Issue Papers
2018 Legislative Session



DEPARTMENT OF LEGISLATIVE SERVICES 2017

Issue Papers

2018 Legislative Session

Presentation to the

Maryland General Assembly

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

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Department of Legislative Services
Office of Policy Analysis
Maryland General Assembly

Warren G. Deschenaux
Executive Director

November 2017

Members of the General Assembly:

Prior to each session, staff of the Department of Legislative Services, Office of Policy Analysis, prepare an information report on issues. This document is a compilation of the issue papers arranged by major topic. The information reflects the status of the items as of November 17, 2017.

Following each paper is an identification of the staff who worked on a particular topic. If you should need additional information, please do not hesitate to contact the appropriate staff person.

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

Sincerely,

Warren G. Deschenaux
Executive Director

WGD/mpd

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Economic and Revenue Outlook

Employment growth in Maryland in 2016 slowed slightly from the pace in 2015, but income growth decelerated more sharply. This pattern was seen not just in Maryland but nationally as well. Economic growth in 2017 is very similar to the pace seen in 2016. Although general fund revenues exceeded expectations in fiscal 2017, the estimate for 2018 was revised down due largely to weakness in sales tax collections.

Economic Outlook

The recession that began in December 2007 officially ended in June 2009 making the recovery phase of the business cycle eight years old. U.S. employment grew 1.7% in 2016, down from growth of 2.1% in 2015. Since bottoming out in February 2010, U.S. employment has increased by almost 17 million jobs, or 13.0%. Income growth slowed in 2016 with total personal income up 2.4% and wage income up 2.9%. In 2015, total personal income grew 5.0% and wage income was up 5.1%. Employment growth has slowed a bit in 2017 with jobs increasing by 1.5% through the first nine months of the year. Nationally, total personal income in 2017 was up 2.9% through August with wage income increasing 3.0%.

Since the recession ended, Maryland has generally underperformed relative to the nation as a whole. Employment growth in Maryland was below the U.S. growth in each year from 2011 to 2016. Maryland's recovery from the recession was derailed as the federal budget reductions of recent years along with the government shutdown in fall 2013 had a significant impact on the Maryland economy. Inflation-adjusted gross State product per capita fell in 2012 and 2013 and was up just 0.4% in 2014. Inflation-adjusted wage income per worker fell in Maryland for three years in a row (2011 to 2013) and grew 0.8% in 2014. Employment increased by less than 1.0% in both 2013 and 2014. Federal civilian employment in Maryland fell 1.0% in 2013 and 2014, and wages fell 1.3% in 2013 and 2.6% in 2014.

The Maryland economy rebounded in 2015 with total employment growth of 1.6% and private-sector jobs up 1.9%. These increases, while slower than the U.S. growth, reflect the strongest employment growth in the State since 2005 for the total and since 2000 for the private sector. Total wages in Maryland grew 4.6% in 2015 and, because inflation was extraordinarily low, the real wage per worker was up 3.0%, the biggest increase since 1998. In 2016, employment growth slowed to 1.4% in total and 1.6% for the private sector. The data available for 2017 shows employment growth accelerating sharply to an increase of 2.0% in the first eight months. Alternate measures of the labor market suggest that the monthly employment data is likely overstating growth and that the true increase is around 1.5%, similar to the growth in both 2015 and 2016.

Despite the relatively strong labor market, wage growth weakened in 2016 (3.0%), and because inflation accelerated, the real wage per worker was up just 0.3%. In the first half of 2017, Maryland wage income growth slowed slightly to 2.7%, and total personal income increased just 3.2%. Unlike in recent years, Maryland's total personal income has been growing faster than the national data over the past six quarters.

In September 2017, the Board of Revenue Estimates (BRE) issued a revised economic forecast for Maryland, its first since December 2016 (**Exhibit 1**). BRE revised the economic outlook largely in line with recent performance. Employment growth for 2017 was revised up from 1.0% to 1.3%, and the projection for personal income growth was increased just slightly in 2017, from 4.0% to 4.1%. Long-term employment growth decelerates as the working age population is projected to increase slowly and eventually decline as the baby boom cohort continues to move into retirement. The share of the Maryland population aged 65 and older increased from 11.4% in 2005 to 14.5% in 2016, and is projected to exceed 20.0% in 2030.

