLR must distribute the list to the local boards of education and superintendents of schools and must post the list on its public web site.

## Libraries

### Funding of Public Libraries

Chapter 481 of 2005 set a schedule of funding enhancements for public libraries. Chapter 481 established a base funding level for local library systems of \$13 per resident in fiscal 2007, up from \$12 per resident in fiscal 2006, and an annual enhancement of \$1 per resident until the formula reached \$16 per resident in fiscal 2010. Increases would then be based on population change. Regional resource centers were scheduled for similar enhancements to their aid formulas. However, the Spending Mandate and Revenue Dedication Relief Act of 2008 (*Chapter 414 of 2008*) and the Budget Reconciliation and Financing Acts of 2009 (*Chapter 487 of 2009*) and 2010 (*Chapter 484 of 2010*) altered these aid formulas and the four-year phase-in schedule set by Chapter 481.

#### Local Library Aid Formula

The library aid formula determines State and local minimum required payments to each of the 24 local library boards. The State pays approximately 40% of the total formula cost on a wealth-equalized basis, with the local jurisdictions providing the remaining 60%. However, *Chapter 414* deferred the \$1 formula increase for fiscal 2009, and *Chapter 487* froze the per resident amount used in the local library aid formula at \$14 for fiscal 2010 and 2011. The following year, *Chapter 484* eliminated further enhancements after the increase to \$15 per resident scheduled for fiscal 2012. With these changes, fiscal 2011 State funding for the library aid formula totaled \$33.0 million, which represents a \$187,000 decrease from the prior year.

#### Regional Libraries

There are three regional resource centers located in Charlotte Hall, Hagerstown, and Salisbury and serving Southern Maryland, Western Maryland, and the Eastern Shore, respectively.

The phase-in of enhancements for the regional resource centers scheduled by Chapter 481 of 2005 increased the per resident allocation by \$1 per year to move from \$4.50 per resident in fiscal 2006 to \$8.50 per resident by fiscal 2010. However, *Chapter 414* deferred the \$1.00 increase for fiscal 2009, and *Chapter 487* decreased the mandated per resident allocations to the State's three regional resource centers to \$6.75 per resident in fiscal 2010 and 2011. The allocation increases to \$7.50 per resident in fiscal 2012, but *Chapter 484* eliminated future increases beyond that level. With these changes, State funding in fiscal 2011 totaled \$6.2 million for the regional resource centers, an increase of approximately \$24,000 over the fiscal 2010 funding level.

#### State Library Resource Center

The State Library Resource Center, located at the Central Library of the Enoch Pratt Free Library System in Baltimore City, was created in 1971 to expand access statewide to specialized library services and materials.



Funding for the State Library Resource Center was not altered by Chapter 481 of 2005 and had equaled \$1.85 per State resident since fiscal 2004. **Chapter 487**, however, decreased the per State resident allocation to the State Library Resource Center by 10% to \$1.67 per State resident for fiscal 2010 and 2011. State funding in fiscal 2011 totaled \$9.4 million for the State Library Resource Center, an increase of approximately \$25,000 over fiscal 2010.

### **Public Library Capital Projects**

Chapter 494 of 2006 addressed the capital needs of public library systems in Maryland. The legislation established a State grant program for public library capital projects to provide a uniform and objective analysis of proposed capital projects and to support projects that address library needs in the State. Chapter 494 required that the Governor include \$5 million annually in the State operating or capital budget for the program beginning in fiscal 2008. Funding for the program was decreased by the General Assembly to \$2.25 million in fiscal 2008 and to \$4 million in fiscal 2009. In fiscal 2010 and 2011, \$5 million in general obligation bond funding was allocated for the program.

### **MDK12 Digital Library Codified**

In 2000, MSDE recommended that a group of school library media administrators study the feasibility of forming a statewide consortium to take advantage of cost-effective licensing of fee-based online services for K-12 schools in Maryland. A survey of local school systems in Maryland found that many local school systems were licensing online services, that licensing fees were not consistent throughout Maryland, and that licensing fees were too high for some local school systems to afford. Furthermore, evidence from other states suggested that discounts from digital purchasing consortia can be significant.

In 2002, MSDE awarded Montgomery County Public Schools (MCPS) a federal *Enhancing Education Through Technology* (Title IID) grant to form a statewide purchasing consortium. Over the next five years MCPS worked with the 23 other local school systems to form the MDK12 Digital Library, a statewide purchasing consortium for the K-12 community designed to give teachers, students, and parents access to a collection of online resources to support teaching and learning at a savings to the individual school systems.

With the federal grant that supported this project expiring on September 30, 2009, **Chapter 528 of 2009** codified the MDK12 Digital Library, a digital content purchasing consortium, within MSDE and established a steering committee to administer the digital library. Members of the MDK12 Digital Library may include the public school systems of the State and private nonprofit schools that are approved by MSDE. Members must agree to report digital content usage data to the steering committee and solely use the pricing agreements established by the steering committee. The steering committee is required to submit a report on the financial status and operations of the MDK12 Digital Library to MSDE by October 1 of each year.

## **Blind and Visually Impaired Students**

To address the barriers faced by blind, visually impaired, and print-disabled postsecondary students, a report by MHEC and the Maryland Department of Disabilities recommended that an entity responsible for providing accessibility services to postsecondary institutions in Maryland be created and suggested an annual budget for the entity of \$200,000. *Chapters 317 and 318 of 2007* established an Instructional Materials Access Guidelines Committee in order to assist the Maryland Library for the Blind and Physically Handicapped (LBPH) in developing guidelines to facilitate the distribution of instructional materials to blind and print disabled students. Upon the request of an eligible blind or print-disabled student, LBPH must request that a publisher that sells electronic or print instructional materials used by postsecondary education students in Maryland provide the instructional materials to LBPH in an electronic format. Beginning in fiscal 2009, the Governor must include \$200,000 for LBPH in the annual State budget.

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169 .....	HB 947	211 .....	SB 984
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259 .....	HB 907
260 .....	HB 964
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262 .....	HB 979
263 .....	HB 1013
264 .....	HB 1071
265 .....	HB 1150
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267 .....	HB 1175
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271 .....	HB 1225
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326 .....	HB 152	369 .....	SB 1014
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338 .....	SB 588	381 .....	HB 188
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434 .....	HB 783	477 .....	HB 1359
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177 .....	SB 444	220 .....	SB 797
178 .....	HB 664	221 .....	SB 822
179 .....	SB 456	222 .....	SB 826
180 .....	HB 985	223 .....	HB 991
181 .....	SB 458	224 .....	SB 828
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183 .....	SB 492	226 .....	HB 581
184 .....	SB 496	227 .....	SB 848
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279 .....	HB 580
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282 .....	HB 626
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284 .....	HB 630
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740 .....	HB 1470
741 .....	HB 1508
742 .....	HB 1514
743 .....	HB 1362
JR1 .....	HJ 3
JR2 .....	SJ 4
JR3 .....	HJ 4
JR4 .....	SJ 5