

Part C

State Government

State Agencies, Offices, and Officials

Department of Juvenile Services

Under *House Bill 860 (passed)*, the name of the Department of Juvenile Justice is changed to the Department of Juvenile Services (DJS). The title of the Secretary of Juvenile Justice is also changed accordingly, as are the names of State boards and programs that use Juvenile Justice in their titles. The bill adds two programs, the Lower Eastern Shore Children's Center and the Western Maryland Children's Center, that DJS is authorized to establish and operate.

Under *House Bill 860*, by December 1, 2003, DJS and the Maryland State Department of Education (MSDE) must develop an implementation schedule for an educational program at Charles H. Hickey, Jr. School (Hickey). DJS must work with MSDE to facilitate the full implementation of the educational program and to make students available during scheduled class time. The implementation of the educational program is contingent on the provision of State funding in the Fiscal 2005 Budget.

For each student placed at Hickey, the local school system where the student was last enrolled must transmit the student's most recent complete record. When a student is released from Hickey, Hickey must transmit the student's complete record to the school system where the student will be enrolled. The State Superintendent of Schools may take appropriate corrective action, including withholding or redirecting funds, against a local school system or Hickey if transmission of a student's record does not occur within five days.

The bill authorizes MSDE to use State nonpublic placement funding to contract for services for students with disabilities who are placed at Hickey. MSDE is also authorized to use emergency procurement policies to ensure that the educational program at Hickey is fully operational by July 1, 2004. The bill also specifies that any residential treatment center located on Hickey grounds and provided for in the State Health Plan is not a part of the MSDE takeover. For a more detailed discussion of this bill, see Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

Distributions of Accessible Information to Disabled Individuals

Lack of access to news and information is a persistent problem for blind and visually impaired people due to the inability to read print. To address this need, the Maryland State Library for the Blind and Physically Handicapped was established to provide patrons with audio and Braille editions of books and magazines. However, this service has not included daily newspapers due to the need for rapid and low-cost daily distribution.

Modern computer and telecommunications technology is making access to newspapers possible; however, most individuals, especially senior citizens, who use Braille and audio books do not have daily access to this technology or the skills needed to receive newspapers online. Distribution of newspapers in an audio format by telephone is more practical. The National Federation of the Blind has developed a new technology called "NFB-NEWSLINE" which allows for distribution of newspapers in an audio format by telephone. Using this technology, blind or disabled readers dial an access number to reach a distribution center and select the desired information from menu choices presented.

Senate Bill 240/House Bill 469 (both passed) require MSDE to provide eligible blind and disabled individuals with access to an audio news and information service produced by a nonprofit organization that produces audio editions of daily newspapers and provides a means of program administration and reader registration on the Internet. The Department of Budget and Management must provide MSDE with an annual payment equal to the cost incurred to provide audio news and information services to blind and physically disabled individuals. The services are funded through the Universal Service Trust Fund.

Maryland African American Museum Corporation

The General Assembly created the Maryland African American Museum Corporation in 1998 (Chapter 428) as an independent State agency charged with planning, developing, and managing a museum of African American history and culture in Baltimore City with the support of the city, affected State agencies, and other institutions. The corporation must support all operating costs from general fund grants, if any, and its other income sources.

Senate Bill 130/House Bill 106 (both passed) are emergency bills that expand the membership of the Maryland African American Museum Corporation's board of directors from 32 to 37 and provide that the five new members must meet the same criteria required for 23 current members. The Governor may appoint up to five members from outside the State, if necessary, to ensure that the membership meets the criteria for 23 current members. The bills also provide that a majority of the members of the board constitutes a quorum. The terms of the five additional members who initially serve on the board are staggered and expire as follows: two in 2004, two in 2005, and one in 2006.

State Treasurer and Physical Securities

House Bill 489 (passed) requires the State Treasurer to deposit physical securities of the State in a vault in the Treasurer's Office, rather than in a financial institution as required under current law. This bill eliminates the need to lease a bank vault, thus eliminating the need for officials of the Treasurer's Office and the Comptroller's Office to travel to the bank to retrieve documents stored in the vault.

State Designations

Title 13 of the State Government Article lists various emblems and designations adopted by the State. In addition to the State flag and seal, the State has designated an official State bird, boat, cat, crustacean, dinosaur, dog, drink, fish, flower, folk dance, fossil shell, insect, reptile, song, sport, summer theater, theater, and tree. **House Bill 98 (passed)** designates walking as the State exercise. **Senate Bill 43 (passed)** designates the Thoroughbred horse as the State horse.

Rural Development Agencies and Programs

Senate Bill 744/House Bill 1147 (both passed) made several changes with respect to agencies that are involved with rural economic development programs. The name of the Forum for Rural Maryland was changed to the Rural Maryland Council and placed in the Department of Agriculture. The administration of the Maryland Agricultural Education and Rural Development Assistance Fund was transferred from the Board of Public Works to the Rural Maryland Council. The awarding of grants by the Department of Business and Economic Development for rural economic development purposes was also transferred to the Rural Maryland Council.

Elections

Election Administration

Help America Vote Act of 2002

The federal Help America Vote Act of 2002 (HAVA) establishes uniform election standards for every state. Approximately \$3.6 billion in funding is authorized for the states over the next three federal fiscal years to assist in compliance. The Act outlines requirements covering such subjects as disabled voter access to polling places, mail-in registration, statewide voter registration, and provisional balloting. These requirements under the Act have various deadlines ranging from 2003 to 2006.

The U.S. Congress authorized fiscal year funding levels under Title I and Title II of the Act. Generally, states will receive a minimum payment and a percentage of funds based on a state's voting age population. Funding authorization for Maryland is shown in the chart below.

**Maryland's Share of Authorized Federal Funds Under the
Help America Vote Act of 2002
(\$ in Millions)**

| Title I FY 2003 Only | Title II FY 2003 Auth. | Title II FY 2004 Auth. | Title II FY 2005 Auth. | Title II Total Authorized |
|---------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|--------------------------------------|
| \$7.2 | \$25.3 | \$18.0 | \$10.8 | \$54.1 |

In February 2003, Congress appropriated approximately 70 percent of the Title II funds authorized under HAVA for fiscal 2003 as part of a supplemental appropriations bill. Maryland is eligible to receive \$7.2 million under Title I and \$15 million under Title II.

HAVA Compliance: *Senate Bill 432 (passed)* alters election day procedures in accordance with Title III of HAVA. The bill modifies the procedure for casting and counting provisional ballots and establishes a voter information system that can be accessed by individuals who were required to vote via provisional ballot, to determine if their ballot was counted, and if not, the reason why. The State Board of Elections (SBE) is required to produce additional informational materials for posting at the polling place and a provision is removed that gives an election judge the discretion to prevent an individual voter who has been challenged from voting. The bill also requires SBE to establish a State administrative complaint procedure to address all claims of alleged violations of the election law by an election official.

