



# Maryland Register

Issue Date: August 26, 2011

Volume 38 • Issue 18 • Pages 1043—1118

## IN THIS ISSUE

Governor  
Attorney General  
Open Meetings Compliance  
Board  
Judiciary  
Regulations  
Errata  
Special Documents  
General Notices

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before August 8, 2011, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of August 8, 2011.

Brian Morris  
Acting Administrator, Division of State Documents  
Office of the Secretary of State



# Information About the Maryland Register and COMAR

## MARYLAND REGISTER

The Maryland Register is an official State publication published every other week throughout the year. A cumulative index is published quarterly.

The Maryland Register is the temporary supplement to the Code of Maryland Regulations. Any change to the text of regulations published in COMAR, whether by adoption, amendment, repeal, or emergency action, must first be published in the Register.

The following information is also published regularly in the Register:

- Governor's Executive Orders
- Attorney General's Opinions in full text
- Open Meetings Compliance Board Opinions in full text
- State Ethics Commission Opinions in full text
- Court Rules
- District Court Administrative Memoranda
- Courts of Appeal Hearing Calendars
- Agency Hearing and Meeting Notices
- Synopses of Bills Introduced and Enacted by the General Assembly
- Other documents considered to be in the public interest

## CITATION TO THE MARYLAND REGISTER

The Maryland Register is cited by volume, issue, page number, and date. Example:

- 19:8 Md. R. 815—817 (April 17, 1992) refers to Volume 19, Issue 8, pages 815—817 of the Maryland Register issued on April 17, 1992.

## CODE OF MARYLAND REGULATIONS (COMAR)

COMAR is the official compilation of all regulations issued by agencies of the State of Maryland. The Maryland Register is COMAR's temporary supplement, printing all changes to regulations as soon as they occur. At least once annually, the changes to regulations printed in the Maryland Register are incorporated into COMAR by means of permanent supplements.

## CITATION TO COMAR REGULATIONS

COMAR regulations are cited by title number, subtitle number, chapter number, and regulation number. Example: COMAR 10.08.01.03 refers to Title 10, Subtitle 08, Chapter 01, Regulation 03.

## DOCUMENTS INCORPORATED BY REFERENCE

Incorporation by reference is a legal device by which a document is made part of COMAR simply by referring to it. While the text of an incorporated document does not appear in COMAR, the provisions of the incorporated document are as fully enforceable as any other COMAR regulation. Each regulation that proposes to incorporate a document is identified in the Maryland Register by an Editor's Note. The Cumulative Table of COMAR Regulations Adopted, Amended or Repealed, found online, also identifies each regulation incorporating a document. Documents incorporated by reference are available for inspection in various depository libraries located throughout the State and at the Division of State Documents. These depositories are listed in the first issue of the Maryland Register published each year. For further information, call 410-974-2486.

## HOW TO RESEARCH REGULATIONS

An Administrative History at the end of every COMAR chapter gives information about past changes to regulations. To determine if there have been any subsequent changes, check the "Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed" which is found online at [www.dsd.state.md.us/CumulativeIndex.pdf](http://www.dsd.state.md.us/CumulativeIndex.pdf). This table lists the regulations in numerical order, by their COMAR number, followed by the citation to the Maryland Register in which the change occurred. The Maryland Register serves as a temporary supplement to COMAR, and the two publications must always be used together. A Research Guide for Maryland Regulations is available. For further information, call 410-260-3876.

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Maryland citizens and other interested persons may participate in the process by which administrative regulations are adopted, amended, or repealed, and may also initiate the process by which the validity and applicability of regulations is determined. Listed below are some of the ways in which citizens may participate (references are to State Government Article (SG), Annotated Code of Maryland):

- By submitting data or views on proposed regulations either orally or in writing, to the proposing agency (see "Opportunity for Public Comment" at the beginning of all regulations appearing in the Proposed Action on Regulations section of the Maryland Register). (See SG, §10-112)
- By petitioning an agency to adopt, amend, or repeal regulations. The agency must respond to the petition. (See SG §10-123)
- By petitioning an agency to issue a declaratory ruling with respect to how any regulation, order, or statute enforced by the agency applies. (SG, Title 10, Subtitle 3)
- By petitioning the circuit court for a declaratory judgment on the validity of a regulation when it appears that the regulation interferes with or impairs the legal rights or privileges of the petitioner. (SG, §10-125)
- By inspecting a certified copy of any document filed with the Division of State Documents for publication in the Maryland Register. (See SG, §7-213)

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# Contents

1045

## Closing Dates for the Maryland Register

Schedule of Closing Dates and Issue Dates for the Maryland Register .....	1047
---	------

## COMAR Research Aids

Table of Pending Proposals .....	1048
----------------------------------	------

## Index of COMAR Titles Affected in This Issue

COMAR Title Number and Name	Page
08 Department of Natural Resources .....	1077, 1079
09 Department of Labor, Licensing, and Regulation .....	1082
10 Department of Health and Mental Hygiene .....	1077, 1082
11 Department of Transportation .....	1087
12 Department of Public Safety and Correctional Services ....	1077
14 Independent Agencies .....	1078, 1090
20 Public Service Commission .....	1078
23 Board of Public Works .....	1096
26 Department of the Environment .....	1101
29 Department of State Police .....	1105
30 Maryland Institute for Emergency Medical Services Systems (MIEMSS) .....	1106
31 Maryland Insurance Administration .....	1106
34 Department of Planning .....	1078

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## The Governor

EXECUTIVE ORDER 01.01.2011.13.....	1051
------------------------------------	------

## The Attorney General

OPINIONS.....	1052
OPINIONS.....	1053
OPINIONS.....	1057

## Open Meetings Compliance Board

OPINIONS.....	1060
OPINIONS.....	1063
OPINIONS.....	1065
OPINIONS.....	1066
OPINIONS.....	1070
OPINIONS.....	1072

## The Judiciary

ADMINISTRATIVE OFFICE OF THE COURTS	
NOTICE OF FUNDING AVAILABILITY	
Child Welfare Program Grants .....	1076
COURT OF APPEALS OF MARYLAND	
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE	
Notice of Open Meeting.....	1076

## Final Action on Regulations

### 08 DEPARTMENT OF NATURAL RESOURCES

WILDLIFE	
Forest Wildlife .....	1077

### BOATING — SPEED LIMITS AND OPERATION OF VESSELS

Middle River .....	1077
--------------------	------

### 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

#### HEALTH SERVICES COST REVIEW COMMISSION

Health Information Exchange Data .....	1077
--	------

### 12 DEPARTMENT OF PUBLIC SAFETY AND

#### CORRECTIONAL SERVICES

##### POLICE TRAINING COMMISSION

General Regulations .....	1077
---------------------------	------

### 14 INDEPENDENT AGENCIES

#### STATE LOTTERY AGENCY

Facility Standards .....	1078
--------------------------	------

### 20 PUBLIC SERVICE COMMISSION

#### SERVICE SUPPLIED BY ELECTRIC COMPANIES

Net Metering .....	1078
--------------------	------

### 34 DEPARTMENT OF PLANNING

#### CENSUS AND REDISTRICTING

Redistricting Prison Populations .....	1078
--	------

## Proposed Action on Regulations

### 08 DEPARTMENT OF NATURAL RESOURCES

#### FISHERIES SERVICE

Crabs .....	1079
-------------	------

Fishing Licenses — Point Assignment, License Revocation

and Suspension Schedule and Criteria, and Hearing

Procedure.....	1081
----------------	------

### 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

#### BOARD OF ARCHITECTS

Fees .....	1082
------------	------

### 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

#### FISCAL

Local Health Services Funding.....	1082
------------------------------------	------

#### MEDICAL CARE PROGRAMS

Physicians' Services.....	1084
---------------------------	------

Physical Therapy Services.....	1084
--------------------------------	------

EPSDT School Health-Related Services or Health-Related	
--	--

Early Intervention Services .....	1084
-----------------------------------	------

FOOD	
------	--

Shellfish Sanitation.....	1086
---------------------------	------

BOARD OF DENTAL EXAMINERS	
---------------------------	--

Practice of Dental Hygiene Under General Supervision in a	
---	--

Facility or Long-Term Care Facility.....	1086
--	------

### 11 DEPARTMENT OF TRANSPORTATION

#### MOTOR VEHICLE ADMINISTRATION —

##### ADMINISTRATIVE PROCEDURES

Motor Vehicle Fees .....	1087
--------------------------	------

Refusal to Renew or Transfer a Vehicle Registration and	
---	--

Refusal to Renew a Driver's License for Failure to Pay	
--	--

Undisputed Taxes and Unemployment Insurance	
---	--

Contributions .....	1087
---------------------	------

MOTOR VEHICLE ADMINISTRATION — VEHICLE	
--	--

REGISTRATION	
--------------	--

Vehicle Trade-In Allowance .....	1087
----------------------------------	------

### 14 INDEPENDENT AGENCIES

COMMISSION ON CRIMINAL SENTENCING POLICY	
--	--

Criminal Offenses and Seriousness Categories .....	1090
--	------

### 23 BOARD OF PUBLIC WORKS

#### PUBLIC SCHOOL CONSTRUCTION

Administration of the Public School Construction	
--	--

Program .....	1096
---------------	------

Construction Procurement Methods .....	1096
--	------

# Contents

1046

<b>26 DEPARTMENT OF THE ENVIRONMENT</b>	
AIR QUALITY	
Volatile Organic Compounds from Specific Processes....	1099
WATER MANAGEMENT	
Erosion and Sediment Control .....	1101
<b>29 DEPARTMENT OF STATE POLICE</b>	
CRIME LABORATORY	
Statewide DNA Data Base System and Repository .....	1105
<b>30 MARYLAND INSTITUTE FOR EMERGENCY</b>	
<b>MEDICAL SERVICES SYSTEMS (MIEMSS)</b>	
PUBLIC ACCESS AUTOMATED EXTERNAL	
DEFIBRILLATOR PROGRAM	
Protocol.....	1106
<b>31 MARYLAND INSURANCE ADMINISTRATION</b>	
LIFE INSURANCE AND ANNUITIES	
Retained Asset Accounts .....	1106

## Errata

COMAR 10.09.53.07 .....	1108
-------------------------	------

## Special Documents

DEPARTMENT OF THE ENVIRONMENT	
SUSQUEHANNA RIVER BASIN COMMISSION	
Projects Approved or Rescinded for Consumptive Uses of	
Water .....	1109
Public Hearing and Commission Meeting .....	1110
DEPARTMENT OF STATE POLICE	
HANDGUN ROSTER BOARD	
Proposed Additions to Handgun Roster and Notice of Right	
to Object or Petition .....	1111

## General Notices

ADVISORY COUNCIL ON CEMETERY OPERATIONS	
Public Meeting.....	1113
CHESAPEAKE BAY TRUST	
Public Meeting .....	1113
BOARD OF CHIROPRACTIC AND MASSAGE THERAPY	
EXAMINERS	
Public Meeting.....	1113
GOVERNOR'S OFFICE OF CRIME CONTROL AND	
PREVENTION	
Public Meeting.....	1113
Public Meeting .....	1113
COMMISSION ON CRIMINAL SENTENCING POLICY	
Public Meeting.....	1113
OFFICE OF THE DEAF AND HARD OF	
HEARING/MARYLAND ADVISORY COUNCIL ON	
THE DEAF AND HARD OF HEARING	
Public Meeting.....	1113
JOINT CHAIRS OF THE DESIGN BOARDS	
Public Meeting.....	1113
BOARD OF DIETETIC PRACTICE	
Public Meeting.....	1113
PROFESSIONAL STANDARDS AND TEACHER	
EDUCATION BOARD	
Public Meeting.....	1113
MARYLAND STATE DEPARTMENT OF	
EDUCATION/DIVISION OF SPECIAL	
EDUCATION/EARLY INTERVENTION SERVICES	
Public Hearing .....	1113
ELEVATOR SAFETY REVIEW BOARD	
Public Meeting.....	1114

EMERGENCY MEDICAL SERVICES ADVISORY	
COUNCIL	
Public Meeting .....	1114
EMERGENCY MEDICAL SERVICES BOARD	
Public Meeting .....	1114
EMERGENCY MEDICAL SERVICES BOARD	
Public Meeting .....	1114
BOARD FOR PROFESSIONAL ENGINEERS	
Public Meeting .....	1114
BOARD OF ENVIRONMENTAL SANITARIANS	
Public Meeting .....	1114
DEPARTMENT OF GENERAL SERVICES/	
ARCHITECTURAL/ENGINEERING/	
PROCUREMENT/GPSSB	
Public Meeting .....	1114
BOARD OF HEATING, VENTILATION, AIR-	
CONDITIONING, AND REFRIGERATION	
CONTRACTORS (HVACR)	
Public Meeting .....	1114
HOME IMPROVEMENT COMMISSION	
Public Meeting .....	1114
DIVISION OF LABOR AND INDUSTRY/MARYLAND	
OCCUPATIONAL SAFETY AND HEALTH (MOSH)	
ADVISORY BOARD	
Public Meeting .....	1114
BOARD FOR PROFESSIONAL LAND SURVEYORS	
Public Meeting .....	1115
MARYLAND HEALTH CARE COMMISSION	
Public Meeting .....	1115
Receipt of Applications .....	1115
MINORITY BUSINESS ENTERPRISE ADVISORY	
COMMITTEE	
Public Meeting .....	1115
Public Meeting .....	1115
BOARD OF MORTICIANS AND FUNERAL DIRECTORS	
Public Meeting .....	1115
BOARD OF EXAMINERS OF NURSING HOME	
ADMINISTRATORS	
Public Meeting on Regulations .....	1115
BOARD OF OCCUPATIONAL THERAPY PRACTICE	
Public Meeting .....	1115
BOARD OF PLUMBING	
Public Meeting .....	1115
BOARD OF PODIATRIC MEDICAL EXAMINERS	
Public Meeting .....	1115
Public Meeting .....	1115
Public Meeting .....	1116
Public Meeting .....	1116
PUBLIC SCHOOL LABOR RELATIONS BOARD	
Public Meeting .....	1116
REAL ESTATE COMMISSION	
Public Meeting .....	1116
Public Hearing.....	1116
BOARD OF SOCIAL WORK EXAMINERS	
Public Meeting .....	1116
STATE TREASURER'S OFFICE	
Announcement .....	1116

# Contents

1047

## COMAR Online

The Code of Maryland Regulations is available at [www.dsd.state.md.us](http://www.dsd.state.md.us) as a free service of the Office of the Secretary of State, Division of State Documents. The full text of regulations is available and searchable. Note, however, that the printed COMAR continues to be the only official and enforceable version of COMAR.

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## CLOSING DATES and ISSUE DATES through JANUARY 27, 2012

Issue Date	Emergency and Proposed Regulations 5:00 p.m.	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
September 9**	August 22	August 30	August 26
September 23**	September 2	September 14	September 12
October 7	September 19	September 28	September 26
October 21**	October 3	October 12	October 7
November 4	October 17	October 26	October 24
November 18**	October 31	November 8	November 4
December 2**	November 14	November 18	November 16
December 16	November 28	December 7	December 5
December 30	December 12	December 21	December 19
January 13**	December 23	January 4	December 30
January 27	January 9	January 18	January 16

\* Due date for documents containing 8 to 18 pages—48 hours before date shown

Due date for documents exceeding 18 pages—1 week before date shown

**NOTE: ALL DOCUMENTS MUST BE SUBMITTED IN TIMES NEW ROMAN, 9-POINT, SINGLE-SPACED FORMAT. THE REVISED PAGE COUNTS REFLECT THIS FORMATTING REQUIREMENT.**

\*\* Note closing date changes

**The regular closing date for Proposals and Emergencies is Monday.**



**10.09.20.01,.04—.06** • 38:16 Md. R. 961 (7-29-11)  
**10.09.24.13** • 38:3 Md. R. 180 (1-28-11)  
 38:14 Md. R. 800 (7-1-11)  
**10.09.50.07** • 38:18 Md. R. 1084 (8-26-11) (ibr)  
**10.09.53.07** • 38:17 Md. R. 1029 (8-12-11)  
 38:18 Md. R. 1108 (8-26-11) (err)  
**10.09.54.33** • 38:17 Md. R. 1030 (8-12-11)  
**10.09.55.29** • 38:17 Md. R. 1031 (8-12-11)  
**10.09.56.22** • 38:17 Md. R. 1033 (8-12-11)  
**10.09.81.01—.07** • 37:20 Md. R. 1409 (09-24-10)

**Subtitles 10 — 22 (3rd Volume)**

**10.10.01.03** • 37:25 Md. R. 1745 (12-3-10)  
**10.10.03.02** • 37:25 Md. R. 1745 (12-3-10)  
**10.10.06.02** • 37:25 Md. R. 1745 (12-3-10)  
**10.15.07.01** • 38:18 Md. R. 1086 (8-26-11) (ibr)  
**10.21.22.07** • 38:15 Md. R. 902 (7-15-11)

**Subtitles 23 — 36 (4th Volume)**

**10.24.05.04** • 38:16 Md. R. 962 (7-29-11)  
**10.25.08.01—.06** • 38:16 Md. R. 962 (7-29-11)  
**10.25.16.01—.07** • 38:16 Md. R. 964 (7-29-11)  
**10.26.01.03** • 38:16 Md. R. 968 (7-29-11)  
**10.26.02.07** • 38:16 Md. R. 968 (7-29-11)  
**10.27.11.02,.04,.05** • 37:21 Md. R. 1456 (10-8-10)  
**10.27.12.03** • 38:16 Md. R. 968 (7-29-11)  
**10.32.03,.01—.16** • 38:14 Md. R. 803 (7-1-11)  
**10.34.03.01—.18** • 38:12 Md. R. 716 (6-3-11)  
**10.34.28.01,.02,.04—.12** • 36:25 Md. R. 1965 (12-4-09)  
**10.34.28.01,.02,.04—.14** • 38:2 Md. R. 93 (1-14-11)  
**10.34.35.01—.10** • 38:17 Md. R. 1034 (8-12-11)

**Subtitles 37—59 (5th Volume)**

**10.41.03.06** • 38:11 Md. R. 674 (5-20-11)  
**10.44.21.01,.02,.04,.05,.10,.11** • 38:11 Md. R. 674 (5-20-11)  
 38:18 Md. R. 1086 (8-26-11)  
**10.44.30.01—.05** • 38:14 Md. R. 812 (7-1-11)  
**10.53.04.03** • 38:16 Md. R. 969 (7-29-11)  
**10.53.12.01** • 38:16 Md. R. 969 (7-29-11)  
**10.54.02.18** • 38:16 Md. R. 970 (7-29-11)

**11 DEPARTMENT OF TRANSPORTATION**

**11.11.05.02** • 38:18 Md. R. 1087 (8-26-11)  
**11.11.05.03** • 38:15 Md. R. 903 (7-15-11)  
**11.11.15.01—.06** • 38:18 Md. R. 1087 (8-26-11)  
**11.15.16.05** • 38:15 Md. R. 903 (7-15-11)  
**11.15.33.06** • 38:18 Md. R. 1087 (8-26-11)

**12 DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONAL SERVICES**

**12.02.28.01—.23** • 37:24 Md. R. 1674 (11-19-10)  
**12.10.01.04—.06,.08,.09,.14—.17,**  
**.19—.27** • 38:15 Md. R. 904 (7-15-11)  
**12.10.04.01—.31** • 38:15 Md. R. 904 (7-15-11)  
**12.10.05.01** • 38:15 Md. R. 904 (7-15-11)  
**12.10.06.01—.16** • 38:15 Md. R. 904 (7-15-11)

**13A STATE BOARD OF EDUCATION**

**13A.01.02.05** • 38:14 Md. R. 814 (7-1-11)

**13A.06.01.01—.03** • 38:12 Md. R. 723 (6-3-11)  
**13A.06.02.01—.05** • 38:16 Md. R. 971 (7-29-11)  
**13A.07.04.01,.01-1,.05,.06** • 37:16 Md. R. 1082 (7-30-10) (ibr)  
**13A.12.02.27** • 38:14 Md. R. 815 (7-1-11)  
**13A.12.03.02,.03,.11** • 38:17 Md. R. 1038 (8-12-11)

**13B MARYLAND HIGHER EDUCATION COMMISSION**

**13B.02.01.04,.05,.07,.08** • 38:14 Md. R. 815 (7-1-11)  
**13B.02.02.04,.06** • 38:14 Md. R. 815 (7-1-11)  
**13B.02.03.02-1** • 38:14 Md. R. 815 (7-1-11)  
**13B.02.04.03** • 38:14 Md. R. 815 (7-1-11)

**14 INDEPENDENT AGENCIES**

**14.01.10.13** • 38:17 Md. R. 1039 (8-12-11)  
**14.09.03.01,.04,.09** • 38:3 Md. R. 207 (1-28-11)  
**14.22.02.02** • 38:18 Md. R. 1090 (8-26-11)  
**14.32.05.02** • 37:1 Md. R. 33 (1-4-10)  
 37:15 Md. R. 1020 (7-16-10)

**15 DEPARTMENT OF AGRICULTURE**

**15.15.01.01-2,.17** • 38:14 Md. R. 817 (7-1-11)

**17 DEPARTMENT OF BUDGET AND MANAGEMENT**

**17.04.13.01,.03** • 38:16 Md. R. 973 (7-29-11)

**20 PUBLIC SERVICE COMMISSION**

**20.50.01.03,.05** • 38:5 Md. R. 332 (2-25-11)  
**20.50.10.05** • 38:5 Md. R. 332 (2-25-11)

**22 STATE RETIREMENT AND PENSION SYSTEM**

**22.01.14.01—.03** • 38:14 Md. R. 818 (7-1-11)  
**22.07.02.04** • 38:14 Md. R. 819 (7-1-11)

**23 BOARD OF PUBLIC WORKS**

**23.03.02.03,.05,.13,.28,.29** • 38:18 Md. R. 1096 (8-26-11)  
**23.03.03.04** • 38:18 Md. R. 1096 (8-26-11)

**26 DEPARTMENT OF THE ENVIRONMENT**

**Subtitles 08 — 12 (Part 2)**

**26.11.09.01,.02,.10** • 38:2 Md. R. 112 (1-14-11)  
**26.11.19.11** • 38:9 Md. R. 565 (4-22-11)  
**26.11.19.27-1** • 38:18 Md. R. 1099 (8-26-11)  
**26.12.01.01** • 38:14 Md. R. 820 (7-1-11) (ibr)

**Subtitles 13—18 (Part 3)**

**26.17.01.01** • 37:19 Md. R. 1329 (9-10-10) (err)  
**26.17.01.01—.11** • 37:18 Md. R. 1244 (8-27-10) (ibr)  
 38:18 Md. R. 1101 (8-26-11) (ibr)

**29 MARYLAND STATE POLICE**

**29.05.01.01,.16** • 38:18 Md. R. 1105 (8-26-11)  
**29.06.06.01—.07** • 36:20 Md. R. 1554 (9-25-09)

**PENDING PROPOSALS**

**1050**

**30 MARYLAND INSTITUTE FOR EMERGENCY MEDICAL  
SERVICES SYSTEMS (MIEMSS)**

**30.04.02.12** • 38:15 Md. R. 922 (7-15-11)

**30.04.03.17** • 38:15 Md. R. 922 (7-15-11)

**30.04.04.15** • 38:15 Md. R. 922 (7-15-11)

**30.06.03.01** • 38:18 Md. R. 1106 (8-26-11)

**30.08.02.03, .04, .07, .10** • 38:15 Md. R. 922 (7-15-11)

**30.08.17.01— .19** • 38:15 Md. R. 924 (7-15-11)

**31 MARYLAND INSURANCE ADMINISTRATION**

**31.04.17.13** • 38:15 Md. R. 929 (7-15-11)

**31.09.14.01— .05** • 38:18 Md. R. 1106 (8-26-11)

**31.10.41.01— .07** • 38:12 Md. R. 730 (6-3-11)

**31.12.08.04** • 38:17 Md. R. 1039 (8-12-11)



# The Governor

## EXECUTIVE ORDER 01.01.2011.13

### Regional Bomb Squad Readiness and Coordination

WHEREAS, The State of Maryland has seven federally accredited bomb squads, including the Office of the State Fire Marshal (OSFM) Bomb Squad and six locally-operated squads, which are located in Prince George's County, Montgomery County, Baltimore County, Ocean City, Annapolis City and Baltimore City;

WHEREAS, The OSFM Bomb Squad, the accredited local bomb squads, the Maryland Emergency Management Agency, and the Governor's Office of Homeland Security have coordinated to enhance bomb squad readiness and coordination throughout the State;

WHEREAS, Recent accomplishments of State agencies, working together with local bomb squads, include creating a system to track bomb squad response time data, and allocating resources to develop a multi-jurisdictional maritime and underwater bomb response capability; and

WHEREAS, It is essential for State agencies and local bomb squads to continue their collaboration in order to ensure that each region of the State has access to safe and effective bomb squad response.

NOW THEREFORE, I MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. The Office of the State Fire Marshal (OSFM) within the Maryland Department of State Police, the Maryland Emergency Management Agency (MEMA), and the Governor's Office of Homeland Security (GOHS) shall continue to coordinate with the State's federally accredited local bomb squads in order to provide safe, immediate, and effective responses to bomb threats throughout all regions of the State.

B. In their coordination with the State's accredited local bomb squads, the OSFM, MEMA and GOHS shall focus on establishing and promoting:

- (1) Mutual aid among Maryland's accredited bomb squads to ensure effective bomb squad response statewide;
- (2) A regional response plan to ensure bomb squad readiness and coordination throughout the State;
- (3) Joint training exercises across jurisdictions and disciplines, including law enforcement; and
- (4) Mechanisms for sharing and analyzing performance data.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 9th Day of August, 2011.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[11-18-50]

# The Attorney General

## OPINIONS

May 2, 2011

The Honorable Scott G. Patterson  
State's Attorney for Talbot County

You have asked for our opinion on the interpretation of Annotated Code of Maryland, Criminal Procedure Article ("CP"), §12-304(c)(1), which requires that an action to forfeit money related to controlled dangerous substances be filed within 90 days of the final disposition of any related criminal proceedings. In particular, you ask whether this provision merely establishes a statute of limitations for filing a forfeiture proceeding that happens to be related to a criminal case, or whether it also requires that a criminal case be filed and completed as a condition of forfeiture.

In our opinion, the case law makes clear that a forfeiture action is not contingent upon the filing of a criminal proceeding. The 90-day period in CP §12-304(c)(1) sets a limitation for the filing of a forfeiture action whenever a related criminal proceeding has been completed. But the forfeiture action need not await the filing or completion of criminal proceedings.

### I Forfeiture Statute

State law permits the seizure of property when there is probable cause to believe that the property was or will be used to violate the controlled dangerous substances laws. CP §12-202(a)(2)(v). A prime example of such property is money intended for an illegal drug transaction or the cash proceeds of such a transaction. The statute further specifies the procedures for instituting and litigating forfeitures. CP §12-301 *et seq.* Among other things, the statute establishes deadlines for filing various types of forfeiture proceedings. CP §12-304. With respect to a proceeding for the forfeiture of money, it states:

(1) A proceeding about money shall be filed within 90 days after the final disposition of criminal proceedings that arise out of the Controlled Dangerous Substances law.

(2) If the State or a political subdivision does not file proceedings about money within the 90-day period, the money seized under this title shall be returned to the owner on request by the owner.

(3) If the owner fails to ask the return of the money within 1 year after the final disposition of criminal proceedings, as provided under §12-403 of this title, the money shall revert to:

(i) the political subdivision in which the money was seized; or

(ii) the State, if the money was seized by State authorities.

CP §12-304(c). Your question relates to the deadline set forth in paragraph (1) for filing forfeiture proceedings.

### II Analysis

#### A. Origin of 90-day Deadline for Money Forfeitures

The State statute authorizing the forfeiture of money related to illegal drug transactions was first enacted in 1970. Chapter 403, Laws of Maryland 1970, then codified at Annotated Code of Maryland, Article 27, §297. Among other things, that statute provided that money or currency was subject to forfeiture if there was probable cause to believe that it had been used, or was intended to be

used, in connection with a violation of the controlled dangerous substances laws. Article 27, §297(a)(6) (1971 Repl. Vol.). The statute required that such forfeiture proceedings be instituted "promptly." Article 27, §297(b) (1971 Repl. Vol.).

In 1973, the Court of Appeals interpreted the term "promptly" in a case involving the forfeiture of money allegedly related to a drug transaction. *Geppi v. State*, 270 Md. 239, 310 A.2d 768 (1973). In that case, money was seized from an individual named Geppi shortly after his October 1970 arrest for drug offenses. The charges were eventually stetted in August 1971. Eight months later, in April 1972, the State filed a petition to forfeit the money under Article 27, §297, on the ground that it was intended for use in a drug transaction. Geppi contested the forfeiture, arguing that the State had not filed its petition "promptly." The Court looked to the period between the stetting of the criminal charges and the filing of the petition – a period of eight months – and, given that no explanation had been offered for the delay, held that the State had failed to file the petition "promptly." 270 Md. at 247. The Court declined to set a general rule or indicate "any particular time as unreasonable for the institution of forfeiture proceedings within the limits of [the statute]," but left that determination to the facts of each case and suggested that a delay of even eight months might be reasonable in some circumstances. *Id.*

*Geppi* thus did not resolve the uncertainty as to the deadline for filing a forfeiture proceeding after a criminal case was concluded. The following year the General Assembly amended the statute. Chapter 666, Laws of Maryland 1974. The 1974 amendment eliminated the uncertainty by specifying that a proceeding to forfeit money had to be "instituted within 90 days from the date of final disposition of criminal proceedings which arise out of [the controlled dangerous substance laws]." Article 27, §297(b) (1971 Repl. Vol. & 1974 Cum. Supp.).<sup>1</sup>

#### B. Whether a Forfeiture Proceeding May be Filed Before Completion of a Criminal Case

The 90-day post-criminal disposition period was thus added to the statute to clarify when a forfeiture proceeding involving money could be filed after the conclusion of a related criminal proceeding. But is that the exclusive period for the filing of a forfeiture proceeding? In other words, may a forfeiture proceeding be filed *before* the conclusion of the criminal proceeding – or even before criminal charges are filed? The Court of Appeals has held that it may.

In *Bozman v. Office of Finance*, 296 Md. 492, 463 A.2d 832 (1982), federal and county law enforcement officers executed search warrants at Bozman's house, where they recovered illegal drugs and \$3,950 in currency. Bozman was never charged with criminal violations of the controlled dangerous substances laws. Nonetheless, nearly 18 months after the search, Baltimore County filed a petition in circuit court to forfeit the currency. Bozman opposed the forfeiture, arguing that the final disposition of criminal proceedings was a condition precedent to the institution of a forfeiture proceeding. He specifically relied on the 1974 amendment that added the 90-day period to the statute. 296 Md. at 497-98. The Court of Appeals rejected that argument:

We believe that the Legislature, by adding the [90-day period] to [CP §12-304(c)(1)] clearly intended to impose a fixed limitation upon the filing of applications for forfeiture *if* a trial has taken place and a final disposition of criminal proceedings has resulted....

<sup>1</sup> There are no legislative bill files available for legislation passed prior to 1975, but the intent of the 1974 amendment appears fairly clear from the context, as well as the statutory language.

The legislative purpose plainly was to place a specific time limitation of 90 days after a concluded criminal prosecution in the case of a seizure of money or currency in lieu of the previously indefinite requirement that the filing “shall be instituted promptly.”

*Id.* at 499 (emphasis in original). The Court further held that the 90-day limitation was not intended to foreclose forfeiture proceedings for seized currency “merely because its possessor has not or not yet been brought to a concluding trial.” *Id.* at 500. It concluded that “nothing in the [1974] amendment ... prohibits ... the filing of such an application *earlier* than the conclusion of an initiated prosecution.” *Id.* (emphasis in original).

### III Conclusion

In summary, the case law makes clear that a forfeiture action is not contingent upon the filing of a criminal proceeding. The 90-day period in CP §12-304(c)(1) sets a limitation for the filing of a forfeiture action whenever a related criminal proceeding has been completed. But the forfeiture action need not await the filing or completion of criminal proceedings.

Douglas F. Gansler, Attorney General  
Robert N. McDonald, Chief Counsel, Opinions and Advice

**Editor’s Note:** This opinion was originally issued as a letter of advice.

[11-18-33]

## OPINIONS

August 3, 2011

Jefferson L. Ghrist, President  
Larry C. Porter, Vice President  
Wilbur Levengood, Jr., Commissioner  
Caroline County Commissioners

You have requested our opinion on a proposal to expand the number of county commissioners in Caroline County from three to five and to conduct an election that would coincide with the date of the 2012 presidential election to fill the two new positions. Under the proposal, the two new positions would each have an initial two-year term; subsequent terms would be four years. As a result, all five county commissioner offices would be on the ballot in 2014 – and every four years thereafter – for election to four-year terms.

The proposal you have outlined raises the following questions: (1) whether the election contemplated for 2012 to fill the new positions would be a general or a special election; (2) whether the commissioners of a code home rule county have the authority to order an election to fill the initial vacancies; and (3) whether holding such an election is consistent with Article XVII of the Maryland Constitution, the Quadrennial Elections Article.<sup>2</sup>

In our opinion, the proposed 2012 election to fill the new positions would be a special election. Further, though less clear, we believe that code home rule counties have not been delegated the authority to conduct a special election for this purpose. However, were the General Assembly to delegate such authority, we agree with the

<sup>2</sup> The commissioners of a code county like Caroline County do have the authority to alter the number of county commissioners. *See, e.g.*, Letter of Assistant Attorney General Richard E. Israel to Janice Davison, Deputy County Attorney for Caroline County (May 29, 1997); Letter of Assistant Attorney General Kathryn M. Rowe to Delegate Susan W. Krebs (May 17, 2006).

County Attorney that Article XVII would not bar a special election for this purpose in 2012.<sup>3</sup>

### I Background

#### A. Code Home Rule Powers

Counties are subdivisions of the State and may act only within the scope of the powers conferred upon them. *See Eastern Diversified Properties, Inc. v. Montgomery County*, 319 Md. 45, 49, 570 A.2d 850 (1990). Caroline County is a code home rule jurisdiction as provided in Article XI-F of the Maryland Constitution. Code home rule counties derive their powers from two main sources – the Constitution itself and legislation enacted by the General Assembly. *See Kent Island Defense League, LLC v. Queen Anne’s County Bd. of Elections*, 145 Md. App. 684, 688, 806 A.2d 341 (2002).

First, with respect to the Constitution, section 3 of the Code Home Rule Article provides: “Except as otherwise provided in this Article, a code county may enact, amend, or repeal a public local law of that county, following the procedure in this Article.” Maryland Constitution, Article XI-F, §3. For purposes of this provision, a “public local law” includes “a law applicable to the incorporation, organization, or government of a code county and contained in the county’s code of public laws . . .” *Id.*, §1(2). This is a direct grant of authority to a home rule county by the Constitution itself. 62 *Opinions of the Attorney General* 275, 286-87 (1977).

In addition to the authority conferred directly by §3 of Article XI-F, the General Assembly has granted code home rule counties certain optional home rule powers in Article 25B of the Annotated Code of Maryland. The general scope of that authority is described as follows:

If a county adopts code home rule status under the provisions of Article XI-F of the Maryland Constitution and this article, it may exercise those powers enumerated in Article 25, and in §5 of Article 25A, except for subsections (A), (P) and (S) of §5 of Article 25A, of the Annotated Code of Maryland, 1957 Edition as amended; and no county adopting code home rule status shall be excepted. These powers are in addition to any powers any county may now have under any public general or local law applicable to the county.

Article 25B, §13. These powers include, therefore, many of the same powers granted to charter counties under the Express Powers Act, Article 25A, §5. One of the provisions of the Express Powers Act explicitly addresses special elections. In particular, §5(Q)(2) grants authority: “To provide for the conduct of a special election to fill a vacancy in the county council that occurs upon the death or resignation of a member of the county council or on forfeiture of office by a member of the county council.”<sup>4</sup>

<sup>3</sup> In compliance with our policies concerning opinion requests from local governments, you provided the analysis of the County Attorney. Opinion 2011-1 of the County Attorney to the County Commissioners of Caroline County, Maryland (January 24, 2011). That opinion focused on whether an election to fill the two new positions in 2012 would violate the Quadrennial Elections Article. It did not specifically address the issue of the authority of commissioners in a code county to hold a special election to fill an initial vacancy in a newly-created office.

<sup>4</sup> This provision was added to the Express Powers Act in 1996, as further described in the next section of this opinion. Chapter 674, Laws of Maryland 1996.

## B. Quadrennial Elections Article

### 1. General Rule

The Quadrennial Elections Article of the Maryland Constitution, sometimes referred to as the “Fewer Elections Amendment,” sets a timetable for the election of State and county officers. It provides, in part, that “all State and county elections shall be held only in every fourth year, and at the time provided by law for holding congressional elections ....” Maryland Constitution, Article XVII, §1. It specifies that all such elections “shall be held on Tuesday next after the first Monday of November, in the year nineteen hundred and twenty-six, and on the same day in every fourth year thereafter.” *Id.*, §2. By that calculation, the next date for holding elections for State and county officers is November 4, 2014.

### 2. Exception for County Council Vacancies

The Quadrennial Elections Article was amended in 1996 to create an exception for “a special election that may be authorized to fill a vacancy in a County Council under Article XI-A, Section 3 of the Constitution.” Chapter 81, Laws of Maryland 1996, *amending* Article XVII, §2 (ratified Nov. 5, 1996).<sup>5</sup> The same law also made a corresponding amendment to Article XI-A. Specifically, new language was added to Article XI-A, §3 enabling charter counties “as expressly authorized by statute, to provide for the filling of a vacancy in the County Council by special election . . . .”

These constitutional amendments were implemented in separate legislation that amended the Express Powers Act and State election code (then codified in former Article 33). *See* Chapter 674, Laws of Maryland 1996. As part of that legislation, subsection 2 was added to Article 25A, §5(Q), which, as mentioned above, grants charter counties the power to fill by special election council vacancies occurring “upon the death or resignation . . . or on forfeiture of office by a member of the county council.” The State election code was amended to direct local boards of elections to conduct special elections that are authorized by county charter “in accordance with the provisions of the charter” and to adopt regulations as necessary to conduct the special election.<sup>6</sup> That provision was later recodified as part of the Election Law Article (“EL”) and, as amended, authorizes a special primary and special general election” to fill a vacancy in the county council if the charter of that county provides for special elections.” EL §8-401(a)(2).

## II Analysis

### A. Whether a 2012 Election Would be a “Special Election”

A preliminary question is whether the proposed plan to fill two new positions on the Board of County Commissioners at the 2012 presidential election would involve a “special election” or a “regular election,” also sometimes referred to as a “general election.” The basic distinction between a general election and a special election has been described as follows:

A regular or general election is . . . one which recurs at stated intervals as fixed by law; it is one which occurs at stated intervals without any superinducing cause other than the efflux of time.” The same authority defines a special election as “one that arises from some exigency or special need outside the usual routine, such as

to fill a vacancy in office, or to submit to the electors a measure or proposition for adoption or rejection.” This distinction between a general election and a special election appears to have practically universal recognition.