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

	Employment		Personal Income	
Calendar Year	**Dec. 2016**	**Sep. 2017**	**Dec. 2016**	**Sep. 2017**
2014	0.9%	0.9%	3.4%	3.3%
2015	1.5%	1.6%	4.1%	4.5%
2016	1.6%	1.4%	3.3%	3.6%
2017 Est.	1.0%	1.3%	4.0%	4.1%
2018 Est.	0.8%	0.8%	4.2%	4.3%
2019 Est.	0.5%	0.5%	4.1%	4.1%
2020 Est.	0.6%	0.6%	4.1%	4.1%

Note: The figures for 2016 under the Dec. 2016 columns are estimates.

Source: Board of Revenue Estimates

Revenue Outlook

Fiscal 2017 general fund revenues were above the estimate by $90 million, or 0.5%. General fund revenues totaled $16.6 billion in fiscal 2017, an increase of 3.1% over fiscal 2016.

The overattainment was mostly due to the personal income tax, the insurance premiums tax, and the estate tax. General fund personal income tax revenues exceeded the estimate by $76.9 million and grew 5.9% over fiscal 2016. The overattainment was largely in withholding, which grew 6.2% over fiscal 2016. Some of the strength in withholding was the result of timing issues that pushed money from fiscal 2016 into 2017. The largest source of underattainment was the sales and use tax. General fund sales tax revenue was below the estimate by $47.9 million and grew just 2.1% over fiscal 2016. Weak sales tax growth has become a consistent trend since the end of the recession. The sales tax grew less than 3.0% in five of the last six years (adjusted for law changes).

Fiscal 2018 general fund revenue collections through September 2017 were down 0.5% from last year. Personal income tax revenues fell 3.8% in the first quarter of fiscal 2018. Revenues in the first few months of fiscal 2017 were unusually strong due to timing issues making the year-over-year comparison difficult. Fiscal 2018 general fund lottery revenues increased 12.4% through September 2017. Net sales were up 10.6% due to strong growth for instant tickets and the Powerball game, which had a jackpot over $700 million early in the fiscal year. Sales tax general fund revenues were up just 0.1% through September. Legislation from the 2017 session, which added backpacks and book bags to the tax-free week for back to school shopping, is likely contributing to the weakness in sales tax revenues.

In September 2017, BRE reduced its estimate for fiscal 2018 general fund revenues by $53.0 million, or 0.3% (see **Exhibit 2**). The personal income tax estimate was revised down by $15.0 million (-0.2%) reflecting an upward revision for withholding but write-downs for estimated and final payments. Given the underattainment in fiscal 2017, the sales tax estimate for fiscal 2018 was reduced by $72.2 million, or -1.5%. The sales tax is now projected to grow 2.5% over fiscal 2017, down from 3.1% in the previous forecast. Lottery revenues were revised up by $15.0 million (3.0%) reflecting the strong start to fiscal 2018. Total general fund revenues are projected to grow 2.6% in fiscal 2018 and 2.8% in fiscal 2019. Excluding one-time items, revenues are projected to grow 2.9% in fiscal 2018 and 3.2% in fiscal 2019.

Exhibit 2
Maryland General Fund Revenue Forecast
($ in Millions)

	Fiscal 2018				Fiscal 2019	
	BRE Mar. 2017	**BRE Sep. 2017**	**$ Diff.**	**% Change 2018/2017**	**BRE Sep. 2017**	**% Change 2019/2018**
Personal Income Tax	$9,396	$9,381	-$15	4.0%	$9,765	4.1%
Sales and Use Tax	4,727	4,655	-72	2.5%	4,787	2.8%
Corporate Income Tax	827	827	0	4.0%	874	5.6%
Lottery	505	520	15	7.3%	523	0.6%
Other	1,730	1,749	20	-6.0%	1,665	-4.8%
Total	**$17,185**	**$17,132**	**-$53**	**2.6%**	**$17,614**	**2.8%**