State Election Modernization Fund: Title II of HAVA requires a state to establish a special fund for receipt of federal funds under that title. *House Bill 1061 (passed)* establishes the Maryland Election Modernization Fund to be held by the Treasurer and accounted for by the Comptroller. The fund is a continuing fund for programs relating to HAVA and related expenditures. The fund consists of (1) monies appropriated in the State budget to the fund; (2) monies otherwise appropriated for the purposes of the fund which may be transferred to the fund by an approved budget amendment; and (3) monies received by the State from the federal government under HAVA or under other federal programs for similar purposes.

Proof of Identity: Title III of HAVA mandates states to require identification from voters who registered to vote by mail and who are first time voters for federal office in a state or who have not previously voted in a local jurisdiction with a statewide computerized voter registration list that complies with the requirements of Title III. *Senate Bill 679/House Bill 1110 (both failed)* would have required an election judge to qualify all voters by requesting that a voter present a form of identification.

Election Law

Procedural Changes

Senate Bill 433 (passed) makes technical changes throughout the Election Law Article. Some of the changes were necessary to comply with HAVA. The bill alters the time period

within which local election voting precinct boundaries cannot be modified to January 1 in the second year preceding the census through the date on which a new redistricting plan becomes effective. Senate Bill 433 clarifies the deadlines for a voter to change party affiliation before an election and changes procedures for processing a change of address to be consistent with continuous registration. The bill also clarifies that the prohibition on State officials from receiving contributions during the legislative session extends to contributors from any campaign finance entity operated in coordination with a candidate. The use of any funds deposited prior to the legislative session for expenditures during session is permissible, however. Finally, a provision is repealed that requires a political committee that spends \$51 or more to aid or oppose the nomination of a candidate, to submit a campaign finance report to the committee that was aided. This practice involved redundant reporting and was never followed or enforced.

Conduct of Elections

Election Judges

Senate Bill 213 (passed) authorizes up to eight hours of administrative leave for State employees who volunteer to serve as an election judge during hours that the employee is otherwise scheduled to work. It also states that those employees will receive the compensation awarded to election judges.

Minors at Polling Places

Current law prohibits children over the age of ten from accompanying a voter inside the voting booth. Following the 2002 election, a number of legislators heard from constituents who brought their older children with them on election day to observe the election process first-hand but were denied access. Accordingly, several bills were introduced that would have loosened restrictions on minors accompanying voters while inside of the voting booth. *House Bill 14* and *House Bill 36 (both failed)* would have allowed children under the age of 13 and 15 respectively, to accompany an individual in the voting booth, while *Senate Bill 23/House Bill 77 (both failed)* would have allowed any minor child to accompany a voter in the voting booth as long as the child was not disruptive.

Baltimore City Election Dates

The schedule of Baltimore City's municipal elections was the subject of considerable attention during the 2003 session. Until the Baltimore City Charter was changed, both State law and the charter required the city's municipal elections to take place in the year between the presidential and statewide elections. In the November 1999 election, the voters of Baltimore City amended their city charter, by referendum, to provide for the election of city officials during the presidential election year rather than the year following the gubernatorial election. Subsequently, the Attorney General advised that the charter amendment was effective only for the change in the date of the general election since the date of the primary election is controlled by State law. Thus, the date of the municipal primary remains in September of the year between

the presidential and statewide elections, while the date of the general election is 14 months later, during the presidential general election in November.

Senate Bill 292/House Bill 323 (both failed) would have changed the dates of the city's municipal primary and general elections to coincide with the early March presidential primary and general election in November, beginning in 2004. There was considerable discussion between both houses regarding a proposal to align the date of the city's municipal elections with the date of the gubernatorial elections, beginning with the 2006 statewide elections. To phase in the change, it was proposed that the next municipal primary be moved to September 2004, which would have closed the 14-month gap but would have given city officials elected in 2004 a two-year term. Since the two houses could not reach agreement on a new schedule for the city's municipal elections, the municipal primary election will be held in September 2003, and the municipal general election will be held in November 2004.

Presidential Elections

Senate Bill 244 (passed) reconciles several conflicting deadlines within the presidential primary election process. The bill establishes and modifies deadlines for (1) the naming of presidential and vice-presidential nominees by a national party convention; (2) the filing of Democratic presidential primary candidates and convention delegates; and (3) the certification of certain presidential candidates, electoral college electors, and the content and arrangement of the presidential primary ballot by SBE. The bill also establishes a procedure to verify a presidential nominee if more than one nominee is submitted.

Senate Bill 747 (failed) would have altered the date of the presidential primary election from the first Tuesday in March to the second Tuesday in February.

Campaign Finance

Public Financing of Campaigns

Chapter 169 of 2002 created a 15-member commission to study public funding of State legislative and statewide candidates for office. The commission is required to collect information regarding current practice in Maryland and in other jurisdictions and determine the feasibility of implementing a public financing system for State legislative candidates. The commission was originally required to report its findings to the Governor and the General Assembly by December 31, 2002. *Senate Bill 40/House Bill 29 (both passed)* extend the sunset date for the commission to June 30, 2004, in accordance with the commission's request for additional time to explore the universe of policy initiatives related to public financing of campaigns and their implications on the State's campaign finance system. The commission must report its findings and recommendations by December 31, 2003.

Other Campaign Finance Measures

Numerous bills were considered relating to campaign finance, including proposals to change limits on contributions and the rules governing slates and to impose restrictions on contributions by individuals involved in gaming activity. None of these bills passed, however.

Legislative Districting Plan of 2002

The Maryland Constitution requires the Governor to present a legislative districting plan to the General Assembly by the first day of session in the second year following the decennial census. If the General Assembly does not pass an alternative plan before the forty-fifth day of session, the Governor’s plan becomes law. Legislative districts can be subdivided for the purpose of electing one or two delegates from a subdistrict, and each legislative district is required to be contiguous, compact, and of “substantially equal” population. Additionally, the State constitution requires that “due regard” be given to natural boundaries and the boundaries of political subdivisions.

On June 11, 2002, the Maryland Court of Appeals invalidated the State legislative districting plan, which had been submitted to the General Assembly by Governor Parris Glendening. The court commissioned a new plan that went into effect on June 21, 2002. For a more detailed discussion of the court’s decision, see the subpart “General Assembly” within this Part C.

Based on the 2000 census, the ideal population of a senatorial district is 112,691. The ideal population for a two-member delegate district is 75,127 and 37,564 for a single-member district. The legislative districting plan of 2002 has a total plan variance of 9.96 percent, and each subdistrict deviates from the ideal population by less than 5 percent. **Exhibit C-1** lists the population and deviation for each district.