32 *Opinions of the Attorney General* 165, 168 (1947) (citations omitted). Similarly, the Court of Appeals has observed that a general election has for its purpose “the regularly recurring selection of an officer after the expiration of the full term of the former officer.” *County Comm’rs for Montgomery County v. Supvrs of Elections of Montgomery County*, 192 Md. 196, 211, 63 A.2d 735 (1949); *see also Cohen v. Governor of Maryland*, 255 Md. 5, 17, 255 A.2d 320 (1969) (discussing multiple senses of the term “general election,” including one that “regularly recurs at fixed intervals without any other requirements than the lapse of time”).

An election to fill initial vacancies on an expanded Board of County Commissioners in 2012 would not satisfy the definition of a regular or general election, even if that election were to coincide with the date of the presidential election. Such an election would arise as a consequence of the decision to enlarge the Board, an act which is plainly “outside the usual routine.” Without that action by the commissioners, no elections for county commissioner would occur in 2012 in the normal course. By contrast, no special provision need be made for an election including the new positions in 2014 – elections for all county commissioner offices will be held on November 4, 2014, as directed by the Quadrennial Elections Article.

Although the regular presidential election is scheduled for November 2012, holding a special election on the same day as a regular or general election does not make the “special” election “general.” For example, the Court of Appeals has held that where a vote on a constitutional convention was called pursuant to an act of the General Assembly, that vote was a “special election,” even though it was held simultaneously with a general election. *Board of Supvrs of Elections for Anne Arundel County v. Attorney General*, 246 Md. 417, 433, 229 A.2d 388 (1967) (“Several courts have sustained the proposition that a special election may be held concurrent with a general election without losing its separate and special character.”) (internal quotations and citations omitted); *see also Fox v. Paterson*, 2010 WL 2222446 at \*6-7 (W.D.N.Y. 2010); *Jackson v. Ogilvie*, 426 F.2d 1333, 1338 (7<sup>th</sup> Cir. 1970) (Governor’s discretion as to timing of federal special election includes right to order special election to coincide with another election).<sup>7</sup>

The proposed timing for a special Caroline County election coincident with the presidential election would certainly be more efficient than conducting the local election on a separate day, but conducting a county commissioner election in a non-gubernatorial election year is not “regular.” Instead, the proposed off-year election would be a one-time event, happening not by virtue of the election calendar alone, but upon the order of the county commissioners on a date of their choosing. This raises the question whether the Board of County Commissioners has been delegated the authority to fill an initial vacancy by means of a special election.

### B. Whether the Commissioners May Order a Special Election for this Purpose

A code home rule county’s authority to call special elections, express or implied, must be derived from either Article XI-F of Constitution or from the legislative delegation of powers in Article 25B of the Annotated Code of Maryland. As discussed below, we

<sup>5</sup> These amendments were designed to supersede *Prince George’s County v. Bd. of Supvrs of Elections of Prince George’s County*, 337 Md. 496, 505, 654 A.2d 1303 (1995) (“*Prince George’s County*”), which held that charter counties did not have authority to hold special elections for interim vacancies. *See* 1996 Legislative File for Senate Bill 524, “Statement of Senator Leo Green Before the Senate Environmental & Economic Matters Committee” (February 12, 1996).

<sup>6</sup> This provision was codified in §2-9(h) to former Article 33.

<sup>7</sup> In allowing a special election to be held on a day other than that of the regular election, the Election Law Article recognizes, by implication, that a special election may also be held coincident with a regular election: “A special primary election and a special general election may be held at a time other than the date of a regular primary election and a regular general election [to fill certain vacancies].” EL §8-401(a).

believe that neither source gives code home rule counties the power to order a special election to fill newly created county offices.

### 1. Express Authority under Article 25B, §13

As noted above, Article 25B, §13 confers on code counties most of the express powers enjoyed by charter counties, including the authority in Article 25A, §5(Q)(2) to “provide for the conduct of a special election to fill a vacancy in the county council that occurs upon the death or resignation of a member of the county council or on forfeiture of office by a member of the county council.”<sup>8</sup> Thus, §5(Q)(2) lists three particular kinds of vacancies for which a county charter may provide a special election: death, resignation, or forfeiture of office. However, that statute does not explicitly grant authority to hold a special election for *newly created offices*.

Should the statute be construed to include circumstances that create a vacancy in addition to those specifically mentioned? Under a basic canon of statutory construction, when a statute lists specific conditions precedent for the exercise of some power or authority, the courts will not infer other conditions for the exercise of that power. *See, e.g., WFS Financial, Inc. v. Mayor & City Council*, 402 Md. 1, 14, 935 A.2d 385 (2007).<sup>9</sup> Under this canon, it is ordinarily presumed that the General Assembly intended to exclude situations that are not listed in a statute. Thus, because §5(Q)(2) grants authority to call a special election for certain situations that create a vacancy, it should not be construed to authorize the calling of a special election in other circumstances, such as the initial filling of newly created position. Moreover, it is entirely reasonable that the General Assembly might distinguish between special elections to fill vacancies caused by death, resignation, or forfeiture of office and special elections to fill vacancies in newly created offices. In each of the circumstances listed in the statute, the occasion requiring the election is not within the control of the same body that would decide when to fill the office.

For these reasons, it is our view that §5(Q)(2) of Article 25A, applicable to code home rule counties through Article 25B, §13, does not include the power to fill initial vacancies by special election.

### 2. Implied Powers of Code Home Rule Counties under Article XI-F

An argument might be made that code home rule counties have been granted the authority to call a special election by implication, as an incident to the commissioners’ power to create the new offices, a power that is within a code county’s general authority to enact laws “applicable to the incorporation, organization or government of a code county.” Article XI-F. However, in our view, the General Assembly retains the power to call special elections except to the extent that power has clearly been delegated to local government. A clear delegation is lacking here, for several reasons. First, the power to create an office does not necessarily imply the right to fill it by special election. Second, it does not appear that Article XI-F was intended to give code counties greater authority over elections than

charter counties possess under Article XI-A and the Express Powers Act. Third, without a clear expression of legislative intent, we believe that courts would be reluctant to infer local authority over an area, such as elections, that is so pervasively regulated by State law.

#### a. whether power to create office implies power to call special election

Maryland courts have not embraced the notion that the power to create an office necessarily implies the power to call an election to fill it. *See, e.g., Ames v. Bd. of Supvrs of Elections of Montgomery County*, 195 Md. 543, 550, 74 A.2d 29 (1950); *Prince George’s County v. Bd. of Supvrs of Elections of Prince George’s County*, 337 Md. 496, 505, 654 A.2d 1303 (1995); *see also* Letter of Assistant Attorney General Kathryn M. Rowe to Delegate Donald B. Elliott (July 31, 2006) at p. 1 (noting that, although the number of the commissioners was a proper subject for the commissioners of a code county, “the manner of their election is a matter for the General Assembly under Article VII, §1”). Rather, the power to enact laws for the organization of government has generally been treated as separate and distinct from the power to regulate elections, or to decide what matters or questions may appear on the ballot. *See, e.g., Prince George’s County*, 337 Md. at 506-7; *Levering v. Bd. of Supvrs of Elections*, 129 Md. 335, 337-38, 99 A. 360 (1916) (control of ballot); 61 *Opinions of the Attorney General* 384, 387-88 (1976) (concluding that power to hold local straw vote requires State authorization).

Only in one limited circumstance has the Court of Appeals held that local authority to order a special election may be implied from some other power or duty. In *County Comm’rs for Montgomery County v. Supvrs of Elections of Montgomery County*, 192 Md. 196, 63 A.2d 735 (1949) (“*Montgomery County*”), the Court found that a county’s decision to convert to a charter form of government under Article XI-A included the power to fill initial county council vacancies by special election. *See also Connor v. Bd. of Election Supvrs of Baltimore County*, 212 Md. 379, 385, 129 A.2d 396 (1957) (upholding plan for one-time special election incident to charter conversion). The Court reasoned that, without that power, a county that opted for charter home rule could face an extended interregnum, without any local legislative authority, if the election of the first county council would have to await the next regular election. *Montgomery County*, 192 Md. at 209-10. Such a result “would be so violent, and so out of harmony with the established doctrines of government of this State that it should be avoided if possible.” *Id.* at 209. The Court further reasoned that a lengthy delay before holding elections also would be inconsistent with the comparatively swift charter process envisioned in Article XI-A: “It is impossible to believe that under an Amendment embodying such emphatic directions for immediate effectiveness it was intended that a delay of as much as four years might result before the County Council could be elected and could function.” *Id.* at 210; *see also Prince George’s County*, 337 Md. at 505 (interpreting *Montgomery County* and explaining special need for implied power under Article XI-A to fill initial council vacancies upon conversion to charter home rule).<sup>10</sup>

Shortly after its *Montgomery County* decision, the Court of Appeals cautioned that the reasoning it had followed in that case —

<sup>8</sup> As described in Part I.B. above, this language was added to the Express Powers Act in 1996 in conjunction with amendments of Articles XI-A and XVII of the Maryland Constitution. The 1996 amendments made no direct change to the powers of code counties under Article XI-F. In our review of the legislative files, we found no mention of the possible effect that the bills would have with respect to code home rule counties. Thus, it is not entirely clear that the authority to hold a special election to fill vacancies in county council positions was intended to extend to county commissioner vacancies. In any event, as explained in the text, we do not believe that the provision applies to vacancies resulting from newly-created positions.

<sup>9</sup> This canon of construction is sometimes referred to as the “doctrine of *expressio (or inclusio) unius est exclusio alterius*.” *WFS Financial*, 401 Md. at 14. A related rule of statutory construction, known as *ejusdem generis*, expresses “the supposition that if the legislature had intended the general words to be construed in an unrestricted sense, it would not have enumerated the specific things.” *In re Wallace W.*, 333 Md. 186, 190-91, 634 A.2d 53 (1993).

<sup>10</sup> The Court in *Montgomery County* also decided that the Quadrennial Elections Article did not apply to special elections to fill initial county council vacancies occurring upon adoption of a home rule charter under Article XI-A of the Maryland Constitution. 337 Md. at 211-12. Because conversion to charter home rule effected the immediate transfer of legislative power from the General Assembly to an elective legislative council, delaying elections to populate the council until the next quadrennial election date would have left the county with no legislative direction whatsoever for a two-year period. *Id.*, 214. The Court reasoned that such a result would be inconsistent with the constitutional framework and could not have been intended.

based in part on a constitutional mandate that contemplated the immediate creation of an instrument of government — “can hardly apply to subsequent elections.” *Ames v. Bd. of Supvrs of Elections of Montgomery County*, 195 Md. at 550.

In *Ames*, the Court rejected the notion that the “power to prescribe the manner of nomination and election [of a council member] must be implied” from Article XI-A’s mandate to “provide for an elective legislative body.” *Id.* at 549. The Court stated: “The question of future elections was expressly left open in [*Montgomery County*].” *Id.* And again in *Prince George’s County* the Court reiterated that *Montgomery County* “was limited by the specifics of the case before it.” 337 Md. at 509 n.7.<sup>11</sup> Thus, the Court has found implied authority to hold a special election only in the limited, and unique, circumstance of filling initial vacancies upon a county’s conversion to a charter form of government.

The unique circumstances present in *Montgomery County* are lacking when an already existing and functioning government body is simply enlarged. In the former situation, the adoption of the charter prohibited the General Assembly from enacting local laws for the county on any subject covered by the Express Powers Act. *See* 192 Md. at 208-9. At the same time, the legislative powers of the prior commissioner form of government were also limited. Consequently, during the “interregnum” period, “there [was] no body in the State competent to enact local legislation to meet the needs of Montgomery County.” *Id.* at 209. That would not be true of the plan contemplated for Caroline County. Under its proposal, pending an election of additional members, the existing board will continue to function without any diminution of its powers. Moreover, no voter in the county will be left unrepresented during the period between the commissioners’ decision to expand the board and the date of the next general election. And whereas the Home Rule Amendment (Article XI-A) “contemplates that any new charter shall go into effect promptly after its ratification by the people,” *id.* at 209-10, a plan to expand the number of county commissioners imposes no similar constitutional duty to speedily implement that decision. In short, *Montgomery County* offers no support for the idea that code home rule counties have implied authority to conduct special elections, nor do subsequent cases suggest that its rationale should be extended beyond the specific context of charter adoption.

#### b. comparison between Article XI-A and Article XI-F

There appears to be no compelling reason to infer that a code county would have greater authority under Article XI-F than a charter county has under Article XI-A to call a special election to fill vacancies created by an expansion of its legislative body.<sup>12</sup> Despite

some differences in the way that the two county home rule amendments operate, their basic purposes are the same. Of relevance to elections, a code county’s legislative authority extends to laws “applicable to the incorporation, organization or government of a code county,” Article XI-F, §1, and to matters enumerated in Article 25B, §13. By comparison, county charters include provisions for “the organization and structure of local government,” 66 *Opinions of the Attorney General* at 108, and the broad home rule powers of county councils include general authority to enact ordinances “for the good government of the county.” Article 25A, §5(S). In our view, there is not much in the language to distinguish one from the other or to conclude that Article XI-F implies a power to conduct special elections where Article XI-A does not.

#### c. State control over elections

A final factor against concluding that the commissioners have the implied power to call a special election is the State’s extensive control over the elections process. *Cf. Board of Liquor License Commissioners v. Fells Point Café, Inc.*, 344 Md. 120, 135-36, 685 A.2d 772 (1996) (comprehensive statutory scheme necessarily circumscribes implied agency authority). For example, as to Caroline County’s ability to place an advisory question on the ballot, an advice letter from this Office explained:

Except for municipal elections, the State has generally pre-empted the regulation of elections in Maryland. . . . In [*County Council for Montgomery County v. Montgomery Ass’n*, 274 Md. 52, 62 (1975)], the Court of Appeals said “[t]his pervasive state administrative control of the election process, in both the statewide and local levels, is a compelling indication that the General Assembly did not intend that local governments should enact election laws, but rather intended that the conduct and regulation of elections be strictly a state function.”

Letter of Assistant Attorney General Richard E. Israel to Senator Richard F. Colburn (May 1, 1997) at p. 1.

Under the State Constitution, “[t]he General Assembly shall have power to regulate by Law, not inconsistent with this Constitution, all matters which relate to Judges of election, time, place, and manner of holding elections in this State, and of making returns thereof.” Maryland Constitution, Article III, §49. “These provisions [former Article III, §§ 42, 49] demonstrate that the framers of our Constitution contemplated that the regulation of elections would be the province of the State Legislature.” *County Council for Montgomery County v. Montgomery Ass’n, Inc.*, 274 Md. 52, 60 (1975) (holding that with former Article 33, General Assembly had occupied the field of campaign finance laws, preempting local legislation on the subject); *see also* 64 *Opinions of the Attorney General* 110, 115 (1979) (“[I]t cannot be doubted that the General Assembly may exercise its residual power over State affairs to repeal the local laws of a code county that purport to create precincts and provide for the appointment of election officials by the election supervisors . . .”). In light of the General Assembly’s central role and its “pervasive” regulation of State and local elections, we would be cautious about finding a delegation of authority in this area without a clear expression of legislative intent.

<sup>11</sup> In *Prince George’s County*, the Court of Appeals not only declined to extend its earlier holding but also rejected the argument that either Article XI-A or the Express Powers Act conferred implied or express authority to fill interim vacancies by special election. At issue there was amended §309 of the county charter, which required council vacancies occurring during the first two years of a term to be filled by special election. 337 Md. at 500. The circuit court ruled the charter section invalid because, among other reasons, neither the Express Powers Act nor the Constitution granted charter counties the authority to regulate the time and manner of special elections. *Id.* at 502-03. The Court of Appeals affirmed that part of the circuit court judgment, observing that the *only* power to call special elections implied by Article XI-A of the Constitution (at that time) was the power to fill initial vacancies immediately upon conversion to charter home rule. *Id.* at 506. Subsequent amendments expanded that authority. *See* Part I.B. of this opinion.

<sup>12</sup> It must be acknowledged, however, that there is little guidance on the comparative scope of legislative powers granted to county governments under the two forms of home rule. *See, e.g.,* 62 *Opinions of the Attorney General* 275, 283 (1977) (noting that the framers’ report on proposed Article XI-F stated that it provided “an optional system for attaining home rule . . . [and] for the granting of broader powers by home rule to a county than does

Article 11-A of the Constitution”) (emphasis added); *see also* 77 *Opinions of the Attorney General* 37, 38 (1992) (“This office has suggested that the scope of this lawmaking power [directly under Article XI-F] is to be broadly construed, but the matter has not been definitely resolved by the courts.”).

### C. Whether Article XVII Applies to Special Elections

A final question is whether the authority of the General Assembly to authorize the county to fill an initial vacancy by special election is limited by the Quadrennial Elections Article. The issue has been raised before the Court of Appeals more than once, but has never been finally settled.<sup>13</sup> In *Montgomery County*, though it decided that the Quadrennial Elections Article did not apply to the special elections at issue in that case, the Court explained that it was “designed for, and its effect is limited to, the establishment of a system to regulate general elections for the purpose of selecting officers after the expiration of the full terms of former officers.” 192 Md. at 212. The Court also noted that the General Assembly’s prior legislation with respect to special elections for vacancies “caused by death, resignation, or otherwise,” showed that the Legislature, too, understood that the Article did not govern special elections. *Id.* at 210-11. Based on the Court’s reasoning in *Montgomery County*, Attorney General Sachs opined that the Quadrennial Elections Article “does not apply to special elections.” 66 *Opinions of the Attorney General* 105, 108 (1981). In our view, that conclusion remains sound.<sup>14</sup>

### III Conclusion

For the reasons explained above, the proposed 2012 election to fill the new positions created by an expansion of the board of county commissioners would be a special election. In our view, code home rule counties have not been delegated the authority to conduct a special election for this purpose. However, were the General Assembly to delegate such authority, we agree with the County Attorney that Article XVII would not bar a special election for this purpose in 2012.

Douglas F. Gansler, Attorney General  
Jeffrey L. Darsie, Assistant Attorney General  
Robert N. McDonald, Chief Counsel, Opinions and Advice  
[11-18-34]

## OPINIONS

August 8, 2011

E. Keith Colston  
Administrator  
Maryland Commission on Indian Affairs

On behalf of the Maryland Commission on Indian Affairs (“Commission”), you asked for our opinion about reconsideration of a petition for recognition of a group’s “Maryland Indian status” under State law. The petition was originally filed in 1995, received a favorable recommendation from the Commission, but was ultimately denied by the Governor in 2003. The denial expressly left open the possibility that the group could resubmit its petition with additional information. You ask whether that petition may now be resubmitted to the Governor, with or without a further recommendation by the Commission.

<sup>13</sup> In *Prince George’s County*, the Court observed that its earlier opinion in *Montgomery County* could be read to say that “the Amendment does not apply to special elections at all.” It then declined to rule on the issue. 337 Md. at 509 n.7.

<sup>14</sup> That opinion also concluded that a charter county had “ample legislative power” to provide for special elections to fill interim council vacancies. 66 *Opinions of the Attorney General* at 108. However, the Court of Appeals subsequently concluded that charter counties lacked such authority. See *Prince George’s County v. Bd. of Supvrs of Elections of Prince George’s County*, 337 Md. 496, 654 A.2d 1303 (1995). The State Constitution was subsequently amended to permit charter counties to call special elections for that purpose in certain circumstances. See Part I.B.2 of this opinion.

For the reasons explained below, it is our opinion that the Commission should not simply resubmit the 1995 petition to the Governor, as the relevant statute contemplates that the Commission and Governor will have reasonably current sociological information concerning the applicant group. However, if the petitioning group wishes to pursue recognition of Maryland Indian status, a revised petition including current information should be submitted to the Commission for its consideration. Based on that information, the Commission may reiterate or revise its recommendation to the Governor.

### I Background

#### A. Recognition of Maryland Indian Status

##### 1. Recognition Process

State law establishes a process by which the Governor may formally recognize, by executive order, the “Maryland Indian status” of a Native American community indigenous to the State. Annotated Code of Maryland, State Government Article (“SG”), §§ 9.5-309 through 9.5-312. The recognition process does not purport to adjudicate Native American status generally, but rather simply identifies communities that have existed in Maryland since the founding of the United States.<sup>15</sup> Moreover, the law provides that it does not create a benefit or entitlement of any kind; nor does it impair existing rights, benefits or entitlements of Native Americans living in the State. SG §9.5-309(d).<sup>16</sup> Nor does any act or omission of the Commission create a private cause of action. SG §9.5-309(c)(3).

Pursuant to the statute, the Commission has adopted regulations that govern the recognition process. SG §§9.5-309(a), 9.5-311; COMAR 01.06.01.<sup>17</sup> Under the regulations, a tribe, band, group, or clan indigenous to the State that wishes to receive State recognition must submit to the Commission a petition containing specified information and documentation. COMAR 01.06.01.05. The Commission publishes notice of receipt of the petition, and provides an opportunity for the public to submit comments in support of or in opposition to the petition. COMAR 01.06.01.07. The Commission then refers the petition and all comments timely received to a Recognition Advisory Committee<sup>18</sup> for review and recommendation for Commission action, based on criteria set out in the statute and the regulations. COMAR 01.06.01.08D through 01.06.01.08J; COMAR 01.06.01.04; COMAR 01.06.01.05B. The Commission reviews the Recognition Advisory Committee’s recommendation and, if the Commission determines that the petition adequately demonstrates that the group satisfies the criteria in the regulations, recommends to the Governor that the petitioning group be formally recognized as a Maryland Indian tribe, band, group, or clan. COMAR 01.06.01.08K through COMAR 01.06.01.08M. (Any Commission members who belong to the petitioning group are barred from participation in the Commission’s deliberations. SG §9.5-309(b)(2)).

<sup>15</sup> For example, many well known Native American groups of the western United States would not qualify for “Maryland Indian status.”

<sup>16</sup> The statute requires that, as a condition of formal recognition of Maryland Indian status, members of the petitioning group file an affidavit renouncing all tribal rights to ownership of land in Maryland. SG §9.5-310. However, such an affidavit is likely without legal effect. See Letter of Attorney General J. Joseph Curran, Jr. to Governor William Donald Schaefer, concerning House Bill 126 and Senate Bill 421 (May 23, 1988).

<sup>17</sup> The regulations were first adopted in 1992. 19:9 Md. Reg. 878. Although they have been recodified several times over the past two decades, their basic requirements and process have remained the same.

<sup>18</sup> Pursuant to the regulations, a Recognition Advisory Committee consists of five persons appointed by the Commission to review a petition. COMAR 01.06.01.11. The Committee is to have at least two Native American members, none of whom may be members of the petitioning group, as well as experts in genealogy, anthropology, and related fields. *Id.*

If the Governor concurs in the Commission's recommendation, the Governor issues an executive order that recognizes formally the Maryland Indian status of the petitioning group. The executive order is submitted to the General Assembly's Joint Committee on Administrative, Executive, and Legislative Review and takes effect 30 days after submission. SG §9.5-309(c); COMAR 01.06.01.10A and C. If the Governor does not concur with a recommendation of the Commission, the Governor notifies the Commission of the reasons and the Commission must promptly notify the petitioning group and all persons requesting notice. COMAR 01.06.01.10B.

Neither the statute nor the regulations address reconsideration of a petition by the Governor or whether a petitioning group is precluded from filing a new petition after a petition has been rejected.

## 2. Petition Requirements

The regulations set forth the information and documentation that make up a petition for State recognition. "[T]aking into account the special circumstances of Native Americans indigenous to Maryland," a petition must establish that:

A. The group has been:

(1) Identified as Native American from before 1790 until the present, and

(2) Part of a continuous Native American community from before 1790 until the present;

B. The members of the group are descendants from a tribe that:

(1) Existed before 1790,

(2) Is indigenous to Maryland, and

(3) Inhabited a specific area in Maryland before 1790; and

C. The membership of the group is composed principally of persons who are not members of any other acknowledged or recognized Native American tribe, band, group, or clan.

COMAR 01.06.01.04. To document that the petitioning group satisfies these criteria, the petitioning group is to submit:

(a) Documents showing, from before 1790 until the present:

(i) Longstanding relationships of the group with the government of Maryland or the United States, based on identification of the group or the group's members as Native American indigenous to Maryland;

(ii) Repeated dealings of the group with a county or other local government in a relationship, based on identification of the group or the group's members as Native American indigenous to Maryland;

(iii) Repeated dealings of the group with other tribes, bands, groups, or clans, or national Native American organizations, based on identification of the group as Native American indigenous to Maryland;

(iv) Identification of the group as Native American indigenous to Maryland by anthropologists, historians, genealogists, or other scholars; or

(v) Repeated identification of the group or the group's members as Native American indigenous to Maryland in official government records, church or school records, medical records, bibles and other family records, newspapers, books, photographs, or oral histories;

(b) Documents identifying the name of the group, or other term recognizing the group as

Native American indigenous to Maryland, with an approximate location in Maryland from before 1790 until the present;

(c) A list of membership criteria established by the group;

(d) A statement of the procedures adopted by the group for applying the group's membership criteria; and

(e) A list of all individuals included on the group's current and previous membership rolls or known by the group to be eligible for membership, and the county in which each resides;...

COMAR 01.06.01.05B(1). The petitioners may also submit other evidence, including affidavits from tribal elders or leaders recognizing individuals as members of the group. COMAR 01.06.01.05B(2). A petition for formal recognition also must include:

(1) The name and mailing address of the petitioning group and of the individual authorized to act as the petitioning group's agent for petition purposes;

(2) A statement that the petitioning group is a Native American tribe, band, group, or clan indigenous to Maryland;

(3) A statement that the petitioning group has verified with its members that the majority of them are not members of any other tribe, band, group, or clan acknowledged or recognized as American Indian by the Secretary of the Interior or any state; [and]

(4) A copy of the petitioning group's rules governing the conduct of the petitioning group's affairs.

COMAR 01.06.01.05A.

## B. Piscataway Conoy Tribe Recognition Petition

### 1. 1995 - Submission of Petition

In 1995, a group organized as the Piscataway Conoy Tribe ("PCT") submitted to the Commission a petition for State recognition of its Maryland Indian status (the "PCT Petition"). The PCT Petition was referred to a Recognition Advisory Committee. At the conclusion of the process, on August 26, 1996, the Commission determined that the PCT Petition satisfied the criteria set forth in the Commission's regulations and recommended that the Governor grant the PCT Petition. However, the petition, and the Commission's determination, were not immediately forwarded to the Governor.<sup>19</sup>

### 2. 2003 — Denial of Petition

On September 24, 2003, then Governor Ehrlich rejected the petition. In his denial letter, the Governor indicated that he did not believe that the petitioning group had adequately documented that the PCT have been identified as a continuous Native American community, from before 1790 to the time of the petition, indigenous to a specific area in the State. In particular, he found that the documentation did not provide clear and direct proof of lineage prior to 1850 and stated that additional research was necessary. He summarized the key questions as follows:

1. Has the PCT established that it or its members have been identified since before 1790

<sup>19</sup> At the time that the petition was originally submitted, the Commission's recommendation was subject to review by the Secretary of Housing and Community Development. That additional layer of review, which has since been eliminated from the process, delayed the transmission of the Commission's recommendation to the Governor while the Commission endeavored to answer questions framed by the Secretary.



as descended by blood line from members of a tribe, band, or clan which is identified as Native American or Indian in the historical record? Has the PCT since before 1790 been part of a continuous group indigenous to Maryland with common cultural ties and interests which differentiate its members from others?

2. Has the PCT established that its members have descended by blood line since before 1790 from the historic Piscataway tribe, bands, or clans in southern Maryland?

He noted that the federal Bureau of Indian Affairs had raised similar questions when it evaluated the group's petition for federal recognition as an Indian tribe.<sup>20</sup>

The Governor concluded that, in the absence of additional research, "the State would need to reach unjustified conclusions in order to determine that the PCT today is a Native American group indigenous to Maryland and has existed continuously since before 1790." Accordingly, the Governor denied the petition, but advised that the group could file a revised petition for review by the Commission and ultimately by the Governor. We understand that, consistent with the Commission's regulations, much of the PCT petition documentation was returned to the petitioning group after the PCT petition was denied. *See* COMAR 01.06.01.06D.

### 3. Request for Reconsideration of PCT Petition

We understand that the petitioning group has recently requested a reconsideration of the petition that it submitted in 1995. However, it has not submitted the documentation that was returned to it. Nor has it yet submitted a revised petition that addresses the issues raised in the Governor's 2003 letter. Rather, it has argued that the 1995 petition satisfied the criteria for recognition.

## II Analysis

You are seeking direction on how to obtain reconsideration of the effort to accord Maryland Indian status to the PCT.<sup>21</sup> You have asked whether the Commission may resubmit to the Governor the 1995 petition that was denied in 2003, with or without a recommendation from the Commission. Nothing in the statute or regulations expressly addresses whether a group may resubmit a petition that has been denied or whether the Commission and Governor may consider a new or revised petition from a group that has previously submitted a petition. In the absence of any prohibition in the statute, it is our view that the Commission and Governor may do so. This is particularly true where a petition may be denied because it is inadequately documented rather than from lack of underlying merit.

One option—as invited by the 2003 denial letter—was for the petitioning group simply to submit to the Governor additional information concerning the existence of the group in Maryland as of 1790. However, in our view, subsequent events and the passage of time have eliminated that option. Some of the original documentation supporting the petition is apparently no longer in the possession of the State. Moreover, it has been eight years since the denial of the petition and nearly a generation since the documentation supporting the petition

was originally assembled. There have no doubt been significant changes in the population encompassed by the petition.

The statute and regulation indicate that the recognition decision is to be based on findings concerning the current status of the petitioning group, as well as its history. *See, e.g.*, COMAR 01.06.01.04A(2) (group must be part of a continuous community "until the present"); .04C (group must be composed principally of members who are not part of another recognized tribe at time of submission of petition); .05B(1)(a) (petition information to demonstrate various facts concerning the group existing "until the present"); .05B(1)(b) (documentation to show approximate location of group in Maryland "until the present"); *see also* SG §9.5-311(b)(3) (Commission's petition standards to require information "from historical times until the present"). The regulations also require that the petition be accompanied by a list of current membership criteria established by the group; a statement of the current procedures adopted by the group for applying the group's membership criteria; and a list of all individuals included on the group's current and previous membership rolls or known by the group to be eligible for membership, and the county in which each resides. COMAR 01.06.01.05B(1)(c), (d), and (e).

The regulations require that the process proceed expeditiously in a way that the information does not grow stale. *See* COMAR 01.06.01.08B (Commission to send notices within 30 days of filing of petition); .08C (deadline for group to supplement incomplete petition); .08D (completed petition to be referred to Recognition Advisory Group "within 15 days"); .08E-H (deadlines for submission of additional information and review by Recognition Advisory Group); .08K-M (deadline for Commission recommendation); .09 (deadlines for Commission reconsideration of recommendation). While the Commission has retained authority to waive or extend these various deadlines, COMAR 01.06.01.13, their evident purpose is to ensure that the information presented to the Governor is reasonably current, as well as historical in nature.

The 1995 petition presumably included documentation and information that were current as of the date submitted. There can be little doubt that, in the intervening 16 years, some of the information and documentation that accompanied the original petition, even if it can now be located, is stale and would fail to satisfy the standards in regulations for submission to the Governor. In our view, a revised petition should include not only any additional historical information concerning the group's presence in Maryland prior to 1850, but also updated information concerning the current status and composition of the petitioning group. Presumably, this could be done expeditiously as the group already assembled, as part of its 1995 submission, information concerning most of the historical period from 1790 to the present.

## III Conclusion

In our opinion, the Commission, and the Governor, may consider a new, or revised petition that seeks recognition of Maryland Indian status for a group. However, information and documentation considered by the Commission, and Governor, must satisfy the requirements in the statute and regulations for current information concerning the petitioning group. Accordingly, if the petitioning group wishes to pursue recognition of Maryland Indian status for the PCT, a revised petition including current information should be submitted to the Commission for its consideration. Based on that information, the Commission may reiterate or revise its recommendation to the Governor.

Douglas F. Gansler, Attorney General  
Philip J. Deters, Assistant Attorney General  
Robert N. McDonald, Chief Counsel, Opinions and Advice

[11-18-38]

<sup>20</sup> The group is not currently recognized by the federal government as an American Indian entity. *See* 75 CFR 60810 (October 1, 2010). It remains listed among the groups petitioning for such status as of April 29, 2011. *See* <http://www.bia.gov/idc/groups/xofa/documents/text/idc013623.pdf>

<sup>21</sup> The fact that a new Governor has been elected since the 2003 qualified denial of the petition does not affect the legal analysis, as "[e]xecutive power is one of continuing effect, never ending, and unbroken by succession, a principle inherent in and necessary to government." *Baxter v. State*, 214 S.E.2d 578, 582 (Ga. App. 1975).

# Open Meetings Compliance Board

## OPINIONS

May 23, 2011

### Complainant:

Mr. Craig O'Donnell  
Kent County News

### Respondent:

Maryland Transportation Authority  
Capital and Finance Committees

We have considered the complaint we received from Mr. Craig O'Donnell ("Complainant") on January 7, 2011. Complainant titled his complaint "Maryland Transportation Authority: Capital and Finance Committees: multiple violations alleged." He indeed asserted numerous violations regarding those Committees. Embedded among those many allegations, however, appear allegations regarding the Authority itself and an additional committee, a Human Resources committee. The Authority responded to the complaint by stating that the Capital and Finance Committees ("Committees") were not "public bodies" subject to the Act until November 24, 2010, when the Authority adopted a resolution "formally creat[ing] [them] for the purpose of making them subject to the Act."

We shall sort out and address the allegations by category. Because the Authority has now decided that the Capital and Finance Committees should operate in the open and has adopted a resolution that clearly makes them public bodies, we shall begin with the allegations of ongoing practices by the Authority itself.

We shall include the facts and the parties' contentions in the discussion.

### I Discussion

#### ***A. Allegations that the attendance at the Committees' closed meetings by other Authority members created a likely quorum of the Authority itself and thus required the Authority to follow the procedures of the Act at those meetings***

Complainant alleges that the attendance of four Authority members at a September 2009 Finance Committee meeting constituted a quorum of the Authority itself and that the Authority did not give public notice of the meeting, did not hold it publicly, did not close it properly, and improperly denied access to the minutes by redacting various sections. He attaches a document on Authority letterhead entitled "Finance Committee Meeting – Notes of September 10, 2009." Those "Notes," approved by the Committee on October 8, 2009 "as written," reflect the attendance of the Chair and three Authority members, one by telephone, at the meeting. The Notes record the attendance of others; that list does not include other Authority members. The "Notes" of the October 8, 2009 meeting and the August 6, 2009 Capital Committee meeting yield the same numbers. The Authority's Fiscal Year 2010 annual report shows that its Board was comprised of the statutory eight members and Chair, the Secretary of Transportation, during that fiscal year. Under the Authority's Operating Policy, a quorum consists of a simple majority, excluding the Chair. Not counting the Chair, then, a quorum of a fully-appointed Authority Board is five members.

The Act applies only to meetings attended by a quorum of the particular public body. §10-502(g) of the State Government Article; *see also 5 OMCB Opinions* 93, 94 (2007). Here, assuming that there were no vacancies on the Board on the dates in question, a quorum of Authority members did not attend these committee meetings. The Act thus did not apply to the Authority itself with respect to these Committee meetings.

#### ***B. Allegations that the Authority and Committees violate the Act by conducting business by telephone polls concerning documents exchanged privately***

The Complaint alleges that the Authority's March 14, 2007 minutes refer to voting by e-mail or telephone polls and that those practices violate the Act. The Authority's Operating Policy contains the following provision regarding a meeting attended by fewer than a quorum:

Alternatively, those members present, though less than a quorum, may conduct the meeting to transact essential business, or exercise any necessary power of the Authority; provided, however, that before such transaction or exercise becomes effective, the concurrence by telephone poll of such additional members as shall constitute both a quorum and a majority of such quorum shall be obtained. Any action taken pursuant to such telephone poll shall be placed on the agenda of the next meeting and formally ratified or acted upon at that meeting.

Under this Policy, "less than a quorum" may vote on an action in a public meeting; absent members may vote separately; the action may be taken; and that action may then be ratified at the next meeting in a public vote. We do not comment on whether this practice is conducive to a belief on the part of the public that the Authority operates transparently, because the fact of "less than a quorum" establishes that we have no jurisdiction over the matter. *See 2 OMCB Opinions* 49, 50 (1999) (finding that Act did not apply to voting by separate telephone calls; recognizing "that this way of proceeding deprives the public of an opportunity to observe the real decision-making process"); *see also 2 OMCB Opinions* 78 (1999) (finding that the Act did not apply to e-mail canvassing). Although other statutes or a public body's own procedures might require voting to take place in the presence of a quorum, the Act does not. The Act "simply sets rules that must be followed when a meeting subject to the Act occurs." *6 OMCB Opinions* 57, 61 (2008). Accordingly, assuming that a quorum of Authority members are not participating in the same telephone call, the Authority's use of telephone polls does not fall within our jurisdiction. If, on the other hand, the Authority conducts meetings by conference call among a quorum of its members, and does so without giving public notice, the Authority is violating the Act.

Our jurisdiction is similarly limited with respect to the alleged practice of circulating documents among members outside of public meetings; the contents of mailings are not within our purview.

#### ***C. The allegations regarding the Finance Committee.***

The threshold question here is whether the Finance Committee itself was a public body as defined by the Act, and hence subject to the Act, prior to its re-creation by resolution in November 2010. The question matters, the Complainant states, because the Authority redacted portions of minutes of meetings, notably those occurring in September and October 2009, and the Act does not permit the redaction of minutes of open meetings. *See 7 OMCB Opinions* 64, 66 (2010) (stating that minutes of open meetings may not be redacted under a later-asserted claim of privilege). The copies that Complainant provided to us reflect substantial redactions. The Authority argues that no legal instrument created this Committee, the members of which were appointed by the Authority.

The relevant facts are as follows. The Authority is an independent agency, authorized under Title 4 of the Transportation Article to adopt its own rules and regulations. Its Chair is the Secretary of

Transportation; it is otherwise composed of eight members, appointed by the Governor, who may not be Executive-branch employees. §4-202 of the Transportation Article. The Authority provided us with an “Operating Policy” adopted in 1985; that Policy provides that it may only be amended by “resolution.” The Operating Policy permits the members of the Authority to “provide for and appoint any committee or committees, to have such powers and perform such duties as may be assigned to it by the members of the Authority.”

The Authority adopted various amendments to the Policy over the years, though not always by resolution. Specifically, the Policy was amended on or after March 14, 2007 to refer to an exhibit adopted on that date. As amended, the Policy provided:

Each committee shall fix its rules of procedure, and shall meet as provided by those rules, or at the call of the chair or any two members of the committee. See Exhibit 1.

Exhibit 1, entitled “Capital Committee,” sets forth procedures for that Committee’s membership, meetings and minutes. Exhibit 1 does not mention the Finance Committee. It appears, however, that the Authority delegated substantial powers and duties to the Finance Committee. According to the Finance Committee’s September 10, 2009 minutes, the Finance Committee “suspended the investment of commercial paper in January 2008” and also advised the Board on various matters. The minutes of the Authority’s May 30, 2007 meeting, Complainant alleges, refer to the approval of a resolution “authorizing members of the Capital Committee ....[to] report actions taken or recommended at their meeting,” so that a “streamlined agenda would basically be voted on as a consent calendar....” Those minutes, according to Complainant, also refer to the Finance Committee “working to draft a similar resolution related to delegation....” The Authority denies that any such resolution was validly adopted by the Board.