BRE: Board of Revenue Estimates

Source: Board of Revenue Estimates

Operating Budget

Budget Outlook

The short-term State budget outlook has improved since July 2017. At the time, a $742 million cash shortfall was projected in fiscal 2019. This has been reduced to $251 million. Fiscal 2017 revenues and budget reversions exceeded projections, which more than offset the reduction in fiscal 2018 revenue estimates, leaving a larger than expected fiscal 2017 closing balance. In addition, the Board of Public Works withdrew appropriations in September 2017. Other factors include additional actual and projected bond premiums, favorable Medicaid enrollment and utilization trends, cost savings from a recently bid employee pharmacy contract, and use of fund balance from the Rainy Day Fund and surplus cash in the employee health insurance account. The fiscal 2019 structural deficit is now $340 million. This increases to $1.3 billion in fiscal 2023. Entitlement programs, debt service, and employee retirement costs are all expected to outpace the average annual growth rate of general fund revenues. Risks also exist based on potential federal actions that would impact direct aid to Maryland and tax revenues from federal employees who reside in Maryland. While the budget can be expected to be balanced on a cash basis without extraordinary actions in the near term, efforts to mitigate the projected shortfall through revenue enhancements or spending cuts should be taken sooner rather than later.

Background

Fiscal 2017 closed with a general fund balance of $258.5 million. General fund revenues totaled $16.7 billion, an increase of 3.1% over fiscal 2016. **Exhibit 1** illustrates the changes by revenue component compared to the revised estimate from March 2017, adjusted for actions taken during the 2017 session. Personal income taxes were higher than estimated by $76.9 million. Although employment grew by 1.3%, wage growth continues to lag due to low inflation and the retirement of baby boomers who were more highly compensated relative to the younger workers who replaced them. Sales and use taxes also decreased by $47.9 million, partly due to the effects of low-wage growth, but also based on lower spending by an aging population, online retailing and increased purchase of digital goods, and the rise of a sharing economy where there are more untaxed direct consumer-to-consumer sales. Slightly higher attainment was also realized from corporate income taxes, offset by nominal underattainment by the State Lottery and Gaming Control Agency.

Exhibit 1
Fiscal 2017 Estimated vs. Actual General Fund Revenue Performance
($ in Millions)

	Fiscal 2017 Estimated	Fiscal 2017 Actual	Change
Personal Income Tax	$8,942.4	$9,019.3	$76.9
Sales and Use Tax	4,567.3	4,539.3	-47.9
Corporate Income Tax	784.6	795.6	11.0
State Lottery	493.8	484.3	-9.5
Other	1,690.1	1,749.9	59.8
Total	**$16,498.2**	**$16,588.5**	**$90.3**

Source: Department of Legislative Services

Fiscal 2018 Activity

Exhibit 2 shows that fiscal 2018 is projected to end with a general fund balance of $110.7 million, which is $19.6 million higher than what was expected when the budget was enacted in the 2017 session. The projected increase in balance is due to four largely offsetting actions. Additional revenue and higher spending reversions associated with the fiscal 2017 closeout are offset by estimated fiscal 2018 deficiencies. A small write down of revenues by the Board of Revenue Estimates in September 2017 was exceeded by the withdrawal of spending by the Board of Public Works (BPW) on September 6, 2017.