Exhibit C-1 Legislative Districting Plan of 2002

| <u>District</u> | <u>Number of Members</u> | <u>Population</u> | <u>Deviation</u> | <u>% Deviation</u> |
|--------------------------|--------------------------|-------------------|------------------|--------------------|
| 01A | 1 | 39,376 | 1,812 | 4.82 |
| 01B | 1 | 39,162 | 1,598 | 4.25 |
| 01C | 1 | 39,257 | 1,693 | 4.51 |
| Total District 1: | 3 | 117,795 | 5,103 | 13.58 |
| 02A | 1 | 39,033 | 1,469 | 3.91 |
| 02B | 1 | 38,628 | 1,064 | 2.83 |

| <u>District</u> | <u>Number of Members</u> | <u>Population</u> | <u>Deviation</u> | <u>% Deviation</u> |
|---------------------------|------------------------------|-------------------|------------------|--------------------|
| 02C | 1 | 39,432 | 1,868 | 4.97 |
| Total District 2: | 3 | 117,093 | 4,401 | 11.72 |
| 03A | 2 | 78,772 | 1,822 | 4.85 |
| 03B | 1 | 39,124 | 1,560 | 4.15 |
| Total District 3: | 3 | 117,896 | 3,382 | 9.00 |
| 04A | 2 | 73,485 | -822 | -2.19 |
| 04B | 1 | 38,898 | 1,334 | 3.55 |
| Total District 4: | 3 | 112,383 | 513 | 1.36 |
| 05A | 2 | 78,399 | 1,636 | 4.35 |
| 05B | 1 | 38,585 | 1,021 | 2.72 |
| Total District 5: | 3 | 116,984 | 2,657 | 7.07 |
| 06 | 3 | 109,181 | -1,170 | -3.12 |
| Total District 6: | 3 | 109,181 | -1,170 | -3.12 |
| 07 | 3 | 110,525 | -722 | -1.92 |
| Total District 7: | 3 | 110,525 | -722 | -1.92 |
| 08 | 3 | 118,220 | 1,843 | 4.91 |
| Total District 8: | 3 | 118,220 | 1,843 | 4.91 |
| 09A | 2 | 78,104 | 1,488 | 3.96 |
| 09B | 1 | 39,307 | 1,743 | 4.64 |
| Total District 9: | 3 | 117,411 | 3,231 | 8.60 |
| 10 | 3 | 118,179 | 1,829 | 4.87 |
| Total District 10: | 3 | 118,179 | 1,829 | 4.87 |
| 11 | 3 | 115,475 | 928 | 2.47 |
| Total District 11: | 3 | 115,475 | 928 | 2.47 |

| <u>District</u> | <u>Number of Members</u> | <u>Population</u> | <u>Deviation</u> | <u>% Deviation</u> |
|---------------------------|------------------------------|-------------------|------------------|--------------------|
| 12A | 2 | 78,692 | 1,782 | 4.74 |
| 12B | 1 | 38,856 | 1,292 | 3.44 |
| Total District 12: | 3 | 117,548 | 3,074 | 8.18 |
| 13 | 3 | 115,525 | 944 | 2.51 |
| Total District 13: | 3 | 115,525 | 944 | 2.51 |
| 14 | 3 | 110,391 | -767 | -2.04 |
| Total District 14: | 3 | 110,391 | -767 | -2.04 |
| 15 | 3 | 107,277 | -1,805 | -4.81 |
| Total District 15: | 3 | 107,277 | -1,805 | -4.81 |
| 16 | 3 | 107,658 | -1,678 | -4.47 |
| Total District 16: | 3 | 107,658 | -1,678 | -4.47 |
| 17 | 3 | 110,712 | -660 | -1.76 |
| Total District 17: | 3 | 110,712 | -660 | -1.76 |
| 18 | 3 | 110,561 | -710 | -1.89 |
| Total District 18: | 3 | 110,561 | -710 | -1.89 |
| 19 | 3 | 109,503 | -1,063 | -2.83 |
| Total District 19: | 3 | 109,503 | -1,063 | -2.83 |
| 20 | 3 | 107,094 | -1,866 | -4.97 |
| Total District 20: | 3 | 107,094 | -1,866 | -4.97 |
| 21 | 3 | 110,255 | -812 | -2.16 |
| Total District 21: | 3 | 110,255 | -812 | -2.16 |

| <u>District</u> | <u>Number of Members</u> | <u>Population</u> | <u>Deviation</u> | <u>% Deviation</u> |
|---------------------------|------------------------------|-------------------|------------------|--------------------|
| 22 | 3 | 109,365 | -1,109 | -2.95 |
| Total District 22: | 3 | 109,365 | -1,109 | -2.95 |
| 23A | 2 | 71,462 | -1,833 | -4.88 |
| 23B | 1 | 37,234 | -330 | -0.88 |
| Total District 23: | 3 | 108,696 | -2,163 | -5.76 |
| 24 | 3 | 108,210 | -1,494 | -3.98 |
| Total District 24: | 3 | 108,210 | -1,494 | -3.98 |
| 25 | 3 | 107,781 | -1,637 | -4.36 |
| Total District 25: | 3 | 107,781 | -1,637 | -4.36 |
| 26 | 3 | 108,420 | -1,424 | -3.79 |
| Total District 26: | 3 | 108,420 | -1,424 | -3.79 |
| 27A | 2 | 75,523 | 198 | 0.53 |
| 27B | 1 | 35,972 | -1,592 | -4.24 |
| Total District 27: | 3 | 111,495 | -1,395 | -3.71 |
| 28 | 3 | 118,029 | 1,779 | 4.74 |
| Total District 28: | 3 | 118,029 | 1,779 | 4.74 |
| 29A | 1 | 39,375 | 1,811 | 4.82 |
| 29B | 1 | 39,136 | 1,572 | 4.18 |
| 29C | 1 | 38,478 | 914 | 2.43 |
| Total District 29: | 3 | 116,989 | 4,297 | 11.44 |
| 30 | 3 | 117,102 | 1,470 | 3.91 |
| Total District 30: | 3 | 117,102 | 1,470 | 3.91 |
| 31 | 3 | 115,256 | 855 | 2.28 |
| Total District 31: | 3 | 115,256 | 855 | 2.28 |

| <u>District</u> | <u>Number of Members</u> | <u>Population</u> | <u>Deviation</u> | <u>% Deviation</u> |
|---------------------------|------------------------------|-------------------|------------------|--------------------|
| 32 | 3 | 118,319 | 1,876 | 4.99 |
| Total District 32: | 3 | 118,319 | 1,876 | 4.99 |
| 33A | 2 | 76,116 | 494 | 1.32 |
| 33B | 1 | 38,636 | 1,072 | 2.85 |
| Total District 33: | 3 | 114,752 | 1,566 | 4.17 |
| 34A | 2 | 77,979 | 1,426 | 3.79 |
| 34B | 1 | 39,430 | 1,866 | 4.97 |
| Total District 34: | 3 | 117,409 | 3,292 | 8.76 |
| 35A | 2 | 76,400 | 636 | 1.69 |
| 35B | 1 | 38,898 | 1,334 | 3.55 |
| Total District 35: | 3 | 115,298 | 1,970 | 5.24 |
| 36 | 3 | 118,176 | 1,828 | 4.87 |
| Total District 36: | 3 | 118,176 | 1,828 | 4.87 |
| 37A | 1 | 39,375 | 1,811 | 4.82 |
| 37B | 2 | 78,818 | 1,845 | 4.91 |
| Total District 37: | 3 | 118,193 | 3,656 | 9.73 |
| 38A | 1 | 39,258 | 1,694 | 4.51 |
| 38B | 2 | 78,867 | 1,870 | 4.98 |
| Total District 38: | 3 | 118,125 | 3,564 | 9.49 |
| 39 | 3 | 110,145 | -849 | -2.26 |
| Total District 39: | 3 | 110,145 | -849 | -2.26 |
| 40 | 3 | 110,971 | -574 | -1.53 |
| Total District 40: | 3 | 110,971 | -574 | -1.53 |