A literal application of the Act’s definition of “public body” to the facts before us would suggest that the Finance Committee was not a public body until the Authority adopted the November 2010 resolution. We stated the three tests for a “public body” in 6 *OMCB Opinions* 21, 24-25(2010) and need not repeat them here. The Finance Committee apparently does not meet the first test, the “legal instrument test,” because it was not created by a legal instrument such as a rule, resolution, or bylaw. It would not meet the second test, *see* SG §10-502(h)(2)(i), which includes bodies appointed by the Governor, because, under SG §10-502 (h)(3)(ix), the term “public body” does not include a “subcommittee” unless that subcommittee was also created by a legal instrument. And it does not meet the third test because it did not include two or more individuals who were not members of its appointing entity, here, the Authority. *See* §10-502(h)(2)(ii).

We hesitate to simply decline jurisdiction over this particular entity. Both Maryland appellate courts have to some extent promoted function over form in determining whether an entity is a “public body” under the Act. In *City of Baltimore Development Corporation v. Carmel Realty*, 395 Md. 299 (2006), the Court of Appeals looked to the “traits” of a private development corporation and applied the Act in accordance with its purposes:

[T]he legislature, as a matter of public policy, has determined that it is essential to the maintenance of a democratic society that, subject to certain well defined exceptions, the deliberations of a public body be open to the public which it serves. An entity that possesses as many public traits as does the [Development Corporation] is a public body for purposes of the Open Meetings Act.

*Id.* at 329. The Court repeated its statement in *New Carrollton v. Rogers*, 287 Md. 56, 72-73 (1980) that the Act affords the public the

right to observe the entire deliberative process:

“It is, therefore, the deliberative and decision-making process in its entirety which must be conducted in meetings open to the public since every step of the process, including the final decision itself, constitutes the consideration or transaction of public business. In this regard the Supreme Court of Florida, in *Town of Palm Beach v. Gradison*, ..., construing that state’s open meeting law, observed:

‘One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. That statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken.’ 296 So.2d at 477.” (Emphasis added.)

395 Md. at 321.

The Court of Special Appeals took a similar approach in *Andy’s Ice Cream v. City of Salisbury*, 125 Md. App. 125, 154, 143, 724 A.2d 717 (1999). There, holding that the Salisbury Zoo functioned as a public body subject to the Act, that court stated, “A private corporate form alone does not [e]nsure that the entity functions as a private corporation.”

Here, the few facts we have could lead to an inference that this committee functioned as the Authority in some matters and also conducted business “to a point just short of ceremonial acceptance.”

Our hesitation, however, only goes so far. Importantly, neither appellate court needed to apply §10-502(h)(3)(ix), the “subcommittee” exception to §10-502(h)(2)(i). The Maryland courts have never construed that exception, and we have rarely applied it. We are not free to disregard it, and we shall apply it here. Nonetheless, as a general matter, we do not believe that the General Assembly intended that public bodies could operate out of the sunshine by apportioning their statutory powers among committees composed of fewer than a quorum of their members.

We commend the Authority’s decision that this committee should indeed operate as a public body. If the November 2010 resolution effecting that policy merely formalized a procedure by which the Finance Committee functioned as an arm of the Authority, we encourage the Authority not to stand on that formality with respect to content in the Committee’s minutes that would not have been the subject of a properly-closed meeting.

#### **D. The allegations regarding the Capital Committee.**

The Complainant alleges that the Capital Committee was a public body even before the Authority adopted the November, 2010 resolution. The Authority disagrees. The Authority asserts that Exhibit 1, which was adopted on March 14, 2007 and sets forth the membership and procedures for a “Capital Committee,” is not a valid “legal instrument” under SG §10-502(h)(2)(i) because it was not adopted as a “resolution,” as required by the Operating Policy. The Authority states that in 2008 it cured the defect as to other amendments that had not been adopted by resolution, but that it “expressly declined” to ratify Exhibit 1. Further, the Authority

asserts, “the original Operating Policy and virtually all of its amendments ... do not even mention or address the subject of committees.” The Authority thus concludes that the Capital Committee was not a “public body” until the Authority adopted the November 2010 resolution. The Complainant replies by providing us with a June 28, 2007 resolution (“Resolution 07-06”) which spells out the Committee’s powers. In rejoinder, the Authority argues that Resolution 07-06 did not “create” the Committee for purposes of SG §10-502(h)(2)(i).

We again look to the documents to assess the facts. The Operating Policy refers to the Capital Committee and attaches Exhibit 1. Exhibit 1 is labeled “Maryland Transportation Authority Capital Committee” and states “ADOPTED March 14, 2007.” It provides: “The Capital Committee shall consist of a minimum of three (3) Authority members, appointed by the full Authority.” Exhibit 1 further sets forth the function of the Capital Committee:

The full Authority shall by resolution delegate approval authority of specific action items to the Capital Committee on behalf of the full Authority which are over and above the levels delegated to the Executive Secretary for planning, engineering, right-of-way and construction in the Authority’s approved Capital Program, including, but not limited to, the following Action Items....

Exhibit 1 then lists eleven functions, including “Award of contracts,” “Approval of Professional Service Contracts for Engineering and Planning,” and approvals of certain leases, equipment procurement, preliminary project plans, and emergency contracts. Exhibit 1 further provides that the “Capital Committee shall be responsible for” various “activities,” including the review of actions taken by the Executive Secretary and the making of various recommendations.

On September 25, 2008, the Authority adopted Resolution 08-11 to cure the Authority’s defective adoption of amendments to the Operating Policy by “amendment,” rather than by resolution. Resolution 08-11 (the “corrective resolution”) lists ten such amendments adopted from 1985 through March 2007, including Exhibit 1. Stating that it “desire[d] to document compliance with the Amendments provision of the Operating Policy,” the Board resolved to retroactively ratify the “December, 9, 1985 through December 21, 2006 amendments,” but not the 2007 amendments. As to the 2007 amendments, the sixteenth “whereas” clause of the corrective resolution provides:

[T]he Authority has determined it will separately consider the amendments that were approved and adopted by motion on February 15, 2007 and March 14, 2007 to determine what action, if any, it needs to take with respect to those amendments....

The Authority interprets the exclusion of Exhibit 1 from the corrective resolution and the Authority’s subsequent inaction regarding that amendment as evidence that it had not created the Capital Committee as a formal body. Viewed in a vacuum, those facts would support that inference. However, the corrective resolution did not wipe the slate clean; neither it nor its Attachment 1, a new Operating Policy,<sup>22</sup> purported to invalidate properly-adopted resolutions. We cannot ignore them. Over a year earlier, on June 28, 2007, the Authority had adopted Resolution 07-06, a “Resolution Authorizing the Capital Committee to Approve Certain Contracts and Contract Modifications and to Take Certain Actions.”

Resolution 07-06 recites the Authority’s prior delegation of “certain procurement and contracting authority” to its Executive

Secretary and then states:

[T]he Authority intends to delegate its authority to the Capital Committee to approve, over and above the levels delegated to the Executive Secretary [by an earlier resolution] ... certain planning, engineering, right-of-way, and construction contracts and contract modifications ... and to authorize the Capital Committee to take certain actions related to the Authority’s transportation facilities projects....

Resolution 07-06 further states the Authority’s authorization to the Capital Committee “to approve, on behalf of the Authority, any and all of the following specific action items....” The action items included certain construction and service contracts “in the amount of \$200,000 or less,” and certain revenue-generating contracts between \$50,000 and \$5,000,000. The resolution further authorized the Capital Committee to “approve and award” certain contract modifications and budgeted contracts and to approve nine activities. Although the resolution does not refer to Exhibit 1, the authority granted in the resolution overlaps with the actions items listed on Exhibit 1 as the action items for which the Authority would “by resolution delegate approval authority” to the Capital Committee. In other words, the Authority acknowledged and implemented its March 14, 2007 “amendment” (Exhibit 1) by adopting Resolution 07-06 that June.

The sole question here is whether the Capital Committee was “created by ... a rule, resolution, or bylaw....” under the “legal instrument” test in SG §10-502(h)(1)(ii)<sup>23</sup>. We have interpreted *Andy’s Ice Cream, supra*, 125 Md. App. 125, to “strongly [suggest]” that the test not be construed narrowly. 6 *OMCB Opinions, supra*, at 27. There, we addressed the question of whether the test was met by a school boundary committee appointed by an area assistant school superintendent under a Board of Education policy. The Board policy “provide[d] little detail prescribing the committee’s governance,” did not specify the number of members needed for a quorum, and left the composition of the committee to the area assistant school superintendent. Nonetheless, the policy “mandated [his] action” in creating the committee. We therefore concluded that the committee was “created by” the policy within the meaning of SG §10-502(h)(1)(ii).

The chronology here is different and more complex than that in 6 *OMCB Opinions* 21. Here, the Authority intended to adopt Exhibit 1 in 2007 as an “amendment” to its Operating Policy, then adopted a resolution premised on the existence of that Committee, and then, without modifying the resolution, declared the amendment of dubious validity on the grounds that it was not in the form of a resolution, apparently all while the Committee performed functions. However, there are significant similarities: while Resolution 07-06 does not spell out the composition of the Capital Committee, it mandates the performance of certain functions by that Committee and thus mandates the Committee’s existence. Furthermore, the Capital Committee entity was created formally, albeit defectively, and, more to the point, was made effective formally. We therefore conclude that the Capital Committee was a public body subject to the Act and that it violated the Act whenever it conducted its meetings without notice or otherwise not in compliance with the Act’s procedures.

We do not take issue with the Authority’s argument that it may validly delegate its powers to committees, just as it may delegate them to its Executive Director. Those governance issues lie beyond

<sup>22</sup> The Resolution also stated the Authority’s approval of that “draft Operating Policy.” As stated by the Authority, that Policy does not create any committees.

<sup>23</sup> As a subcommittee of the Authority, the Capital Committee would be excluded from the SG §10-502(h)(2)(i) definition, *see* SG §10-502(h)(3)(ix), unless it also met the “legal instrument” test. It does not meet the requirement of SG §10-502(h)(2)(ii) that at least two members not be members of the appointing entity.

our purview, as does the Executive Director, who, as one individual, lies beyond the Act's definition of a public body as a body consisting of "at least 2 individuals." SG §10-502(h)(1). We simply conclude that the Capital Committee has been a public body since the Authority's formal recognition of the Committee by resolution.

#### ***E. The allegations regarding the Human Resources Committee.***

While the documents evidence the creation of a Human Resources Committee, we have no information on how it was created and whether the Authority has adopted a resolution analogous to that adopted for the Capital committee. We also lack information on the creation of the Authority's other committees and groups. In case any of these committees fall within the definition of a public body under the Act, we counsel that the Act's procedures apply even when a committee has been created to handle matters for which meetings may properly be closed.

## **II Conclusion**

We conclude that the Act did not apply to the alleged actions of the Authority and the Finance Committee, but that the Act did apply to, and was violated by, the Capital Committee. We shall trust that the Authority's 2010 resolution that at least two of its committees will operate in the open will assure public access to its entire deliberative process.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire

[11-18-25]

## **OPINIONS**

May 23, 2011

Complainant:

Mr. Yakov Shafronovich

Respondent:

Baltimore City Environmental Control Board

We have considered and consolidated into one matter the submissions of Mr. Yakov Shafronovich ("Complainant") and the Baltimore City Environmental Control Board ("ECB") pertaining to Complainant's allegations that the ECB has violated, and continues to violate, the Open Meetings Act in a number of ways.

Complainant's allegations and questions fall into the following categories of issues:

1. Does the Open Meetings Act apply to the hearings conducted for the ECB by its administrative law judges ("ALJs")?
2. Does the Open Meetings Act apply to the proceedings of the three-member panels convened by the ECB to hear appeals?
3. Does the Open Meetings Act apply to other activities conducted by the ECB, such as advising the City Council or taking positions on legislation pending in the General Assembly, and has the ECB violated the Act with respect to meetings on those matters?

4. Has the ECB violated City laws governing its meetings?

For the reasons stated below, we conclude that the ECB has violated the Act in some, but not all, of the ways alleged by the Complainant.

## **I Facts**

Baltimore City's ECB was created by a city ordinance as an independent agency with "full authority to enforce, in accordance with the provisions of [Subtitle 40], the sanitation, environmental, safety, and other quality-of-life provisions of law listed in §40-14....including any rules and regulations adopted under them." Baltimore City Code ("City Code") Art. I, §§40-2 and 40-5. The list of provisions in City Code Art. I, §40-14 (e) includes laws pertaining to licensing and regulation of certain dwellings, water and sanitation laws, building and fire codes, nuisance laws, and three provisions of the Zoning Code. The violation of any of these laws may result in an "environmental citation." City Code Art. I, §40-1(d). In its response to the complaint, the ECB states: "Respondents that are before the ECB receive citations from Animal Control, the Fire Department, Housing, Health Department, Police Department, Department of Public Works, and Zoning." The ECB also states, "The ECB hearings do not encompass zoning matters covered by Article 66B of the Maryland Code ... The ECB does not enforce or regulate any zoning matters, but rather is limited to those matters listed in Section 40-14(e)...." Instead, the ECB states, "The Board of Municipal Zoning Appeals hears the City's zoning matters."

City Code Art. I, § 40-3 sets forth three "[g]eneral Board functions." First, the ECB "is responsible to provide for hearing officers or panels of [ECB] members to conduct hearings on contested environmental citations." City Code Art. I, §40-3(a). Second, the ECB "is responsible to provide for an opportunity to appeal to the [ECB] or to a panel of the [ECB] from the decision of a hearing officer." City Code Art. I, §40-3(b). Third, the ECB, "[w]ith the assistance of its Executive Director and staff," is responsible for collecting environmental fines and accounting functions. City Code Art. I, §40-3(c). While the ECB "must prescribe the form and wording" of environmental citations, the contents are prescribed by statute. City Code Art. I, §40-7(a), (b).

Under City Code Art. I, §40-2(b), the ECB is to be comprised of 13 members, some by virtue of their positions as designees of departments in the executive branch of the City government; others by mayoral appointment. Some of the positions are vacant, and the ECB may currently have as few as 9 members.<sup>24</sup>

## **II Discussion**

### ***A. Whether the Act applies to the hearings conducted for the ECB by its ALJs***

Complainant alleges that the ECB "holds administrative hearings with an administrative judge on citations" without either providing notice to the public or allowing the public to attend. The ECB denies that its hearings are closed to the public and asserts that the Act does not apply to the hearings anyway.

We agree with the result asserted by the ECB: the Act does not apply to these hearings. Addressing a similar claim involving hearings conducted by a sole zoning hearing examiner, we found that while the zoning board in that case was a public body, the examiner was not:

But those who conduct hearings on behalf of the [zoning board] are not themselves a separate "public body." When a hearing examiner, as distinct from the Board itself, conducts a hearing, no "public body" holds a meeting. Moreover, a

<sup>24</sup> City Code, Art. I, §40-2(b) prescribes 13, and the ECB website lists 10. Complainant cites a March 23, 2011 *City Paper* article which reports that only 9 members actually serve.

single individual, like the hearing examiner who conducted [the hearing in question] is not a “public body.” §10-502(h)(3)(i). Hence,...the Act did not apply.

1 *OMCB Opinions* 175, 176 (1996). Here, too, we conclude that the ALJs who conduct the hearings for the ECB are neither the ECB itself nor separate public bodies, and, accordingly, that the Act does not apply to those hearings.

***B. Whether the Act applies to the proceedings of the ECB’s 3-member review panels***

Complainant alleges that the ECB violates the Act when three of its members convene to hear appeals filed by people who wish to contest an ALJ’s findings. The City asserts that the panels are conducting quasi-judicial functions exempt from the Act under SG §10-503 (a)(1). We agree with the City that the Act does not apply to the ECB itself when its panels conduct these hearings, but for a different reason.

The Act applies only to meetings of a quorum of a public body to discuss public business. See State Government Article (“SG”), §10-505 (providing, “a public body shall meet in open session”) and SG §10-502(g) (defining “meet” to mean “to convene a quorum of a public body for the consideration or transaction of public business”). The Act is the sole source of our authority, SG §10-502.4, and we therefore may only address allegations involving meetings within its definition of the term. Here, even if the ECB is assumed to be comprised of only 9 members, three members do not constitute a quorum. So, no matter what function these three members perform, their gatherings are not meetings of the ECB itself.

Whether the panels themselves are “public bodies” exercising functions subject to the Act poses a more complicated question. To address whether the panels meet the Act’s definition of a “public body,” we turn to 3 *OMCB Opinions* 260 (2003), a matter involving a county animal control commission. County law authorized the commission chair to convene three-member panels for certain proceedings. We noted that “because the panel is authorized by law, it would appear that even if a panel conducted the meeting in question, the panel itself constitutes a ‘public body’ for purposes of the Act.” *Id.* at 261, n.2. Here, the City Code requires the ECB “to provide for an opportunity to appeal to the [ECB] or to a panel of the [ECB] from the decision of a hearing officer.” City Code, Art. I, §40-3(b); see also §40-9 (providing that the ECB, “acting by or through ...panels of the [ECB]” must conduct proceedings and “has full authority to render decisions and orders”). We conclude that the panels are themselves public bodies and are therefore subject to the Act when they are fulfilling functions subject to the Act.

With respect to whether the panels’ functions fall within the Act, we agree with the City that these panels perform a quasi-judicial function; the full ECB, when sitting to hear appeals, would also be performing that function. The Act defines “quasi-judicial function” as a “determination of... a proceeding before an administrative agency for which Title 7, Chapter 200 of the Maryland Rules would govern judicial review.” Those Maryland Rules apply to petitions for judicial review where provided by statute, and City Code, Art. I, §40-10(a) of the City Code so provides. The fact that the panels perform a quasi-judicial function, however, does not exclude them from the Act entirely. Under the provisions of SG §10-503 (a) and (b) (2) relevant to this matter, the Act applies to a public body performing a quasi-judicial function “when it is meeting to consider... the enforcement of any zoning law or regulation, or any other zoning matter.” As noted above, the ECB is charged with processing citations issued under three City zoning laws, listed in City Code, Art. I, §40-14(e)(8) as “use permit required,” “Prohibited uses - storage, etc. of vehicles,” and “conditional use - live entertainment,”

each with a statutory reference to a Zoning Code section. However, Complainant has not alleged that an ECB panel has actually held a closed meeting to consider appeals of decisions involving one of the three zoning laws.<sup>25</sup> Further, we do not adopt his argument that the other laws enforced by the ECB fall under the category of zoning matters within the Act.<sup>26</sup> Because the Act does not apply to the ECB or its panels when they are performing quasi-judicial functions pertaining to those other laws, no violation of the Act has been alleged.

***C. Whether the Open Meetings Act applies to other activities conducted by the ECB, such as advising the City Council or taking positions on legislation pending in the General Assembly.***

Complainant alleges that he has been unable to obtain copies of public notices and minutes for the ECB’s meetings. In this regard, he states that the ECB “routinely issues advice to the City Council” and thus exercises functions other than the quasi-judicial function. The ECB responds with minutes that show that the ECB discusses various matters, including its position on legislation in meetings. The minutes provided by the ECB contain redactions under headings such as “Appeal Responses,” “New Appeals,” “Human Resources,” “Law Department,” and “Filed in Circuit Court for Baltimore City.” The minutes do not reflect votes by the ECB members to close the meeting to discuss those matters.

The ECB states: “The ECB admits that it has not kept the notices and written statements for closing its board meetings as required by the Open Meetings Act.” The ECB further states: “The ECB is modifying its procedures to be sure that it keeps the notices of the meetings of the ECB board (not the hearings conducted by the hearing examiners...), the minutes, and the written statements for closing board meetings, when such meetings are closed.”

The ECB’s submissions demonstrate that the ECB has indeed violated the Act, not only because it “has not kept” the notices and written statements for closing its Board meetings, but also because it appears that the ECB did not generate those statements in the first place. Indeed, it appears from the materials provided to us that the ECB did not follow any of the Act’s procedures for closing its meetings. The redactions in the minutes suggest that the ECB considered its discussion of those matters “closed.” However, the minutes do not reflect that the presiding officer completed a written statement containing the information required by SG §10-508(d)(2), especially a citation to the statutory exception relied on for closing the session; that the presiding officer did not record any vote on closing the session, as required by SG §10-508(d)(2); and that the ECB did not include in its minutes of the next public session a

<sup>25</sup> Complainant alleges that a housing inspector attended the hearing of his matter by a hearing examiner and that he had been issued citations for trash on the grass and hedges outside his home. His matter thus did not involve one of the three zoning laws enforced by the ECB, and we do not know if he appealed it.

<sup>26</sup> Complainant bases his argument that all nuisance laws are zoning laws on Art. 66B, §2.03. That section, which pertains to zoning regulations in Baltimore City, requires Baltimore’s zoning regulations to “be designed to” accomplish eight broad purposes, including “Control congestion in the streets,” “Secure the public safety,” “Promote health and the general welfare.” Art. 66 B §2.03(b). The fact that Baltimore’s zoning regulations, like many others, see, e.g., Art. 66B, §4.03 (concerning regulations adopted by other local legislative bodies), must further these purposes does not mean that every law which also addresses these purposes is a zoning regulation. For instance, traffic, food safety, and criminal laws also address them. Such a broad reading of the term “zoning” in the Act would render the quasi-judicial exception meaningless. However, we agree with Complainant that the quasi-judicial consideration of some licensing matters may be subject to the Act. To be subject to the Act, however, those matters must involve “granting” the license or permit. SG §10-503(b)(1).

summary of the actions taken in the closed session, as required by SG §10-509 (c)(2). We also question whether the ECB gave public notice of its meetings.

In this regard, we have read the February 25, 2011 e-mail that Complainant received from a City community liaison who, after reporting that she had “check[ed] with” ECB’s Executive Director, explained:

The Environmental Control Board has a quasi-judicial function and is exempt from “The Public Meeting Act.” Therefore their Board meetings are not open to the public as they are generally deliberating on appeals after a board panel presents their analysis to the full board.

If the ECB indeed has proceeded as though the Act does not apply to its performance of advisory and other non-quasi-judicial functions, it has likely violated the Act in many respects for as many years as it has operated under that belief.

The Complainant’s narrative and exhibits detail his efforts, apparently lasting from August 2010 through February 2011, to inspect the ECB’s minutes. His submissions lead us to make two more observations. First, the Act requires public bodies to make those documents available for inspection during business hours. SG §10-509(d); *see also 7 OMCB Opinions* 36, 40-41 (2010) (explaining closed-session procedures). The Act does not require the public body to provide copies by mail or e-mail, but a requester should not have to make a written request to inspect the documents. *7 OMCB Opinions* 64, 66-67 (2010). Further, the Act does not permit public bodies to redact minutes of public meetings. *Id.* If ECB members wish to discuss matters falling within one of the statutory exceptions to the open meetings requirement, they must do so in a properly-closed session devoted solely to those matters. SG §10-508(b). And, certainly, a citizen who visits a public body’s office should be provided with notice of the public body’s next meeting or directed to the place where that notice is posted. *See* SG §10-506.

#### ***D. Whether the ECB has violated City laws governing its meetings***

Complainant alleges that the ECB has also violated the City’s laws pertaining to open meetings and that those laws are “more stringent” laws, which, under SG §10-504, control. The Act does not provide us with the authority to address allegations of violations of other laws, and we therefore do not address the Complainant’s allegations of violations of City law.

### **III Conclusion**

We find that the ECB has violated the Open Meetings Act by failing to close its Board meetings in accordance with the Act. We find that the Act does not apply to hearings before an ECB hearing examiner because that person is not a “public body” under the Act. We find that the ECB is performing a quasi-judicial function, not subject to the Act, when it or one of its panels considers matters other than those either listed in the City’s Zoning Code or the grant of a license or permit.

We commend the ECB for its decision to modify its procedures.

OPEN MEETINGS COMPLIANCE BOARD  
Elizabeth L. Nilson, Esquire  
Courtney J. McKeldin  
Julio A. Morales, Esquire

[11-18-26]

## **OPINIONS**

May 23, 2011

Complainants:

Mr. Cornelius Ridgely  
Ms. Judith Smith

Respondent:

Carroll County Commissioners

We have considered the complaint of Mr. Cornelius Ridgely and Ms. Judith Smith, (“Complainants”) that the Board of County Commissioners of Carroll County (“Commissioners”) violated the Open Meetings Act on March 17 or 18, 2011 by communicating privately about public business. We conclude that the Commissioners did not violate the Act, because it did not apply to the communications in question.

Complainants allege that the Commissioners communicated about certain State laws on redistricting committees, reviewed a certain proposal, and voted to recommend it, all either in a closed meeting or by e-mail or other means of circulating messages. The Commissioners, a five-member body, respond that while they indeed conducted those activities outside of an open meeting, they did so not in a meeting, but rather by separate e-mail messages, a call between their president and one Commissioner, a conversation between the president and one Commissioner, and a message left with the Town Clerk for the president. The Commissioners attach various e-mails and relate the sequence of events. Although the president states in one e-mail that he “[s]poke to” two other commissioners, a reference that could suggest that a quorum of three had met, their narrative states that the president had spoken separately with each of those commissioners. In short, at no time did more than two Commissioners interact on this matter.

The Act applies only to meetings of a quorum of a public body to discuss public business. *See* State Government Article (“SG”), §10-505 (providing, “a public body shall meet in open session”) and SG §10-502(g) (defining “meet” to mean “to convene a quorum of a public body for the consideration or transaction of public business”). While other laws might require a public body to conduct certain business in a public meeting, the Act does not; rather, it “simply sets rules that must be followed when a meeting subject to the Act occurs.” *6 OMCB Opinions* 57, 61 (2008). The Act is the sole source of our authority, SG §10-502.4, and we therefore may only address allegations involving meetings within its definition of the term.

Here, the alleged communications were not made in a “meeting” as defined by the Act. In 1999, addressing a similar complaint about e-mail communications, we concluded that “an e-mail canvass of the members of a public body does not involve the convening of a quorum.” *2 OMCB Opinions* 78, 78-79 (1999). And, in 1994, addressing a similar complaint about private conversations between two members of a city council which consisted of more than three members, we stated: “The Act was not applicable to whatever discussions may have occurred between any two members..., because no quorum was present at those discussions.” *1 OMCB Opinions* 101, 102 (1994). Here, there is no indication that more than two Commissioners attended any telephone, e-mail, or face-to-face discussion about the redistricting committee.

We conclude that the Board of County Commissioners of Carroll County did not violate the Open Meetings Act when their president communicated with each commissioner out of the presence of the others. As in *2 OMCB Opinions* 49, 50 (1999), another case in which a public body discussed public business through a series of communications between the chair and each member, we reach this result because “the Act’s definition of ‘meeting’ could hardly be more precise.” However, even though the *seriatim* contacts

concerning the matter did not constitute a “meeting,” we emphasize a conclusion reached by us in the past: that “this way of proceeding deprives the public of an opportunity to observe the real decision-making process, for a subsequent open meeting to ‘ratify’ the decision...is a mere formality.” *Id.*

We have no authority to address whether this conduct violated other laws applicable to this public body.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire

[11-18-27]

## OPINIONS

June 27, 2011

Complainant:

Craig O'Donnell

Respondents:

Maryland Transportation Authority

Canton Development Company

Canton Railroad Company

Freestate Logistics Services, Inc.

We have considered the allegations of Mr. Craig O'Donnell (“Complainant”) that Canton Development Company (“CDC”), which is wholly owned by the Maryland Transportation Authority (“MDTA”), is a public body and has violated the Open Meetings Act (“the Act”) by not conducting open meetings. He alleges similar violations by two corporations that are wholly-owned subsidiaries of CDC. He further alleges that MDTA violated the Act by discussing certain matters in a closed meeting on May 30, 2007 and refusing to unseal minutes of any of the closed sessions it held in years 2007-2010.

For the reasons stated below, we are unable to resolve the question of whether CDC and its subsidiaries are “public bodies” under the Act. We conclude that MDTA violated the Act by closing its May 30, 2007 meeting to discuss matters not falling within the exception it claimed. The Act requires MDTA to unseal the minutes of meetings involving investments that it has now made or the marketing of public securities that it has now issued.

### I

#### Discussion

##### *A. Whether the Canton entities are “public bodies”*

Complainant alleges that CDC and its subsidiaries, Canton Railroad Company and Freestate Logistic Services, Inc., are wholly owned and controlled by MDTA and are thus “public bodies” subject to the Act. He states that, as far as he could ascertain, all three companies have the same directors, all of whom are elected by MDTA in its capacity as the CDC's sole shareholder. He notes that MDTA member Walter E. Woodford serves also as Chairman of the CDC Board.

MDTA and CDC respond that CDC and its subsidiaries are private, for-profit corporations. MDTA, responding on its own behalf “in its capacity as the shareholder of [CDC],” and not on behalf of the companies, explains that “the Canton Railroad Company was chartered in 1906 [...] Canton Development Company was originally formed in 1982, and Freestate ... was formed in 2006.” MDTA states that it is CDC's “sole stockholder.” CDC's president, Mr. John C. Magness, provided us with information on the

incorporation and governance of the companies. The three companies have a “Joint Board of Directors”; Mr. Woodford is its Chairman. CDC's by-laws provide that the stockholders elect CDC's board members, who need not themselves be stockholders, that the stockholders may remove a director “with or without cause” and elect a replacement, and that stockholders may call special meetings for any purpose at any time. The companies explain that the Directors are “interviewed by a committee of the Board and a recommendation is made to the Maryland Transportation Authority which then approves or disapproves them as the representative of the shareholder.”

CDC and MDTA have expressed varying perspectives on whether the companies serve public functions. CDC states:

Canton Development Company and its subsidiaries are private for-profit corporations that do not conduct “public business” but are involved in providing traditional rail and logistic services to our customers. In fact we are exactly like more than 500 short line railroads in the United States in how we operate and are organized from a corporate structure. We provide no services that are considered for the public good, and we generate our own revenues from the service we provide and pay taxes just as any corporation would.

Similarly, MDTA describes itself in its response as “merely the shareholder of the [CDC].” However, MDTA's minutes of the May 30, 2007 meeting state: “Members want to continue to operate the railroad primarily as a service to the Port and to provide the benefit to the Port.” And, MDTA's June 30, 2006 Financial Statement states:

In 1987, the Authority acquired 100% of Canton Development Corporation (CDC) for \$1,625,000. CDC owns 100% of the Canton Railroad Company (CRC). The Authority accounts for CDC on the cost basis. The investment in CDC is accounted for at cost as CDC was purchased for the benefit of the State of Maryland's economy. Ownership of CDC and CRC allows the Authority and the Maryland Port Authority [sic] to assure access of freight into and out of the Seagirt Marine Terminal.<sup>27</sup> ...

Similarly, the Authority's 2007 Financial Statement states:

In 1987, the Authority acquired 100% of Canton Development Corporation (CDC) for \$1,625,000. CDC owns 100% of the Canton Railroad Company (CRC). The Authority purchased the entity to ensure control of the rail rights which allows the Authority and the Maryland Port Authority [sic] to assure access of freight into and out of the Seagirt Marine Terminal. ...

More recently, MDTA's 2010 Strategic Plan refers to MDTA's ownership of “Canton Railroad Company, which provides short-line rail access to Seagirt” under this “Goal”: “Strategic Financing: Invest, Finance and Build New Transportation Facilities with the Maryland Department of Transportation and Other Agencies to Meet Maryland's Transportation Needs.” Finally, MDTA's website states:

Acting on behalf of the Maryland Department of Transportation (MDOT), the Authority finances

<sup>27</sup> According to the Authority's website, “The Authority funded construction of the Seagirt Marine Terminal, which opened in 1990. The terminal was owned by the Authority and operated by the Maryland Port Administration (MPA) until November, 2009, when the Authority transferred ownership of Seagirt to MPA.”



and builds new transportation facilities to meet Maryland's transportation needs. \*\*\*

Some of the Authority's ventures include: \*\*\*

The Canton Railroad Company, owned by the Authority since 1987, operates along 16 miles of track and provides railroad access to the Seagirt Marine Terminal. The Canton Railroad Company has served the Port of Baltimore and southeast Baltimore City industries for 95 years. It contracts with Conrail and CSX Transportation

There is no question that CDC was originally incorporated as a private, not public, entity. Now, however, there appears to be a hybrid situation in which a public government agency owns and controls an entity created and operated as a private, for-profit, corporation in order to assure access to a marine terminal which the agency once owned but has since transferred to another public entity.<sup>28</sup> Public ownership of the corporation is thus apparently viewed not simply as a passive investment, but as a part of the agency's strategy for carrying out its function.

To determine whether the CDC is a "public body" for purposes of the Open Meetings Act, we start with the Act's three definitions of a "public body." See SG § 10-502(h). Where, as here, the entity in question was privately-incorporated, we may also look to other considerations. See, e.g., *City of Baltimore Development Corp. v. Carmel Realty Associates*, 395 Md. 299, 910 A.2d 406 (2006).

An entity meets the Act's first definition of a "public body" if the entity was created by a law or other legal instrument. SG § 10-502(h)(1). CDC was not so created. An entity meets the second definition if it is a board or other body appointed by the Governor, a chief executive authority of a local government, or officials subject to their direction. SG § 10-502(h)(2)(i). The CDC Board is not so appointed.

Under the third definition, an entity is a public body if it is (1) a multimember board appointed by "an entity in the Executive branch of State government, the members of which are appointed by the Governor, and that otherwise meets the definition of a public body under this subsection," and (2) composed of at least two members "who are not members of the appointing entity or employed by the State." SG § 10-502(h)(2)(ii).

The CDC Board of Directors fits the literal terms of the third definition. It is a "board," composed of multiple members appointed by the MDTA Board, which itself is "an entity in the Executive branch of State government."<sup>29</sup> MDTA is a public body by virtue of its creation by § 4-201 of the Transportation Article ("TA"), and its members are appointed by the Governor. MDTA suggests that its "election" of a CDC board member is not the same as the "appointment" of a member. However, both acts, when performed by a public body, would be accomplished by a vote, and we do not perceive a material distinction. Finally, more than two of CDC's board members are neither members of the appointing entity nor state employees. A straightforward application of SG § 10-502(h)(2)(ii) would thus seem to yield the result that the CDC Board is a "public body."

Here, however, our analysis does not stop with the application of the Act's definitions. Where an entity created as a private entity nonetheless meets the plain language of the Act, the Court of Appeals has indicated that it may be appropriate to examine on a broader level whether treating it as a public body comports with legislative intent. See *Carmel Realty Associates*, *supra*, 395 Md. at 327. We pursue that

broader approach here, because a number of CDC's and its subsidiaries' traits, particularly the operation of these companies as for-profit enterprises, make the characterization of them as "public bodies" seem odd. For guidance, we look to the two cases in which the Maryland courts determined that entities not created as a government "board" or "commission" nonetheless were "public bodies" under the Act in light of their traits. See *City of Baltimore Development Corp. v. Carmel Realty Associates*, 395 Md. 299, 910 A.2d 406 (2006); *Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999). We also look to our own opinion that a particular privately-incorporated entity was not a public body. See 3 *OMCB Opinions* 284 (2003). All were decided before the third definition of "public body" was enacted, and the guidance is limited in light of the novel facts here.

In *Carmel Realty*, the Court of Appeals found that the Baltimore Development Corporation ("BDC"), although incorporated as a private entity, met the criteria in the second definition of a "public body." The Court then addressed BDC's argument that the "General Assembly never intended to apply [the Act] to entities like the BDC." *Id.* at 327. The Court charted BDC's functions under three headings: "Purely Public Function," "Public and Private Function," and "Purely Private Function." The Court noted the lack of any entry in the "Purely Private" column and described the chart as "a powerful visual aid demonstrating the extent to which the BDC has been able to cloak the business of the Citizens of the City of Baltimore behind the veil of a supposedly private corporation." *Id.* at 329. The Court concluded that requiring BDC to open its deliberative process to the public would be "consistent with the purposes of the Open Meetings Act." *Id.* at 331.

In *Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999), the court held that the Salisbury Zoo Commission, incorporated as a private, non-stock corporation, was a public body because it had "the functional status of a government board." *Id.*, 125 Md. App. at 153 (emphasis added). That entity had been incorporated by the City solicitor, operated under a budget subject to City approval, and was directed by a board appointed by the Mayor and City Council. *Id.* The court stated:

To permit the government to operate outside of the view of the public through private corporations ... is an invitation to great mischief, which the Open Meetings Act seeks to curtail. Therefore, the focus of review is transactional in the sense that the analysis requires a determination of the extent to which the controlled entity actually carries on public business. A private corporate form alone does not insure that the entity functions as a private corporation. When a private corporation is organized under government control and operated to carry on public business, it is acting, at least, in a quasi-governmental way. When it does, it is unreasonable to conclude that such an entity can use the private corporate form as a parasol to avoid the statutorily-imposed sunshine of the Open Meetings Act.

*Id.* at 154-55.

Here, unlike the Baltimore Development Corporation or Salisbury Zoo Commission, CDC was not originally organized under government control, and there is no indication that CDC has made any effort to "cloak" public business behind any sort of "veil." On the other hand, CDC is now under government control, and the controlling government entity includes it among the activities that entity conducts "to meet Maryland's transportation needs" – a public function. Still, were we to draw a chart like the one in *Carmel Realty*, the "purely private" column might include a number of

<sup>28</sup> See footnote 1.

<sup>29</sup> See *Md. Transp. Auth. v. King*, 369 Md. 274, 276 (2002) (stating, "The Maryland Transportation Authority is a unit of the Maryland Department of Transportation, which is a cabinet-level principal department in the executive branch of the state government....").

activities not falling within the public functions of the MDTA.<sup>30</sup> The cases on when a privately-created entity is a “public body” do not yield a clear conclusion, and we turn to our opinions on when a privately-created entity is just that.

We have twice concluded that the Baltimore Area Convention and Visitors Association, Inc. (“BACVA”) was a private entity, despite the fact that it met the second definition of “public body” by virtue of the Mayor’s power to appoint its board. See 3 *OMCB Opinions* 284 (2003); 1 *OMCB Opinions* 197 (1996). In 2003, citing *Andy’s Ice Cream, supra*, 125 Md. App. 125, we stated that “we may not limit our analysis to the origins of an entity, for the governing body of an originally private entity performing a governmental function could be transformed into a ‘public body’ ... subject to the ... Act if a sufficient level of governmental control had resulted.” 3 *OMCB Opinions* at 291. We found “key differences” between BACVA and the Salisbury Zoo Commission. We noted that the City of Salisbury had “explicit control” over “matters of fundamental corporate governance,” “did not have to rely on the good will of the [Zoo Commission] board to achieve [the City’s] objectives,” and “had the authority to dissolve the Zoo Commission at will,” all with the result that the Zoo Commissioners “could not possibly act with genuine independence.” *Id.* at 291-92. In contrast, we stated, the BACVA board had authority over corporate governance and was “given perpetual succession.” *Id.* BACVA’s continuance was not “at the sole discretion of the City,” and it therefore was not a “public body.” *Id.*

The circumstances we found key when determining that BACVA was a private entity are not present here. Here, as was not the case with BACVA, the governmental entity has control over fundamental corporate governance: CDC’s by-laws give the stockholder “the power and authority to amend, alter, or repeal all or any provision of these by-laws,” whether at a special meeting called by the stockholder or at the annual meeting. Further, the CDC directors may not undo changes made by the stockholders under that provision before the next stockholder’s meeting. MDTA may thus repeal the by-law provision which provides that the directors are to manage the “property, business and affairs of the Corporation.” MDTA not only appoints the CDC board, but also may remove any director at any time. MDTA may inspect the books, and CDC’s wish to issue more stock apparently required MDTA’s consent. This level of control, especially viewed in conjunction with MDTA’s statement that it acquired CDC to assure control over rail access to Seagirt, brings CDC closer to the Salisbury Zoo Commission, found by the court to function as “an extension or sub-agency of the City government,” than to BACVA.