Exhibit 2
Evolution of the Fiscal 2018 General Fund Balance
($ in Millions)

		Fiscal 2018
Estimated Closing Balance (July 2017)		**$91.1**
Revenue and Transfers		
Fiscal 2017 Closeout	$90.3	
September 2017 Board of Public Works Administration Assumptions	1.0	
Tax Credit Reimbursements	-0.1	
September 2017 Board of Revenue Estimates Revenue Revision	-52.3	

		Fiscal 2018
Spending		
Fiscal 2017 Closeout Reversions	$72.6	
September 2017 Board of Public Works Withdrawn Appropriations	61.0	
Department of Legislative Services Estimated Fiscal 2018 Deficiencies	-152.9	
Revised Closing Balance (October 2017)		**$110.7**

Source: Department of Legislative Services

Agencies underspent their fiscal 2017 appropriations by $72.6 million beyond the $155.8 million estimated by the Administration during the 2017 session. Savings identified at closeout came mostly from lower Medicaid enrollment, vacancies in the Department of Public Safety and Correctional Services (DPSCS), overbudgeted homeowner's tax credits, and smaller levels of unspent appropriations from the Judiciary and other Executive Branch agencies.

Subsequent to the revenue revision, the Administration withdrew $61.0 million in general fund appropriations through BPW on September 6, 2017. This included $27.8 million in agency reductions, mainly comprised of $8.4 million due to high levels of vacancies in DPSCS and $4.5 million from residential per diem savings in the Department of Juvenile Services. Other actions pared spending in entitlement programs ($14.7 million) related to hospital stay assumptions in Medicaid and lower Temporary Cash Assistance enrollment; $10.9 million and 30 vacant positions from higher education; and $7.5 million in reductions that will be replaced by special or federal fund balances (chiefly, $5.0 million in the Cigarette Restitution Fund balance that will replace a similar amount of general funds in Medicaid). The Administration is also assuming an additional $950,000 in revenue related to special fund cuts and $9.0 million in general fund reversions due to unanticipated bond premiums from the August 2017 general obligation (GO) bond sale.

Fiscal 2019 to 2023 Forecast

Exhibit 3 provides the Department of Legislative Services' (DLS) general fund forecast through fiscal 2023. Relative to the forecast prepared following the 2017 session, the fiscal outlook has improved. A fiscal 2019 cash shortfall estimated at -$742 million in July 2017 has been reduced to -$251 million in the DLS October 2017 forecast. This is due to actual and projected bond premiums, debt service savings from GO refinancing, favorable Medicaid enrollment and utilization trends, cost savings from a recently bid employee pharmacy contract, and use of fund balance from the Rainy Day Fund and surplus cash in the employee health insurance account. Despite the promising news, the structural deficit between ongoing general fund revenues and spending is forecasted to exceed $300 million in fiscal 2019 and grow to $1.3 billion by fiscal 2023.

Exhibit 3
General Fund Projections
Fiscal 2018-2023
($ in Millions)

	Working 2018	Baseline 2019	Estimate 2020	Estimate 2021	Estimate 2022	Estimate 2023	Avg. Annual Change 2019-23
Revenues							
Opening Fund Balance	$259	$111	$0	$0	$0	$0	
Transfers	0	191	38	36	35	36	
One-time Revenues/Legislation	15	0	0	0	0	0	
Subtotal One-time Revenue	***$274***	***$302***	***$38***	***$36***	***$35***	***$36***	
Ongoing Revenues	$17,139	$17,639	$18,256	$18,923	$19,620	$20,316	
Subtotal Ongoing Revenue	***$17,139***	***$17,639***	***$18,256***	***$18,923***	***$19,620***	***$20,316***	***3.6%***
Total Revenues and Fund Balance	**$17,413**	**$17,941**	**$18,294**	**$18,959**	**$19,655**	**$20,352**	**3.2%**
Ongoing Spending							
Operating Spending	$17,882	$18,487	$19,518	$20,433	$21,295	$22,169	
Education Trust Fund*	-487	-508	-515	-508	-515	-523	
Subtotal Ongoing Spending	***$17,394***	***$17,980***	***$19,003***	***$19,925***	***$20,780***	***$21,646***	***4.7%***
One-time Spending							
PAYGO Capital	$10	$78	$50	$50	$31	$31	
Legislation/One-time Adjustments/Swaps	-112	-61	0	0	0	0	
Appropriation to Reserve Fund	10	196	50	83	83	83	
Subtotal One-time Spending	***-$92***	***$213***	***$100***	***$133***	***$114***	***$114***	
Total Spending	**$17,302**	**$18,193**	**$19,103**	**$20,058**	**$20,893**	**$21,760**	**4.6%**
Ending Balance	**$111**	**-$252**	**-$809**	**-$1,100**	**-$1,238**	**-$1,408**	
Rainy Day Fund Balance	$858	$882	$913	$946	$981	$1,015	
Balance Over 5% of General Fund Revenues	1	0	0	0	0	0	
As % of General Fund Revenues	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	
Structural Balance	**-$255**	**-$340**	**-$747**	**-$1,033**	**-$1,159**	**-$1,330**	