| <u>District</u> | <u>Number of Members</u> | <u>Population</u> | <u>Deviation</u> | <u>% Deviation</u> |
|---------------------------|--------------------------|-------------------|------------------|--------------------|
| 41 | 3 | 108,521 | -1,390 | -3.70 |
| Total District 41: | 3 | 108,521 | -1,390 | -3.70 |
| 42 | 3 | 108,084 | -1,536 | -4.09 |
| Total District 42: | 3 | 108,084 | -1,536 | -4.09 |
| 43 | 3 | 107,094 | -1,866 | -4.97 |
| Total District 43: | 3 | 107,094 | -1,866 | -4.97 |
| 44 | 3 | 107,487 | -1,735 | -4.62 |
| Total District 44: | 3 | 107,487 | -1,735 | -4.62 |
| 45 | 3 | 108,452 | -1,413 | -3.76 |
| Total District 45: | 3 | 108,452 | -1,413 | -3.76 |
| 46 | 3 | 108,629 | -1,354 | -3.61 |
| Total District 46: | 3 | 108,629 | -1,354 | -3.61 |
| 47 | 3 | 107,822 | -1,623 | -4.32 |
| Total District 47: | 3 | 107,822 | -1,623 | -4.32 |
| Total Population: | | 5,296,486 | | |

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

Redistricting Reform

In addition to the modified legislative districting plan promulgated by the Court of Appeals, two bills were introduced that were aimed at modifying the redistricting process. *House Bill 180 (failed)* would have created a 13-member study commission on the redistricting process to examine the law relating to redistricting and to suggest any necessary constitutional or statutory changes needed. *Senate Bill 169 (failed)* would have proposed a constitutional amendment requiring single-member legislative districts for State representatives with no more than a 2 percent population deviation with respect to each. In addition, the bill would have

required that the “highest regard” be given to natural boundaries and the boundaries of political subdivisions and the crossing of political subdivisions boundaries would have been “disfavored.”

Ethics

Lobbyist Registration Fund

In order to enhance its administrative capabilities, the State Ethics Commission requested the introduction of *House Bill 191 (passed)* to raise the lobbyist registration fee from \$20 per client to \$50 per client. As provided under current law, the fees are deposited in the Lobbyist Registration Fund, which is used to defray the cost of the commission’s lobbyist regulation functions. The bill alters the operation of the fund by requiring that any balance remaining at the end of a fiscal year must revert to the general fund of the State.

Offices of Sheriff and State’s Attorney

The elected positions of sheriff and State’s Attorney have always been considered “State officials” under the Maryland Public Ethics law and, therefore, subject to the State-level provisions of the law, rather than the local ethics enactments of the respective counties. The State provisions include a variety of restrictions designed to prevent conflicts of interest and other unethical behavior, and also require the annual filing of a detailed financial disclosure statement with the State Ethics Commission. For many years, however, the deputy sheriffs, deputy and assistant State’s Attorneys, and other employees in the offices of a county’s sheriff and State’s Attorney were considered to be subject to county ethics laws. In accordance with a 1999 Attorney General’s Opinion, it was determined that the State law (rather than county law) should cover everyone employed in those offices.

Some employees of the offices who are now required to file annual financial disclosure statements were concerned that the personal information required to be disclosed made them more vulnerable to retaliation by law-breakers with whom they dealt in the criminal justice system. *House Bill 1074 (passed)* codifies the 1999 opinion but exempts the deputy sheriffs, deputy and assistant State’s Attorneys, and all other employees of the offices from the requirement to file the annual disclosure statement. All of the officials and employees will continue to be subject to the conflict of interest provisions of the ethics law.

Frederick County Zoning and Planning

Under current law, Howard, Montgomery, and Prince George’s counties have special ethics law and election law provisions that apply to officials engaged in the planning and zoning process, and to business entities that become involved in the process. *House Bill 633 (passed)* creates similar provisions for Frederick County.

House Bill 633 (1) prohibits applicants from changing land use regulations by making political campaign contributions to a member of the Board of County Commissioners for Frederick County during the pendency of an application; (2) requires the recusal of a member

from voting on specified actions before the county commissioners if the member received a prohibited campaign contribution during the pendency of the application; and (3) requires disclosure of *ex parte* communications between commissioners and applicants during the pendency of an application.

The county manager is responsible for implementing the bill, subject to the direction and control of the State Ethics Commission. A court may reverse and remand a land use case if there is a violation of the provisions, and a violator is subject to imprisonment up to six months and a fine up to \$1,000 or both.

House Bill 633 has a delayed effective date of June 1, 2004.

Procurement

Exemptions

General Exemptions

When the State procurement law was first enacted in 1980, generally it applied to “every expenditure by a State agency for supplies, services, and construction under any contract or similar business agreement.” Contracts between a State agency and another State agency or a local government were exempt, as were procurements by bistate or multistate governmental agencies, bicounty or multicounty agencies, and procurements by local governments. Since 1980, many State entities have been exempted from the procurement law. For some agencies it is an exemption limited to specified purposes or types of contracts. For others it is a total exemption. Generally agencies that are exempt are required to make their procurements in such a way as to promote the stated purposes of the procurement law and must comply with provisions regarding fraud, nondiscrimination, and required disclosures to the Secretary of State.

House Bill 182 (passed) exempts from the provisions of State procurement law governing source selection for procurements, preferences (including minority, disadvantaged individuals, and small business preferences), contract administration, and dispute resolution procurements by the Maryland Energy Administration that relate to federal requirements for energy conservation, energy efficiency, or renewable energy projects. However, the procurements for these goods and services must comply with other provisions, such as the supervision of capital expenditures and real property leases, collusion and fraud enforcement, suspension and debarment of contractors, and special provisions for State and local subdivisions.

Likewise, *House Bill 1075 (passed)* exempts procurements by the Developmental Disabilities Administration for family and individual support services and individual family care services from most provisions of State procurement laws and regulations. These contracts are subject to the goals of the Minority Business Enterprise (MBE) program. Also, these procurements must comply with several other requirements of the procurement law, including the supervision of capital expenditures and real property leases, suspension and debarment of contractors, and special provisions for State and local subdivisions.

Exemption from Information Technology Master Plan

Chapter 467 of 2002 requires an agency or unit of the Executive Branch, other than a public institution of higher education, to obtain approval from the Chief of Information Technology before making expenditures for a “major information technology development project.” Changes relating to or the purchase, lease, or rental of information technology by (1) public institutions of higher education solely for academic or research purposes; (2) the Maryland Port Administration; or (3) the University System of Maryland are exempt from the Statewide Information Technology Master Plan.

House Bill 1043 (passed) includes St. Mary’s College of Maryland among the State agencies that are exempt from the requirements of the Statewide Information Technology Master Plan and other provisions of Chapter 467 of 2002.