A conclusion that CDC is a “public body” for purposes of the Act would comport with the language of the Act and our opinions on the question. Nonetheless, the circumstance of a government entity owning and controlling a for-profit corporation is novel, especially when the government entity bought the corporation to assure access to a facility the government entity no longer owns or operates. In these circumstances, we believe that a court faced with the question would undertake the *Carmel Realty* analysis by sorting the entity’s various functions as public, private, or both and then weighing the results. This is where we hit a dead end. We are not equipped, either in this case or generally, to gather and determine facts in the level of detail needed for such an analysis, whether for CDC or for its two subsidiaries. See 1 *OMCB Opinions* 101, 102 (1994) (stating that the Compliance Board “is not an adjudicatory body with compulsory process or other tools for conducting a factual inquiry”).

As we are permitted to do by SG § 10-502.5(f)(2), we therefore state that we are unable to resolve this aspect of the complaint. We

caution, however, that a stockholders’ meeting comprised of a quorum of the MDTA as stockholder would be subject to the Act because that quorum would be discussing the affairs of the entity it controls for public purposes.

#### **B. The May 30, 2007 closed meeting**

Complainant alleges that MDTA violated the Act on May 30, 2007 by closing a meeting to discuss and take action on two matters that should have been discussed publicly. According to the MDTA’s minutes of the open session it held that day, the members of the MDTA voted to move into closed session “pursuant to Section 10-508(a) of the State Government Article [“SG”] of the Annotated Code of Maryland: (5) to consider the investment of public funds (*Pride of Baltimore* contribution and Canton Development Company investment) ....” The open-session minutes further state:

The following actions were taken during the Closed Session:

##### *Pride of Baltimore II* Contribution

Upon motion by Ms. Rieg and seconded by Mr. Woodford, members unanimously voted to contribute \$164,000 to the *Pride of Baltimore II* for fiscal year 2007 by reducing the amount payable by the Maryland Port Administration to the Authority under the Seagirt Marine Terminal Operating Agreement by that amount.

##### Canton Development Company Investment

Upon motion by Ms. Hoblitzell and seconded by Ms. Affleck Bauer, members unanimously consented to the articles of amendment by the Canton Development Company authorizing additional shares by the Canton Development Company and delegated the authority to the Executive Secretary to execute the consent document. Members want to continue to operate the railroad primarily as a service to the Port and to provide the benefit to the Port. This investment will be taken to the Board of Public Works.

The minutes of the open session then state: “Upon motion ..., members unanimously ratified the above-recorded actions taken in Closed Session, the Acting Chair concurring.”

Under SG § 10-508 (a)(5), a public body may meet in closed session or adjourn an open session to a closed session to “consider the investment of public funds...” While we have instructed generally that the discussion must be “sufficiently related to a concrete investment possibility as to justify invoking the exception,” 4 *OMCB Opinions* 114, 117 (2005), we have not addressed the question of whether “investment” includes either a “contribution” or the consideration of whether a company owned by the public body may issue stock so that the public body may buy it. We begin with the “contribution” discussion.

#### **1. The “*Pride of Baltimore II* Contribution”**

MDTA asserts without elaboration that the discussion about the “contribution” was a discussion about “an investment.” At first blush, it would seem clear that a “contribution” to a private entity qualifying as a § 501(c)(3) organization under the Internal Revenue Code is not the same thing as an “investment” of public funds. Nonetheless, in the interest of not drawing a hasty conclusion, we shall look for circumstances which might muddy those waters.

First, although “investment of public funds” connotes an investment made in the hopes of a monetary reward, one could interpret “investment” to include the use of money in the hopes of other forms of reward, such as publicity. In this regard, the *Pride of Baltimore*, and its successor, the *Pride of Baltimore II*, were built to promote Baltimore, including its ports, and, by extension, the Seagirt

<sup>30</sup> One possible example is the switching operation conducted by Freestate.

Marine Terminal, then owned by MDTA. So, under an expansive reading of “investment,” one could view MDTA’s waiver of lease payments from the Port Administration as an “investment.” SG § 10-508(c), however, does not permit the exceptions in SG § 10-508 (a) to be read expansively; to the contrary, it requires us to construe them “strictly...in favor of open meetings.” Furthermore, permitting public bodies to discuss in closed sessions their voluntary contributions of public funds would not serve any purpose recognized by the Act. Other exceptions bearing on a public body’s own financial matters, such as procurement, collective bargaining, and land acquisition, protect the public body against the effect of public disclosure on its ability to negotiate a favorable price. That consideration is not present where, as here, the transfer of funds is gratuitous.

We conclude that broadly construing “investment” to include voluntary contributions, for whatever reason, would neither serve a need for non-disclosure nor conform to SG § 10-508(c). In our view, the word “investment” does not include a public body’s expenditures on either charitable contributions or promotional activities. In any event, we note that MDTA made its “contribution” not by paying the *Pride* entity directly, but rather by “reducing the amount payable by the Maryland Port Administration to [MDTA] under the Seagirt Marine Terminal Operating Agreement by that amount.” The discussion thus apparently involved both the contribution of certain funds and a waiver of rights under the operating agreement. The investment exception applies to the discussion of a concrete investment possibility; it does not apply to the public body’s discussion of the financing mechanism for contributing to a promotional endeavor. We conclude that MDTA violated the Act by discussing this “contribution” in a closed session.

## 2. The “Canton Development Company Investment”

A public body’s authorization to its wholly-owned company to issue additional shares involves corporate financing and governance, a topic not listed in any exception under SG § 10-508(a). Here, MDTA apparently authorized CDC to issue additional shares so that MDTA itself could buy them. Although a discussion of whether to invest further public funds in CDC could theoretically fall within the investment exception, MDTA’s minutes show that the May 30, 2007 meeting involved an adoption of CDC’s “articles of amendment.” As discussed above, MDTA’s control over CDC and its view of CDC’s role in meeting Maryland’s transportation needs demonstrate that the relationship between MDTA and CDC cannot be analogized to that between, for instance, a public pension fund and the corporations in which it invests passively and votes shares. We find that MDTA violated the Act by discussing the corporate governance of CDC in a session closed under the “investment” exception.

## 3. Sealed and unsealed minutes

In his complaint, Complainant alleges that MDTA has violated the Act by neither unsealing the minutes of the May 30, 2007 meeting nor disclosing in other minutes the actual investment in CDC made pursuant to the discussion at that meeting. MDTA responds that it has unsealed the minutes of its May 30, 2007 meeting, that they are available at its office, and that the Act requires the unsealing of minutes “when the public body invests the funds,” not when the investment is approved. Complainant rejoins by alleging “some 25 closed sessions in 2007-2009 where [SG § ] 10-508(a) 5 and/or 6 were invoked.” For each session, Complainant states, “the public has never been told (1) when [the minutes were ] “unsealed” and how; (2) dates on which “investments were made” or “bonds were sold” triggering the statutory requirement.” Complainant’s list of closed meetings includes meetings closed in 2007 under SG § 10-508(a) (5) and (6) to discuss “ICC funding, financial overview and forecast,” and, under SG § 10-508(a) (6), to discuss “Toll Revenue Bonds.”

We have been given no reason to disbelieve MDTA’s assertion that the May 30, 2007 minutes are now unsealed, and no reason to

disbelieve Complainant’s understanding on February 3, 2011, when he filed his complaint, that the minutes were still sealed. We also have no reason to disbelieve Complainant’s understanding on April 1, 2011, when he filed his rejoinder, that the minutes were still sealed for the 26 other meetings on his list, because MDTA has not disputed his summary. Whether those minutes remain unsealed is a fact we do not know. We thus do not know whether the problem here lies with a failure to unseal minutes of closed sessions, a failure to provide access, or, as is quite possible, a simple miscommunication between this public body and this Complainant. In the hopes that we might provide some relief to these parties in their ongoing difficulties,<sup>31</sup> we provide the following guidance on the unsealing of minutes of meetings closed to either “consider the investment of public funds,” as permitted by SG § 10-508 (a)(5), or “consider the marketing of public securities,” as permitted by SG § 10-508 (a)(6).

SG § 10-509 (c) (3) permits a public body to seal the minutes and any tape recording of a closed session and shield them from public inspection, except as provided in SG § 10-509 (c) (4). Paragraph (c)(4) requires that minutes be unsealed in some circumstances and allows unsealing in others:

The minutes and any tape recording shall be unsealed and open to inspection as follows:

(i) for a meeting closed under § 10-508 (a)(5) of this subtitle, when the public body invests the funds;

(ii) for a meeting closed under § 10-508 (a)(6) of this subtitle, when the public securities being discussed have been marketed;

(iii) on request of a person or on the public body’s own initiative, if a majority of the members of the public body present and voting vote in favor of unsealing the minutes and any tape recording.

As applied to the MDTA’s May 30, 2007 consideration of a further “investment” in its wholly-owned company, had that discussion involved an investment, SG § 10-509 (c) (4) would have required unsealing when that investment was made. As applied to the MDTA’s consideration of bond issuances in meetings closed under the public securities exception, SG § 10-509 (c) (4) required unsealing when the securities had been marketed. In short, when the need for the secrecy – namely, the possible effect on the price of the investment or public securities – has ended, the minutes must be unsealed and open to inspection. For example, if the toll revenue bonds considered at a meeting in 2007 were issued, those minutes should have been unsealed promptly after the issuance.

We have stated that a public body’s consideration of a motion to open the minutes of sessions closed under the other exceptions is an administrative function to which the Act does not apply. 5 *OMCB Opinions* 105, 115 (2007). Complainant is thus not entitled to observe MDTA’s deliberations on his request that minutes be unsealed. However, if the public body recesses an open session to discuss this administrative matter, “the minutes for the public body’s next meeting shall include ... a phrase or sentence identifying the subject matter discussed at the administrative function meeting.” SG § 10-503(c).

<sup>31</sup> See 7 *OMCB Opinions* 30 (2010), 7 *OMCB Opinions* 64 (2010), and 7 *OMCB Opinions* 117 (2011).

## II Conclusion

We are unable to resolve the complaint against CDC and its subsidiaries. We conclude that MDTA has violated the Act with respect to the closing of the May 30, 2007 meeting to discuss matters beyond the scope of the claimed exception. If there remain any state-sealed minutes for meetings involving the discussion of investments which MDTA has since made or the marketing of securities which it has since issued, MDTA has violated the Act.

In closing, we note that many allegations involve events which occurred several years ago, and we are encouraged by the fact that MDTA now posts its minutes on its website. Nonetheless, the General Assembly has not imposed any statute of limitations on the time in which complaints must be filed, and we cannot disregard past violations brought to our attention. Still, if those violations have in good faith been cured, as by, for instance, the unsealing of minutes, we would likely find a further “specific analysis ... moot and therefore pointless.” See 3 *OMCB Opinions* 140, 142 (2001).

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire

[11-18-28]

## OPINIONS

June 27, 2011

Complainant:

Janis Zink Sartucci

Roseann Hurwitz

Respondent:

Montgomery County Board of Education

We have considered the allegations of Rosanne Hurwitz and Janis Zink Sartucci (“Complainants”) that the Montgomery County Board of Education (“County Board”) violated the Open Meetings Act (“the Act”) by discussing in a closed meeting or meetings a proposal to lease property to Montgomery County. We conclude that the County Board violated the Act in a number of ways.

### I The Parties’ Contentions

Complainants allege that the County Board received briefings about a proposal to lease County Board property to the County and that those briefings were not given in an open meeting. The property in question is the former Brickyard Middle School (“Brickyard”) site, which, Complainants allege, the County Board transferred to Montgomery County to be “turn[ed] ... over to a private entity for a commercial purpose.” They refer to a memorandum, attached to the agenda published for the March 8, 2011, County Board meeting in which the Superintendent addressed the “Lease Agreement – Brickyard Road site” and stated: “Staff ... briefed the Board of Education in May and June of 2010....”

The County Board responds that the May “briefing” was made only in the form of a memorandum and that the County Board’s June discussions were properly held in two meetings closed under § 10-508(a)(3) of the State Government Article (“SG”) for the discussions relating to the acquisition of real property or, in the alternative, closed for the performance of an executive function. Complainants reply that the County Board’s summaries of those closed meetings do not reflect discussions falling within the exception provided by SG § 10-508(a)(3) and that the verb, “to brief,” means to give an oral

summary, not a written one. They further object to the County Board’s redaction of the entire text of a May 12, 2010, memorandum on the subject of “Future Brickyard Middle School Site – Proposed use by Montgomery County.”

## II Facts

For the facts, we look to the Superintendent’s May 2010 memorandum on the subject of the Brickyard site, the written resolutions adopted by the County Board as its basis for closing two June 2010 meetings, the summaries of the actions taken at those meetings, as reported in the minutes of the subsequent open meetings, and the minutes of those closed sessions, which we shall keep confidential.

On May 12, 2010, the Superintendent of the Board of Education wrote a “confidential memorandum” to the County Board members. The subject line reads “Future Brickyard Middle School Site – Proposed Use by Montgomery County.” The County Board has redacted everything below that line.

On June 8, 2010, the County Board met in a public session and adopted a written closing resolution which states, in pertinent part:

Resolved, That the Board of Education of Montgomery County discuss negotiation matters relating to the use of real property for a public purpose and matters directly related thereto, as permitted under Section 10-508(a)(3) of the *State Government Article* and Section 4-107(d) of the *Education Article*; and be it further

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Resolved, That the Board of Education of Montgomery County dedicate part of the closed sessions on June 8, 2010, to acquit its administrative functions and receive legal advice to adjudicate and review appeals ....

The minutes of the June 8, 2010, closed session demonstrate that the County Board discussed the Brickyard site. Although that discussion is placed under the heading, “Acquittal of Executive Function: Board/Superintendent Exchange,” the text cites SG § 10-508(a) and repeats the County Board’s version of the exception. The summary of that closed session, which appears in the minutes of the June, 28, 2010, open meeting, states:

The [County Board] met in closed sessions on June 8, 2010, ... and ...

6. Discussed negotiation matters relating to the use of real property for a public purpose and matters directly related thereto, as permitted under Section 10-508(a)(3) of the State Government Article and Section 4-107(d) of the Education Article. ...

8. Reviewed and selected appointments [to various committees] and recommendation [for a certain board] with a subsequent vote in open session, which are administrative functions outside the purview of the Open Meetings Act under Section 10-508(a).

The June 28, 2010 meeting is not otherwise relevant to the complaint.<sup>32</sup>

<sup>32</sup> After this opinion was drafted, the County Board produced an unredacted version of the memorandum to complainants who in turn provided it to Compliance Board staff. The contents of the memorandum do not change either the analysis in this opinion or the result.

### III Discussion

We begin with the events of May 2010. None of the facts before us suggests that a quorum of the County Board met that month to discuss the Brickyard site. The Act applies only when a public body “meets,” a term defined by the statute as the convening of a quorum of the public body’s members. § 10-502(g) of the State Government Article (“SG”). Further, the Act “does not control a public body’s decision on how it is to conduct its business, and in particular whether it will discuss a matter in a meeting.” 3 *OMCB Opinions* 191, 193 (2002). The Act thus does not “inhibit a public body from conducting business in writing, rather than at a meeting.” *Id.*, quoting 2 *OMCB Opinions* 70,71-72 (1999). The Act does not apply to the distribution of the May 12, 2010, memorandum, and the question of whether the County Board is required to disclose its contents does not fall within our authority.

The June 8, 2010, closed session does fall within our purview. At that session, a quorum of the County Board members met to conduct public business. The allegations question whether the County Board properly invoked the exception in SG § 10-508(a)(3) regarding the acquisition of real property and whether its closing resolution complied with the Act. Because the County Board now asserts that the Act did not apply to the discussion, we must also address whether it closed the meeting to exercise an administrative function with respect to the Brickyard site, and whether it actually exercised such a function.

A threshold question is whether the County Board properly invoked the SG § 10-508(a)(3) exception to discuss leasing the Brickyard site to another entity. SG § 10-508(a)(3) permits a public body “to adjourn an open session to a closed session ... to ... consider the acquisition of real property for a public purpose and matters directly related thereto.” In claiming the exception in its closing resolution, the County Board replaced the word “acquisition” with the word “use.” That act was doubly problematic. First, the change was incorrect under the plain language of the statute: the exception applies to a public body’s acquisition of real property, not to divestment of an interest. 6 *OMCB Opinions* 35,39 (2008). Second, the County Board’s citation to that exception created the impression that the County Board members who voted to close the session on the basis of the resolution would in fact be discussing the acquisition of real property.

We have long stressed the importance of the Act’s requirement that a public body vote publicly, for a publicly-disclosed reason, to meet in a closed session. The vote provides the public the opportunity to object. 1 *OMCB Opinions* 191, 193 (1996), citing SG § 10-508(d)(3). It also effectuates the legislative policy of the Act, as stated in SG § 10-501(a) to provide the public the opportunity to “observe ... the performance of public officials”:

Members of a public body are accountable for their decision to hold a closed session, and part of their accountability is to make that decision before the public that is about to be excluded.

1 *OMCB Opinions* 191, *supra*, at 193. A key element of the closing procedures is the requirement that the public body’s presiding officer provide three pieces of information on the written closing statement: a citation to the legal authority relied on for the closing, a listing of the topics to be discussed, and a statement of the reason for closing. SG § 10-508(d)(3). We find that the County Board violated the Act by misstating the legal authority it cited as a basis for excluding the public from this meeting.<sup>33</sup> We also find that the County Board

further violated SG § 10-508(d)(3) by failing to provide any meaningful information on the reason for the closing and the topics to be discussed.

We remind the County Board that in 2009 we found one of its closing resolutions deficient for the exact same reason: the resolution did no more than repeat the words of the statutory exception. 6 *OMCB Opinions* 77, 82-83 (2009). The June 8, 2010, closing resolution did not even do that correctly.

In sum, both substantively and procedurally, the County Board did not invoke the SG § 10-508(a)(3) exception properly. Our conclusion that the exception did not apply to the topic leads necessarily to a finding that the County Board also violated the Act by discussing in closed session topics beyond the scope of the claimed exception. SG § 10-508(b).

We next address the County Board’s alternative argument, which is comprised of two contentions: first, that it also closed its meeting to exercise an administrative function with regard to the Brickyard lease, and, second, that the consideration of whether to divest a school site fell within that function. With respect to whether the County Board relied on the administrative exclusion to discuss the Brickyard lease in a closed session, the County Board’s boilerplate reference to the exclusion in its resolution is uninformative on the subject at best. Indeed, as shown in the language quoted above, the County Board placed that reference in the clause referring to its deliberations on appeals and not in the clause claiming a version of the real property exception. We look instead to County Board’s public summary of the closed session.

Under the Act, when a public body recesses an open meeting to exercise an administrative function in a closed session, “the minutes for the public body’s next meeting shall include ... a phrase or sentence identifying the subject matter discussed at the administrative function meeting.” SG § 10-503 (c). The County Board included such information in the minutes of its next open meeting: item #8 of its closed-session summary, quoted above, lists a number of topics discussed and actions expressly taken in the exercise of the County Board’s administrative function. There is no mention in that category of any discussion of the Brickyard site. Instead, the County Board stated in its item #6 that it had “[d]iscussed negotiation matters relating to the use of real property for a public purpose and matters directly related thereto, as permitted under Section 10-508(a)(3).”<sup>34</sup> We have read the closed-session minutes, and they do not disclose any other topic pertaining to real property. Thus, according to its contemporaneous public statements, the County Board only invoked SG § 10-508(a)(3) to exclude the public from its discussion of the Brickyard lease and exercised its administrative function with regard to other matters.

We have found that the County Board improperly invoked the real property exception to exclude the public from the Brickyard site discussion, and we have inferred, as well as we can from the boilerplate on the closing resolution, that the County Board did not rely on the administrative exclusion for this particular matter. We are left with the question of whether the discussion actually did involve the exercise of that function.

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consideration is: (i) Land and site acquisitions....” The County Board has not claimed, and we do not find, that this provision permitted the County Board to discuss leasing County Board property to another entity. The County Board also did not cite SG § 10-508(a)(13), the exception that permits closing a meeting to comply with a statutory requirement “that prevents public disclosures about a particular ... matter.”

34

A public entity’s summary of a closed session, like its closing statement, must provide meaningful information. The Board’s summary, which merely recites its version of the SG § 10-508(a)(3) exception, also violates the Act.

33

The County Board also cited § 4-107(d) of the Education Article as authority for the closing. That section permits, but does not require, county boards to “meet and deliberate in executive session if the matter under

The County Board asserts that its discussion of whether to lease the Brickyard site to another entity merely entailed the administration of existing law. The County Board cites 76 *Opinions of the Attorney General* 190 (1991) for the proposition that, under § 4-114 of the Education Article, it is “statutorily charged with administering the use of school property” and *Hormes v. Baltimore County*, 225 Md. 371, 378 (1961) for the proposition that “[w]here the execution of a lease by a public body does not require the enactment of a new law, a public body’s decision to enter into a lease is an executive, not a legislative, function.”

*Hormes* was decided before the enactment of the Act. In a case involving another county’s Board of Education, we explained the Act’s administrative exclusion this way:

We have frequently recited a two-part test for determining whether a particular matter before a public body qualifies as an administrative function. First, we inquire whether the topic falls within the definition of any alternative defined function. If so, analysis stops because, by definition, it could not qualify as an administrative function. If it does not involve an alternative function, we then ask whether the public body was involved in the “administration” of an existing law, rule, or regulation. If not, the topic does not qualify as an administrative function.

6 *OMCB Opinions* 145, 147 (2009) (citation omitted).

As to the first step, the question is whether the Brickyard lease topic fell into any function defined by the Act. The Act specifies that the term “administrative function” excludes five functions, including the “quasi-legislative function.” SG § 10-502 (b)(2). It then defines “quasi-legislative” to mean “the process or act of ... approving, disapproving, or amending a contract.” SG § 10-502 (j). The County Board’s discussions about leasing the Brickyard property were part of the process of approving the lease. The analysis stops there.

Nonetheless, it may be useful to explain when the administrative exclusion might apply to discussions involving a contract. In 6 *OMCB Opinions* 145, *supra*, at 148, we explained that a county board would likely be performing that function “where the superintendent of schools or the superintendent’s staff shared information with the school board involving administrative matters under the authority of the superintendent,” because that practice was “consistent with the school board’s responsibility in overseeing the superintendent’s performance.” *Id.* We cited our longer discussion of the exclusion at 3 *OMCB Opinions* 39, 42-43 (2000). We then stated:

Of course, if the superintendent or staff was advising a school board on a contractual matter and the proposed contract or contract modification could not be given effect absent school board approval, it could not be considered an administrative function. The school board would be involved in a quasi-legislative function as defined by the Act. § 10-502(j)(3); 3 *OMCB Opinions* at 44, n.5.

Here, Section 4-114 of the Education Article requires the County Board, not its superintendent, to hold real property in trust for the benefit of the school or school system. The County Board’s consideration of matters relating to a lease of the Brickyard site to another entity thus constituted a quasi-legislative function.

## IV Conclusion

We conclude that the County Board violated the Open Meetings Act when it convened a closed session on the basis of a resolution that did not meet three requirements of SG § 10-508(d)(2), when it discussed matters exceeding the scope of the exception it claimed, and when it did not include meaningful information about the session in the minutes of its subsequent open meeting. The administrative exclusion, even had the County Board closed the meeting for that purpose to discuss the Brickyard site, did not apply.

We once again encourage the County Board to adopt closing resolutions and closed-session summaries that do more than simply repeat or refer to the statutory exception.

OPEN MEETINGS COMPLIANCE BOARD  
Elizabeth L. Nilson, Esquire  
Courtney J. McKeldin  
Julio A. Morales, Esquire

[11-18-29]

## OPINIONS

June 27, 2011

Complainant:

Craig O’Donnell

Respondent:

Queen Anne’s County Commissioners

We have considered the complaint of Mr. Craig O’Donnell (“Complainant”) that the County Commissioners of Queen Anne’s County (“Commissioners”) violated the Open Meetings Act (“the Act”) with respect to certain meetings of the current Commissioners in early 2011 and of the former Commissioners in 2009 and 2010. We have also considered the Commissioners’ response admitting some alleged violations and denying others.

We shall set forth the facts and our conclusions in our discussion.

## I Discussion

### *A. Allegations concerning the adequacy of closing statements in 2011*

Complainant alleges that the closing statements for meetings held on December 28, 2010, January 4, 11, and 25, 2011, February 22, 2011, and March 1, 2011 are variously deficient because (1) the signature of the presiding officer appears to have been stamped; (2) only a citation to the relevant statutory exception is given as the “reason” for the closed session; (3) the statements do not identify the commissioners who made and seconded the motion to close; (4) the cited exceptions did not apply to the discussion; (5) the closing statements do not contain the amount of detail required by the Act; and (6) the Commissioners impermissibly discussed contract matters. These allegations mostly require us to apply §10-508 of the State Government Article (“SG”), which sets forth the reasons for which a public body may close a meeting involving a function covered by the Act and the procedures for doing so.

**1. The use of a signature stamp.** The Commissioners state that “County staff has on occasion, utilized a stamp signature of the President of the County Commissioners on the closing statement.” Noting that the Act does not prohibit that practice, they nonetheless state that future closing statements will bear an original signature.

The Act does not require the presiding officer to sign the closing statement. It does, however, require that officer to “conduct a recorded vote on the closing of the session” and “make a written

statement of the reason for closing the meeting, including a citation of the authority [under SG §10-508], and a listing of the topics to be discussed.” SG §10-508. As we have noted, the closing statement is an “accountability tool,” 4 *OMCB Opinions* 188, 196 (2005), and the Act requires the presiding officer, and the presiding officer alone, to complete it. The most efficient way for a public body to establish compliance with that requirement, (and to avoid creating suspicion), is for the presiding officer to sign the statement when generating it, and we commend the Commissioners’ undertaking to follow that practice. We discuss other aspects of the presiding officer’s responsibility in Section B.

**2. The sufficiency of the statement of the “reason for closing the meeting.”** Complainant alleges that the closing statements violate the Act because the “reason for closing the meeting” is simply given in the form of a citation to the statutory exception invoked as a basis for the closing. The Commissioners respond that they used the form statement recommended by us, that they provided more detail under the heading “Topics to be discussed,” and that they will in any event provide more detail in the future.

SG §10-508(d)(2)(ii) requires the presiding officer to make a written statement before the public body meets in closed session, of “the reason for closing the meeting, including a citation of the authority under [SG §10-508], and a listing of the topics to be discussed.” We have found that a closing statement which contained no “reason for closing” substantially complied with SG §10-508(d)(2)(ii) because “the reasoning was implicit in the information disclosed” elsewhere on the form. 4 *OMCB Opinions* 188, 195 (2005).

The Commissioners’ various topics statements, as quoted by Complainant, read with the statutory reference, convey the subjects discussed in the various closed sessions in enough detail for the Complainant to question whether the discussion actually fell within the claimed exception. For instance, when claiming the exception provided by §10-508(a)(3) for the discussion in a closed session of matters pertaining to the acquisition of property, the Commissioners identified the property. Nonetheless, to comply fully with the Act, the closing statement should state the reason the public body voted to close the meeting, and we commend the Commissioners’ undertaking that their presiding officer will follow this practice in the future.

**3. The failure of the closing statements to identify the commissioners who made and seconded the motion to close.** While SG §10-508 (d)(2) requires the presiding officer to “conduct a recorded vote on the closing of the session,” it does not require the officer to record on the closing statement the identities of the people who made and seconded the motion to close. We do not find any violation of the Act in this regard.

**4. The applicability of the cited exceptions to the discussions held.** SG §10-508 permits a public body to close a session for any of 14 specific exceptions to the general requirement that public business within the scope of the Act be conducted in the open. Complainant alleges that six meetings were closed to discuss matters not within the exception claimed on the closing statement. We take them in chronological order.

**December 28, 2010 meeting.** The Commissioners met in closed session to discuss “Boards, Commissions, addendum to employee contract.” They cited SG §10-508(a)(1) (“the personnel exception”), which permits a public body to meet in closed session to discuss:

- (i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
- (ii) any other personnel matter that affects 1 or more specific individuals [.]

The minutes of the open session additionally cite SG §10-503(c) and state that the Commissioners “went into closed session for the purpose of conducting an administrative function meeting.” SG §10-503(a) provides that the Act does not apply generally to a public body meeting to carry out an administrative function except as provided in subsections (b), which is not relevant here, and (c). Subsection (c) provides that a public body which closed a public meeting to carry out an administrative function must include certain information, notably “a phrase or sentence identifying the subject matter discussed,” in the minutes for the next public meeting. The Commissioners’ open-session minutes state: “The Board discussed an addendum to an employment contract and what Boards and Commissions they would serve on.”

Complainant alleges that the “Boards and Commissions” discussions involved the Commissioners’ own assignments, that the summary and closing statements contradict each other, and that “if [the Commissioners] are going to use 10-503 as a cover for a private debate over [ assignments], they cannot tell the public they are closing under 10-508(a)(1) to discuss “boards and committees.” He further alleges that the employment matter had to do with the shifting positions of “two particular employees,” that the reassignment of them was not confidential and should not have been confidential in light of the prominence of the positions, and that the minutes were insufficient because more information appeared in news accounts.

We begin with the “commissions and boards” discussion. The personnel exception stated by SG §10-508(a)(1)(i) includes the discussion of the “appointment” or “assignment” of “appointees” or “officials” over which the public body has jurisdiction and so encompasses a public body’s assignment of its own members to boards and commissions. However, a public body conducts an administrative function when it discusses its own organization, and SG §10-508 does not apply. 7 *OMCB Opinions* 142 (2011). We do not fault the Commissioners for unnecessarily disclosing on a closing statement the topic of their administrative discussion.

SG §10-503 does apply when the public body has closed a public meeting to conduct an administrative function, but the Commissioners complied with that provision by amply disclosing the assignments they made during their closed session.

The discussion of addenda to the contracts of two particular employees also falls within the SG §10-508(a)(1)(ii) exception for “any other personnel matter that affects 1 or more specific individuals.” That exception, like the other exceptions, does not evaporate when the matter discussed would be of particular interest to the public. The allegation that the Commissioners discussed two individuals in prominent positions thus does not state a violation of the Act. Nor were the Commissioners required to identify the person or persons discussed. See 6 *OMCB Opinions* 127, 136 (2009). We do not find violations with respect to the December 28, 2010 closing statement.

**January 4, 2011 meeting.** The Commissioners closed a meeting under the personnel exception to discuss an “addendum to an employee’s contract and a new employee contract.” Complainant alleges that the minutes of the next public meeting did not contain any information on what occurred at the closed session. The Commissioners acknowledge that SG §10-509(c) required them to make certain disclosures. They admit that they omitted those disclosures from the minutes of the next meeting. They further identify the individuals and contracts discussed, confirm that only those personnel matters were discussed, and state that they are “committed to correcting any and all deficiencies noted.” We trust that this information will be available to other citizens reviewing the January 4, 2011 minutes. Because the Commissioners have admitted this violation, we need not discuss it further.

**January 11, 2011 meetings.** The Commissioners met in three non-public sessions. They held the first session before convening

publicly to discuss administrative matters regarding board and commission appointments. Although the Act did not apply to that meeting, they later included the topic on a closing statement completed during the open session they held later that morning. They also disclosed in the minutes of the open session that they had “reviewed various board appointments.” Although the Commissioners’ use of a SG§10-508 closing statement for a separately-held administrative function meeting could indeed cause confusion, we again do not fault the Commissioners for disclosing more information than required.

The January 11, 2011 closing statement also reflected the closing of the public meeting under the personnel exception to discuss “the appointment of a new finance director and administrator.” As fully disclosed in the minutes of the open session, that discussion occurred at the third session of the day. The appointment of the two employees in question fell within the personnel exception. The administration of an oath to the new County Administrator was an administrative task, and the Commissioners complied with SG §10-503(c) by disclosing it in the minutes. We do not find any violations of the Act with respect to these two closed sessions.

The second closed session on January 11, 2011 is more problematic. The minutes of the open session state that the Commissioners discussed the “elimination of a position” and voted to approve that the “Sheriff’s department ... fill three vacant positions.” With respect to the first topic, the Commissioners inform us that they discussed whether to eliminate the position of chief operating officer, soon to be vacated by the appointment of that employee as County Administrator. The extent to which this discussion involved his performance or that of other employees or prospective employees is unclear. The “elimination of a position,” while it is vacant, likely involves the setting of policy, rather than the discussion of information specific to a particular individual. Even where the discussion involves a position held by so few employees that everyone knows whose positions are being discussed, the discussion must be held in an open meeting unless it involves the performance or other attributes of those individual employees. 3 *OMCB Opinions* 335, 337 (2003). The exception thus does not apply where anyone in the position would be affected by the action being considered. *Id.*

The second topic, the action on permitting the Sheriff’s Department to fill three vacancies, appears to implicate budget matters, as it is unclear at best whether the vacancies in question would be filled by employees over whom the Commissioners “have jurisdiction” under the exception. The open minutes also do not report a discussion of specific individuals in this regard. We again refer the Commissioners to the principles set forth in 3 *OMCB Opinions* 335, *supra*.

January 25, 2011 meeting. The Board met initially in a closed session. The minutes of the subsequent open session disclose that they met “for the purpose of conducting an administrative function meeting; Pursuant to [SG] §10-508(a)(1) ....” The minutes state that they discussed “board appointments and reorganization.” As explained above, the Commissioners could have held a closed session to discuss board appointments without completing a closing statement. However, the “reorganization” discussion by its terms appears to involve a policy question not qualifying as an “administrative function.” Also as explained above, the personnel exception does not extend to a discussion about the elimination of positions without regard to the performance or attributes of specific employees. The Commissioners have provided us with the minutes of that closed session and have explained that their discussion about reorganizing a particular part of the County government in fact involved a discussion of specific individuals. The Commissioners thus did not discuss matters outside of the scope of the exception. They did violate the Act by providing insufficient detail in the summary in the open-session minutes.

February 22, 2011 meetings. The Commissioners met in two closed sessions. They closed the first under SG §10-508(a)(3), which is the exception “to consider the acquisition of real property for a public purpose and matters directly related thereto,” and disclosed in their open-session minutes that they had “discussed the Matapeake Business Park site.” Complainant alleges, and the Commissioners do not dispute, that the County owns the business park and that the Commissioners could not have been discussing an acquisition of the site. SG §10-508(a)(3) applies to the acquisition of real property, not the transfer of real property, 6 *OMCB Opinions* 35, 39 (2008), and the Commissioners therefore violated the Act by discussing County property in a meeting closed under this exception. The exception in SG §10-508 (a)(7) for consulting with counsel to obtain legal advice would have applied, had the Commissioners cited it: the open-session minutes disclose his presence, and the closed-session meetings demonstrate the applicability of that exception.

The Commissioners held a second closed meeting under SG §10-508(a)(3), which is the exception to “consult with counsel to obtain legal advice,” and disclosed in their open-session minutes that they had “discussed the Board of Education budget.” The minutes also disclose that the County Attorney attended the session. The information provided to us demonstrates that the closed-session discussion fell within the scope of the exception. We encourage the Commissioners to refer to a discussion or consultation “with counsel” to avoid future complaints that a meeting was improperly closed under this exception.

March 1, 2011 meeting. The Commissioners invoked the personnel exception to close a session which involved the elimination of positions. They listed “Reorganization Proposal” as the topic to be discussed. As discussed above, that policy issue would not fall within the exception. However, the Commissioners state in their response that the actual discussion concerned “specific discussions ... on the particular individuals” who held the positions being eliminated. We find that the exception applied, but that the closing statement was inadequate.

In summary, most of the problems noted above arose from the Commissioners’ inadequate disclosures of the bases of, and actions taken during, their closed session, not from the discussion in closed session of topics exceeding the scope of any exception. This complaint is a textbook example of how an unnecessarily-vague description of the topic of a closed session can lead the public to conclude that the public body has met secretly to discuss a topic required to be discussed in the open. We reiterate that a public body should disclose on the closing statement as much information as it can without revealing the information that the Act permits the public body to keep confidential. We encourage the Commissioners to look on the Act as providing mechanisms which, when used properly, can serve to protect them against unwarranted suspicions. Here, for instance, had the references to “reorganization” in meetings closed under the personnel exception instead specified “personnel issues pertaining to specific individuals whose positions may be affected by the proposed reorganization,” Complainant would have had no basis for alleging that the description was too vague and that the topic exceeded the scope of the exception.

#### ***B. Allegations concerning violations by the former Commissioners***

Complainant alleges violations with regard to ten meetings held by the prior Board of County Commissioners (“prior Board”). Complainant alleges that the prior Board conducted closed sessions for the purpose of discussing the acquisition of real property and consulting with legal counsel and discussed topics outside of those exceptions, and that their open-session minutes lacked sufficient detail about the actions taken in the closed sessions. None of these allegations involves the current Commissioners. We shall forego an extensive discussion of each



meeting in the belief that our prospective advice on these topics will be more productive for all parties.

All ten meetings were closed under SG §10-508(a)(3), pertaining to the “acquisition of real property.” Complainant alleges that the references in the open-session minutes were insufficiently detailed because they contained sentences such as “The Board discussed purchasing parcels of property,” or “The Board discussed property in Centreville,” or “The Board discussed several parcels of land,” or “discussed the Matapeake site development,” or “discussed the Rural Legacy program and the Courthouse Property.” One closing statement merely cited the statute. Complainant states that the public was surprised to learn later that the Commissioners had purchased property from a local judge and that one contract was suddenly voted on in an open session. One meeting involved a discussion of “an upcoming court date,” in a session closed under SG §10-508(a)(7), which is the exception for consulting with counsel to obtain legal advice.

SG §10-508(d) requires the presiding officer to make a written statement listing the reason for closing the meeting, a citation of the authorities, and a list of the topics to be discussed. The new Commissioners assured us in their response to the allegations pertaining to their meetings that they will provide that information on future closing statements.

The information on future closing statements should at a minimum establish the applicability of the exception. For instance, “discussed several parcels” does not necessarily mean that the Commissioners discussed acquiring those parcels, and discussions about the Matapeake site development and the Rural Legacy Program do not appear to pertain to the acquisition of property at all. Similarly, the sentence, “The board discussed an upcoming court date” does not establish that the Commissioners sought any legal advice. Also at a minimum, the Commissioners should disclose as much information as they can without compromising the confidentiality of matters discussed within the claimed exception. As we stated in 1 *OMCB Opinions* 16, 17 (1992),

The level of detail in the written statement required prior to a closed session and in the minutes of the ensuing open session may preserve the confidence of information that led to the session’s being closed in the first place.