PAYGO: pay-as-you-go

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

Source: Department of Legislative Services

Entitlement programs, debt service, and employee retirement costs, are all expected to outpace the average annual growth rate of general fund revenues. Medicaid growth, in particular, is expected to consume a larger share of the budget as the State is required to phase up to 10% of the cost of the Affordable Care Act (ACA) population. Debt service also continues to grow due to large issuances of GO bonds after the Great Recession. Retirement contribution levels rise partly because investment returns have not always met expectations, and the system will be lowering its future estimated level of investment returns. While the estimated shortfall in the forecast poses a challenge in upcoming years, there are multiple downside risks that could worsen the outlook. This includes potential changes to the ACA, conversion of federal Medicaid participation to block grant funding, federal tax reform, and the inevitable downturn in the business cycle.

Conclusion

In the short-term, the fiscal outlook is favorable. Fiscal 2018 is projected to close with a positive cash balance even after accounting for estimated spending shortfalls in agency budgets. Improved assumptions underpinning the fiscal 2019 budget suggest that a cash shortfall in the $200 million to $300 million range should be resolvable without the need for drastic actions. However, the longer term outlook is less attractive as Medicaid, debt service, and employee retirement expense, coupled with tepid revenue growth, are expected to worsen the projected structural deficit in excess of $1.3 billion by fiscal 2023. Risks also exist based on potential federal actions that would impact direct aid to Maryland and tax revenues from federal employees who reside in Maryland. While the budget can be expected to be balanced on a cash basis without extraordinary actions in the near term, efforts to mitigate the projected shortfall through revenue enhancements or spending cuts should be taken sooner rather than later.

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Operating Budget

Transportation Trust Fund Overview

The Transportation Trust Fund closed fiscal 2017 with a fund balance $38 million higher than the $125 million projected ending balance. The Department of Legislative Services assumes lower total revenue attainment and higher operating expenses than estimated by the Maryland Department of Transportation over the fiscal 2018 to 2023 forecast period. This will reduce the six-year capital program by $1.7 billion.

Fiscal 2017 Closeout

The Transportation Trust Fund (TTF) ended fiscal 2017 with a fund balance of $163 million, an amount $38 million higher than the $125 million projected ending balance. Revenues exceeded projections by $152 million, and expenditures were $114 million higher than projected.

Nonbond-related revenues exceeded projections by $53 million with motor fuel tax attainment accounting for $39 million of the additional revenues. Bond sales were $80 million higher than projected, and bond premiums were $20 million higher.

On the expenditure side of the equation, spending was a net $114 million higher than estimated. Spending for capital projects exceeded estimates by $123 million. Departmental operations spending exceeded projections by $4 million, and Highway User Revenue distributions were $2 million higher than projections due to the increased revenue attainment. These increases were partially offset by savings on debt service ($12 million) achieved through a bond refunding and reduced spending in agencies that are reimbursed from the TTF ($3 million).

Fiscal 2018 to 2023 TTF Forecast

Exhibit 1 shows the fiscal 2018 to 2023 TTF forecast by the Department of Legislative Services (DLS). The forecast details the expected trends in revenue attainment, debt issuance, and expenditures. Compared to the Maryland Department of Transportation (MDOT) forecast, DLS assumes revenue attainment that is $157 million lower and operating budget spending that is $662 million higher. The lower revenue and higher spending assumptions require a reduction in bond issuances over the forecast period totaling $1.1 billion in order to maintain minimum debt service coverage ratios. Based on DLS estimates, the six-year capital program would be $1.7 billion less than projected in the MDOT forecast.