Task Force to Study Efficiency in Procurement

Senate Bill 492 (passed) establishes a 21-member task force to study methods of increasing efficiency in procurement, including (1) the use of market-based procurement practices; (2) outsourcing and privatization; (3) the use of contracts where compensation is based on successful performance; (4) the accountability of State officials who violate procurement law; (5) rewards and incentives to State officials in order to encourage better procurement results; (6) greater centralization of the procurement system; (7) the effectiveness of the dispute resolution process; (8) the feasibility of uniform application of the procurement law to all State agencies, except for public institutions of higher education; and (9) policy and practices concerning the procurement of technology and technology-related services. The task force is required to submit a report of its findings and recommendations to the Governor and the General Assembly by December 31, 2003. The bill will terminate on December 31, 2003.

Minority Business Enterprises

The MBE program in Maryland began in 1978. In 1989 the U.S. Supreme Court held in the *City of Richmond v. J. A. Croson Co.* that state or local MBE programs using race-based classifications are subject to strict scrutiny under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. Since the *Croson* decision, the State has commissioned three minority business utilization studies to continue to provide support for Maryland’s MBE program.

Based on the study completed in January 2001, Chapter 339 of 2001 established the current overall goal of 25 percent for the total value of contracts being awarded to certified minority business enterprises and separate goals of 7 percent for African American businesses and 10 percent for women-owned businesses.

The 2001 enactment also revised the definition of minority business enterprise to require that the daily business operations be managed by one or more socially and economically disadvantaged individuals who are also owners. The legislation defined socially and

economically disadvantaged individuals and created a rebuttable presumption that individuals who fall within the defined criteria are socially and economically disadvantaged, subject to an exclusion for individuals with a personal net worth that exceeds \$750,000.

Units are required to obtain waivers from the Governor's Office of Minority Affairs only if a successful bidder or offeror is unable to meet the MBE goal in an individual solicitation. State law requires that procurement units try to achieve the annual MBE goals, but there are no penalties for units failing to meet annual goals.

Each procurement unit must (1) implement a program enabling the unit to evaluate each contract to determine the appropriateness of the goal; and (2) meet the maximum feasible portion of the goals by using race neutral measures to facilitate MBE participation in the procurement process.

Senate Bill 715 (passed) requires most of the agencies that are exempt from the State procurement law to comply with the State's MBE requirements. The bill also requires the Board of Public Works to keep a record of the number of MBE waivers requested and granted each year and submit a copy of the record to the General Assembly each year.

If during the performance of a contract, a certified MBE contractor or subcontractor becomes ineligible to participate in the MBE program because the personal net worth of an owner of the MBE exceeds the program amount, **House Bill 1109 (passed)** establishes that that ineligibility alone is not a sufficient cause to terminate the contractual relationship for the remainder of the contract term. In addition, the participation of that certified MBE contractor shall continue to be counted toward MBE program and contract goals.

The bill also requires the Maryland Department of Transportation, as the State's MBE certification agency, to conduct a study to determine whether (1) it continues to be appropriate, under current economic conditions, to prohibit a finding that an individual whose personal net worth exceeds \$750,000 is economically disadvantaged; and (2) it is appropriate to establish a transition period of a specific duration between the date on which an individual's personal net worth exceeds \$750,000 and the date on which decertification occurs under the MBE law.

Price Preferences

The State currently offers a 5 percent price-preference for the purchase of products made with recycled materials. Recycled materials are defined as material recovered from or otherwise destined for the waste stream. They include post-consumer material, industrial scrap material, compost, and obsolete inventories. The Department of General Services publishes a list of acceptable products that contain recycled materials twice a year for use by State agencies. **Senate Bill 473/House Bill 325 (both passed)** include processed and pasteurized chicken litter in the definition of recycled materials that receive a price preference in the procurement of goods by the State.

Construction Contracts – Public Bodies

Chapter 621 of 2000 capped the amount of retainage that the State may require in a construction contract at 5 percent, provided that 100 percent security has been provided under the Maryland Little Miller Act. The State can withhold additional money if the agency reasonably believes the withholding is necessary to protect the State's interest. Additionally, the percentage of payments due to a subcontractor that a contractor or another subcontractor may withhold can be limited based on the percentage withheld by the State or by a higher tier contractor. Additional payments can be withheld if a lower tier subcontractor's performance on the job provides reasonable grounds to justify additional withholdings.

In the 2003 session, the General Assembly passed legislation that applies similar requirements to all public bodies, including counties, municipal corporations, and other political subdivisions. *Senate Bill 591/House Bill 371 (both passed)* establish conditions under which public bodies may withhold retainage for construction contracts. If a contractor has furnished 100 percent payment security and 100 percent performance security under a contract for construction awarded by a public body, the percentage of retainage specified in the contract may not exceed 10 percent of the total amount for the first 50 percent of the contract. After 50 percent of the contract is completed, a public body may retain only 5 percent of the total amount unless the public body demonstrates the need to retain more than 5 percent to protect the public interest. However, a public body may withhold any amount in addition to retainage that the public body feels is reasonably necessary to protect the public body's interest. The bills require a public body to return retainage to a contractor within 120 days after either the satisfactory completion of the contract or the resolution of any dispute relating to the satisfactory completion of the contract. Contractors are not permitted to withhold from subcontractors or lower-tier subcontractors more than the amount withheld by the public body unless the contractor determines that a subcontractor or lower-tier subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

Debarment

Under current law, a person may be debarred from entering into a contract with the State on several grounds, including conviction for a variety of specified offenses; an admission in writing or under oath of an act that constitutes grounds for conviction of certain offenses; being a successor, assignee, subsidiary, or affiliate of a debarred person; or operating in a manner designed to evade or defeat the purpose of the State Finance and Procurement Article. A person may also be debarred from entering into a contract with the State for any cause that the Board of Public Works determines to be so serious as to affect the integrity of the procurement process. Under *Senate Bill 122 (passed)* a person may be debarred from entering into a contract with the State if the person has been criminally convicted for a violation of federal or State labor laws, civil rights laws, or environmental protection laws within the preceding five years. The bill also provides that a person may be debarred from entering into a contract with the State if, within the preceding five years, the person has committed multiple violations of a federal, Maryland, or a contiguous jurisdiction's labor law, civil rights law, or environmental protection law, and as a

result of the violations, the person has been subject to multiple separate and distinct findings of civil liability in Maryland or a contiguous jurisdiction.

Regulations and Procedures

Administrative Procedure Act

The referral of contested cases between regulatory agencies and the public to administrative law judges is intended as a means of saving time and resources in resolving administrative disputes, compared with bringing those disputes to the courts. Some disputes are resolved by the administrative law judge. In other cases, the administrative law judge makes a recommendation to a final decision maker, usually an administrator or a commission. In order to ensure that contested cases are resolved in an expeditious manner, *Senate Bill 522 (passed)* requires the final decision maker to make a final decision within 90 days after exceptions are filed or arguments are presented, whichever is later, unless otherwise provided by law or agreed to by the parties.

Public Records

Senate Bill 284 (passed) requires the Motor Vehicle Administration to disclose personal information regarding the ownership of a vehicle parked on hospital property to the hospital for security purposes. Hospital security personnel anticipate using this information to identify ownership of vehicles inappropriately parked in patient or handicapped parking areas.