Put another way, the public body may not withhold information unnecessarily. Although we have often stated that mere boilerplate repetition of the language of the Act is insufficient, there is no hard and fast rule for how much information is required in every circumstance. For instance, in some land acquisition matters, it may be appropriate to withhold all identifying information from the public eye until an agreement has been reached. Although the identity of certain land under consideration, or of its seller, might be of great public interest, the Act does not require the public body to disclose it.

We stress that the decision of what information should be disclosed on a closing statement requires a good-faith judgment call by the presiding officer, who is responsible for preparing it. SG §10-508(d). All of the members of the public body are responsible for keeping the discussion within the reason stated in the motion to close the session. SG §10-508(b). For instance, when a closed-session discussion about a particular purchase of land or proposal of a business to locate in the County strays into broader policy, as when the purchase or proposal calls for the Commissioners to adopt generally- applicable land-use policies, *see, e.g., 7 OMCB Opinions* 148 (2011), that discussion very likely has exceeded the scope of those exceptions and should be conducted openly. Under the Act, the responsibility for complying with the SG §10-508 closing procedures lies with the members of a public body, not its staff.

Finally, the members who vote to adopt open-session minutes containing a summary of a prior closed session in effect certify the sufficiency of that summary; “it is through the approval of minutes that a

public body can be said to accept responsibility for the record of its meetings.” 5 *OMCB Opinions* 105, 112 (2007). The Act thus also makes compliance with the SG §10-509 minutes procedures the responsibility ultimately of the members of the public body, not of its staff.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire

[11-18-30]

# The Judiciary

## ADMINISTRATIVE OFFICE OF THE COURTS

### NOTICE OF FUNDING AVAILABILITY

#### Child Welfare Program Grants

The Foster Care Court Improvement Project of the Department of Family Administration at the Administrative Office of the Courts is announcing the availability of funds to support programs and/or projects designed to assist the courts in processing children in need of assistance (CINA) and related termination of parental rights/guardianship (TPR) and adoption cases as well as to facilitate the elimination of barriers to timely permanency. CIP grants are federal funds awarded to each state's highest court by the U.S. Department of Health and Human Services, Administration for Children and Families (ACF), to assist state courts in improving safety, permanency, and well-being outcomes for abused and neglected children in the child welfare system.

Subject to the provision of funds for Fiscal Year 2012 grants will be awarded to those programs which enhance the experience of families and children involved with Maryland's child welfare system. Grant applications are due August 26, 2011.

For more detailed information, please review the Notice of Funding Announcement and Grant Guidelines found on the Department of Family Administration's website: [www.courts.state.md.us/family/grantadmin.html](http://www.courts.state.md.us/family/grantadmin.html) or call 410-260-1272.

Post/Release Date: August 8, 2011

Application Due Date: August 26, 2011

[11-18-36]

## COURT OF APPEALS OF MARYLAND

### STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

#### Notice of Open Meeting

The Standing Committee on Rules of Practice and Procedure will hold an open meeting on Thursday, September 8, 2011, in the Judiciary Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland, commencing at 9:30 a.m., to consider any questions relating to rules changes as may be brought before the meeting.

For further information contact Sandra F. Haines, Reporter, (410) 260-3630.

[11-18-37]

# Final Action on Regulations

## Symbol Key

- Roman type indicates text already existing at the time of the proposed action.
- *Italic type* indicates new text added at the time of proposed action.
- Single underline, italic indicates new text added at the time of final action.
- Single underline, roman indicates existing text added at the time of final action.
- [[Double brackets]] indicate text deleted at the time of final action.

## Title 08

### DEPARTMENT OF NATURAL RESOURCES

#### Subtitle 03 WILDLIFE

##### 08.03.04 Forest Wildlife

Authority: Natural Resources Article, §10-205, Annotated Code of Maryland

#### Notice of Final Action

[11-163-F]

On August 16, 2011, the Secretary of Natural Resources adopted amendments to Regulation .22 under **COMAR 08.03.04 Forest Wildlife**. This action, which was proposed for adoption in 38:14 Md. R. 791—792 (July 1, 2011), has been adopted as proposed.

**Effective Date: September 5, 2011.**

JOHN R. GRIFFEN  
Secretary of Natural Resources

#### Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS

##### 08.18.14 Middle River

Authority: Natural Resources Article, §8-704, Annotated Code of Maryland

#### Notice of Final Action

[11-162-F]

On August 16, 2011, the Secretary of Natural Resources adopted amendments to Regulation .05 under **COMAR 08.18.14 Middle River**. This action, which was proposed for adoption in 38:14 Md. R. 792—793 (July 1, 2011), has been adopted as proposed.

**Effective Date: September 5, 2011.**

JOHN R. GRIFFIN  
Secretary of Natural Resources

## Title 10

### DEPARTMENT OF HEALTH AND MENTAL HYGIENE

#### Subtitle 37 HEALTH SERVICES COST REVIEW COMMISSION

##### 10.37.07 Health Information Exchange Data

Authority: Health-General Article, §§19-143, 19-207, 19-212, 19-215, and 19-216, Annotated Code of Maryland

#### Notice of Final Action

[11-142-F]

On August 11, 2011, the Health Services Cost Review Commission adopted new Regulations .01—.07 under a new chapter, **COMAR 10.37.07 Health Information Exchange Data**. This action, which was proposed for adoption in 38:12 Md. R. 722—723 (June 3, 2011), has been adopted as proposed.

**Effective Date: September 19, 2011.**

JOHN M. COLMERS  
Chairman  
Health Services Cost Review Commission

## Title 12

### DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

#### Subtitle 04 POLICE TRAINING COMMISSION

##### 12.04.01 General Regulations

Authority: Correctional Services Article, §2-109; Public Safety Article, §3-208(a); Annotated Code of Maryland

#### Notice of Final Action

[11-120-F]

On August 11, 2011, the Secretary of Public Safety and Correctional Services, in cooperation with the Police Training Commission, adopted amendments to Regulation .02 under **COMAR 12.04.01 General Regulations**. This action, which was proposed for

1078

adoption in 38:9 Md. R. 556 (April 22, 2011), has been adopted as proposed.

**Effective Date: September 5, 2011.**

GARY D. MAYNARD  
Secretary of Public Safety and Correctional Services

## **Title 14**

# **INDEPENDENT AGENCIES**

### **Subtitle 01 STATE LOTTERY AGENCY**

#### **14.01.13 Facility Standards**

Authority: State Government Article, §9-1A-04(d), Annotated Code of Maryland

#### **Notice of Final Action**

[11-153-F]

On August 3, 2011, the Maryland State Lottery Agency adopted amendments to Regulation .02 under **COMAR 14.01.13 Facility Standards**. This action, which was proposed for adoption in 38:13 Md. R. 762—763 (June 17, 2011), has been adopted as proposed.

**Effective Date: September 5, 2011.**

STEPHEN L. MARTINO  
Director  
State Lottery Agency

## **Title 20**

# **PUBLIC SERVICE COMMISSION**

### **Subtitle 50 SERVICE SUPPLIED BY ELECTRIC COMPANIES**

#### **Notice of Final Action**

[11-096-F]

On August 16, 2011, the Public Service Commission adopted new Regulations .01—.04 and .06—.08 under a new chapter, **COMAR 20.50.10 Net Metering**.

Proposed amendments to Regulation .03 and new Regulation .05 under **COMAR 20.50.01 General Provisions** and new Regulation .05 under new chapter **COMAR 20.50.10 Net Metering** will not be adopted at this time.

This action, which was proposed for adoption in 38:5 Md. R. 332—334 (February 25, 2011), has otherwise been adopted as proposed.

**Effective Date: September 5, 2011.**

TERRY J. ROMINE  
Executive Secretary  
Public Service Commission

## **Title 34**

# **DEPARTMENT OF PLANNING**

### **Subtitle 05 CENSUS AND REDISTRICTING**

#### **34.05.01 Redistricting Prison Populations**

Authority: State Finance and Procurement Article, §§5-203, 5-301, and 5-306, Annotated Code of Maryland

#### **Notice of Final Action**

[11-099-F]

On August 4, 2011, the Maryland Department of Planning adopted new Regulations .01—.04 under a new chapter, **COMAR 34.05.01 Redistricting Prison Populations**, under a new subtitle, **Subtitle 05 Census and Redistricting**. This action, which was proposed for adoption in 38:6 Md. R. 401—402 (March 11, 2011), has been adopted as proposed.

**Effective Date: September 5, 2011.**

RICHARD E. HALL  
Secretary of Planning

# Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

## Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

## Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

## Title 08 DEPARTMENT OF NATURAL RESOURCES

### Subtitle 02 FISHERIES SERVICE

#### 08.02.03 Crabs

Authority: Natural Resource Article, §4-215, Annotated Code of Maryland

#### Notice of Proposed Action

[11-230-P]

The Secretary of Natural Resources proposes to amend Regulations .07, .10, and .14 under **COMAR 08.02.03 Crabs**.

#### Statement of Purpose

The purpose of this action is to make corrections and clarifications to the blue crab regulations.

Specifically, this action will eliminate the regulation that prohibits the commercial harvest of blue crabs on the second and third Thursdays in November. The regulation results in a very small reduction in harvest that is no longer needed because of the implementation of more effective year-long regulations that limit blue crab harvest, including the closure of the female crab fishery on November 10. The two closed days in November now impact male harvest and do not result in any measurable reduction in harvest.

The action removes the requirement to list a vessel number on a crabbing license. The provision was originally put in place in 2001 to assist with enforcement of the commercial day off requirement. However, Natural Resources Police now have access to the computer license system (COIN) to confirm a waterman's day off rather than what is printed on the license. Therefore, the provision is no longer needed for enforcement purposes.

The action clarifies that all recreational crab pots are required to be marked with the owner's name and address regardless of whether they are set on a pole or buoy or attached to the owner's pier or dock. This aids enforcement officers when identifying the owner of the pot.

Additionally, the action allows temporary transfers of frozen and male-only limited crab harvester licenses (LCCs). Permanent transfers are currently allowed. Prohibiting the temporary transfer of these LCCs has caused a restriction on temporary transfers of other authorizations as well. This was unintended. Allowing all types of transfers of frozen and male only LCCs will provide license holders with more business flexibility and does not affect conservation measures.

Finally, the action would clarify that female hard crabs and female peelers may be possessed if accompanied by a bill of sale. Currently, the regulation permits the possession of female peeler crabs only when a person is using them as bait while finfishing and if the crabs are accompanied by a bill of sale. The action would allow an individual to possess female hard crabs that are accompanied by a bill of sale, except when actively crabbing.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The proposed action may have a positive economic impact on the regulated industry.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

D. The proposed action may positively impact the commercial crabbing industry by allowing them to harvest on 2 additional days in November. The proposed action also allows for more business flexibility by allowing temporary transfers of male-only and frozen LCC licenses.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

The proposed action may have a positive economic impact on the commercial crabbing industry by allowing them to harvest on 2 additional days in November. The action may also have a positive economic impact on the commercial crabbing industry by allowing temporary transfers of frozen or male-only LCC licenses, providing for greater business flexibility.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Crabs, Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B2, Annapolis, MD 21401, or call 410-260-8300, or email to [fisheriespubliccomment@dnr.state.md.us](mailto:fisheriespubliccomment@dnr.state.md.us), or fax to 410-260-8310. Comments will be accepted through September 26, 2011. A public hearing will be held on Wednesday, September 8, 2011, at 6pm in the C-1 Conference Room at the Tawes State Office Building, 580 Taylor Ave., Annapolis, MD 21401.

**.07 Crab Pots.**

A.—C. (text unchanged)

D. General Requirements.

(1) (text unchanged)

(2) The crab pots shall be:

(a)[set] Set in front of the person's property, within 100 yards of the shore, and:

[(a) Be attached by a line to the property or a privately owned pier or dock; or

(b) Be marked by a buoy or pole and sign, indicating the owner's name and address.]

(i) Attached by a line to the property or a privately owned pier or dock; or

(ii) Marked by a buoy or pole and sign; and

(b) Marked with the owner's name and address.

(3)—(7) (text unchanged)

E.—H. (text unchanged)

**.10 Recreational Crabbing Catch and Possession Limits — Chesapeake Bay and its Tidal Tributaries.**

A.—D. (text unchanged)

E. Female Hard Crabs and Female Peelers.

(1) (text unchanged)

(2) Exceptions.

(a) (text unchanged)

(b) An individual may possess female peeler or hard crabs

iff:

(i) The individual is using the female peeler crabs as bait while finfishing; and

(ii) The female [peeler] crabs are accompanied by a bill of sale.

(c) An individual recreationally harvesting crabs may not be in possession of female peeler or hard crabs.

F. (text unchanged)

**.14 General Prohibitions.**

A. (text unchanged)

B. Commercial — General.

(1)—(4) (text unchanged)

[(5) A person licensed to catch crabs for sale may not set or retrieve gear or catch crabs for commercial purposes in the Chesapeake Bay and its tidal tributaries on the second and third Thursdays in November.]

[(6)] ~~(5)~~—[(11)]—~~(10)~~ (text unchanged)

C. Closed Day Declaration of Intent.

(1)—(2) (text unchanged)

(3) A person licensed to catch crabs for sale who declares a day off under §C(1) of this regulation shall declare [the licensee's vessel identification number and] a Sunday or Monday day off at the time of license renewal on forms provided by the Department.

(4) (text unchanged)

D.—E. (text unchanged)

F. Limited Crab Harvester.

(1) (text unchanged)

(2) Latent Effort Limited Crab Harvester Status.

(a) (text unchanged)

(b) An individual with a limited crab harvester license — frozen status:

(i)—(iii) (text unchanged)

(iv) May [only permanently] apply to the Department for a permanent or temporary transfer of the license through a family [transfer], beneficiary, or business transfer, as described in Natural Resources Article, §4-701, Annotated Code of Maryland.

(c) (text unchanged)

(d) An individual with a limited crab harvester license — male only status:

(i)—(iii) (text unchanged)

(iv) May [only permanently] apply to the Department for a permanent or temporary transfer of the license through a family, business, or beneficiary transfer as described in Natural Resources Article, §4-701, Annotated Code of Maryland.

(e)—(g) (text unchanged)

G. (text unchanged)

JOHN R. GRIFFIN  
Secretary of Natural Resources

## Subtitle 02 FISHERIES SERVICE

### 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure

Authority: Natural Resources Article, §4-1210, Annotated Code of Maryland

#### Notice of Proposed Action

[11-238-P]

The Secretary of Natural Resources proposes to adopt new Regulation .09 under **COMAR 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure**.

#### Statement of Purpose

The purpose of this action is to add a new regulation for egregious, knowing, or repeat crab and striped bass violations based on HB 1154/SB 635 from the 2011 General Assembly Session. The action follows HB 1154/SB 635, which requires the Department to adopt regulations for authorization revocation related to egregious, knowing, or repeat violations under the following categories: 1) using illegal gear, 2) harvesting during closed season, 3) harvesting from a closed area, 4) exceeding harvest, catch, or size limits, or 5) violating tagging and reporting requirements. The action defines the terms egregious, repeat, and knowingly and describes the revocation hearing process. The action also includes a process for revoking a person's authorization to catch striped bass or crabs when the person is found to be operating during a suspension period.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The action has a potential economic impact to the regulated industry.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
Regulated Industry	(+)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

D. The action may have an overall positive economic impact on the regulated industry. As individuals who are poaching or

knowingly, egregiously, or repeatedly violating regulations are removed from the fishery, the fishery should expect positive impacts on the resource, which could lead to potential increases in income for the watermen. Those watermen who violate the laws and have their authorizations revoked will have a negative economic impact, but it is not possible to determine that number.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Commercial License Revocation, Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B-2, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

#### .09 Revocation of a Striped Bass or Crab Authorization.

##### A. Definitions.

(1) *In this regulation, the following terms have the meanings indicated.*

##### (2) *Terms Defined.*

(a) *Egregious means an offense which displays a wanton disregard for a requirement of the striped bass or crab fishery.*

(b) *Knowingly means the specific intent to violate a requirement of the striped bass or crab fishery.*

##### (c) *Repeat means:*

(i) *Three or more offenses in the striped bass or crab fishery on separate days in a single season;*

(ii) *A series of offenses in the striped bass or crab fishery which are part of an ongoing scheme or conspiracy; or*

(iii) *A series of similar offenses committed over any period of time which collectively display a wanton disregard for the requirements of the striped bass or crab fishery.*

##### B. *Knowing, Egregious, and Repeat Offenses.*

(1) *The Department may schedule a hearing to revoke a person's commercial authorization to catch striped bass or crabs from a person who knowingly commits an offense, commits an egregious offense, or commits repeat offenses in the following categories:*

(a) *Using illegal gear;*

(b) *Harvesting during closed seasons;*

(c) *Harvesting from closed areas;*

(d) *Violating established harvest, catch, or size limits; and*

(e) *Violating tagging and reporting requirements.*

(2) *When the Department seeks to revoke a person's commercial authorization for an egregious offense, the presiding officer shall consider the person's history of offenses in the striped bass or crab fishery, the amount of striped bass or crabs unlawfully caught, and the following, as appropriate, to determine whether the offense warrants revocation:*

(a) *The damage or potential damage to natural resources associated with using illegal gear;*

(b) *Any facts which bear on the egregiousness of a seasonal violation;*

(c) *The location of a violation in a closed area;*

(d) *The extent to which the person has exceeded permissible harvest, catch, or size limits; or*

(e) *The extent of the tagging and reporting violations.*

(3) *If, after a hearing conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of*

*Maryland, the presiding officer finds or concludes that a person committed an egregious offense, committed repeat offenses, or knowingly committed an offense described in §B(1) of this regulation, the Department shall revoke that person's commercial authorization to catch striped bass or crabs.*

**C. Operating During a Suspension.**

*(1) The Department may schedule a hearing to revoke a person's commercial authorization to catch striped bass or crabs from a person who violates terms of a suspension as described in COMAR 08.02.13.02.*

*(2) If, after a hearing conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, the presiding officer finds or concludes that a person committed an offense under §C(1) of this regulation, the Department shall revoke that person's commercial authorization to catch striped bass or crabs.*

JOHN R. GRIFFIN  
Secretary of Natural Resources

## Title 09

# DEPARTMENT OF LABOR, LICENSING, AND REGULATION

## Subtitle 21 BOARD OF ARCHITECTS

### 09.21.04 Fees

Authority: Business Occupations and Professions Article, §§3-208, 3-309, 3-309.1, and 3-309.2, Annotated Code of Maryland

#### Notice of Proposed Action

[11-227-P]

The Board of Architects proposes to amend Regulation .03 under **COMAR 09.21.04 Fees**. This action was considered at an open meeting held on April 27, 2011, notice of which was published in 38:8 Md. R. 535 (April 8, 2011) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to set a one-time retired status license fee for Maryland architects who no longer wish to practice architecture but still wish to retain the honorary title and who meet the criteria set forth in the law. This license category is authorized by recently enacted legislation (Ch. 50, Acts of 2011).

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Pamela J. Edwards, Acting Executive Director, Board of Architects, 500 N. Calvert Street, Room 308, Baltimore, MD 21202, or call 410-230-6263, or email to

pamedwards@dlr.state.md.us, or fax to 410-333-0021. Comments will be accepted through September 27, 2011. A public hearing has not been scheduled.

#### Open Meeting

Final action on the proposal will be considered by Board of Architects during a public meeting to be held on October 26, 2011, at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, MD 21202.

#### .03 Fees and Costs.

A. (text unchanged)

B. *Retired Status.* The Board sets the fee for a retired status license at \$68.

[B.] C. — [C.] D. (text unchanged)

DIANE CHO  
Chair  
Maryland Board of Architects

## Title 10

# DEPARTMENT OF HEALTH AND MENTAL HYGIENE

## Subtitle 04 FISCAL

### 10.04.01 [Funding for Core] Local Health Services *Funding*

Authority: Health-General Article, §§2-301—2-305, Annotated Code of Maryland

#### Notice of Proposed Action

[11-239-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .02, .05, and .06, repeal Regulations .03 and .04, and adopt new Regulations .03 and .04 under **COMAR 10.04.01 Local Health Services Funding**.

#### Statement of Purpose

The purpose of this action is to align regulations with statutory changes made during the 2010 legislative session and to make certain clarifications concerning funding for local health services.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 210 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.



**.01 Scope.**

This chapter governs the provision of funding for [certain] local health services designated in Health-General Article, §2-304, Annotated Code of Maryland, and, at the discretion of the Secretary, any other State or federal funds that support these services.

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.

[(1) “Adjusted baseline” means the original \$41,000,000 General Fund appropriation for core local health services plus annual formula adjustments.]

[(2)] (1) “Annual formula adjustment” means the amount calculated after applying the percentage change as determined by Health-General Article, §2-302(b)(2), Annotated Code of Maryland[, and either added to or subtracted from the previous fiscal year’s core local health services adjusted baseline].

[(3) “Community health need” means the average of a county’s percentage share of the following two factors:

(a) Estimated Statewide population, as provided by the Department of State Planning; and

(b) Statewide 10-year average of years of potential lives lost for the most recent 10-year period for which data is available.

(4) “Core local health services” means the services specified in Health-General Article, §2-304, Annotated Code of Maryland.

(5) “County” means a county of this State and, unless expressly provided otherwise, Baltimore City.]

[(6)] (2) (text unchanged)

(3) “Federal non-matching funds” means federal funds made available annually by the State to a subdivision for local health services that do not require local matching funds.

(4) “Local health services” means the services specified in Health-General Article, §2-304, Annotated Code of Maryland.

[(7) “Local funding effort” means all local funding expenditures of county funds for core local health services for the most recently completed fiscal year, capped at 1/2 of the total expenditures by the county from State and local sources for core local health services for the most recently completed fiscal year.]

[(8)] (5) “Local [match] matching funds” means the annual funding made available by a [county to a local health department] subdivision for [core] local health services to qualify for [a] State [match] matching funds, plus any excess amount [in excess of the amount required for a State match].

[(9)] (6) (text unchanged)

(7) “State funds” means State matching funds plus federal nonmatching funds.

[(10)] (8) “State [match] matching funds” means the [annual funding made available by the State to a local health department for core local health services] general funds made available annually to a subdivision by the State for local health services that require local matching funds.

(9) “Subdivision” means a county of this State and Baltimore City.

[(11) “Years of potential lives lost” means, for a particular calendar year, the sum representing the difference in years between an individual’s age at death and 75, for all individuals residing in a county who die before age 75.]

**.03 Distribution of State Matching Funds.**

A. For fiscal year 2013 and each subsequent fiscal year, each subdivision shall receive, at a minimum, the amount of State matching funds distributed in fiscal year 2012 for local health services.

B. The annual formula adjustment and any other adjustments for local health services shall be allocated to each subdivision based on each subdivision’s percentage share of State funds distributed in the

previous fiscal year, and to address a substantial change in community health need, if any, as determined in the discretion of the Secretary after consultation with local health officers.

**.04 Requirement for Local Matching Funds.**

A. As to appropriations referenced in Health-General Article, §2-302, Annotated Code of Maryland, local matching funds shall be required as a condition of any distribution to a subdivision.

B. The local match percentage for each subdivision shall equal the percentage required for each subdivision for fiscal year 1996.

**.05 Submission of Local Health Department [Plan and] Budget for [Core] Local Health Services.**

A. [An operational plan] An operating budget to implement each local health department’s projects for the next fiscal year, funded partially or wholly from funds provided through [core] local health services, [shall accompany each budget. This plan] shall be prepared in sufficient detail and submitted to the Department for the Secretary to determine the acceptability of the budget.

B. The format, content, and submission date of the [plan and] budget shall be as set forth in the annual local health department [planning and budgeting] budget instructions available on the Department’s website or as otherwise determined by the Secretary.

C. (text unchanged)

D. An agreement form signed by the county executive authority and the health officer of the [county] subdivision shall be transmitted to the Department by a date established by the Secretary for the upcoming State fiscal year. The agreement shall include, but is not limited to, the following:

(1) A statement showing the amount of the local [match] matching funds, along with any qualifications which cover that funding;

(2) A statement indicating whether the [county] subdivision elects to be the paying agent for items other than salaries, or requests that the Department act in that capacity, and, in the event of such a request, the names of the persons upon whose authority commitments and expenditures are authorized; and

(3) A statement indicating whether the [county] subdivision wishes to audit those records of the Department pertaining to disbursements made on behalf of the [county] subdivision.

E. If the [county] subdivision elects to make an audit as described in §D(3) of this regulation, the audit shall be done within 3 years after the close of the fiscal year that is the subject of the audit.

F. (text unchanged)

G. Any substantive change in local health projects during the fiscal year is subject to Departmental review and approval, as set forth in the annual local health department [planning and budgeting] budget instructions.

H. Cash Transactions.

(1) The Department only assumes responsibility in any fiscal year for paying from its funds the State [match] matching funds certified by the Secretary of Health and Mental Hygiene in the agreement for [core] local health services.

(2) If a [county] subdivision elects the Department to be its disbursing agent, and the [county] subdivision fails to deposit sufficient funds with the Department to satisfy the [county’s] subdivision’s share of [core] local health services expenditures, the Department [will cease immediately as the disbursing agent] may not disburse funds for the subdivision until sufficient funds are deposited by the subdivision to meet the [county’s] subdivision’s financial obligations.

(3) If a [county] subdivision elects the Department to be its disbursing agent, the Secretary may charge for the cost of the disbursement-related administrative services rendered by the Division of General Accounting.

- (4) If the [county] *subdivision* elects to be the disbursing agent:
- (a) Disbursements shall be reported monthly to the Division of General Accounting of the Department, in the form and under the conditions as the Department may specify from time to time, in order that these disbursements may be entered on the central accounting records; [and]
  - (b) Funds owed a [county] *subdivision* shall be paid to the [county] *subdivision* within 30 days following the end of each quarter, *except that funds owed at fiscal year end shall be paid to the subdivision within 30 days following the completion of the annual cost settlement process; and*
  - (c) *Funds owed the State by a subdivision at fiscal year end shall be paid to the State within 30 days following the completion of the annual cost settlement process.*

**.06 Procedures and Conditions.**

[A. Personnel. Salary amounts considered for matching will be limited to the amounts paid to individuals employed under the State Personnel Management System or individuals employed under the merit system of a county which has a legally constituted home-rule authority as enacted by the General Assembly, or which achieves that status before the end of the State's fiscal year.]

[B.] A. Purpose of Expenditure. [Local funding shall] *State funds and local matching funds may only be [considered for matching only] expended if the activity [for which the funding is made available] to be funded is:*

- (1)—(2) (text unchanged)
- (3) [Not] *With respect to §A(1) and (2) of this regulation, not budgeted for separately in the State budget.*

[C. Only those expenditures for personnel and other purposes which are an actual and integral part of the organization and budget of the local health department shall be matched, unless the Secretary grants an exception.]

[D.] B. Procurement. If authorized by [local ordinance] *the principal executive or legislative authority of the subdivision's government in accordance with local ordinance*, a local health department may use *either* the State procurement system or the procurement system of the [county] *subdivision* in which the local health department is located. In the absence of [a local ordinance] *such authorization*, a local health department shall use the State procurement system in accordance with State Finance and Procurement Article, Annotated Code of Maryland, and COMAR Title 21.

[E.] C. Expense Accounts. Amounts spent to reimburse personnel for travel expenses [may be considered for matching] in accordance with COMAR 23.02.01 *are eligible for State matching funds.*

[F.] D. [Social Security, Employees' Retirement, and Group Insurance.] *Employee Fringe Benefits.* The employer's payments for Social Security, retirement systems, [and group] *health insurance, and unemployment insurance* are [considered as matching costs] *eligible for State matching funds.*

[G.] E. Revenues. Amounts collected in accordance with COMAR 10.02.01 [and .07] as the result of services rendered as part of [core] local health services shall be treated as a reduction of expenditures for the corresponding project. Amounts collected by [counties] *subdivisions* shall be reported monthly to the Department.

- [H.] F. Interest. A [county] *subdivision* shall:
- (1) Deposit the collections and funds allocated to support [core] local health services in a federally insured interest-bearing account when these funds are not required to meet current *local health services* expenses; and
  - (2) [Identify interest income in the budget and fiscal reporting documents and treat] *Treat interest income from the local health service revenues which generated the interest* as a reduction of

expenditures for the [project] *local health service* which generated the interest.

[I.] G. Prohibited Expenditures.

(1) [The] State [match] *matching funds* may not be used to support the following categories of expenditures:

- (a)—(b) (text unchanged)
- (c) Salary supplements; [or]
- (d) [Other items the Secretary may specify.] *Utilities;*
- (e) *Janitorial expenses;*
- (f) *Landscaping; or*
- (g) *Other items the Secretary may specify.*

(2) [The] State [match] *matching funds* may not participate in the capital costs of *or improvements to* the physical facilities in which local health department operations are conducted. This regulation applies regardless of the manner in which this cost is defrayed including but not limited to rental, lease, and direct payment of contract for construction *or installation.*

(3) [The] State [match] *matching funds* may not be used to defray the cost of debt service if the construction *or improvement* is financed by the creation of a long-term debt.

[J.] H. Insurance, Repair, and Maintenance of Physical Assets.

[(1)] The cost of insuring, repairing, or maintaining physical assets, the provision of which under this chapter is the responsibility of the [county] *subdivision*, is not eligible for State matching funds.

[(2)] However, the cost of insuring, repairing, and maintaining physical assets, the provision of which under this chapter is the responsibility of the State and the county is eligible for State matching funds.]

[K.] I. (text unchanged)

[L.] J. Audits.

(1) All Department records of disbursements relating to local health department activities are available for audit by representatives of the [county] *subdivision*, if they so elect, as provided in Regulation .05D(3) and E of this chapter.

(2) All records of disbursements and revenues of the [counties] *subdivisions* relating to local health department activities shall be available [for audit by representatives of the Department for at least 5 years following the close of each fiscal year or] until audited by the State[, whichever comes first].

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 09 MEDICAL CARE PROGRAMS

### Notice of Proposed Action

[11-234-P-I]

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulation .07 under **COMAR 10.09.02 Physicians' Services;**
- (2) Regulation .06 under **COMAR 10.09.17 Physical Therapy Services;** and
- (3) Regulation .07 under **COMAR 10.09.50 EPSDT School Health-Related Services or Health-Related Early Intervention Services.**

### Statement of Purpose

The purpose of this action is to update the rates in the fee schedule for Physician's Services, EPSDT School Health-Related Services, and Physical Therapy Services.

### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The changes will save the Department approximately \$1,060,000 for Fiscal Year 2012.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E-)	\$1,060,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	
	Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$1,060,000
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

A. The Department will see a cost savings of \$1,060,000 as a result of the proposed regulation.

D. The proposed regulation will reduce the amount of reimbursement for those providers that are reimbursed in accordance with the fee schedules by approximately 1 percent.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

**Editor's Note on Incorporation by Reference**

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, Revision July—December 2011, has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 38:3 Md. R. 145 (January 28, 2011), and is available online at [www.dsd.state.md.us](http://www.dsd.state.md.us). The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

**10.09.02 Physicians' Services**

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

**.07 Payment Procedures.**

A.—C. (text unchanged)

D. The Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, Revision [January—June 2009 and] July—December [2009] 2011, is contained in the Medical Assistance Provider Fee Manual, dated October 1986. All the provisions of this document, unless specifically excepted, are incorporated by reference.

E.—Q. (text unchanged)

**10.09.17 Physical Therapy Services**

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

**.06 Payment Procedures.**

A.—D. (text unchanged)

E. The fee schedule for services covered in this chapter is contained in the [Medical Assistance Provider Fee Manual dated October 1, 1986, all the provisions of which are incorporated by reference with the following amendments: EPSDT: OT, SP, Chiropractic and PT Services Procedure Code and Fee Schedule, March 2004. ] *Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, Revision July—December 2011, contained in the Medical Assistance Provider Fee Manual, dated October 1986. All the provisions of this document, unless specifically excepted, are incorporated by reference.*

F.—K. (text unchanged)

**10.09.50 EPSDT School Health-Related Services or Health-Related Early Intervention Services**

Authority: Health-General Article, §§2-104(b), 15-103, and 15-124, Annotated Code of Maryland

**.07 Payment Procedures.**

A.—D. (text unchanged)

E. Reimbursement for health-related services and health-related early intervention services is [\$82 per patient encounter, of which the] *contained in the Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, Revision July—December 2011, contained in the Medical Assistance Provider Fee Manual, dated October 1986. All the provisions of this document, unless specifically excepted, are incorporated by reference. The State portion is provided by the Maryland State Department of Education.*

F. Reimbursement for behavior services is [\$20 per hour of which the] *contained in the Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, Revision July—December 2011, contained in the Medical Assistance Provider Fee Manual, dated October 1986. All the provisions of this document, unless specifically excepted, are incorporated by reference. The State portion is provided by the Maryland State Department of Education.*

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 15 FOOD

### 10.15.07 Shellfish Sanitation

Authority: Health-General Article, §§18-102, 21-234, and 21-304, Annotated Code of Maryland

#### Notice of Proposed Action

[11-235-P-I]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .01 under **COMAR 10.15.07 Shellfish Sanitation**.

#### Statement of Purpose

The purpose of this action is to update the incorporation by reference of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, Model Ordinance, to the most recent revision.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston St., Room 512, 201 W. Preston Street, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to [regs@dnhm.state.md.us](mailto:regs@dnhm.state.md.us), or fax to 410-767-6483. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

#### Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, 2009 Revision, Model Ordinance, has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 38:3 Md. R. 145 (January 28, 2011), and is available online at [www.dsd.state.md.us](http://www.dsd.state.md.us). The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

#### .01 Incorporation by Reference.

In this chapter, the following documents are incorporated by reference:

A. National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, [2007] 2009 Revision, Model Ordinance, except for Chapter IV, Shellstock Growing Areas; and

B. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 44 BOARD OF DENTAL EXAMINERS

### 10.44.21 Practice of Dental Hygiene Under General Supervision in a Facility or Long-Term Care Facility

Authority: Health Occupations Article, §4-308, Annotated Code of Maryland;  
**Ch. 733, Acts of 2010**

#### Notice of Proposed Action

[11-138-R]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .02, .04, and .05, adopt new Regulation .10, and recodify existing Regulation .10 to be Regulation .11 under **COMAR 10.44.21 Practice of Dental Hygiene Under General Supervision in a Facility or Long-Term Care Facility**. Because substantive changes have been made to the original proposal as published in 38:11 Md. R. 674—676 (May 20, 2011), this action is being repropounded at this time.

This action was considered by the Board of Dental Examiners at a public meeting held on February 2, 2011, and June 1, 2011, notice of which was given under the Notice of Public Meetings link on the Board's website pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to incorporate into the regulations the provisions of Ch. 733, Acts of 2010, which permit licensed dental hygienists to practice dental hygiene under the general supervision of a dentist in long-term care facilities such as nursing homes and assisted living programs.

The purpose of the repropounding is to add a requirement in COMAR 10.44.21.10 that long-term care facilities that utilize dental hygienists working under the general supervision of a dentist file a report with the Board which: 1) states that the facility is operating under general supervision; 2) identifies each dental hygienist providing dental hygiene services in the facility; and 3) identifies the supervising dentist. The remainder of the proposal was not revised.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to [regs@dnhm.state.md.us](mailto:regs@dnhm.state.md.us), or fax to 410-767-6483. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

Ed. Note: Pursuant to State Government Article, §10-113, Annotated Code of Maryland, if a promulgating agency substantively alters the text of regulations that have been previously proposed in the Maryland Register, the altered text must be published in the Maryland Register as though it were initially proposed. The text of regulations appearing immediately below has been altered substantively from the initially proposed text.

Symbols: Roman type indicates existing text of regulations. *Italic* type indicates initially proposed new text. **Helvetica Bold Italic** type indicates new text that substantively alters the text as initially proposed. [Single brackets] indicate existing text proposed for repeal. [[[Triple brackets]]] indicate text proposed for deletion which substantively alters the originally proposed text.

**.01—.02** (originally proposed text unchanged)

**.04—.05** (originally proposed text unchanged)

**.10 Long-Term Care Facilities.**

A.—J. (originally proposed text unchanged)

**K. Before a long-term care facility may allow a dental hygienist to practice dental hygiene, the facility shall report to the Board:**

**(1) That the facility is operating under general supervision;**

**(2) The identity of each dental hygienist providing dental hygiene services in the facility; and**

**(3) The identity of each supervising dentist.**

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

# **Title 11** **DEPARTMENT OF** **TRANSPORTATION**

**Notice of Proposed Action**

[11-233-P]

The Administrator of the Motor Vehicle Administration proposes to:

(1) Amend Regulation **.02** under **COMAR 11.11.05 Motor Vehicle Fees**;

(2) Adopt Regulations **.01 — .06** under a new chapter **COMAR 11.11.15 Refusal to Renew or Transfer a Vehicle Registration and Refusal to Renew a Driver's License for Failure to Pay Undisputed Taxes and Unemployment Insurance Contributions**; and

(3) Amend Regulation **.06** under **COMAR 11.15.33 Vehicle Trade-In Allowance**.

**Statement of Purpose**

The purpose of this action is to remove motor vehicle fees from regulation because those fees are set by statute under H.B. 72 (Ch. 397, Acts of 2011). H.B. 72 increased the vehicle titling fee and reduced the portion of excise tax that a dealer is permitted to retain, by increasing the tax required to be remitted by Maryland dealers for vehicle trade-in allowances. These amendments also create a new chapter, COMAR 11.11.15, which outlines the process for the Comptroller's Office and Department of Labor, Licensing, and Regulations to prevent applicants who have outstanding liabilities from executing certain transactions.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** There will be an estimated increase of \$344,349,258 in revenues to the Transportation Trust Fund during FY2012 — FY 2016 based on the new fee amounts set by statute for certificates of title and the new dealer excise tax retention limits.

There will be an estimated decrease of \$320,665,470 in revenues to the public during FY2012 — FY 2016 based on the new fee amount set by statute for certificates of title and an estimated decrease of \$23,683,789 in revenues to car dealerships during FY2012 — FY2016 based on the new limits set by statute for dealers' retention of excise taxes.