Exhibit 1
Transportation Trust Fund Forecast
Fiscal 2018-2023
($ in Millions)

	2018	2019	2020	2021	2022	2023	Total 2018-23
Opening Fund Balance	**$163**	**$125**	**$150**	**$150**	**$150**	**$150**	
Closing Fund Balance	**$125**	**$150**	**$150**	**$150**	**$150**	**$150**	
Net Revenues							
Taxes and Fees	$2,604	$2,686	$2,725	$2,780	$2,833	$2,914	$16,542
Operating and Miscellaneous	648	650	634	684	721	716	4,053
Subtotal	***$3,252***	***$3,336***	***$3,359***	***$3,464***	***$3,554***	***$3,630***	***$20,595***
Bond Proceeds/Premiums	$660	$381	$244	$155	$200	$244	$1,883
Fund Balance (Increase)/Use	38	-25	0	0	0	0	13
Total Net Revenues	**$3,950**	**$3,692**	**$3,603**	**$3,618**	**$3,754**	**$3,874**	**$22,491**
Expenditures							
Debt Service	$340	$332	$342	$391	$414	$432	$2,251
Operating Budget	2,027	2,120	2,214	2,312	2,445	2,640	13,757
State Capital	1,583	1,239	1,048	916	895	802	6,484
Total Expenditures	**$3,950**	**$3,692**	**$3,603**	**$3,618**	**$3,754**	**$3,874**	**$22,491**
Debt							
Debt Outstanding	$2,940	$3,121	$3,159	$3,057	$2,971	$2,909	
Debt Coverage – Net Income	3.5	3.0	2.9	2.7	2.6	2.5	
Local Highway User Revenue	**$177**	**$180**	**$181**	**$184**	**$186**	**$189**	**$1,096**
Capital Summary							
State Capital	$1,583	$1,239	$1,048	$916	$895	$802	$6,484
Net Federal Capital (Cash Flow)	1,103	1,084	903	844	816	710	5,460
Total Capital Expenditures	**$2,686**	**$2,323**	**$1,951**	**$1,760**	**$1,711**	**$1,512**	**$11,944**
GARVEE Debt Service	$87	$87	$51	$0	$0	$0	$226

GARVEE: Grant Anticipation Revenue Vehicle

Source: Department of Legislative Services

Revenues

Over the six-year forecast, DLS estimates that tax and fee revenue, including revenue going to local governments as aid and other State agencies to cover transportation-related activities, will total $18.1 billion with an average annual growth rate of just 2.2%. This weak growth rate results from projected annual growth in motor fuel usage of less than one-quarter of 1.0% during the forecast period combined with low rates of inflation and gas price increases of just over 25 cents over the six-year period.

Operating and Debt Service Expenditures

Operating and debt service expenditures are the first draw on TTF revenues. Over the six-year period, operating expenses are estimated to total $13.8 billion, and debt service expenditures are estimated to total $2.3 billion The DLS baseline budget estimate for MDOT operations in fiscal 2019 is $2.1 billion (4.6%) higher than the current year legislative appropriation. The DLS forecast projects operating expenses to grow at an average annual rate of 4.4% from fiscal 2019 to 2023 – the five-year average annual rate experienced by MDOT through fiscal 2017, the most recent year for which actual expenditures are available. The DLS estimate of operating expenses for the six-year forecast is $662 million higher than assumed by MDOT in its draft forecast. Compared to the MDOT forecast, the DLS estimate of debt service is $194 million lower over the forecast period as a result of a lower level of bond issuance. Both the DLS and MDOT forecasts include $31 million in fiscal 2022 and $119 million in fiscal 2023 for Availability Payments to the Purple Line concessionaire.