Personnel

Budget Actions on State Personnel

Employee Compensation

Personnel expenditures, which are estimated to cost \$5.4 billion in fiscal 2004, constitute a major component of the Fiscal 2004 Budget. Regular employee expenditures increase \$21.1 million, or 0.4 percent, while contractual employee expenditures increase \$19.5 million, or 4.9 percent, over the fiscal 2003 working appropriation. *House Bill 935 (passed)*, the Budget Reconciliation and Financing Act, prohibits and the Fiscal 2004 Budget does not include, any increases resulting from employee bonuses, merit or increment increases, or general salary increases. Increases are largely due to rises in health, dental, and prescription insurance costs.

The Fiscal 2004 Budget and *House Bill 935* made three other noteworthy changes to employee compensation. First, the State's match of up to \$600 to deferred compensation plans was not funded for fiscal 2004. Second, funding for the fiscal 2003 employee transit benefit, which provides free ridership to State employees on mass transit in the Baltimore area, is in effect transferred from individual agencies to the Maryland Department of Transportation. Third, the Fiscal 2004 Budget establishes an employee buyout pilot program in the State. The Department of Budget and Management may establish a buyout program in which each

participating agency is required to identify positions that are not critical to agency functions. Employees in these positions would then be eligible for a “buyout” – one month of salary for each year of service, to a maximum of six months of salary.

Position Cap

The Fiscal 2004 Budget sets a position cap for the Executive Branch at 74,100 full-time equivalent (FTE) regular positions. The Administration must reduce positions sufficient to meet this ceiling by December 1, 2003. Position reductions under this provision need not affect filled positions, as over 5,000 State positions were vacant in January 2003.

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

Military Administrative Leave

Chapter 285 of 2002 authorized State employees ordered into military service on or after September 11, 2001, who had exhausted all paid leave and were on leave without pay, to receive leave from the State Employees’ Leave Bank. However, due to the unanticipated cost of implementing Chapter 285, the General Assembly terminated Chapter 285 in *House Bill 935*, the Budget Reconciliation and Financing Act.

To continue some level of financial assistance for State employees called to active duty, *Senate Bill 505/House Bill 816 (both passed)* establish a new form of paid leave, military administrative leave. Under the bills, military administrative leave may be provided to an employee of any branch of State government, except a temporary employee, who is on active duty on July 1, 2003. An employee using military administrative leave may receive compensation sufficient to make up the difference between the employee’s active duty base salary paid by the federal government and the employee’s State base salary or direct wages. The bills require an employee activated on or after July 1, 2003, to elect whether to use military administrative leave or the 15 days of paid military leave provided under current law.

Salary Supplements

Employees of the Maryland Department of Agriculture (MDA), the federal government, and a soil conservation district may all perform similar duties for a soil conservation district, yet may receive very different salaries. To address this disparity, some counties have supplemented the salaries of MDA employees assigned to work in soil conservation districts. *House Bill 786 (passed)* authorizes this practice by allowing a soil conservation district or a county in which a soil conservation district is located to supplement the salary of an MDA employee who is assigned to work for the soil conservation district by providing a grant to the employee.

Department of Juvenile Justice Teachers

Most certificated teachers in Maryland are covered by collective bargaining agreements that provide certain employee protections. Certificated teachers employed by the Department of Juvenile Justice (DJJ), however, are at-will employees who are subject to termination without cause and have limited appeal rights. *House Bill 909 (passed)* provides some parity for certificated teachers employed by DJJ by removing them from the management service or special appointment classification in the State Personnel Management System. This reclassification will provide DJJ certificated teachers with additional employment protections, including layoff rights and the right to appeal management decisions to the Office of Administrative Hearings.

Pensions and Retirement

Board Restructuring

History

Over the past several years, the Board of Trustees of the State Retirement and Pension System (SRPS) and the State Retirement Agency have been the subject of numerous controversies. In the fall of 2002, the Joint Committee on Pensions held a hearing to address the Pension Board's involvement with Nathan Chapman and his investment firm, eChapman.com. Chapman, an investment manager hired by the board in 1996 as a "fund of funds" manager, hired Alan Bond as a submanager to invest State pension assets on behalf of the SRPS in January 1997. Bond was indicted in December 1999 for participating in an alleged kickback scheme and indicted for a second time in April 2001 for "cherry-picking." It was not until after Bond's second indictment that Chapman fired him as one of Chapman's submanagers. In January 2002, the board fired Chapman as a "fund of funds" manager after they were notified that the Securities and Exchange Commission was investigating Chapman as a result of Bond's investment of SRPS assets in Chapman-controlled companies.

In addition to the controversy with Chapman, the SRPS lost \$3 billion in fiscal 2002 for the second consecutive fiscal year. While virtually all financial market investors experienced losses during this period, the losses of the SRPS continue to be worse than those of other large pension plans. The system's one-year performance ranked in the bottom quartile (77th percentile) compared to other public pension plans with more than \$1 billion in assets and near the bottom for its ten-year performance.

Finally, the board is currently facing a \$27 million loss as the result of the failure of a major information technology project that was to be used as a new benefit processing and administration computer system for the State Retirement Agency.

Joint Committee Response

In response to these concerns regarding the governance and management of the \$26.5 billion trust, the joint committee introduced *Senate Bill 721 (passed)* during the 2003 session.

As adopted, *Senate Bill 721* makes several changes to the composition and governance of the board. These changes include:

- removing the Secretary of State Police as a trustee starting on July 1, 2003, and the State Superintendent of Schools as a trustee starting on July 1, 2004, and filling these vacancies with two members of the public appointed by the Governor to serve as investment experts;
- removing one of the two State Police trustees and filling this vacancy with a member of the public appointed by the Governor to serve as an investment expert;
- adding experience requirements for the investment expert trustees and for expert members of the board's investment committee;
- requiring appointed or elected trustees to attend at least 80 percent of the board's monthly meetings, not including excused absences, or face removal from the board;
- providing that the board is not responsible for considering benefit enhancements or reviewing the benefit structures for any of the several systems, except for the purpose of making technical corrections;
- requiring all trustees to receive at least eight hours of investment and fiduciary training each year;
- requiring the Department of Budget and Management to conduct, or hire an outside independent third party to conduct, a peer benefits study every four years;
- requiring that with regard to the two trustees representing the Employees' Retirement System (ERS) and the Employees' Pension System (EPS), one must be an active member of either the ERS or EPS, while the second trustee must be a retiree of either the ERS or the EPS; and
- requiring that with regard to the two trustees representing the Teachers' Retirement System (TRS) and the Teachers' Pension System (TPS), one must be an active member of either the TRS or TPS, while the second trustee must be a retiree of either the TRS or the TPS.

Extension of Task Force to Study the State's Health Insurance Liabilities

The joint committee also introduced *Senate Bill 300 (passed)* which extends the reporting date of the six-member Task Force to Study the State's Retiree Health Insurance Liabilities from January 2003 to January 2004. The task force is required to (1) review the approaches to retiree health care of other states; (2) commission an actuarial valuation of the liabilities associated with the retiree health system; and (3) develop options and recommendations to address the issue of retiree health care for the 2004 session.