There will be an estimated increase of \$443,951 in expenditures to the Transportation Trust Fund during FY2012 — FY 2016 for additional staff to service an estimated 80,500 individuals annually denied renewal or transfer of a vehicle registration and denied renewal of a driver's license, as a result of unpaid tax liabilities or unpaid unemployment insurance contributions.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:		
Fee	(1) Certificate of Title	FY 2012
	(R+)	\$52,475,060
	(R+)	FY 2013
	(R+)	\$59,297,070
	(R+)	FY 2014
	(R+)	\$65,108,340
	(R+)	FY 2015
	(R+)	\$71,216,000
	(R+)	FY 2016
	(R+)	\$72,569,000
(2) Lower Dealer Excise Tax Retention	(R+)	FY 2012
	(R+)	\$3,669,581
	(R+)	FY 2013
	(R+)	\$4,267,840
	(R+)	FY 2014
	(R+)	\$4,834,384
	(R+)	FY 2015
	(R+)	\$5,302,275
	(R+)	FY 2016
	(R+)	\$5,609,709
(3) Walk-In Transactions	(E+)	FY 2012 \$98,400
	(E+)	FY 2013 \$105,593
	(E+)	FY 2014 \$79,986
	(E+)	FY 2015 \$79,986
	(E+)	FY 2016 \$79,986
	(E+)	
B. On other State agencies:		
NONE		
C. On local governments:		
NONE		

## PROPOSED ACTION ON REGULATIONS

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:		
Lower Dealer Excise		FY 2012
Tax Retention	(-)	\$3,669,581
		FY 2013
	(-)	\$4,267,840
		FY 2014
	(-)	\$4,834,384
		FY 2015
	(-)	\$5,302,275
		FY 2016
	(-)	\$5,609,709
F. Direct and indirect effects on public:		
Certificate of Title		FY 2013
Fee	(-)	\$59,297,070
		FY 2014
	(-)	\$65,108,340
		FY 2015
	(-)	\$71,216,000
		FY 2016
	(-)	\$72,569,000
		FY 2012
	(-)	\$52,475,060

### III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A(1).The estimated revenue increase to the agency for FY 2013 for the increased certificate of title fee represents the increase from \$50 to \$100 on the issuance of new title certificates. Title certificates for rental vehicles (approximately 3% of all new title certificates) would remain at \$50 through FY 2014 and increase to \$100 beginning in FY 2015.

A(2). The estimated revenue increase to the agency for FY2012 — FY 2016 for the lower dealer excise tax retention represents the decrease in the percentage of excise tax retained by dealers for collecting taxes and therefore, would result in additional revenue for the State. For purposes of this analysis, the estimated revenue impact is calculated using the reduction of .6% of the gross excise tax collected. Based on the transaction volume/sales price of dealer activity (both new and used) and taking into consideration applicable trade-in allowances, the average taxable amount per dealer vehicle sold in FY 2010 was \$11,567. Since the structure would be reduced by 50% (1.2% vs. 0.6%), the amount retained by the dealers would also decrease by 50%. To calculate the impact in the out years, two factors are considered. These are: (1) The assumption that the taxable amount per dealer sale will increase by 4% annually, and (2) The assumed growth in dealer transactions in the out years is calculated by comparing the projected year over year increase in the number of new title certificates to the projected increase in certificates that would be issued as a result of a dealer sale.

A(3).The estimated expenditure increase to the agency for FY 2012 is based on the assumption that the walk-in transactions for additional staff to service approximately 80,500 individuals denied renewal or transfer of a vehicle registration and denied renewal of a driver's license as a result

of unpaid tax liabilities or unpaid unemployment insurance contributions will increase wait times by 2—4 minutes per transaction. Based on staffing models, this increased walk-in transaction volume would result in the need for an additional three (3) temporary employees (\$76,821) and communication expenses (\$21,579) totaling \$98,400 (\$76,821 + 21,571 = \$98,400). The FY 2013 — FY 2016 estimated expenditure increase of \$345,551 is for continued employee salaries and communication expenses.

E. The estimated revenue decrease to other industries or trade groups for FY2012 — FY 2016 for the lower dealer excise tax retention represents the decrease in the percentage of excise tax retained by dealers for collecting taxes and therefore, would result in additional revenue for the State. For purposes of this analysis, the estimated revenue impact is calculated using the reduction of .6% of the gross excise tax collected. Based on the transaction volume/sales price of dealer activity (both new and used) and taking into consideration applicable trade-in allowances, the average taxable amount per dealer vehicle sold in FY 2010 was \$11,567. Since the structure would be reduced by 50% (1.2% vs. 0.6%), the amount retained by the dealers would also decrease by 50%. To calculate the impact in the out years, two factors are considered. These are: (1) The assumption that the taxable amount per dealer sale will increase by 4% annually, and (2) The assumed growth in dealer transactions in the out years is calculated by comparing the projected year over year increase in the number of new title certificates to the projected increase in certificates that would be issued as a result of a dealer sale.

F. The estimated revenue decrease to the public for FY 2013 for the increased certificate of title fee represents the increase from \$50 to \$100 on the issuance of new title certificates. Title certificates for rental vehicles (approximately 3% of all new title certificates) would remain at \$50 through FY 2014 and increase to \$100 beginning in FY 2015.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Tracey C. Sheffield, Regulations Coordinator, MVA, 6601 Ritchie Highway, N.E., Room 200, Glen Burnie, MD 21062, or call 410-768-7545, or email to tsheffield@mdot.state.md.us, or fax to 410-768-7506. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

## Subtitle 11 MOTOR VEHICLE ADMINISTRATION — ADMINISTRATIVE PROCEDURES

### 11.11.05 Motor Vehicle Fees

Authority: Transportation Article, §§12-104(b) and 12-301, Annotated Code of Maryland, and as cited in Regulations .02—.06 of this chapter

#### .02 Vehicle Titling Fees.

Service	Section	Fee
[A. Title certificate—new vehicle	13-802	\$50
B. Title certificate—used vehicle	13-802	\$50]
[C.] A. Title certificate—duplicate	13-805	\$20
[D.] B. — [J.] H. (text unchanged)		

# **11.11.15 Refusal to Renew or Transfer a Vehicle Registration and Refusal to Renew a Driver's License for Failure to Pay Undisputed Taxes and Unemployment Insurance Contributions**

Authority: Transportation Article, §§12-104(b), 13-406.2, and 16-115, Annotated Code of Maryland

## **.01 Scope.**

A. This chapter contains procedures governing the refusal to renew or transfer a vehicle registration and the refusal to renew a driver's license of an applicant as a result of unpaid tax liabilities or unpaid unemployment insurance contributions.

B. This chapter applies to:

(1) Individuals for whom or entities for which the Comptroller has notified the Administration of failure to pay all undisputed taxes or failure to provide for payment in a manner satisfactory to the Comptroller; and

(2) Individuals for whom or entities for which the Department of Labor, Licensing, and Regulation has notified the Administration of failure to pay undisputed unemployment insurance contributions or failure to provide for payment in a manner satisfactory to the Department.

## **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administration" means the Motor Vehicle Administration.

(2) "Comptroller" means the Comptroller of Maryland or the Comptroller's designee.

(3) "Department of Labor, Licensing, and Regulation (DLLR)" means the Secretary of Labor, Licensing, and Regulation or the Secretary's designee.

(4) "Driver's license" has the meaning stated in Transportation Article, §§11-116, Annotated Code of Maryland.

(5) "Release" means evidence that an applicant either has paid all undisputed taxes and unemployment contributions payable to the Comptroller or the Department of Labor, Licensing, and Regulation or has provided for payment in a manner satisfactory to the agency responsible for collection.

(6) "Undisputed tax liabilities" means an assessment of tax that has become final.

## **.03 Reporting Undisputed Taxes and Unemployment Insurance Contributions.**

A. The Comptroller or DLLR shall transmit to the Administration, in a format and frequency agreed to by the Administration, Comptroller, and DLLR:

(1) Undisputed tax liabilities;

(2) Releases for tax liabilities;

(3) Undisputed unemployment insurance contribution liabilities; and

(4) Releases for unemployment insurance contribution liabilities.

B. In the event the Comptroller or DLLR transmits to the Administration records which the Administration is unable to match to the Administration's records, the Administration shall notify the Comptroller or DLLR of all unmatched names and partially matched names.

C. In the event the Administration notifies the Comptroller or DLLR of unmatched names and partially matched names, the Comptroller or DLLR shall attempt to match all unmatched names and partially matched names and transmit back to the Administration.

## **.04 Nonrenewal or transfer of Registration and Nonrenewal of Driver's License.**

Upon notification to the Administration from the Comptroller or DLLR that an individual or entity has failed to pay undisputed taxes or unemployment insurance contributions, or has failed to arrange for a plan of payment in a manner satisfactory to the agency responsible for collection, and upon a positive match to that individual in Administration records, the Administration shall refuse:

A. For any vehicle owned or co-owned by applicant:

(1) To renew the vehicle registration;

(2) To transfer the vehicle registration;

(3) To issue a replacement tag;

(4) To issue a substitute set of tags; or

(5) To issue a substitute set of registration stickers; and

B. For the applicant's driver's license:

(1) To renew the driver's license; or

(2) To renew the driver's license with correction.

## **.05 Notice of Proposed Action.**

The Administration shall advise the applicant:

A. That the registration renewal or transfer of any vehicle owned by the applicant and the renewal of the applicant's driver's license will be refused; and

B. That the individual or entity must contact the Comptroller or DLLR to resolve any questions regarding undisputed taxes and unemployment insurance contributions.

## **.06 Reinstatement.**

A. The Administration shall continue to refuse the transactions as set forth in Regulation .04 of this chapter for an applicant who has failed to pay undisputed taxes and unemployment insurance contributions, until the Administration receives evidence from the Comptroller or DLLR that all tax liabilities and unemployment insurance contribution liabilities have been released.

B. The Comptroller or DLLR shall notify the Administration on the next business day, excluding Maryland State holidays as defined in State Personnel and Pensions Article, §9-201, Annotated Code of Maryland, when satisfactory arrangements have been made to pay undisputed taxes and unemployment insurance contributions.

# **Subtitle 15 MOTOR VEHICLE ADMINISTRATION — VEHICLE REGISTRATION**

## **11.15.33 Vehicle Trade-In Allowance**

Authority: Transportation Article, §§12-104(b), 13-809, and 13-812, Annotated Code of Maryland

## **.06 Applying the Trade-In Allowance.**

A.—B. (text unchanged)

C. The dealer shall determine and enter on the Maryland Dealer's Certification portion of the application for title:

(1)—(4) (text unchanged)

(5) For licensed Maryland dealers, the net tax remitted by:

(a) Multiplying [1.2] 0.6 percent times the gross tax remitted up to \$12; and

(b) (text unchanged)

D.—F. (text unchanged)

JOHN T. KUO  
Administrator  
Motor Vehicle Administration

# Title 14 INDEPENDENT AGENCIES

## Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

### 14.22.02 Criminal Offenses and Seriousness Categories

Authority: Criminal Procedure Article, §6-211, Annotated Code of Maryland.

#### Notice of Proposed Action

[11-236-P]

The State Commission on Criminal Sentencing Policy proposes to amend Regulation .02 under **COMAR 14.22.02 Criminal Offenses and Seriousness Categories**. This action was considered by the State Commission on Criminal Sentencing Policy at an open meeting held on June 28, 2011, notice of which was given by publication in the Maryland Register pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to indicate modifications to the table of seriousness categories in COMAR 14.22.02.02. These modifications reflect updates and/or corrections to the offense table identified by the Sentencing Commission since the last submission for COMAR revisions.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to David Soule, Executive Director, Maryland State Commission on Criminal Sentencing Policy, 4511 Knox Road, Suite 309, College Park, MD 20742, or call 301-403-2707, or email to dsoule@crim.umd.edu, or fax to 301-403-4164. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

#### .02 Seriousness Categories.

	Offense Literal	CJIS Code	Source	Felony or Misd.	Max Term	Min Term	Offense Type	Ser. Category	Fine
1—4-1 (text unchanged)									
4-2	<b><i>Abuse and Other Offensive Conduct</i></b> <i>Child neglect</i>		<i>CR, §3-602.1</i>	<i>Misd.</i>	<i>5Y</i>		<i>Person</i>	<i>VI</i>	<i>\$5,000</i>
5—12-1 (text unchanged)									
12-2	<b><i>Animals, Crimes Against Unlawful capture of over \$20,000 worth of striped bass</i></b>		<i>NR, §4-1201(d)(2)</i>	<i>Misd.</i>	<i>2Y</i>		<i>Property</i>	<i>VII</i>	<i>varies</i>
13—98-2 (text unchanged)									
98-3	<b>Commercial Fraud, Other</b> Fraudulently obtaining motor vehicle accident report		[TR, §§20-110(e)(1)] <i>TR, §20-110(e)(1)</i>	Felony	15Y		Property	V	\$10,000
98-4	<b>Commercial Fraud, Other</b> Improper disclosure of motor vehicle accident report by law enforcement agent		[TR, §§20-110(e)(2)] <i>TR, §20-110(e)(2)</i>	Felony	15Y		Property	V	\$10,000
99—174 (text unchanged)									
175 <i>Vacant</i>	<b>[Handguns—In General</b> Handgun—unlawful use in commission of felony or crime of violence, 1 <sup>st</sup> offense]	[1-5299]	[CR, §4-204(b)(1)]	[Misd.]	[20Y ♦]	[MM*=5Y]	[Person]	[III]	



176 <i>Vacant</i>	<b>[Handguns—In General</b> Handgun-unlawful use in commission of felony or crime of violence, <b>subsequent]</b>	[1-5299]	[CR, §4-204(b)(2)]	[Misd.]	[20Y ♦]	[MM*=5Y]	[Person]	[II]	
176-1—191 (text unchanged)									
192	<b>Harboring, Escape, and Contraband</b> [Contraband—deliver, possess, conceal, receive weapon] <i>Contraband—deliver, possess with intent to deliver, conceal, receive weapon</i>	2-1035 2-1040 2-1045 2-1055	[CR, §9-414(a)] <i>CR, §9-414</i>	Felony	10Y		Person	IV	\$5,000
193	<b>Harboring, Escape, and Contraband</b> [Contraband—deliver, possess, conceal, receive to effect an escape] <i>Contraband—deliver, possess with intent to deliver, conceal, receive contraband to effect an escape</i>	2-1060 2-1065 2-1070 2-1075	[CR, §9-413(a)] <i>CR, §9-413</i>	Felony	10Y		Person	IV	\$5,000
194	<b>Harboring, Escape, and Contraband</b> Escape, 1 <sup>st</sup> degree	1-0615 2-1010 [2-1015]	[CR, §9-404(a)] <i>CR, §9-404</i>	Felony	10Y		Person	IV	\$20,000
195	<b>Harboring, Escape, and Contraband</b> Escape, 2 <sup>nd</sup> degree	1-0766 2-1020 2-1025 2-1030	[CR, §9-405(a)] <i>CR, §9-405</i>	Misd.	3Y		Person	VI	\$5,000
196 (text unchanged)									
197	<b>Harboring, Escape, and Contraband</b> [Contraband—delivery; possession with intent to deliver] <i>Contraband—deliver, possess with intent to deliver, knowingly possess contraband</i>	1-1835 2-1080 2-1085	[CR, §9-412(a)] <i>CR, §9-412</i>	Misd.	3Y		Property	VI	\$1,000
198	<b>Harboring, Escape, and Contraband</b> [Deliver alcoholic beverage to person in confinement; possess alcoholic beverage with the intent to deliver] <i>Deliver, possess with intent to deliver, receive alcoholic beverage</i>	1-0724 2-1090 2-1092	[CR, §9-415(b)] <i>CR, §9-415</i>	Misd.	3Y		Property	VI	\$1,000
199	<b>Harboring, Escape, and Contraband</b> [Deliver controlled substance to person in confinement; possess controlled substance with the intent to deliver] <i>Deliver, possess with intent to deliver, receive controlled dangerous substance</i>	1-0718 2-1095 2-1097	[CR, §9-416(a)] <i>CR, §9-416</i>	Misd.	3Y		Property	VI	\$1,000

**PROPOSED ACTION ON REGULATIONS**

1092

199-1	<b>Harboring, Escape, and Contraband</b> Possess, possess with intent to deliver, [or] receive telecommunication device [in place of confinement]	1-0719 1-0721 1-0722 1-0723	CR, §9-417	Misd.	3Y		Property	VI	\$1,000
200—201 (text unchanged)									
202	<b>Harboring, Escape, and Contraband</b> Harboring—prison escapee	2-4904	[CR, §9-403(a)] <i>CR, §9-403</i>	Misd.	1Y		Person	VII	\$1,000
203—245-20 (text unchanged)									
246	<b>Motor Vehicle Offense</b> [Fleeing or eluding police that results in a death of another person] <i>Fleeing or eluding police, 1<sup>st</sup> offense</i>		[TR, §27-101(p)(3), TR, §21-904(d)(2)] <i>TR, §27-101(p)(1)(i), TR, §21-904</i>	Misd.	[10Y] <i>1Y</i>		Person	[IV] <i>VII</i>	[\$5,000] <i>\$1,000</i>
247	<b>Motor Vehicle Offense</b> [Fleeing or eluding police that results in bodily injury] <i>Fleeing or eluding police, subsequent</i>		[TR, §27-101(p)(2), TR, §21-904(d)(1)] <i>TR, §27-101(p)(1)(ii), TR, §21-904</i>	Misd.	[3Y] <i>2Y</i>		Person	[V] <i>VI</i>	[\$5,000] <i>\$1,000</i>
248	<b>Motor Vehicle Offense</b> [Eluding a police officer attempting to apprehend driver for commission of crime of violence] <i>Fleeing or eluding police that results in bodily injury to another person</i>		[TR, §27-101(p)(4) TR, §21-904(e)] <i>TR, §27-101(p)(2), TR, §21-904(d)(1)</i>	Misd.	3Y		Person	V	\$5,000
249 [Vacant]	<b>Motor Vehicle Offense</b> <i>Fleeing or eluding police that results in death of another person</i>		<i>TR, §27-101(p)(3), TR, §21-904(d)(2)</i>	Misd.	<i>10Y</i>		<i>Person</i>	<i>IV</i>	<i>\$5,000</i>
250	<b>Motor Vehicle Offense</b> [Driver failing to remain at scene—accidents resulting in death of another person] <i>Fleeing or eluding police attempting to apprehend driver for commission of crime of violence</i>		[TR, §27-101(o)(2) TR, §20-102] <i>TR, §27-101(p)(4), TR, §21-904(e)</i>	Misd.	[5Y] <i>3Y</i>		Person	V	\$5,000
251 [Vacant]	<b>Motor Vehicle Offense</b> <i>Driver failing to remain at scene of accident that results in bodily injury to another person</i>		<i>TR, §27-101(o)(1), TR, §20-102(a)</i>	Misd.	<i>1Y</i>		<i>Person</i>	<i>VII</i>	<i>\$3,000</i>
252 [Vacant]	<b>Motor Vehicle Offense</b> <i>Driver failing to remain at scene of accident that results in death of another person</i>		<i>TR, §27-101(o)(2), TR, §20-102(b)</i>	Misd.	<i>5Y</i>		<i>Person</i>	<i>V</i>	<i>\$5,000</i>

PROPOSED ACTION ON REGULATIONS

1093

253	<b>Motor Vehicle Offense</b> [Fleeing or eluding police, 2 <sup>nd</sup> offense] <i>Driver failing to remain at scene of accident with knowledge of serious bodily injury to another person</i>		[TR, §27-101(p)(1)(i),(ii) TR, §21-904] <i>TR, §27-113(b), TR, §20-102</i>	[Misd.] <i>Felony</i>	[2Y] <i>5Y</i>		Person	[VI] <i>V</i>	[\$1,000] <i>\$5,000</i>
254	<b>Motor Vehicle Offense</b> [Driving while license is canceled, suspended, refused, or revoked, <b>subsequent</b> ] <i>Driver failing to remain at scene of accident with knowledge of death of another person</i>		[TR, §27-101(h)(1),(2) TR, §16-303(a), (b), (c), (d), (e), (f), (g)] <i>TR, §27-113(c), TR, §20-102</i>	[Misd.] <i>Felony</i>	[2Y] <i>10Y</i>		[Property] <i>Person</i>	[VI] <i>IV</i>	[\$1,000] <i>\$10,000</i>
254-1	<b>Motor Vehicle Offense</b> [Driving without having been issued a license, <b>subsequent</b> ] <i>Commit or engage another to commit a violation of motor vehicle law for the purpose of recording the violation without permission</i>		[TR, §27-101(y)] <i>TR, §27-101(z), TR, §21-1126</i>	Misd.	1Y		[Property] <i>Person</i>	VII	[\$500] <i>\$1,000</i>
255	<b>Motor Vehicle Offense</b> [Conduct the business of an automotive dismantler and recycler or a scrap processor without a license, <b>subsequent</b> ] <i>Violation of ignition interlock system participation requirements, 1<sup>st</sup> offense</i>		[TR, §27-101(i), (2) TR, §15-502(a)] <i>TR, §27-101(h)(1), TR, §16-113(k)</i>	Misd.	1Y		Property	VII	[\$2,000] <i>\$1,000</i>
256	<b>Motor Vehicle Offense</b> [Providing false evidence of required security, <b>subsequent</b> ] <i>Violation of ignition interlock system participation requirements, <b>subsequent</b></i>		[TR, §27-101(h)(1), (2) TR, §17-110] <i>TR, §27-101(h)(2), TR, §16-113(k)</i>	Misd.	2Y		Property	VI	\$1,000
257	<b>Motor Vehicle Offense</b> [Required security-a person who knows or has reason to know that a motor vehicle is not covered by the required security may not drive the vehicle; or, if owner, knowingly permit another person to drive it, <b>subsequent</b> ] <i>Driving without having been issued a license, <b>subsequent</b></i>		[TR, §27-101(h)(1), (2) TR, §17-107] <i>TR, §27-101(y)(2), TR, §16-101</i>	Misd.	[2Y] <i>1Y</i>		Property	[VI] <i>VII</i>	[\$1,000] <i>\$500</i>
258 [Vacant]	<b>Motor Vehicle Offense</b> <i>Driving while license is refused, canceled, suspended, or revoked, 1<sup>st</sup> offense</i>		<i>TR, §27-101(h)(1), TR, §16-303(a)-(g)</i>	Misd.	<i>1Y</i>		<i>Property</i>	<i>VII</i>	<i>\$1,000</i>
258-1 [Vacant]	<b>Motor Vehicle Offense</b> <i>Driving while license is refused, canceled, suspended, or revoked, <b>subsequent</b></i>		<i>TR, §27-101(h)(2), TR, §16-303(a)-(g)</i>	Misd.	<i>2Y</i>		<i>Property</i>	<i>VI</i>	<i>\$1,000</i>
259 [Vacant]	<b>Motor Vehicle Offense</b> <i>Driving commercial motor vehicle while license is refused, canceled, suspended, or revoked</i>		<i>TR, §27-101(s)(1), TR, §16-808(a)</i>	Misd.	<i>5Y</i>		<i>Property</i>	<i>VI</i>	<i>\$10,000</i>

**PROPOSED ACTION ON REGULATIONS**

1094

260 [Vacant]	<b>Motor Vehicle Offense</b> <i>Driver of commercial vehicle not in possession of license, 1<sup>st</sup> offense</i>		TR, §27-101(s)(2)(i), TR, §16-808(c)	Misd.	6M		Property	VII	\$1,000
261 [Vacant]	<b>Motor Vehicle Offense</b> <i>Driver of commercial vehicle not in possession of license, 2<sup>nd</sup> offense</i>		TR, §27-101(s)(2)(ii), TR, §16-808(c)	Misd.	1Y		Property	VII	\$2,000
262 [Vacant]	<b>Motor Vehicle Offense</b> <i>Driver of commercial vehicle not in possession of license, 3<sup>rd</sup> or subsequent offense</i>		TR, §27-101(s)(2)(iii), TR, §16-808(c)	Misd.	2Y		Property	VI	\$3,000
263 [Vacant]	<b>Motor Vehicle Offense</b> <i>Obtaining commercial driver's license by misrepresentation</i>		TR, §27-101(s)(3), TR, §16-813.1	Misd.	5Y		Property	VI	\$10,000
264 [Vacant]	<b>Motor Vehicle Offense</b> <i>Providing false evidence of required security, 1<sup>st</sup> offense</i>		TR, §27-101(h)(1), TR, §17-110	Misd.	1Y		Property	VII	\$1,000
265	<b>Motor Vehicle Offense</b> [Driver failing to remain at scene—Accidents resulting in bodily injury to another person] <i>Providing false evidence of required security, subsequent</i>		[TR, §27-101(o)(1) TR, §20-102] TR, §27-101(h)(2), TR, §17-110	Misd.	[1Y] 2Y		[Person] Property	[VII] VI	[\$3,000] \$1,000
266	<b>Motor Vehicle Offense</b> [Fleeing or eluding police, 1 <sup>st</sup> offense] <i>Drive vehicle or permit another to drive vehicle knowing that vehicle is not covered by the required security, 1<sup>st</sup> offense</i>		[TR, §27-101(p)(1)(i), (ii) TR, §21-904] TR, §27-101(h)(1), TR, §17-107	Misd.	1Y		[Person] Property	VII	\$1,000
267	<b>Motor Vehicle Offense</b> [Conduct the business of a vehicle dealer without a license] <i>Drive vehicle or permit another to drive vehicle knowing that vehicle is not covered by the required security, subsequent</i>		[TR, § 27-101(v) TR, §15-302] TR, §27-101(h)(2), TR, §17-107	Misd.	[1Y] 2Y		Property	[VII] VI	[\$5,000] \$1,000
268	<b>Motor Vehicle Offense</b> [Driving while license is canceled, suspended, refused, or revoked, 1 <sup>st</sup> offense] <i>Possession of motor vehicle master key</i>		[TR, §27-101(h)(1), (2) TR, §16-303(a), (b), (c), (d), (e), (f), (g)] TR, §27-101(f)(1)(i), TR, §14-103	Misd.	1Y		Property	VII	[\$1,000] \$500
268-1	<b>Motor Vehicle Offense</b> [Driving commercial motor vehicle while license is canceled, suspended, refused, or revoked, 1 <sup>st</sup> offense] <i>Conduct the business of a vehicle dealer without a license</i>		[TR, §16-808(a)] TR, § 27-101(v), TR, §15-302	Misd.	[5Y] 1Y		Property	[VI] VII	\$5,000

PROPOSED ACTION ON REGULATIONS

1095

268-2	<b>Motor Vehicle Offense</b> [Driver of commercial vehicle not in possession of license, 1 <sup>st</sup> offense] <i>Conduct the business of an automotive dismantler and recycler or a scrap processor without a license, subsequent</i>		[TR, §16-808(b)] <i>TR, § 27-101(i)(2), TR, §15-502(a)</i>	Misd.	[6M] 1Y		Property	VII	\$2,000
268-3	<b>Motor Vehicle Offense</b> [Driver of commercial vehicle not in possession of license, 2 <sup>nd</sup> offense] <i>Act as a vehicle salesman without a license, subsequent</i>		[TR, §16-808(b)] <i>TR, § 27-101(i)(2), TR, §15-402</i>	Misd.	1Y		Property	VII	\$2,000
268-4	<b>Motor Vehicle Offense</b> [Driver of commercial vehicle not in possession of license, 3 <sup>rd</sup> or subsequent offense] <i>Transportation of hazardous materials, subsequent</i>		[TR, §16-808(b)] <i>TR, §27-101(e)(2), TR, §21-1411</i>	Misd.	[2Y] 1Y		Property	[VI] VII	\$2,000
268-5 <i>Vacant</i>	<b>[Motor Vehicle Offense]</b> Obtaining commercial driver's license by misrepresentation]		[TR, §16-813.1]	[Misd.]	[5Y]		[Property]	[VI]	
269 <i>Vacant</i>	<b>[Motor Vehicle Offense]</b> Driver's license required, <b>subsequent</b> ]		[TR, §27-101 (f)(1)(ii)1 TR, 16-101]	[Misd.]	[1Y]		[Property]	[VII]	[\$500]
270 Vacant									
271 <i>Vacant</i>	<b>[Motor Vehicle Offense]</b> Providing false evidence of required security, 1 <sup>st</sup> offense]		[TR, §27-101(h)(1), (2) TR, §17-110]	[Misd.]	[1Y]		[Property]	[VII]	[\$500]
272 <i>Vacant</i>	<b>[Motor Vehicle Offense]</b> Possession of motor vehicle master key]		[TR, §27-101(f)(1)(i) TR, §14-103]	[Misd.]	[1Y]		[Property]	[VII]	[\$1,000]
273 <i>Vacant</i>	<b>[Motor Vehicle Offense]</b> Required security—a person who knows or has reason to know that a motor vehicle is not covered by the required security may not drive the vehicle; or, if owner, knowingly permit another person to drive it, 1 <sup>st</sup> offense]		[TR, §27-101(h)(1), (2) TR, §17-107]	[Misd.]	[1Y]		[Property]	[VII]	[\$1,000]
274 <i>Vacant</i>	<b>[Motor Vehicle Offense]</b> Transportation of hazardous materials, <b>subsequent</b> ]		[TR, §27-101(e)(1), (2) TR, §21-1411]	[Misd.]	[1Y]		[Property]	[VII]	[\$2,000]
275 <i>Vacant</i>	<b>[Motor Vehicle Offense]</b> Act as a vehicle salesman without a license, <b>subsequent</b> ]		[TR, §27-101(i)(2) TR, §15-402]	[Misd.]	[1Y]		[Property]	[VII]	[\$2,000]
275-1 <i>Vacant</i>	<b>[Motor Vehicle Offense]</b> Commit or engage another to commit a violation of motor vehicle law for the purpose of making recordings of activity without permission]		[TR, §21-1126, TR, §27-101(z)]	[Misd.]	[1Y]		[Person]	[VII]	[\$1,000]
276—364 (text unchanged)									
364-1	<b>Stalking and Harassment</b> <i>Stalking</i>	1-6525	CR, §3-802	Misd.	5Y		Person	V	\$5,000

## PROPOSED ACTION ON REGULATIONS

365	<b>Stalking and Harassment</b> [Stalking] <i>Harassment, 1<sup>st</sup> offense</i>	[1-6525] <i>1-0191</i> <i>1-5406</i>	[CR, §3-802(b)] <i>CR, §3-803(c)(1)</i>	Misd.	[5Y] <i>90D</i>		Person	[V] <i>VII</i>	[\$5,000] <i>\$500</i>
365-1	<b>Stalking and Harassment</b> Harassment, <i>subsequent</i>	[1-5406] [1-0191]	[CR, §3-803] <i>CR, §3-803(c)(2)</i>	Misd.	[90D] <i>6M</i>		Person	VII	[\$500] <i>\$1,000</i>
365-2—392 (text unchanged)									
392-1	<b>Weapons Crimes—In General</b> <i>Unlawful use of firearm in commission of felony or crime of violence, 1<sup>st</sup> offense</i>	1-5299	<i>CR, §4-204(c)(1)</i>	Misd.	20Y ♦	<i>MM*=5Y</i>	<i>Person</i>	<i>III</i>	
392-2	<b>Weapons Crimes—In General</b> <i>Unlawful use of firearm in commission of felony or crime of violence, subsequent</i>	1-5299	<i>CR, §4-204(c)(2)</i>	Misd.	20Y ♦	<i>MM*=5Y</i>	<i>Person</i>	<i>II</i>	
393—402 (text unchanged)									
403	<b>Weapons Crimes—In General</b> Possession of regulated firearm after having been convicted of a crime of violence or select drug crimes	2-2030	PS, §5-133(c) [PS, §5-143 (penalty)]	Felony	[5Y] <i>15Y</i>	<i>MM*=5Y<sup>1</sup></i>	Person	V	[\$10,000]
404	<b>Weapons Crimes—In General</b> Possession of regulated firearm [or ammunition] by person younger than 21 years old	1-5285	PS, §5-133(d) PS, §5-143 (penalty)	Misd.	5Y		Person	VI	\$10,000
405—420 (text unchanged)									

<sup>1</sup>At the time of the offense, if more than 5 years has elapsed since the person completed serving the sentence for the most recent conviction of a crime of violence or select drug crimes (including all imprisonment, mandatory supervision, probation, and parole), the imposition of the mandatory minimum sentence is within the discretion of the court.

MM\* = Non-suspendable mandatory minimum penalty

♦ Defined as a violent crime in Correctional Services Article, §7-101, Annotated Code of Maryland. At the time of imposition of a sentence of incarceration for these offenses, Criminal Procedure Article, §6-217, Annotated Code of Maryland indicates the Court shall state in open court the minimum time the defendant must serve before becoming eligible for parole.

♦♦ Defined as a violent crime only under certain circumstances specified in Criminal Law Article, §14-101, Annotated Code of Maryland.

General Rules (text unchanged)

DAVID SOULE  
Executive Director  
Commission on Criminal Sentencing Policy

## Title 23

# BOARD OF PUBLIC WORKS

### Subtitle 03 PUBLIC SCHOOL CONSTRUCTION

#### Notice of Proposed Action [11-228-P]

The Board of Public Works proposes to:

(1) Amend Regulations .03, .05, and .13 and adopt new Regulations .28 and .29 under COMAR 23.03.02 Administration of the Public School Construction Program; and

(2) Amend Regulation .04 under COMAR 23.03.03 Construction Procurement Methods.

This action was considered at an open meeting held on July 6, 2011, notice of which was published pursuant to State Government Article, §10-506, Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to require 1. sites and construction projects for new schools and for replacement schools in which there is an increase of capacity, and which are proposed to be located outside of Priority Funding Areas (PFAs), to be subject to PFA review (similar to review of other State capital investments). Unless a waiver is granted under proposed new regulation COMAR 23.03.02.28, the State will only approve sites for, and planning and funding for, new schools and for replacement schools in which there is an increase of capacity that are proposed to be built within PFAs;

2. all school construction projects that include replacing or upgrading the electrical system to be designed and constructed so that designated areas of the school will be fully powered in the event of an emergency; and 3. to make permanent procedures for determining the State cost share percentages for school construction projects. Revisions to the State cost share percentages are required to be calculated every three years; and 4. to correct an internal reference (Regulations .04C incorrectly referenced Regulation 11B - the correct reference is to Regulation 12B).

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

The potential economic impact on small businesses cannot be determined since it will depend on which schools will be proposed in local and State capital budgets that must meet the requirement to be fully electrically powered.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to David Lever, Executive Director, Public School Construction Program, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0610, or email to dlever@msde.state.md.us, or fax to 410-333-6522. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

### 23.03.02 Administration of the Public School Construction Program

Authority: Education Article, §§4-126, 5-112, and 5-301; *State Finance and Procurement Article*, §5-7B-07; Annotated Code of Maryland

#### .03 Capital Improvement Program.

A. (text unchanged)

B. IAC Review.

(1) Planning Approval. The IAC or its designee shall evaluate the merits of planning approval requests contained in the local capital improvement programs using the following factors as applicable and rank the requests on a Statewide basis using the factors in §B(1)(a)—(e) of this regulation:

(a) — (c) (text unchanged)

(d) The [State's policy set forth in State Finance and Procurement Article, §5-7B-07, Annotated Code of Maryland, that emphasizes projects that target the] rehabilitation of existing schools to ensure that facilities in established neighborhoods are of equal quality to new schools, *including location of a new school or a replacement school that adds capacity within a priority funding area;*

(e) — (n) (text unchanged)

(2) Funding Approval. The IAC shall evaluate funding approval requests contained in the local capital improvement programs using the following factors when applicable:

(a) — (f) (text unchanged)

(g) The [State's policy set forth in State Finance and Procurement Article, §5-7B-07, Annotated Code of Maryland, emphasizing that funding for school construction projects shall target rehabilitating] *rehabilitation* of existing schools to ensure that facilities in established neighborhoods are of equal quality to new schools;

(h) *Location of a new school or a replacement school that adds capacity within a priority funding area;*

[(h)] (i) — [(n)] (o) (text unchanged)

(3) (text unchanged)

#### C. Priority Funding Area Review.

(1) *Except as provided in §C(3) of this regulation, when an LEA proposes to build a new school or to increase the State-rated capacity of a replacement school outside of a priority funding area, the LEA shall request a waiver in accordance with Regulation .28 of this chapter for approval of planning and funding.*

(2) *Unless a waiver is granted under Regulation .28 of this chapter, a new school or a replacement school that adds capacity proposed for planning and funding approval shall be in a priority funding area.*

(3) *The following school construction projects are not subject to the requirement of §C(1) of this regulation:*

(a) *A locally funded project that was funded by an LEA prior to or in Fiscal Year 2012;*

(b) *A public school construction project that was approved for planning in an annual capital improvement program prior to or in Fiscal Year 2012;*

(c) *A replacement school on the same site when there is no increase of capacity; or*

(d) *A renovation, limited renovation, addition, or systemic renovation project.*

[C.] D. — [F.] G. (text unchanged)

#### .05 State Cost Share Percentage.

A. (text unchanged)

B. Percentages.

(1) (text unchanged)

(2) For Fiscal Year [2010] 2013 through Fiscal Year [2012] 2015, the State share percentages of public school construction funding for eligible costs of approved projects are as follows: (existing table proposed for repeal)

County	FY 2013	FY 2014	FY 2015
Allegany	93%	93%	93%
Anne Arundel	50%	50%	50%
Baltimore City	93%	93%	93%
Baltimore	50%	50%	50%
Calvert	56%	56%	56%
Caroline	81%	78%	78%
Carroll	58%	58%	58%
Cecil	70%	69%	69%
Charles	72%	67%	63%
Dorchester	69%	69%	69%
Frederick	67%	62%	60%
Garrett	54%	50%	50%
Harford	63%	63%	63%
Howard	60%	60%	60%
Kent	50%	50%	50%
Montgomery	50%	50%	50%
Prince George's	68%	63%	62%
Queen Anne's	50%	50%	50%
St. Mary's	70%	65%	64%
Somerset	83%	82%	82%
Talbot	50%	50%	50%
Washington	71%	71%	71%
Wicomico	96%	96%	96%
Worcester	50%	50%	50%

(3) Reductions in cost share that exceed -5% shall be phased in over 3 years so that a 1-year reduction in the cost share percentage does not exceed -5%.

C. (text unchanged)

### **.13 Site Selection.**

A. An LEA shall submit a proposed site to the Maryland Department of Planning through the Public School Construction Program for:

- (1) Acquisition of a new site for a new or a replacement school;
- (2) Use of an existing site for a new school or a replacement school that adds capacity; or
- (3) Redesignation of an existing site for a new school or a replacement school that adds capacity.

B. Unless a waiver is granted in accordance with Regulation .28 of this chapter, a proposed site for a new school or a replacement school that adds capacity shall be in a priority funding area.

[A.] C. The IAC and State Superintendent of Schools shall approve or disapprove an LEA's school site selection based on:

(1) — (4) (text unchanged)

(5) The State's economic growth policies [set forth in State Finance and Procurement Article, Title 5, Subtitles 7A and 7B, Annotated Code of Maryland] to ensure that facilities in established neighborhoods are of equal quality to new schools, including location of a new school or a replacement school that adds capacity within a priority funding area.

[B.] D. (text unchanged)

[C.] E. [The] When submitting the site for IAC approval, the LEA shall include [the]:

(1) The local board of education's approval of the school site acquisition to the IAC [when submitting for IAC approval.]; and

(2) For a new school or a replacement school that adds capacity located outside of a priority funding area, a request for a waiver in accordance with Regulation .28 of this chapter.

[D.] F. (text unchanged)

G. Priority Funding Area Review.

(1) Except as provided in §G(2) of this regulation, priority funding area review shall be conducted by the IAC for sites for new schools and replacement schools that add capacity and are proposed outside of priority funding areas, including review of requests for:

- (a) Acquisition of new sites for new schools or replacement schools that add capacity;
- (b) Reapproval of existing sites that were initially approved after the effective date of this regulation; or
- (c) Redesignation of existing sites that were initially approved after the effective date of this regulation.

(2) The following sites for school construction projects are not subject to priority funding area review:

- (a) A site that was approved prior to the effective date of this regulation if a new school or a replacement school that adds capacity on the site received planning approval within 5 years of the date of the previous approval; and
- (b) A site for a replacement school when there is no increase of capacity.

### **.28 Priority Funding Area Waiver Criteria.**

A. This regulation applies to the IAC for site approval, and to the IAC and Board of Public Works for planning or funding approval, of new schools and of replacement schools that add capacity.

B. Waiver Procedure.

(1) An LEA may request a waiver for approval of planning and funding, or of a site, for a new school or a replacement school that adds capacity located outside of a priority funding area.

(2) On confirmation by the Maryland Department of Planning that the proposed new school or a replacement school that adds

capacity, or the site for same, is outside a priority funding area, the designees shall make a recommendation to the IAC.

(3) Based on the recommendation of the IAC designees, the IAC shall consider whether to grant a waiver for approval of planning and funding, or of a site, for a new school or a replacement school that adds capacity outside of a priority funding area.

(4) After considering the criteria for a waiver in §C of this regulation, the IAC may recommend to the Board of Public Works:

- (a) Approval of planning and funding, or of a site, for the new school or the replacement school that adds capacity;
- (b) Approval of planning and funding, or of a site, for the new school or the replacement school that adds capacity with conditions; or
- (c) Denial of planning and funding, or of a site, for the new school or the replacement school that adds capacity.

(5) When considering whether to grant a waiver for a new school or a replacement school that adds capacity outside of a priority funding area, the IAC may consult with the Smart Growth Subcabinet.

(6) The Board of Public Works shall make the final determination on the approval of a site for a new school or a replacement school that adds capacity that is outside a priority funding area in the event of a conflict between the IAC and the Smart Growth Subcabinet.

C. The IAC or the Board of Public Works, when applicable, shall consider the following factors when determining whether to grant a waiver to the requirement that a site for a new school or for a replacement school that adds capacity, or a new school or a replacement school that adds capacity that is requested for approval of State planning and funding, be located inside a priority funding area:

(1) Evidence of efforts made by the LEA and the local government to secure a site within a priority funding area that is of a size, location, and configuration that can support the proposed educational program and serve an appropriate student body. For each evaluated site, criteria that must be considered include:

(a) Costs of each site, including both quantifiable first costs and life cycle costs analysis (LCCA) inclusive of transportation costs, and non-quantifiable costs such as administrative inefficiencies or lost teaching time, in order to demonstrate that sites within the priority funding area are more costly than those outside the priority funding areas; and

(b) Benefits of each site, including the impact of the proposed site on community life, walkability of students, access to public transportation, and access of students to educational programs and non-curricular activities;

(2) Evidence that if a site outside a priority funding area is selected because of inability to locate a site within a priority funding area that is of a size, location, and configuration that can support the proposed educational program and serve an appropriate student body:

(a) The new site or new school or replacement school that adds capacity is located as proximate to the priority funding area as possible;

(b) The LEA proposes to mitigate potential negative effects of the site on educational delivery and the community; and

(c) The local government tools for control of land use, including the comprehensive plan and zoning, restrict the growth of housing development outside of the priority funding area that may result from the new school or replacement school that adds capacity;

(3) Evidence of efforts made by the LEA and local government to achieve the needed capacity through additions to existing schools inside the priority funding area;

(4) The location of the student body that will be served by the new school or replacement school that adds capacity;



(5) *The potential of the new school or replacement school that adds capacity to be permanently connected to existing or proposed municipal or county water and sewer service that is in the 6-year local government capital improvement program;*

(6) *The effect of the new school or replacement school that adds capacity in relieving an Adequate Public Facilities closure within an existing priority funding area or local growth area;*

(7) *Opportunities for co-location or joint use that the new school or replacement school that adds capacity may make possible;*

(8) *Opportunities for reuse of an existing facility;*

(9) *The increase of capacity for a replacement school is modest;*

(10) *Other factors.*

**.29 Emergency Power Generation.**

A. *This section applies to all school construction projects that include replacing or upgrading the electrical system.*

B. *Local officials shall consult with the Maryland Emergency Management Agency to determine which areas of the school facility may be designated for public shelter use during or after a federal, State, or local declared emergency.*

C. *The LEA shall ensure that the designated public shelter area is designed and constructed to be fully powered in the event of an emergency through installation of:*

(1) *An emergency generator; or*

(2) *Other means to accept temporary emergency electrical power generation.*

**23.03.03 Construction Procurement Methods**

Authority: Education Article, §§4-126, 5-112, and 5-301, Annotated Code of Maryland

**.04 Choice of Method.**

A. — B. (text unchanged)

C. *An LEA may use intergovernmental cooperative purchasing when the circumstances set forth in Regulation [.11B] 12B of this chapter exist.*

D. — E. (text unchanged)

SHEILA McDONALD  
Executive Secretary  
Board of Public Works

# **Title 26** **DEPARTMENT OF THE** **ENVIRONMENT**

## **Subtitle 11 AIR QUALITY**

### **26.11.19 Volatile Organic Compounds from Specific Processes**

Authority: Environment Article, §§1-101, 1-404, 2-101—2-103, 2-301—2-303, 10-102, and 10-103, Annotated Code of Maryland

**Notice of Proposed Action**

[11-240-P]

The Secretary of the Environment proposes to adopt new Regulation .27-1 under **COMAR 26.11.19 Volatile Organic Compounds from Specific Processes.**

**Statement of Purpose**

The purpose of this action is to adopt the requirements of EPA's Control Techniques Guidelines (CTG) for miscellaneous metal and plastic parts for this category. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. MDE proposes to adopt new standards and application methods that will be set for pleasure craft coating operations.

This action will be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan.

**Background**

EPA developed the CTG standards and requirements for Pleasure Craft Coating Operations after reviewing the 1978 CTG, the 1988 NSPS for Surface Coating of Plastic Parts for Business Machines (40 CFR 60 Subpart TTT), the 1994 ACT for Surface Coating of Automotive/Transportation and Business Machine Plastic Parts, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Metal Parts and Products 40 CFR 63 Subpart MMMM, and existing State and local VOC emission reduction approaches. The miscellaneous metal and plastic parts category includes metal pleasure crafts (recreational boats) along with components that are used for many other purposes. The pleasure craft coating category does not include coatings that are a part of other product categories listed under Section 183(e) of the Act for which CTGs have been published or included in other CTGs.

The American Coatings Association commented to EPA on September 14, 2009, that the CTG standards for several coating categories are technologically infeasible, considering the performance requirements of the coatings. Additionally, the Association requested more time to develop coatings to meet a specific type of coating standard. EPA reviewed the information and data provided and determined in a June 1, 2010, memo that states could consider alternative standards as proposed in the recommendation of the industry. The proposed regulation incorporates the recommendations proposed by the pleasure craft industry.

**Sources Affected and Location**

This regulation applies to metal pleasure craft coating operations at a premises where the total VOC emissions equals or exceeds 15 pounds per day from metal pleasure craft coating operations.

**Requirements**

This regulation requires the affected sources to meet specific coating standards for various coating types. The CTG also requires that coatings can only be applied by coating applicators such as: electrostatic spray coating, high volume/low pressure (HVLV) spray coating, dip coating, flow coating, roll coating, electrocoating, and autophoretic coating. Powder coatings can be applied through electrostatic spraying or dipping.

**Expected Emissions Reductions**

EPA has estimated that the emissions of VOCs from metal pleasure craft coating operations will be reduced by 35 percent on a nationwide basis. The Department believes that there may be few if any sources affected by this regulation; therefore emission reductions in the State will be minimal.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** EPA estimated the economic impact of this regulation on a national level. Cost effectiveness is approximately \$1,800/ton of VOC controlled. There is no additional impact on the Department.

**II. Types of Economic Impact.**

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	
	Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$1,800/ton VOC
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

D. EPA estimated the economic impact of this regulation on a national level.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has an impact on individuals with disabilities as follows:

This action will have a positive impact on individuals with disabilities involving respiratory problems by reducing air pollutants that contribute to disease.

**Opportunity for Public Comment**

The Department of the Environment will hold a public hearing on the proposed action on September 27, 2011, at 10 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor Conference Rooms, Baltimore, Maryland 21230-1720. Interested persons are invited to attend and express their views. Comments may be sent to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to drabin@mde.state.md.us. Comments must be received not later than September 27, 2011, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

Copies of the proposed action and supporting documents are available for review at the following locations: The Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisbury; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

Anyone needing special accommodations at the public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

**.27-1 Control of Volatile Organic Compounds from Metal Pleasure Craft Coating Operations.****A. Applicability and Exemptions.**

(1) This regulation applies to pleasure craft coating operations at a premises where the total VOC emissions equals or exceeds 15 pounds per day from pleasure craft coating operations.

(2) The requirements of this regulation do not apply to:

(a) Coatings applied using a hand-held, pressurized, nonrefillable container which expels coatings from the container in a finely divided spray when a valve on the container is depressed; and

(b) Coatings that are applied to:

(i) Recoat portions of a product which has sustained mechanical damage to the coating following normal painting operation; or

(ii) Cover minor coating imperfections appearing after the main coating operation.

**B. Definitions.**

(1) In this regulation, the following terms have the meanings indicated:

(a) "Antifouling sealer/tiecoat" means coating that is required to promote adhesion of biocide-free, nonstick foul release coatings when applied to vessels.

(b) "Extreme high gloss coating" means any coating which achieves at least 95 percent reflectance on a 60° meter when tested by ASTM Method D 523-89.

(c) "Finish primer/surfacer" means a coating applied with a wet film thickness of less than 10 mils prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, or a moisture barrier, or promoting a uniform surface necessary for filling in surface imperfections.

(d) "High build primer/surfacer" means a coating applied with a wet film thickness of 10 mils or more prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, or a moisture barrier, or promoting a uniform surface necessary for filling in surface imperfections.

(e) "Pleasure craft" means vessels which are manufactured or operated primarily for recreational purposes, or leased, rented, or chartered to a person or business for recreational purposes.

(f) "Pleasure craft coating" means any metal parts and products coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller, or other means to a pleasure craft.

(2) All definitions provided in COMAR 26.11.19.27B also apply in this regulation.

**C. Incorporation by Reference.** The document ASTM Designation: ASTM Method D 523-89, Standard Test Method for Specular Gloss, which is incorporated by reference in COMAR 26.11.33.02B, shall be followed when complying with this regulation.

*D. Pleasure Craft Coating Standards (Expressed in Terms of Mass of VOC per Volume of Coating Excluding Water and Exempt Compounds, as Applied).*

Coating Types	lbs VOC/gal	kg VOC/liter
Extreme high gloss topcoat	5.0	0.59
High gloss topcoat	3.5	0.42
Pretreatment wash primers	6.5	0.78
Finish primer/surfacer		
Applicable until March 31, 2014	5.0	0.59
Applicable after March 31, 2014	3.5	0.42
High build primer/surfacer	2.8	0.34
Aluminum substrate antifoulant coating	4.7	0.56
Antifouling sealer/tiecoat	3.7	0.45
Other Substrate antifoulant coating	3.3	0.39
All other pleasure craft surface coatings	3.5	0.42

*E. If more than one emission limitation in §D of this regulation applies to a specific coating, the least stringent emission limitation is applicable.*

*F. Application Methods. A person subject to the requirements of this regulation shall use the following application methods:*

- (1) Electrostatic application;
- (2) HVLP spray;
- (3) Flow coat;
- (4) Roller coat;
- (5) Dip coat, including electrodeposition;
- (6) Brush coat; or

*(7) Other coating application methods capable of achieving a transfer efficiency equal to or better than that achieved by HVLP spraying.*

ROBERT M. SUMMERS, Ph.D.  
Secretary of the Environment

## Subtitle 17 WATER MANAGEMENT

### 26.17.01 Erosion and Sediment Control

Authority: Environment Article, §4-101 Annotated Code of Maryland

#### Notice of Proposed Action

[10-255-R-I]

The Department of the Environment proposes to amend Regulations .01 and .11, repeal existing Regulations .02 — .10, and adopt new Regulations .02 — .10 under **COMAR 26.17.01 Erosion and Sediment Control**. Because substantive changes have been made to the original proposal as published in 37:18 Md. R. 1244—1251 (August 27, 2010), this action is being repropose at this time.

#### Statement of Purpose

The purpose of this action is to update the existing regulations and revise the handbook “1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control,” incorporated by reference in the current regulations. These revisions will improve and expand the erosion and sediment control requirements and standards included in the handbook and regulations. These actions were considered by the

Department of the Environment at an open meeting held on October 29, 2009, notice of which was given pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

The proposed action was published in the Maryland Register on August 27, 2010. The proposed “2010 Maryland Standards and Specifications for Soil Erosion and Sediment Control” was incorporated by reference into the proposed action. Comments on the proposed action were accepted through September 27, 2010 on which date a public hearing was held. Revisions to the document and regulations were made based on the comments. Additionally, the name of the document has been changed to the “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.”

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** Currently, an approved erosion and sediment control plan must be obtained for most construction projects and other earth disturbances in the State. Additionally, coverage under the National Pollutant Discharge Elimination System General Permit for Stormwater Associated with Construction Activity is required for projects disturbing 1 acre or more. Most erosion and sediment controls practices included on an approved plan and installed on sites are found in the “1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control.”

An update to this handbook has been supported by government entities, the regulated community, trade groups, and members of the public for several years. The revisions include the addition of new designs and standards as well as improvements and clarifications to existing ones. Most of the new standards reflect practices already in use. The new planning section of the handbook describes the approval process currently required by the State’s stormwater laws and regulations.

Two potentially significant changes to the regulations are the establishment of a 20-acre grading unit and strengthening existing stabilization requirements. Both may result in additional phasing on some projects to comply with the grading unit criteria and required temporary stabilization. While this may complicate the design process and possibly lengthen the construction time period, it may also allow a project to be exempt from the sampling requirements of 40 CFR Part 450.

The revisions will have economic impacts on State agencies, local governments, the regulated industry, and the general public. Impacts to the issuing agency and to local approval authorities are minimal as no additional staffing is needed to implement the proposed changes. MDE currently administers the State’s erosion and sediment control program, and the additional responsibilities associated with these changes are minimal.

Local governments will be required to submit revised ordinances incorporating the proposed regulation changes. Counties will require no additional staff to implement these proposed regulations. The economic impacts incurred by the regulated community will be relatively moderate. These impacts include potential engineering and construction costs to design and implement phased plans. Many of revisions, such as those affecting the plan submittal and approval process, are already required under other sections of State or local laws or regulations. Additionally, recent federal regulations may compel better phasing of projects independent of these proposed regulations.

The inclusion of new erosion and sediment control practices in the revised handbook allows for additional choices when designing and constructing a project. It also should lead to better erosion and sediment control on a site, thereby improving the water quality of

runoff from a site during construction. While increased costs associated with the proposed regulations will likely be passed onto consumers, the overall general public will benefit from better environmental protections.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency: Implementation of erosion/sediment control program	(E+)	Minimal
B. On other State agencies: Implementation of erosion/sediment control program	(E+)	Minimal
C. On local governments: Implementation of erosion/sediment control program	(E+)	Minimal
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups: Implementing erosion/sediment control practices	(-)	Minimal to moderate
E. On other industries or trade groups: Increased business to designers and manufacturers	(+)	Minimal
F. Direct and indirect effects on public: Costs passed on to the consumer	(-)	Minimal

### III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Under existing regulations, MDE's Water Management Administration's (WMA) primary erosion and sediment control responsibilities are the oversight of local programs, technical assistance and education, and federal and State project plan review. MDE/WMA will still be responsible for these functions with the regulatory revisions but additional time may be spent on plan review and in a technical support role. This work will be conducted by existing staff.

B. Under existing regulations, other State agencies, like the regulated community, must obtain an approved plan and implement erosion and sediment control practices for most earth disturbances. Although some of the regulations will be more stringent, the inclusion of additional practices will increase flexibility and may decrease the cost of installation.

C. Current regulations require the local administration of erosion and sediment control programs. This requires that local governments develop and adopt ordinances to implement these programs. Local governments will have to revise ordinances, but this will be a one time expense and can be accomplished with current staff. Local approval authorities may experience additional review time of

proposed projects, at least in the short-term due to the new requirements.

D. The estimated costs of the regulations on regulated industries or trade groups range from minimal to moderate. Changes to the planning and approval process for new developments will likely increase up-front costs for developers and other applicants. More stringent stabilization requirements and the establishment of a grading unit may increase construction costs if a project is not well planned out and phased adequately. The overall time frame for constructing some projects may also increase. However, existing State and federal laws already mandate similar or more extensive requirements, making the net cost of implementing these proposed regulations minimal to moderate.

E. There will be a slight positive economic impact to the design/engineering community due to additional design criteria resulting from the proposed regulations. Additionally, as noted in Section II, the inclusion of new practices in the handbook will likely create a larger market for certain products.

F. Although the net cost of regulations to the regulated community will be minimal to moderate, any costs will likely be passed onto the consumer. However, the consumer and general public will benefit from the positive environmental impacts, including a reduction of sedimentation in local streams and waterways.

### Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

As discussed above, the estimated costs of the erosion and sediment control regulations and the "2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control" on regulated industries and trade groups range from minimal to moderate. While these estimated costs impact both large and small business, small businesses may experience greater net costs as a result of the regulations. MDE anticipates that smaller businesses will be more affected by costs associated with additional engineering design requirements and any increase in construction time due to the phasing of a project. Additionally, costs to larger businesses and projects may be mitigated if good phasing and sequencing of a project eliminates the necessity to comply with other State or federal requirements.

### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

### Opportunity for Public Comment

Comments may be sent to Ken Pensyl, Program Administrator, MDE/ Water Management Administration, 1800 Washington Boulevard, Baltimore, MD 21230-1708, or call 410-537-3543, or email to [kpensyl@mde.state.md.us](mailto:kpensyl@mde.state.md.us), or fax to 410-537-3553. Comments will be accepted through September 26, 2011. The Department of the Environment will hold one public hearing concerning the adoption of these amendments. This hearing will be held on September 16, 2011, at 10 a.m. at the Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, MD 21230. All interested persons are invited to attend the hearing and offer their views. Hearing impaired persons may request an interpreter to be present at the hearings by giving five (5) working days notice to Ken Pensyl, at 410-537-3543.

Ed. Note: Pursuant to State Government Article, §10-113, Annotated Code of Maryland, if a promulgating agency substantively alters the text of regulations that have been previously proposed in the Maryland Register, the altered text must be published in the Maryland Register as though it were initially proposed. The text of regulations appearing immediately below has been altered substantively from the initially proposed text.

Symbols: Roman type indicates existing text of regulations. *Italic* type indicates initially proposed new text. **Helvetica Bold Italic** type indicates new text that substantively alters the text as initially proposed. [Single brackets] indicate existing text proposed for repeal. [[[Triple brackets]]] indicate text proposed for deletion which substantively alters the originally proposed text.

## **.01 Definitions.**

A. (originally proposed text unchanged)

B. *Terms Defined.*

(1) — (2) (originally proposed text unchanged)

(3) “Approval authority” means [[[any]]] **the** soil conservation district, [[[a]]] **municipal corporation**, [[[that has been designated the approval authority by a soil conservation district, the]]] specified agency, [[[named in a municipality not within a soil conservation district, the]]] Commission, or the Administration **that is authorized by or pursuant to Environment Article, §4-105, Annotated Code of Maryland, to review and approve erosion and sediment control plans for the given jurisdiction.**

(4) — (7) (originally proposed text unchanged)

(8) “Erosion and sediment control plan” means an erosion and sediment control strategy or plan *designed* to minimize erosion and prevent off-site sedimentation, *in accordance with the requirements of the* [[[appropriate]]] approval authority and the handbook “[[[2010]]] **2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control,**” which is incorporated by reference in Regulation .11 of this chapter.

(9) — (30) (originally proposed text unchanged)

## **.02 General Provisions.**

A. *The Administration shall be responsible for the implementation and supervision of the erosion and sediment control program established by the Sediment Control Subtitle. This responsibility includes but is not limited to:*

(1) (originally proposed text unchanged)

(2) *The review and approval of:*

(a) — (d) (originally proposed text unchanged)

(e) **Erosion and sediment control plans for State projects and federal projects;**

(f) — (g) (originally proposed text unchanged)

(3) — (4) (originally proposed text unchanged)

B. (originally proposed text unchanged)

C. *Review and Evaluation.*

(1) (originally proposed text unchanged)

(2) *In conducting the review and evaluation of erosion and sediment control programs, the Administration will use the following guidelines for determining the acceptability of the program:*

(a) (originally proposed text unchanged)

(b) *The review and approval of erosion and sediment control plans are in accordance with “[[[2010]]] **2011 Maryland Standards and Specification for Soil Erosion and Sediment Control**”;*

(c) — (d) (originally proposed text unchanged)

(3) (originally proposed text unchanged)

**D. A building or grading permit may not be issued by a county or municipality prior to erosion and sediment control plan approval unless specifically exempted by the ordinance, the regulation, or this chapter.**

.03 (originally proposed text unchanged)

## **.04 Erosion and Sediment Control Ordinances.**

A. *Each county and municipality shall adopt an erosion and sediment control ordinance in compliance with the intent and requirements of the Sediment Control Subtitle and the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.* [[[Counties]]] **Within 6 months of the adoption of this Subtitle, counties and municipalities shall submit ordinances and amendments to the Administration for review** [[[and approval]]. **Counties and municipalities shall adopt an approved ordinance within 1 year of this Subtitle’s adoption.** Municipalities may adopt the erosion and sediment control ordinance of their respective county.

B. *The Commission shall adopt erosion and sediment control regulations covering utility operations in Prince George’s and Montgomery counties that are in compliance with the intent and requirements of the Sediment Control Subtitle and the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.* **Within 6 months of the adoption of this subtitle, the Commission shall develop** [[[These]]] erosion and sediment control regulations [[[are to be developed]]] in consultation with and subject to the review and approval of the Administration, the Prince George’s Soil Conservation District, and the Montgomery Soil Conservation District as appropriate. **The Commission shall adopt approved regulations within one year of this Subtitle’s adoption.** The Commission’s erosion and sediment control regulations shall ensure that in addition to meeting the requirements of §C of this regulation, the following shall be included:

(1) — (2) (originally proposed text unchanged)

C. — D. (originally proposed text unchanged)

## **.05 Activities for Which Approved Erosion and Sediment Control Plans Are Required.**

A. (originally proposed text unchanged)

B. *A project that involves any combination of private lands, county lands, State lands, or federal lands, such as a utility right-of-way, requires the approval of the* [[[appropriate]]] approval authority **affiliated with** [[[determined by identifying]]] the entity undertaking the activity or for whose benefit the activity is being undertaken. Ownership of the land or lands upon which the activity is occurring is not to be the sole **factor in** determining [[[factor of]]] the [[[appropriate]]] approval authority.

C. Any [[[appropriate]]] approval authority may make a written request to the Administration for a joint review of an erosion and sediment control plan.

**D. Any activity pursuant to and in compliance with Environment Article, Title 15, Annotated Code of Maryland, is exempt from the grading unit restriction.**

**E. Any activity pursuant to sanitary landfills and in compliance with Environment Article, §9-204, Annotated Code of Maryland, and COMAR 26.04.07.02B(27) is exempt from the grading unit restriction.**

.06 (originally proposed text unchanged)

**.07 Application for Approval of Erosion and Sediment Control Plans.**

A. When an approved erosion and sediment control plan is required, an applicant shall make a submittal to the *[[[appropriate]]]* approval authority in accordance with procedures established by the *[[[appropriate]]]* jurisdiction and this chapter, and shall be subject to any fees established under Environment Article, §4-103(c), Annotated Code of Maryland.

B. At a minimum, a submittal must include:

- (1) — (5) (originally proposed text unchanged)
- (6) An erosion and sediment control plan including the following, unless otherwise noted in this chapter:
  - (a) — (e) (originally proposed text unchanged)
  - (f) Details of temporary and permanent stabilization measures including:
    - (i) — (ii) (originally proposed text unchanged)
    - (iii) Maintenance requirements to ensure that stabilized areas continuously meet the *[[[appropriate]]]* requirements of the “*[[[2010]]]* **2011** Maryland Standards and Specifications for Soil Erosion and Sediment Control”; and
    - (iv) (originally proposed text unchanged)
  - (g) — (h) (originally proposed text unchanged)
- (i) An Owner/Developer Certification stating:
  - (i) (originally proposed text unchanged)
  - (ii) Responsible personnel involved in the construction project will have a Certificate of Training before beginning the project. This Certificate of Training for responsible personnel requirement may be waived by the *[[[appropriate]]]* approval authority on any project involving four or fewer residential units; and
- (7) Any additional information or data deemed appropriate by the *[[[appropriate]]]* approval authority.

C. The *[[[appropriate]]]* approval authority may require **that erosion and sediment control plans receive** certification by a professional engineer, land surveyor, landscape architect, architect, or forester (for a forest harvest operation only) registered in the State that *[[[a plan has]]]* **they have** been designed in accordance with the appropriate approved erosion and sediment control ordinance or regulation, standards, and criteria.

D. Standard Erosion and Sediment Control Plans.

- (1) — (4) (originally proposed text unchanged)
- (5) The Administration shall conduct the review of the standard plan in a timely manner and notify the *[[[appropriate]]]* approval authority in writing of the Administration’s findings.

**.08 Approval or Denial of Erosion and Sediment Control Plans.**

A. Review of Plans.

(1) The *[[[appropriate]]]* approval authority shall review and approve an erosion and sediment control plan in accordance with the criteria contained in **the** “*[[[2010]]]* **2011** Maryland Standards and Specifications for Soil Erosion and Sediment Control.”

(2) The *[[[appropriate]]]* approval authority shall assess the adequacy of the proposed erosion and sediment control measures to minimize erosion and keep sediment on site.

(3) (originally proposed text unchanged)

B. The *[[[appropriate]]]* approval authority reserves the right to **deny approval or impose conditions necessary to prevent:**

- (1) *[[[Prevent creation of a]]]* **A** nuisance or dangerous condition;
- (2) *[[[Avoid sediment]]]* **Sediment** pollution; or
- (3) *[[[Deny the issuance of an approval where the proposed project would adversely affect the]]]* **Adverse impacts to public safety and welfare.**

C. The *[[[appropriate]]]* approval authority may withhold approval when it determines that:

- (1) — (2) (originally proposed text unchanged)

D. In jurisdictions *[[[which]]]* **that** are not delegated, the *[[[appropriate]]]* approval authority shall forward one copy of each approved plan to the Administration upon plan approval.

E. (originally proposed text unchanged)

F. Expiration of Approved Erosion and Sediment Control Plans.

- (1) (originally proposed text unchanged)
- (2) Erosion and sediment control plan approvals may be extended or renewed by the *[[[appropriate]]]* approval authority.

**.09 Inspection and Enforcement.**

A. — D. (originally proposed text unchanged)

E. When conducting an inspection, the appropriate enforcement authority **shall:**

- (1) — (4) (originally proposed text unchanged)

F. — G. (originally proposed text unchanged)

H. Plan Modifications.

- (1) (originally proposed text unchanged)
- (2) Modifications must be made in accordance with the erosion and sediment control criteria contained in the “*[[[2010]]]* **2011** Maryland Standards and Specifications for Soil Erosion and Sediment Control” and the criteria for major and minor modifications.

(3) Major Modifications.

- (a) (originally proposed text unchanged)
- (b) Major modifications must be approved by the *[[[appropriate]]]* approval authority prior to implementation.

(4) Minor Modifications

- (a) The *[[[appropriate]]]* approval authority may, in conjunction with the appropriate enforcement authority, develop a list of minor modifications.

(b) — (d) (originally proposed text unchanged)

I. (originally proposed text unchanged)

J. Suspension of Approval.

- (1) The *[[[appropriate]]]* approval authority may suspend approval of an erosion and sediment control plan.
- (2) (originally proposed text unchanged)

**.10 Responsibility of Applicant.**

The issuance of an approval by the *[[[appropriate]]]* approval authority does not relieve the applicant of the continuing responsibility to effectively abate sediment pollution and comply with all other applicable local and State laws.

**.11 Sediment Control Design Standards and Specifications.**

A. The handbook titled “*[[[2010]]]* **2011** Maryland Standards and Specifications for Soil Erosion and Sediment Control” is hereby incorporated by reference by the Administration, and shall serve as the official guide for erosion and sediment control principles, methods, and practices.

B. — C. (originally proposed text unchanged)

ROBERT M. SUMMERS  
Secretary of the Environment

# Title 29

## DEPARTMENT OF STATE POLICE

### Subtitle 05 CRIME LABORATORY

#### 29.05.01 Statewide DNA Data Base System and Repository

Authority: Public Safety Article, §2-503, Annotated Code of Maryland

##### Notice of Proposed Action

[11-241-P]

The Secretary of State Police proposes to amend Regulations .01 and .16 under **COMAR 29.05.01 Statewide DNA Data Base System and Repository**.

##### Statement of Purpose

The purpose of this action is to clarify defined terms and the parameters of information that must be reported to the Office of Legislative Audits and to make the deadlines for reporting to the Office of Legislative Audits reflect the deadlines established by statute.

##### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

##### Estimate of Economic Impact

The proposed action has no economic impact.

##### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

##### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

##### Opportunity for Public Comment

Comments may be sent to Mira Scharf, Staff Attorney, Department of State Police, 1201 Reisterstown Road, Pikesville, MD 21208, or call 410-653-4452, or email to mscharf@mdsp.org, or fax to 410-653-4270. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) "Arraignment" means the [scheduled or actual date, whichever occurs sooner, of an initial appearance in circuit court, as contemplated by] *earlier of the appearance of counsel or the scheduled or actual initial appearance of the defendant before the circuit court pursuant to Maryland Rule 4-213, even if waived by the defendant.*

(2) — (35) (text unchanged)

#### .16 Reporting Requirements.

A. — B. (text unchanged)

C. Requirements of Local Law Enforcement Agencies. On or before January 31, 2010, and annually thereafter, local law enforcement shall report the information [described in §B of this regulation to the Crime Laboratory] *necessary for the Crime Laboratory to comply with the reporting requirements of this regulation.*

D. Additional Reporting by Local Law Enforcement Agencies and the Department of State Police to the Office of Legislative Audits, in

Coordination with the Governor's Office of Crime Control and Prevention.

(1) *For the purposes of this section, crime scene DNA evidence is a forensic or evidence sample as defined in COMAR 29.05.01.01B(17), including samples submitted for biological screening or serology testing.*

[(1)] (2) Not later than January 31, 2010, and by [January 31] *April 1* of every even-numbered year thereafter, the following shall be reported *for the preceding calendar year* to the Office of Legislative Audits, in coordination with the Governor's Office of Crime Control and Prevention, by each local law enforcement agency and the Department of State Police:

(a) (text unchanged)

(b) The [approximate] number of [crime scene DNA evidence samples collected] *cases in which crime scene DNA evidence samples were collected* during the preceding year for each category of crime [as described in] *reported pursuant to* [§D(1)] *§D(2)(a)* of this regulation;

(c) The average time between crime scene DNA evidence collection, *as defined by COMAR 29.05.01.01B(6-1), and analysis.*

(d) The [approximate] number of *cases in which crime scene DNA evidence samples were collected, but [not yet analyzed as of the time of the reporting] were still pending analysis by the end of the reporting period;* and

(e) (text unchanged)

[(2)] (3) The schedule for annual reporting shall be as follows:

(a) Not later than January 31, 2010, and *by January 31* of every even-numbered year thereafter, local law enforcement agencies shall report to the Governor's Office of Crime Control and Prevention; and

(b) Not later than February 28, 2010, and *by April 1* of every even-numbered year thereafter, the Governor's Office of Crime Control and Prevention shall report to the Office of Legislative Audits.

[(3)] (4) The data reported by each local law enforcement agency under this regulation shall be transmitted to the Office of Legislative Audits by the Governor's Office of Crime Control and Prevention as part of the reporting process.

E. — G. (text unchanged)

TERRENCE B. SHERIDAN  
Secretary of State Police

# Title 30

## MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

### Subtitle 06 PUBLIC ACCESS AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM

#### 30.06.03 Protocol

Authority: Education Article, §13-517, Annotated Code of Maryland

##### Notice of Proposed Action

[11-237-P]

The Emergency Medical Services Board proposes to amend Regulation .01 under **COMAR 30.06.03 Protocol**. This action was considered and approved by the State Emergency Medical Services Board at its regular meeting on July 12, 2011.

##### Statement of Purpose

The purpose of this action is to reflect changes in practice and training and ensure that the regulations remain consistent with the “Guidelines for CPR and Emergency Cardiovascular Care” issued by the American Heart Association and updated every 5 years.

##### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

##### Estimate of Economic Impact

The proposed action has no economic impact.

##### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

##### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

##### Opportunity for Public Comment

Comments may be sent to Lisa Myers, Director, Special Programs, Maryland Institute for Emergency Medical Services Systems, 653 Pratt Street, Baltimore, Maryland 21201, or call (410) 706-4740, or email to lmyers@miemss.org, or fax to (410) 706-0853. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

##### .01 Protocol.

[A.] All personnel expected to operate an AED at a registered facility shall utilize the AED in accordance with their training. When an individual’s training conflicts with the auditory and visual prompts of the device, the individual shall follow the auditory and visual prompts.

[B. In utilizing the AED, the following are to be considered:

(1) Indications:

(a) Sudden cardiac arrest—Patient without signs of circulation and not breathing;

(b) Infant 12 months—Child 8 years—If available, pediatric AED only;

(c) Child 8 years old or older—Adult AED;

(2) Contraindications:

(a) Infant less than 12 months old (estimate based upon information available to individual operating AED);

(b) Patient is breathing, responsive, speaking, or making intentional movements;

(3) Potential adverse effects/complications:

(a) Burns to skin;

(b) Deactivation of patient’s implanted pacemaker;

(c) Injury to patient, self, or bystanders;

(4) Precautions/critical concepts:

(a) Wet conditions—Make sure the patient and environment are dry (this includes removing nitroglycerin paste from the chest with a dry cloth);

(b) Metal surfaces—Make sure patient is not touching any metal surfaces;

(c) Combustible materials or hazardous (explosive) environment—Remove patient, if possible, from area which presents hazard;

(d) Do not touch patient while AED is assessing, charging, or shocking patient;

(e) Ensure patient is “clear” (no one is touching patient) when shock button is pushed;

(f) If patient has internal pacemaker/defibrillator, position pad 1 hand’s width (approximately 5 inches) from the pacemaker/defibrillator site;

(g) If patient has a nitroglycerin patch, position pads away from the patch;

(h) Never defibrillate while moving patient;

(i) Location of AED(s) should provide optimal accessibility to the maximum number of individuals;

(j) Upon placement of AED consider the following:

(i) No obstacles in the way of AED;

(ii) Avoid locked doors preventing quick access to AED;

(iii) Areas of facility with large numbers of high-risk individuals;

(iv) Length of time and distance to AED;

(v) The AED is placed in a clearly visible location.]

ROBERT R. BASS, M.D.

Executive Director

Maryland Institute for Emergency Medical Services Systems

# Title 31

## MARYLAND INSURANCE ADMINISTRATION

### Subtitle 09 LIFE INSURANCE AND ANNUITIES

#### 31.09.14 Retained Asset Accounts

Authority: Insurance Article, §§2-109(a), 12-208, and 16-108, Annotated Code of Maryland.

##### Notice of Proposed Action

[11-231-P]

The Insurance Commissioner proposes to repeal Regulations .01 — .05 under **COMAR 31.09.14 Retained Asset Accounts**.

##### Statement of Purpose

The purpose of this action is to repeal COMAR 31.09.14.01—.05. S.B. 217 (Ch. 38, Acts of 2011), which goes into effect October 1, 2011, addresses the requirements and procedures included in these regulations.



**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to [klawhorn@mdinsurance.state.md.us](mailto:klawhorn@mdinsurance.state.md.us), or fax to 410-468-2020. Comments will be accepted through September 26, 2011. A public hearing has not been scheduled.

THERESE M. GOLDSMITH  
Insurance Commissioner

# Errata

## COMAR 10.09.53.07

At 38:17 Md. R. 1030 (August 12, 2011), col. 1, line 19 from the bottom:

For: accepted through August 12, 2011. A public hearing has not been

Read: accepted through September 12, 2011. A public hearing has not been

[11-18-57]

# Special Documents

## DEPARTMENT OF THE ENVIRONMENT

### SUSQUEHANNA RIVER BASIN COMMISSION

#### Projects Approved or Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved or rescinded by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE: June 1, 2011, through June 30, 2011.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval or rescission for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR §806.22(f) for the time period specified above:

#### Approvals By Rule Issued Under 18 CFR §806.22(f):

Talisman Energy USA Inc., Pad ID: 05 253 Senn W, ABR-201106001, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: June 2, 2011.

EQT Production Company, Pad ID: Wohler, ABR-201106002, Chest Township, Clearfield County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: June 6, 2011.

SWEPI LP, Pad ID: Drake 274, ABR-201106003, Lawrence Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 9, 2011.

Chesapeake Appalachia, LLC, Pad ID: Ford, ABR-201106004, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 9, 2011.

Chesapeake Appalachia, LLC, Pad ID: Sophia, ABR-201106005, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 10, 2011.

SWEPI LP, Pad ID: Wood 626, ABR-201106006, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 10, 2011.

Chesapeake Appalachia, LLC, Pad ID: GB, ABR-201106007, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 13, 2011.

Chief Oil & Gas LLC, Pad ID: Polovitch East Drilling Pad #1, ABR-201106008, Nicholson Township, Wyoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: June 13, 2011.

Citrus Energy Corporation, Pad ID: Johnston 1 Pad, ABR-201106009, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: June 13, 2011.

Chesapeake Appalachia, LLC, Pad ID: Neal, ABR-201106010, Leroy Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 14, 2011.

SWEPI LP, Pad ID: Watkins 820, ABR-201106011, Chatham Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 14, 2011.

Chesapeake Appalachia, LLC, Pad ID: Mel, ABR-201106012, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 17, 2011.

Chesapeake Appalachia, LLC, Pad ID: Knickerbocker, ABR-201106013, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 17, 2011.

Chesapeake Appalachia, LLC, Pad ID: IH, ABR-201106014, Stevens Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 17, 2011.

Chesapeake Appalachia, LLC, Pad ID: J & J, ABR-201106015, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 20, 2011.

Chesapeake Appalachia, LLC, Pad ID: Wootten, ABR-201106016, Mehoopany Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 21, 2011.

SWEPI LP, Pad ID: Brucklacher 734, ABR-201106017, Jackson Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 21, 2011.

Chesapeake Appalachia, LLC, Pad ID: Quail, ABR-201106018, Fox Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 21, 2011.

Anadarko E&P Company LP, Pad ID: Larrys Creek F&G Pad H, ABR-201106019, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 24, 2011.

Anadarko E&P Company LP, Pad ID: H Lyle Landon Pad A, ABR-201106020, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 24, 2011.

Chesapeake Appalachia, LLC, Pad ID: T&T, ABR-201106021, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 27, 2011.

Chesapeake Appalachia, LLC, Pad ID: Arch, ABR-201106022, Sweden Township, Potter County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 27, 2011.