Additional Joint Committee Legislation

In addition to *Senate Bill 721* and *Senate Bill 300*, the joint committee introduced three bills in the 2003 session at the request of the pension board, and each was passed.

Senate Bill 92/House Bill 234 (both passed) exempt retired members of the Local Fire and Police System from a reemployment earnings limitation unless they are reemployed by the same participating employer that employed them when they retired. *Senate Bill 299 (passed)* gives former members of the employees' or teachers' retirement or pension systems who have terminated State employment and whose monthly allowance is less than \$50 the option to receive a one-time lump sum payment equal to the present value of the individual's vested allowance, rather than the monthly allowance. *Senate Bill 332 (Ch. 23)* alters the terms for the transfer of service credit, as it affects employee contributions, between the Law Enforcement Officers' Pension System and other public pension plans in Maryland. These provisions mirror the transfer provisions for the teachers' and employees' pension plans.

Military Service Credit

Senate Bill 245 (passed) allows members of a State retirement or pension system to receive military service credit for service with the Maryland National Guard when they are called to active duty on the same basis that they would receive such credit for inactive duty under current law.

Involuntarily Transferred Public Employees

As of July 1, 1991, employees of the Baltimore City Jail (now the Division of Pretrial Detention and Services) became State employees and were enrolled in either EPS or the Correctional Officers' Retirement System (CORS). No previous service credit under the Baltimore City Employees' Retirement System was transferred to these State systems on behalf of these individuals. To address this issue, *House Bill 557 (passed)* allows those individuals who were employed by the Baltimore City Jail for at least five years prior to the State takeover and who have at least ten years of eligibility service in CORS to retire without an early retirement penalty on or after July 1, 2006. These 71 individuals will receive a retirement allowance equal to their normal service retirement for the period of years they have worked for the State.

Senate Bill 78/House Bill 812 (both passed) apply to 51 members of the ERS or the EPS who (1) were employees of the State prior to November 1, 1996; (2) as of November 1, 1996, were employed by a private vendor to provide child support enforcement services in Baltimore City; and (3) resumed employment with the State as of November 1, 2002. *Senate Bill 78/House Bill 812* allow these individuals to receive service credit for the time they were employed by the private vendor through October 31, 2002, subject to an actuarial reduction if member contributions are not repaid.

Participating Governmental Units

Three bills addressed retirement benefits for members of participating governmental units. *House Bill 941 (Ch. 51)* authorizes Carroll County, with the approval of Carroll County's Board of County Commissioners, to establish and maintain a general system of pensions and retirement and group insurance for its employees. *House Bill 270 (Ch. 39)* provides additional pension service credit for service prior to Oakland's participation in the EPS to employees of the Town of Oakland who were employed by the town on June 30, 2000, and who remain employed on June 30, 2003. Finally, *Senate Bill 357 (Ch. 25)* allows a retiree of the ERS who was employed by, and retired from, the Washington County Board of Elections and then later became reemployed by the Board of License Commissioners of Washington County to continue to receive the member's ERS benefit while also accruing a benefit in the EPS as an employee of the Board of License Commissioners.

Optional Retirement Program and State Retiree Health Benefits

Senate Bill 331/House Bill 262 (both passed) clarify that higher education supplemental retirement plan assets may be invested in the same manner as the existing supplemental plans and that a public employee of the institution where the new supplemental plan is offered may be indemnified to the same extent as employees of the existing supplemental plans. Another clarifying bill with regard to the Optional Retirement Program is *Senate Bill 189 (passed)*. This bill defines "year of service" for purposes of determining eligibility in the State Employee and Retiree Welfare Benefits Plan for retirees and surviving spouses and dependent children of retirees of the Optional Retirement Program. *Senate Bill 100 (passed)* codifies the Mass Transit Administration's existing practice of allowing former Mass Transit Administration employees who receive a Maryland Transit Administration retirement allowance to participate in the State Employee and Retiree Welfare Benefits Plan.

General Assembly

Annotated Code of Maryland

Legal Recognition of West's Annotated Code

Current law provides that the version of the Annotated Code of Maryland published by the Michie Company (owned by Lexis Law Publishing) "shall be considered as evidence of the

law in all courts of the State and by all public offices and officers of the State and its political subdivisions.” *Senate Bill 180/House Bill 287 (both passed)* give the same recognition to West’s Annotated Code published by the West Company of Egan, Minnesota, as well as to the database of Maryland’s public general laws compiled by the General Assembly’s Department of Legislative Services (DLS). Additionally, the bills codify the long-standing process by which DLS maintains the authoritative database of the State’s statutory law.

Statutory Revision

The nonsubstantive bulk revision of the Annotated Code of Maryland is an ongoing process undertaken on behalf of the General Assembly by DLS. During the 2003 session, the General Assembly enacted *Senate Bill 1 (Ch. 5)* to create a new Public Safety Article of the Annotated Code.

The Public Safety Article revises existing provisions of law relating to the Department of State Police; law enforcement and law enforcement funds; regulated firearms; the State Fire Prevention Commission and the State Fire Marshal; fire, rescue, or emergency medical services entities and fire and rescue funds; fire protection and prevention; fireworks and sparklers; explosives; building and material codes and other safety codes; the militia; and emergency management.

Cross-references elsewhere in the Code to provisions now codified in the Public Safety Article are updated in *Senate Bill 192 (Ch. 17)*.

Future proposed articles to complete the revision of the entire Annotated Code are under development by DLS and are scheduled for introduction and consideration by the General Assembly over the course of the next several years.

Annual Corrective and Curative Bills

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

These corrective measures are called the Annual Corrective Bill, *Senate Bill 306 (Ch. 21)*, and the Annual Curative Bill, *Senate Bill 305 (Ch. 20)*, respectively. Neither enactment contains any substantive changes.

Office of Legislative Audits

During the course of an audit conducted by the Office of Legislative Audits of DLS, alleged criminal violations by a person in the agency that is the subject of the audit may be discovered. *House Bill 485 (failed)* would have authorized the Legislative Auditor to report such violations to the Attorney General.

Legislative Committees and Task Forces

Gaming – Study Commission on Video Lottery Terminals

With the focus of the 2003 session on budget deficits and revenue sources, the issue of legislation authorizing the operation of video lottery terminals, commonly referred to as slot machines, became the dominating issue of the session. *House Bill 800 (failed)* would have created a 16-member study commission to “review and evaluate the effectiveness of authorizing the operation of video lottery terminals in the State.” For a more complete discussion of this issue, see the subpart “Horse Racing and Gaming” under Part H of this *90 Day Report*.

Joint Technology Oversight Committee

In the 2000 session, the General Assembly created a Joint Technology Oversight Committee composed of 10 members of the General Assembly to oversee the implementation of the Maryland Uniform Computer Information Transactions Act, which established rules governing sales and license agreements for computer information products. The original enactment would have terminated the oversight committee on June 1, 2005. Because of the ongoing importance of technology to the State, *Senate Bill 335 (passed)* removes the sunset provision, so the oversight committee will continue indefinitely.

Elections – Study Commission on Public Funding of Campaigns

The Study Commission on the Public Funding of Campaigns in Maryland was created by the General Assembly in 2002. Because its members determined that further study of the issue of public financing of election campaigns was warranted, *Senate Bill 40/House Bill 29 (both passed)* extend the termination of the study commission until December 31, 2003.