Chesapeake Appalachia, LLC, Pad ID: Lambs Farm, ABR-201106023, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 27, 2011.

Chesapeake Appalachia, LLC, Pad ID: Nichols, ABR-201106024, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 27, 2011.

Talisman Energy USA Inc., Pad ID: 07 185 Camp Comfort, ABR-201106025, Middletown Township, Susquehanna County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: June 27, 2011.

SWEPI LP, Pad ID: Youst 405, ABR-201106026, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: June 30, 2011.

Anadarko E&P Company LP, Pad ID: COP Tract 728 Pad B, ABR-201106027, Watson Township, Lycoming County, Pa.;

1110

Consumptive Use of up to 4.000 mgd; Approval Date: June 30, 2011.

Novus Operating, LLC, Pad ID: Lucca, ABR-201106028, Covington and Sullivan Townships, Tioga County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: June 30, 2011.

Talisman Energy USA Inc., Pad ID: 02 011 DCNR 587, ABR-201106029, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: June 30, 2011.

EXCO Resources (PA), LLC, Pad ID: Poor Shot East Drilling Pad #2, ABR-20100681.1, Anthony Township, Lycoming County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: June 30, 2011.

Rescinded Approvals By Rule Issued Under 18 CFR §806.22(f):

Hydro Recovery, LP, Blossburg Municipal Authority, ABR-201010061, Blossburg Borough, Tioga County, Pa.; Consumptive Use of up to 0.100 mgd; Approval Date: October 21, 2010, Rescinded Date: June 30, 2011.

AUTHORITY: Pub.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: August 5, 2011.

STEPHANIE L. RICHARDSON  
Secretary to the Commission

[11-18-48]

## SUSQUEHANNA RIVER BASIN COMMISSION

### Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting on September 15, 2011, in Milford, New York. At the public hearing, the Commission will consider: (1) compliance matters involving three projects; (2) the rescission of one docket approval; (3) action on certain water resources projects; and (4) action on three projects involving a diversion. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: September 15, 2011, at 8:30 a.m.

ADDRESS: Country Inn & Suites Cooperstown, 4470 State Highway 28, Milford, New York 13807

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: (1) expansion of the Remote Water Quality Monitoring Network; (2) hydrologic conditions in the basin; (3) a report on the Morrison Cove Study in the Juniata Subbasin; (4) the Maurice K. Goddard Award to Dr. Willard Harman of the SUNY Biological Station at

Oneonta; (5) a possible supplemental proposed rulemaking action; (6) a preliminary introduction to dockets; (7) a capital budget and contract for acquisition of a new SRBC headquarters building; and (8) ratification/approval of grants/contracts. The Commission will also hear Legal Counsel's report.

Public Hearing – Compliance Actions:

Project Sponsor: Energy Corporation of America. Pad ID: Coldstream Affiliates #1MH (ABR-201007051 and ABR-201007051.1), Goshen Township, Clearfield County, Pa. and Pad ID: Whitetail #1-5MH (ABR-201008112 and ABR-201008112.1), Goshen and Girard Townships, Clearfield County, Pa.

Project Sponsor: Hazleton Creek Properties, LLC. Project Facility: Hazleton Mine Reclamation (Docket No. 20110307), Hazleton City, Luzerne County, Pa.

Project Sponsor: Keister Miller Investments, LLC. Withdrawal ID: West Branch Susquehanna River (Docket No. 20100605), Mahaffey Borough, Clearfield County, Pa.

Public Hearing – Project Scheduled for Rescission Action:

Project Sponsor and Facility: Lake Meade Municipal Authority (Docket No. 19911102), Reading Township, Adams County, Pa.

Public Hearing – Projects Scheduled for Action:

Project Sponsor: Anadarko E&P Company LP. Project Facility: Sproul State Forest – Council Run, Snow Shoe Township, Centre County, Pa. Application for groundwater withdrawal of up to 0.715 mgd from Well PW-11.

Project Sponsor: Borough of Ephrata. Project Facility: Ephrata Area Joint Authority, Ephrata Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.210 mgd from Well 1.

Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Modification to increase surface water withdrawal by an additional 0.441 mgd, for a total of 1.44 mgd (Docket No. 20080906).

Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Terry Township, Bradford County, Pa. Modification to increase surface water withdrawal by an additional 0.441 mgd, for a total of 1.44 mgd (Docket No. 20090605).

Project Sponsor and Facility: EXCO Resources (PA), LLC (Pine Creek), Porter Township, Lycoming County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

Project Sponsor: Graymont (PA), Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Application for groundwater withdrawal of up to 0.660 mgd from Well I-5 (McJunkin Well Field).

Project Sponsor: Hazleton Creek Properties, LLC. Project Facility: Hazleton Mine Reclamation, Hazleton City, Luzerne County, Pa. Modification to increase consumptive water use approval by 0.145 mgd, for a total of 0.200 mgd (Docket No. 20110307).

Project Sponsor and Facility: J-W Operating Company (Sterling Run), Lumber Township, Cameron County, Pa. Modification to conditions of the surface water withdrawal approval (Docket No. 20090330).

Project Sponsor and Facility: M & P Energy Services Inc. (Susquehanna River), Briar Creek Borough, Columbia County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads District, Harford County, Md. Modification to conditions of the surface water withdrawal approval (Docket No. 20010801).

Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads

District, Harford County, Md. Modification to conditions of the consumptive water use approval (Docket No. 20010801).

Project Sponsor: Milton Regional Sewer Authority. Project Facility: Wastewater Treatment Plant, Milton Borough and West Chillisquaque Township, Northumberland County, Pa. Application for withdrawal of treated wastewater effluent of up to 0.864 mgd.

Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (West Branch Susquehanna River), Pine Creek Township, Clinton County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

Project Sponsor and Facility: Seneca Resources Corporation (Marsh Creek), Delmar Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

Project Sponsor and Facility: Southwestern Energy Production Company, Herrick Township, Bradford County, Pa. Application for groundwater withdrawal of up to 0.101 mgd from the Fields Supply Well.

Project Sponsor and Facility: Stanley S. Karp Sr. (Tunkhannock Creek), Nicholson Borough, Wyoming County, Pa. Application for surface water withdrawal of up to 0.510 mgd.

Project Sponsor and Facility: Susquehanna Gas Field Services, LLC. (Meshoppen Creek), Meshoppen Borough, Wyoming County, Pa. Modification to project features and conditions of the surface water withdrawal approval (Docket No. 20090628).

Project Sponsor: Susquehanna Gas Field Services, LLC. Project Facility: Meshoppen Pizza Well, Meshoppen Borough, Wyoming County, Pa. Modification to project features and conditions of the groundwater withdrawal approval (Docket No. 20100612).

Project Sponsor and Facility: William C. Wingo (Wingo Ponds), Ulysses Township, Potter County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

Project Sponsor and Facility: XTO Energy, Inc. (West Branch Susquehanna River), Chapman Township, Clinton County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

#### Public Hearing – Projects Scheduled for Action Involving a Diversion:

Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads District, Harford County, Md. Modification to conditions of the diversion approval (Docket No. 20010801).

Project Sponsor: SWEPI, LP. Project Facility: Pennsylvania American Water Company – Warren District, Warren City, Warren County, Pa. Application for an into-basin diversion of up to 3.000 mgd from the Ohio River Basin.

Project Sponsor: EQT Production Company. Project Facility: Franco Freshwater Impoundment, Washington Township, Jefferson County, Pa. Application for an into-basin diversion of up to 0.482 mgd from the Ohio River Basin.

#### Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, e-mail: srichardson@srbc.net. Comments mailed or

electronically submitted must be received prior to September 9, 2011, to be considered.

AUTHORITY: Public Law 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: August 12, 2011.

THOMAS W. BEAUDUY  
Deputy Executive Director

[11-18-54]

## DEPARTMENT OF STATE POLICE HANDGUN ROSTER BOARD

### Proposed Additions to Handgun Roster and Notice of Right to Object or Petition

The following is a list of handguns that the Handgun Roster Board proposes to add to the official handgun roster. These handguns will be officially placed on the Handgun Roster if no timely objection is received or if all timely objections are dismissed.

<i>Manufacturer</i>	<i>Model Name</i>	<i>Model Number</i>	<i>Caliber</i>
Carl Walther	P22		.22 LR
Carl Walther	HK-416		.22 LR
Chiappa Firearms	Rhino	200 DS	.357 Mag
Chiappa Firearms	American Classic 22		
Cimarron Arms (Pietta)	Thunderball		.45 & .357
Cimarron Arms (Pietta)	Frontier		.45, .44-40 & .357
Citadel (L.S.I.)	1911	CIT38SFSPNP	.38 SP
Ed Brown Products		Special Forces 1911	.45 ACP
Henry	H100 ML		.22 LR
I.W.I. Israeli Weapon (Magnum Research)	Baby Desert Eagle II	BE4500RS	.45 ACP
Kahr Arms	CM9	CM9093	9mm
Lasserre S.A.	Super Comanche		.22 Win. Mag
Magnum Research	MR9 Eagle	MRFA915 F	9mm
Pioneer Arms Corp	PPS43-C		7.62 X 25
			.45 LC, .357, .44 Mag, 38 SP
Rossi	Ranch Hand		
Sig Sauer/Sigarms Inc.	1911-22		.22 LR
Smith & Wesson	SW 1911 TA		.45
Smith & Wesson	340 PD		.357
Smith & Wesson	Governor		.410, .45 ACP, .45 Colt

Smith & Wesson	SW 1911		.45
Smith & Wesson	360 PD		.357
Smith & Wesson	22	150199	.45 ACP
Smith & Wesson	SW 1911 SC		.45
Sturm Ruger	SR 1911	6700	.45 ACP
Sturm Ruger	New Model Blackhawk	5233	.44 SP
Sturm Ruger	New Vaquero	5147, 5148	.44 SP
Taurus	M405	2405021	.40 S&W
Walther	PPQ		9mm, .40 S&W

Under the Public Safety Article, §5-405, Annotated Code of Maryland, and COMAR 29.03.03.13 and .14, any person may object to the placement of any of those handguns on the Handgun Roster. Objections must be filed within 30 days after **August 26, 2011**. In addition, any person may petition for the placement of an additional handgun on the Handgun Roster. Forms for objections or petitions may be obtained from: Marlene Jenkins, Administrator, Handgun Roster Board, 1201 Reisterstown Road, Pikesville, Maryland 21208.

[11-18-43]

# General Notices

## Notice of ADA Compliance

The State of Maryland is committed to ensuring that individuals with disabilities are able to fully participate in public meetings. Anyone planning to attend a meeting announced below who wishes to receive auxiliary aids, services, or accommodations is invited to contact the agency representative at least 48 hours in advance, at the telephone number listed in the notice or through Maryland Relay.

### ADVISORY COUNCIL ON CEMETERY OPERATIONS

**Subject:** Public Meeting  
**Date and Time:** September 22, 2011, 10 a.m. — 1 p.m.  
**Place:** Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl., Baltimore, MD  
**Contact:** Benjamin Foster (410) 230-6229  
 [11-18-21]

### CHESAPEAKE BAY TRUST

**Subject:** Public Meeting  
**Date and Time:** September 14, 2011, 3 — 6 p.m.  
**Place:** Loews Hotel, Annapolis, MD  
**Contact:** Heather Adams (410) 974-2941  
 [11-18-23]

### BOARD OF CHIROPRACTIC AND MASSAGE THERAPY EXAMINERS

**Subject:** Public Meeting  
**Date and Time:** September 8, 2011, 10 a.m. — 1 p.m.  
**Place:** Dept. of Health and Mental Hygiene, 4201 Patterson Ave., Rm. 108/109, Baltimore, MD  
**Contact:** Maria Ware (410) 764-5902  
 [11-18-52]

### GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

**Subject:** Public Meeting  
**Date and Time:** September 8, 2011, 3 — 5 p.m.  
**Place:** Howard Co. Police Dept., Ellicott City, MD  
**Contact:** Jessica Winpigler (410) 821-2829  
 [11-18-09]

### GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

**Subject:** Public Meeting  
**Date and Time:** September 12, 2011, 3 — 5 p.m.  
**Place:** Loch Raven Library, Baltimore, MD  
**Contact:** Jessica Winpigler (410) 821-2829  
 [11-18-15]

### COMMISSION ON CRIMINAL SENTENCING POLICY

**Subject:** Public Meeting  
**Date and Time:** September 20, 2011, 5:30 — 7:30 p.m.  
**Place:** Judiciary Education and Conference Center, 2009D Commerce Park Dr., Training Rms. 1 and 2, Annapolis, MD  
**Contact:** David Soule (301) 403-4165  
 [11-18-22]

### OFFICE OF THE DEAF AND HARD OF HEARING/MARYLAND ADVISORY COUNCIL ON THE DEAF AND HARD OF HEARING

**Subject:** Public Meeting  
**Date and Time:** September 14, 2011, 1 — 4 p.m.  
**Place:** Dept. of Transportation, 7201 Corporate Center Dr., Hughes Ste. II, Ground Fl., Hanover, MD  
**Add'l. Info:** Please RSVP to lquinn@gov.state.md.us or call 410-767-6290, due to MDOT's security policies. Also, you must show a photo ID or State ID badge to enter the building.  
 Advisory Council Business Meeting (1 — 4 p.m.) is opened for the public to observe. (There will be no public forum following this Advisory Council meeting.)  
 Sign language interpreters, real-time captioning services, and assistive listening devices will be provided.  
 For additional accommodations, please contact Laura Quinn at lquinn@gov.state.md.us.  
**Contact:** Laura Quinn (410) 767-6290  
 [11-18-20]

### JOINT CHAIRS OF THE DESIGN BOARDS

**Subject:** Public Meeting  
**Date and Time:** September 8, 2011, 1 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Pamela J. Edwards (410) 230-6263  
 [11-18-47]

### BOARD OF DIETETIC PRACTICE

**Subject:** Public Meeting  
**Date and Time:** September 15, 2011, 12:30 — 3:30 p.m.  
**Place:** 4201 Patterson Ave., Rm. 100/107, Baltimore, MD  
**Contact:** Lenelle Cooper (410) 764-4733  
 [11-18-35]

### PROFESSIONAL STANDARDS AND TEACHER EDUCATION BOARD

**Subject:** Public Meeting  
**Date and Time:** September 1, 2011, 9 a.m. — 12 p.m.  
**Place:** 200 W. Baltimore St., Baltimore, MD  
**Contact:** Madeline Koum (410) 767-0385  
 [11-18-08]

### MARYLAND STATE DEPARTMENT OF EDUCATION/DIVISION OF SPECIAL EDUCATION/EARLY INTERVENTION SERVICES

**Subject:** Public Hearing  
**Date and Time:** October 4, 2011, 1 — 3 p.m.  
**Place:** Maryland State Dept. of Education, 200 W. Baltimore St., 9th Fl. Conf. Rm., Baltimore, MD  
**Add'l. Info:** The Maryland Infants and Toddlers Program is proposing revisions to the Annual State Application Under Part C of the Individuals With Disabilities Education Act for 60 days (August 26 — October 26, 2011), accepting public comment for 30 days (September 12 — October 11, 2011), and providing an opportunity for a public hearing (October 4, 2011) concerning the proposed revisions. The proposed revisions pertain to the age range for participation of children with disabilities in the Extended IFSP Option; the Statewide template for local CAPTA policies and procedures; and the memorandum of understanding between the Maryland State Department of Education and the Maryland Head Start Association.

These documents are available for public review on the Maryland State Department of Education website at the following address:  
[http://www.marylandpublicschools.org/MSDE/divisions/earlyinterv/infant\\_toddlers/re-sources](http://www.marylandpublicschools.org/MSDE/divisions/earlyinterv/infant_toddlers/re-sources)

## GENERAL NOTICES

1114

These documents are also available for review at the offices of the Local Infants and Toddlers Programs in each Maryland county and Baltimore City or at the Maryland State Department of Education, Nancy S. Grasmick State Education Building, 200 W. Baltimore Street, Baltimore, MD 21201.

Comments may be mailed to Thomas Stengel, Interim Branch Chief, Early Childhood Intervention and Education, 9th Floor, Maryland State Department of Education, Baltimore, MD 21201 or emailed to [tstengel2@msde.state.md.us](mailto:tstengel2@msde.state.md.us), or faxed to (410) 333-8165. Comments must be received no later than 5 p.m., Tuesday, October 11, 2011. For more information, call Thomas Stengel at 410-767-0261. To register to speak at the public hearing on October 4, 2011 please contact Bambi Montanez at (410) 767-0557.

Anyone planning to attend the public hearing who wishes to receive auxiliary aids, services, or accommodations is invited to contact Bambi Montanez at (410) 767-0557 or through Maryland Relay at least 48 hours in advance of the hearing.  
**Contact:** Thomas Stengel (410) 767-1028  
[11-18-51]

### ELEVATOR SAFETY REVIEW BOARD

**Subject:** Public Meeting  
**Date and Time:** August 31, 2011, 1:30 — 5 p.m.  
**Place:** 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Raquel M. Meyers (410) 230-6379  
[11-18-01]

### EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL

**Subject:** Public Meeting  
**Date and Time:** September 1, 2011, 1 p.m. — 3 p.m.  
**Place:** 653 W. Pratt St., Ste. 212, Baltimore, MD  
**Add'l. Info:** The State Emergency Medical Services Advisory Council (SEMSAC) meets regularly on the 1st Thursday of each month.  
**Contact:** Leandrea Gilliam (410) 706-4449  
[11-18-18]

### EMERGENCY MEDICAL SERVICES BOARD

**Subject:** Public Meeting  
**Date and Time:** September 11, 2011, 9 — 11 a.m.; part of the meeting may include a closed session  
**Place:** 653 W. Pratt St., Ste. 212, Baltimore, MD

**Add'l. Info:** The State Emergency Medical Services Board (EMS Board) meets regularly on the 2nd Tuesday of each month.

**Contact:** Leandrea Gilliam (410) 706-4449  
[11-18-19]

### EMERGENCY MEDICAL SERVICES BOARD

**Subject:** Public Meeting  
**Date and Time:** September 13, 2011, 9 a.m. — 11 p.m.; part of the meeting may include a closed session  
**Place:** 653 W. Pratt St., Ste. 212, Baltimore, MD  
**Add'l. Info:** The Emergency Medical Services Board (EMS Board) meets regularly on the 2nd Tuesday of each month.  
**Contact:** Leandrea Gilliam (410) 706-4449  
[11-18-17]

### BOARD FOR PROFESSIONAL ENGINEERS

**Subject:** Public Meeting  
**Date and Time:** September 8, 2011, 9 a.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Pamela J. Edwards (410) 230-6263  
[11-18-46]

### BOARD OF ENVIRONMENTAL SANITARIANS

**Subject:** Public Meeting  
**Date and Time:** October 5, 2011, 10 a.m. — 4:30 p.m.  
**Place:** Howard County Bureau of Utilities, Columbia, MD  
**Add'l. Info:** A portion of this meeting may be held in closed session.  
**Contact:** Pat Kratochvil (410) 537-3597  
[11-18-13]

### DEPARTMENT OF GENERAL SERVICES/ARCHITECTURAL/ENGINEERING/PROCUREMENT/GPSSB

**Subject:** Public Meeting  
**Date and Time:** September 7, 2011, 9 a.m. — 10 a.m.  
**Place:** 201 W. Preston St., Rm. L-2, Baltimore, MD  
**Add'l. Info:** The General Professional Services Selection Board (GPSSB) will meet in a public meeting on Wednesday, September 7, 2011, at 9 a.m. in Rm. L-2, 201 West Preston Street in Baltimore, Maryland. The agenda for the meeting is as follows:  
A. Acknowledge receipt of the Department of General Services' Letter of

Certification and receive and act upon the Qualification Committee's and/or Second Phase Review Panel's recommendation that the ranking of the firms be approved and that authorization be granted to initiate negotiations in accordance with the A/E Procurement regulations for the following project:

Project No. DGS-11-009-IQC  
Professional Services Agreement to Provide Civil Investigative, Design and Engineering Services and Land Surveying Services for Multiple Construction Projects with Fees Greater than \$25,000 but Less than \$200,000

Using Agency: Department of General Services

B. The Selection Board will also review other matters which may be presented for its consideration.

Please call William A. Davis at 410-767-4296 (Voice) or, for persons with hearing or speech disabilities, call via the Maryland Relay Service at 1-800-735-2258, to request any reasonable accommodations you may require.  
**Contact:** William A. Davis (410) 767-9296  
[11-18-44]

### BOARD OF HEATING, VENTILATION, AIR-CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)

**Subject:** Public Meeting  
**Date and Time:** September 14, 2011, 9:30 a.m. — 12 p.m.  
**Place:** 500 N. Calvert St., Rm. 302, Baltimore, MD  
**Contact:** Steve Smitson (410) 230-6169  
[11-18-16]

### HOME IMPROVEMENT COMMISSION

**Subject:** Public Meeting  
**Date and Time:** September 1, 2011, 10 a.m. — 12:30 p.m.  
**Place:** 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Steven Smitson (410) 230-6169  
[11-18-07]

### DIVISION OF LABOR AND INDUSTRY/MARYLAND OCCUPATIONAL SAFETY AND HEALTH (MOSH) ADVISORY BOARD

**Subject:** Public Meeting  
**Date and Time:** September 7, 2011, 10 a.m.  
**Place:** 10946 Golden West Dr., Ste. 160, Hunt Valley, MD



**Add'l. Info:** This will be a general meeting. The MOSH Advisory Board may consider regulations on tree care.

**Contact:** Debbie Stone (410) 767-2225  
[11-18-53]

#### BOARD FOR PROFESSIONAL LAND SURVEYORS

**Subject:** Public Meeting

**Date and Time:** September 7, 2011, 10 a.m.

**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

**Contact:** Pamela J. Edwards (410) 230-6263

[11-18-45]

#### MARYLAND HEALTH CARE COMMISSION

**Subject:** Public Meeting

**Date and Time:** September 15, 2011, 1 p.m.

**Place:** Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD

**Add'l. Info:** Individuals requiring special accommodations are requested to contact Valerie Wooding at (410) 764-3460, or the Department of Health and Mental Hygiene TTY at (410) 383-7755, not later than 20 days before the meeting to make arrangements.

**Contact:** Valerie Wooding (410) 764-3460  
[11-18-02]

#### MARYLAND HEALTH CARE COMMISSION

**Subject:** Receipt of Applications

**Add'l. Info:** On August 5, 2011 the Maryland Health Care Commission (MHCC) received four applications for Certificate of Need submitted by:

The Village at Rockville, A National Lutheran Community — Matter No. 11-15-2319 — New construction and modernization of the comprehensive care facility (CCF) and a reduction from 300 CCF beds to 160 CCF beds and the addition of an assisted living facility. Cost: \$21,754,268 (CCF facility only)

Johns Hopkins Hospital — Wilmer Eye Institute — Matter No. 11-24-2320 — Expansion of outpatient special-purpose operating room capacity in the Bendann Outpatient Surgical Center by 2 operating rooms. Cost: \$1,430,037

Johns Hopkins Bayview Medical Center — Matter No. 11-24-2321 — Capital project for the expansion of the emergency department. Cost: \$39,771,248

Johns Hopkins Bayview Medical Center — Matter No. 11-24-2322 — Creation of a

comprehensive cancer program at the hospital. Cost: \$25,844,525

The MHCC shall review these applications under Health-General Article, §19-101 et seq., Annotated Code of Maryland, and COMAR 10.24.01.

Any affected person may make a written request to the Commission to receive copies of relevant notices concerning the applications. All further notices of proceedings on the applications will be sent only to affected persons who have registered as interested parties.

Please refer to the Matter Nos. listed above in any correspondence on the applications. Copies of the applications are available for review in the office of the MHCC during regular business hours by appointment. All correspondence should be addressed to Paul Parker, Acting Director, Center for Hospital Services, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215.

**Contact:** Ruby Potter (410) 764-3276  
[11-18-40]

#### MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

**Subject:** Public Meeting

**Date and Time:** August 31, 2011, 8:30 a.m. — 4 p.m.

**Place:** Harry R. Hughes Dept. of Transportation Bldg., 7201 Corporate Center Dr., Hanover, MD

**Contact:** Pam Gregory (410) 865-1253  
[11-18-41]

#### MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

**Subject:** Public Meeting

**Date and Time:** September 14, 2011, 8:30 a.m. — 5 p.m.

**Place:** Harry R. Hughes Dept. of Transportation Bldg., 7201 Corporate Center Dr., Hanover, MD

**Contact:** Pam Gregory (410) 865-1253  
[11-18-42]

#### BOARD OF MORTICIANS AND FUNERAL DIRECTORS

**Subject:** Public Meeting

**Date and Time:** September 14, 2011, 10:30 a.m. — 12:30 p.m.

**Place:** 4201 Patterson Ave., Rms. 108/109, Baltimore, MD

**Add'l. Info:** Review statutes and regulations and vote as necessary. Sign language interpreter and/or other appropriate accommodations for qualified individuals with disabilities will be provided upon request.

**Contact:** LouAnn Cox (410) 764-4792  
[11-18-39]

#### BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

**Subject:** Public Meeting on Regulations

**Date and Time:** September 14, 2011, 9:30 a.m.

**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD

**Contact:** Patricia A. Hannigan (410) 764-4750

[11-18-31]

#### BOARD OF OCCUPATIONAL THERAPY PRACTICE

**Subject:** Public Meeting

**Date and Time:** September 16, 2011, 8:30 a.m. — 2 p.m.

**Place:** Spring Grove Hospital Center, 55 Wade Ave., Catonsville, MD

**Add'l. Info:** Health Occupations Article, Title 10, Annotated Code of Maryland, and COMAR 10.46 amendments, additions, and revisions, including fee changes, may be discussed/voted on. Budget information may also be discussed. It may be necessary to go into executive session.

Sign language interpreters and/or appropriate accommodations for qualified individuals with disabilities will be provided upon request. Please call 1 (800) 735-2255.

**Contact:** Marilyn Pinkney (410) 402-8556  
[11-18-56]

#### BOARD OF PLUMBING

**Subject:** Public Meeting

**Date and Time:** September 15, 2011, 10 a.m. — 12:30 p.m.

**Place:** 500 N. Calvert St., Rm. 302, Baltimore, MD

**Contact:** Brenda Clark (410) 230-6164  
[11-18-32]

#### BOARD OF PODIATRIC MEDICAL EXAMINERS

**Subject:** Public Meeting

**Date and Time:** September 8, 2011, 1 p.m.

**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD

**Contact:** Sheri Henderson (410) 764-4785  
[11-18-03]

#### BOARD OF PODIATRIC MEDICAL EXAMINERS

**Subject:** Public Meeting

**Date and Time:** October 13, 2011, 1 p.m.

**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD

**Contact:** Sheri Henderson (410) 764-4785  
[11-18-04]

**BOARD OF PODIATRIC MEDICAL EXAMINERS**

**Subject:** Public Meeting  
**Date and Time:** November 10, 2011, 1 p.m.  
**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD  
**Contact:** Sheri Henderson (410) 764-4785  
 [11-18-05]

**BOARD OF PODIATRIC MEDICAL EXAMINERS**

**Subject:** Public Meeting  
**Date and Time:** December 8, 2011, 1 p.m.  
**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD  
**Contact:** Sheri Henderson (410) 764-4785  
 [11-18-06]

**PUBLIC SCHOOL LABOR RELATIONS BOARD**

**Subject:** Public Meeting  
**Date and Time:** September 16, 2011, 10 a.m. — 12 p.m.  
**Place:** State Labor Relations Boards Offices, 839 Bestgate Rd., Ste. 400, Annapolis, MD  
**Contact:** Erica Snipes (410) 260-3216  
 [11-18-49]

**REAL ESTATE COMMISSION**

**Subject:** Public Meeting  
**Date and Time:** September 21, 2011, 10:30 a.m.  
**Place:** Dept of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Patricia Hannon (410) 230-6199  
 [11-18-11]

**REAL ESTATE COMMISSION**

**Subject:** Public Hearing  
**Date and Time:** September 21, 2011, 12:30 p.m.  
**Place:** Dept of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Patricia Hannon (410) 230-6199  
 [11-18-12]

**BOARD OF SOCIAL WORK EXAMINERS**

**Subject:** Public Meeting  
**Date and Time:** September 9, 2011, 11 a.m. — 3 p.m.  
**Place:** 4201 Patterson Ave., Rm. 109, Baltimore, MD  
**Add'l. Info:** The Board may discuss/vote on proposed regulations. A portion of this meeting may be held in closed session.

**Contact:** James T. Merrow (410) 764-4788  
 [11-18-55]

**STATE TREASURER'S OFFICE**

**Subject:** Announcement  
**Add'l. Info:** Recommendation that the Board of Public Works authorize for publication in the Maryland Register the automatic terminations of State debt authorizations listed in Sections A and B below. These terminations reduce the State's authority to issue general obligation bonds in the amount of \$1,308,038.06 and, at the same time, reduce the State's spending authority as shown for the capital projects listed. Written notices of impending terminations were sent by the Comptroller's Office to agencies on a quarterly basis throughout the fiscal year and to grantees on June 18, 2010 and January 5, 2011.

The Office of the Comptroller, the State Treasurer's Office, the Department of Budget and Management (Office of Capital Budgeting), and the Department of General Services have reviewed this request and concur.

Background: State law provides "Except to the extent that money authorized by an enabling act for a State project or program has been encumbered by the Board, an authorization of State debt shall automatically terminate 7 years after the date of the authorization, unless the Board unanimously grants a temporary exception for 1 year."

Authority: Section 8-128, State Finance and Procurement Article, Maryland Code.

A. The following authorizations for State projects were not encumbered within the 7-year time period and have terminated by operation of law on June 1, 2011:

(1) Maryland Consolidated Capital Bond Loan of 2001, Chapter 111 of 2001 Laws of Maryland, as Amended:

(a) Department of Public Safety and Correctional Services — Maryland Correctional Institution for Women — Support Services Building/State Use Industries Shop Loan of 2001: Amount Terminated: \$238.26; Original Authorization: \$975,000

(b) Department of Public Safety and Correctional Services — Western Correctional Institution Support Space, Gatehouse, and Expansion Housing Loan of 2001: Amount Terminated: \$12,784; Original Authorization: \$26,714,000

(2) Maryland Consolidated Capital Bond Loan of 2002, Chapter 290 of the 2002 Laws of Maryland, as Amended:

(a) Department of Health and Mental Hygiene-Community Health Facilities Loan of 2002: Amount Terminated:

\$101,250; Original Authorization: \$8,912,000

(3) Maryland Consolidated Capital Bond Loan of 2003, Chapter 204 of 2003 Laws of Maryland, as Amended:

(a) Department of Public Safety and Correctional Services — Maryland Correctional Institution for Women Support Services/State Use Industries Buildings Loan of 2003: Amount Terminated: \$6,292.68; Original Authorization: \$17,408,000

(b) Department of Public Safety and Correctional Services — Division of Pre-Trial Detention and Services — Baltimore City Detention Center Phase III Utility Renovation Loan of 2003: Amount Terminated: \$200; Original Authorization: \$1,948,000

(c) Department of Health and Mental Hygiene — Community Health Facilities Loan of 2003: Amount Terminated: \$620.11; Original Authorization: \$7,974,000

(4) Maryland Consolidated Capital Bond Loan of 2004, Chapter 432 of the 2004 Laws of Maryland, as Amended:

(a) Department of Public Safety and Correctional Services — Patuxent Institution — Electrical Service Upgrade Loan of 2004: Amount Terminated: \$2,584.38; Original Authorization: \$385,000

(b) Executive Department — Governor — Office of Individuals With Disabilities — Accessibility Modifications Loan of 2004: Amount Terminated: \$5,900.50; Original Authorization: \$1,600,000

(c) General State Facilities — Capital Facilities Renewal Loan of 2004: Amount Terminated: \$15,815.75; Original Authorization: \$6,049,000  
 TOTAL: \$145,685.68

B. The following grant authorizations were not encumbered within the 7-year time period and have terminated by operation of law on June 1, 2011:

(1) Baltimore City — St. James Academy Education Center Loan of 1998, Chapter 196 of the 1998 Laws of Maryland, as Amended: Amount Terminated: \$500,000; Original Authorization: \$500,000

(2) Baltimore City — Park Heights Golf Range and Family Sports Park Loan of 2000, Chapter 440 of the 2000 Laws of Maryland, as Amended: Amount Terminated: \$250,000; Original Authorization: \$250,000

(3) Kent County — Echo Hill Outdoor School Improvements Loan of 2001, Chapter 243 of the 2001 Laws of Maryland, as Amended: Amount Terminated: \$113.53; Original Authorization: \$300,000

(4) Maryland Consolidated Bond Loan of 2003 — Shady Grove Adventist Hospital, Chapter 204 of the 2003 Laws of Maryland, as Amended: Amount Terminated: \$30,003.29; Original Authorization: \$700,000

(5) Community Based Regional Initiatives Loan of 2004 — Prince George's County — Bethel Recreation Center, Chapter 204 of the 2003 Laws of Maryland, as Amended: Amount Terminated: \$7,340; Original Authorization: \$250,000

(6) Community Based Regional Initiatives Loan of 2004 — Montgomery County — Chelsea School, Chapter 204 of the 2003 Laws of Maryland, as Amended: Amount Terminated: \$19,275.88; Original Authorization: \$300,000

(7) Legislative Community Initiatives Loan of 2004 — Bethel A.M.E. Museum and Cyber Community Center, Chapter 432 of the 2004 Laws of Maryland, as Amended: Amount Terminated: \$250,000; Original Authorization: \$250,000

(8) Legislative Community Initiatives Loan of 2004 — Veterans Memorial, Chapter 432 of the 2004 Laws of Maryland, as Amended: Amount Terminated: \$5,619.68; Original Authorization: \$50,000

(9) Legislative Community Initiatives Loan of 2004 — Victory Youth Center, Chapter 432 of the 2004 Laws of Maryland, as Amended: Amount Terminated: \$100,000; Original Authorization: \$100,000

TOTAL: \$1,162,352.38

**Contact:** Kina Johnson-Malcolm (410) 260-7154

[11-18-24]

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Title 21	State Procurement Regulations		\$48	\$30	_____	_____
Title 22	State Retirement and Pension System		\$22	\$13	_____	_____
Title 23	Board of Public Works		\$18	\$11	_____	_____
Title 24	Business and Economic Development		\$34	\$20	_____	_____
Title 25	State Treasurer		\$16	\$9	_____	_____
Title 26	Environment (All parts) **		\$189	\$125	_____	_____
Title 26	Part 1 **		\$54	\$35	_____	_____
Title 26	Part 2 **		\$83	\$52	_____	_____
Title 26	Part 3 **		\$57	\$38	_____	_____
Title 26	Part 4 **		\$37	\$24	_____	_____
Title 27	Critical Area Comm. for the Chesapeake and Atlantic Coastal Bays		\$18	\$10	_____	_____
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- 01 Procedures
- 02 Division of Reimbursements
- 03 Health Statistics
- 04 Fiscal
- 05 Freestanding Ambulatory Care Facilities
- 06 Diseases
- 07 Hospitals
- 08 Health Facilities Grants

#### Part 2

- 09 Medical Care Programs

#### Part 3

- 10 Laboratories
- 11 Maternal and Child Health
- 12 Adult Health
- 13 Drugs
- 14 Cancer Control
- 15 Food
- 16 Housing
- 17 Sanitation
- 18 Human Immunodeficiency Virus (HIV) Infection and  
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- 19 Dangerous Devices and Substances
- 20 Kidney Disease Program
- 21 Mental Hygiene Regulations
- 22 Developmental Disabilities

#### Part 4

- 23 Advance Directive Registry
- 24 Maryland Health Care Commission
- 25 Maryland Health Care Commission
- 26 Board of Acupuncture
- 27 Board of Nursing
- 28 Board of Examiners in Optometry
- 29 Board of Morticians and Funeral Directors
- 30 Commission on Kidney Disease
- 31 Health Occupation Boards
- 32 Board of Physicians
- 33 Board of Examiners of Nursing Home Administrators
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- 35 Postmortem Examiners Commission
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#### Part 5

- 37 Health Services Cost Review Commission
- 38 Board of Physical Therapy Examiners
- 39 Board of Nursing – Certified Nursing Assistants
- 40 Board of Podiatric Medical Examiners
- 41 Board of Examiners for Audiologists, Hearing Aid  
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- 42 Board of Social Work Examiners
- 43 Board of Chiropractic Examiners
- 44 Board of Dental Examiners
- 45 Maryland Community Health Resources Commission
- 46 Board of Occupational Therapy Practice
- 47 Alcohol and Drug Abuse Administration
- 48 Child Abuse and Neglect Medical Reimbursement Program
- 49 State Anatomy Board
- 50 Tissue Banks
- 51 Vacant
- 52 Preventive Medicine
- 53 Board of Nursing—Electrology Practice Committee
- 54 Special Supplemental Nutrition Program for Women,  
Infants, and Children (WIC)
- 55 State Board of Spinal Cord Injury Research
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- 57 Board for Certification of Residential Child Care Program  
Professionals
- 58 Board of Professional Counselors and Therapists
- 59 Catastrophic Health Emergencies

### Title 11

Department of Transportation – Volume & Subtitles

#### Volume 1

- 01 Office of the Secretary
  - 02 Transportation Service Human Resources System
  - 03 Maryland Aviation Administration
  - 04 State Highway Administration
  - 05 Maryland Port Administration
  - 06 Mass Transit Administration
  - 07 Maryland Transportation Authority
  - 08 Vacant
  - 09 Vacant
  - 10 Vacant
- #### Volume 2 and Volume 3
- 11 Motor Vehicle Administration – Administrative Procedures
  - 12 MVA – Licensing of Businesses and Occupations
  - 13 MVA – Vehicle Equipment
  - 14 MVA – Vehicle Inspections
  - 15 MVA – Vehicle Registration
  - 16 MVA – Vehicle Operations
  - 17 MVA – Driver Licensing and Identification Documents
  - 18 MVA – Financial Responsibility Requirements
  - 19 MVA – School Vehicles
  - 20 MVA – Motorcycle Safety Program
  - 21 MVA – Commercial Motor Vehicles
  - 22 MVA – Preventive Maintenance Program
  - 23 MVA – Drivers' Schools, Instructors, Driver Education Program

### Title 26

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#### Part 1

- 01 General Provisions
- 02 Occupational, Industrial, and Residential Hazards
- 03 Water Supply, Sewerage, Solid Waste, and Pollution Control  
Planning and Funding
- 04 Regulation of Water Supply, Sewage Disposal, and Solid Waste
- 05 Board of Well Drillers
- 06 Waterworks and Waste Systems Operators
- 07 Board of Environmental Sanitarians

#### Part 2

- 08 Water Pollution
- 09 Maryland CO<sub>2</sub> Budget Trading Program
- 10 Oil Pollution and Tank Management
- 11 Air Quality
- 12 Radiation Management

#### Part 3

- 13 Disposal of Controlled Hazardous Substances
- 14 Hazardous Substance Response Plan
- 15 Disposal of Controlled Hazardous Substances —  
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- 18 Susquehanna River Basin Commission

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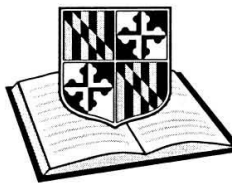
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