Tri-County Council for Western Maryland

House Bill 317 (passed) alters the selection process for the five voting members of the General Assembly on the Tri-County Council for Western Maryland. The membership of the 27-member council will now include the chairmen of the Garrett, Allegany, and Washington county delegations of the House of Delegates and two members of the Senate who reside in the counties.

Program Evaluation (“Sunset Review”)

The Maryland Program Evaluation Act, enacted in 1978, is utilized by the General Assembly as a mechanism to monitor and evaluate approximately 70 regulatory boards, commissions, and other agencies of the Executive Branch of State government. DLS is required under this law to periodically undertake the evaluations according to a statutorily based schedule. These evaluations are more commonly known as “sunset review” because the agencies subject to review are usually also subject to termination (“sunset”) unless legislation is enacted to reauthorize them. The methodology for conducting the evaluations by DLS involves an

extensive evaluation process by DLS staff. The goals of the process have evolved to reflect the General Assembly's interest in identifying the strengths and weaknesses of the various regulatory entities that are subject to program evaluation and addressing through legislation appropriate issues relating to the structure, performance, and practices of the agencies.

One of the most closely observed bills in this area, *Senate Bill 500 (passed)*, extends the sunset date of the Board of Physician Quality Assurance, the entity that regulates Maryland physicians, from July 1, 2003, to July 1, 2007. Among the substantive provisions of the bill is a change in the board's name to the State Board of Physicians. For a more detailed discussion of this bill, see Part J – Health of this *90 Day Report*.

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

- Division of Labor and Industry and Associated Boards and Councils – *Senate Bill 303/House Bill 651 (both passed)*;
- State Board of Electrologists, which will be transferred to the State Board of Nursing and be renamed the Electrology Practice Committee – *Senate Bill 269 (passed)*;
- State Board of Certified Interior Designers – *Senate Bill 267 (passed)*;
- State Acupuncture Board – *Senate Bill 99/House Bill 34 (both passed)*; and
- State Board of Social Work Examiners – *Senate Bill 268/House Bill 310 (both passed)*.

Legislative Redistricting and Elections

On June 11, 2002, the Maryland Court of Appeals invalidated the State legislative districting plan of 2002, finding that the district configurations violated Article III, Section IV of the Maryland Constitution, which requires legislative districts to be compact, and drawn with due regard to natural boundaries and the boundaries of political subdivisions. In accordance with its decision, the court commissioned two nonpartisan experts to reconfigure a State legislative plan under its specific direction. On June 21, 2002, the court's plan became effective for purposes of electing members to the General Assembly in the 2002 statewide election. For a more detailed review of the State legislative districting process, see the subpart "Elections" within this Part C.

In the 2003 session, legislation was introduced to alter the Maryland constitutional standards for redistricting, but it was unsuccessful. *Senate Bill 472 (failed)* would have required, to the greatest extent possible, that the legislative districting plan provide for a resident delegate for each county in the State.

On occasion, the office of a member of the General Assembly will become vacant for any number of reasons during the early part of the member's term. *House Bill 994 (failed)* would have altered the Maryland Constitution to provide that, if a vacancy occurs in the Senate or

House of Delegates before the completion of 18 months of a term of office, the vacancy is to be filled for the balance of the unexpired term at a special election. Under current provisions of the Constitution, the Governor appoints an individual to fill the unexpired term of office at any time a vacancy occurs in the office of a member of the General Assembly.

Senate Confirmation of Gubernatorial Appointments

As part of the system of checks and balances established in the Constitution of Maryland with respect to the Executive and Legislative branches of the State government, the Governor has the broad authority to nominate and appoint all civil officers of the State, a number that ranges in the several hundreds, but those nominations are subject to the approval of the Senate. The Court of Appeals of Maryland has ruled over 100 years ago that, in essence, without Senate approval of a nomination, the appointment is not valid. Since it was anticipated that the newly elected Governor would appoint an entirely new group of individuals to his “cabinet,” much focus during the session centered on the confirmation process in the Senate for the 16 individuals appointed by the Governor during the first month of the session to serve as department secretaries.

The confirmation process in the Senate begins after the Governor’s office submits in writing to the Senate the names of the nominees for the positions in the Executive Branch to be filled. The nominees are then referred to the Executive Nominations Committee. The committee, which meets weekly, schedules confirmation hearings for the nominees. When considering the nominees, who are required to appear in person, the committee reviews their resumes, biographies, or applications, asks questions of the nominees as to their qualifications, interest in serving, and views and positions on issues relating to the department or office for which the individuals are being considered.

At the end of the confirmation hearing, the committee votes to recommend to the full Senate the approval or rejection of the nomination of the individuals who appeared before it. While rare, the Executive Nominations Committee, for any number of reasons, will recommend that a nomination be rejected. In other instances, also rare, the committee will take no action, either to confirm or reject, with respect to a nominee during the course of a session.

According to an advice of counsel letter that the Attorney General’s office provided during the session to the Executive Nominations Committee, which was based on a review of relevant provisions of the Maryland Constitution and decisions of the Court of Appeals of Maryland, if the Senate rejects a nominee of the Governor *who was appointed during the session*, the “nomination is dead.” The Governor is then required to nominate another individual to fill the position before final adjournment of the General Assembly.

As to *appointments made during the 2002 interim* by the previous Governor, the Attorney General’s office advised that if the individuals were not confirmed by the adjournment sine die of the 2003 session, they “could under no circumstances hold over beyond adjournment” and the “ouster of the appointee is accomplished regardless of whether the Senate expressly rejects the nominee or simply declines to act.” However, if the Senate rejects the nominee, the Governor

cannot renominate the individual to the same position; on the other hand, if the Senate fails to take action, the individual may be renominated to the position.

The Senate confirmed all but one of the Governor's nominees to cabinet secretary positions during the 2003 session. The rejection of the nominee for the Secretary of Environment was the first instance in which the Senate rejected a nominee for a departmental head since the inception of the cabinet system over 30 years ago.

The previous Governor made a number of appointments to positions during the 2002 interim, but as a "lame duck" Governor because he was completing two consecutive terms of office, he was prohibited by the Constitution from making appointments between the primary election held in September 2002 and the inauguration of the next succeeding Governor. The appointees made prior to the primary election were submitted to the Senate by the previous Governor on the first day of the 2003 session while he was still in office. However, as to three of those appointees, neither the Senate Executive Nominations Committee nor the full Senate chose to take action on them during the session; the remainder were approved by the committee and confirmed by the Senate.

New House of Delegates Office Building

As construction of the new House of Delegates office building, to be adjacent to the current Lowe House Office Building, is scheduled to get underway in the late spring of 2003, *House Simple Resolution 1* was adopted to name the building in honor of Casper R. Taylor, Jr., the former Speaker of the House of Delegates. Delegate Taylor began his career in the General Assembly in 1975, served as chairman of the House Committee on Economic Matters from 1987 to 1994, and became speaker in 1994, served through 2002. His tenure as the presiding officer of the House of Delegates makes him the longest serving speaker in modern Maryland history.