Debt Financing

Debt issued by MDOT supports the capital program. Debt issuances are limited by a total debt outstanding cap of $4.5 billion and two coverage tests that require the prior year's pledged taxes and net income to be at least two times greater than the maximum debt service for all bonds outstanding in the current fiscal year. MDOT has an administrative goal of maintaining a minimum 2.5 times pledged taxes and net income to maximum debt service ratio. The lower revenue attainment and higher operating spending discussed earlier results in the need to reduce the amount of bonds issued over the forecast period from the $2.9 billion contained in the MDOT forecast by $1.1 billion. Absent this reduction in bond issuances, the net income debt service coverage ratio would fall to 2.3 for fiscal 2021 and 2022, then decline to just over 2.1 in fiscal 2023.

Capital Expenditures

DLS estimates that the total special and federal fund capital budget will total $11.9 billion, just over $1.7 billion less than MDOT's estimate contained in the draft 2018 to 2023 *Consolidated Transportation Program*.

Local Transportation Aid

Highway User Revenue distributed to local governments is projected to total $1.1 billion over the six-year forecast period.

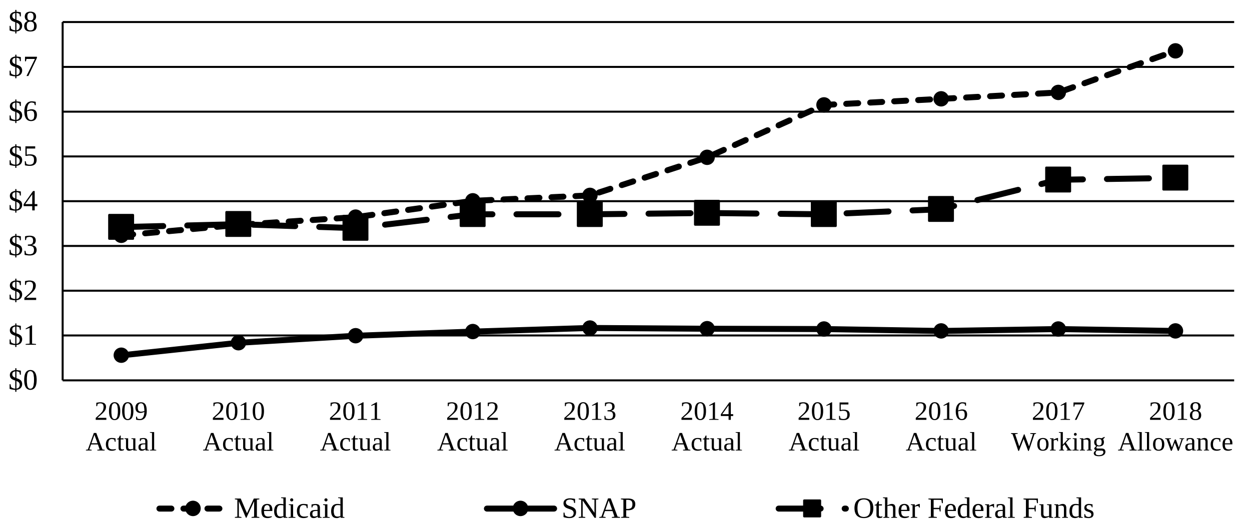
Federal Funds Outlook

In fiscal 2018, the State of Maryland anticipates $13 billion in federal funds. The federal fiscal 2018 budget is funded with a continuing resolution that expires on December 8, 2017.

Federal Funds to the State of Maryland

Federal funds to the State have grown 6.7% annually from fiscal 2009 to 2018; the fiscal 2018 federal fund allowance totals $13.0 billion.[1] As shown in **Exhibit 1**, Medicaid accounts for $7.4 billion in fiscal 2018, or 56.7% of total federal funds. Increases in Medicaid since fiscal 2007 are primarily due to enrollment growth during the recession. Starting in fiscal 2014, Medicaid funding increased dramatically as a result of the Affordable Care Act (ACA) expansion.

Exhibit 1
Medicaid, Supplemental Nutrition Assistance Program, and Other Federal Funds
Fiscal 2009-2018
($ in Billions)



SNAP: Supplemental Nutrition Assistance Program

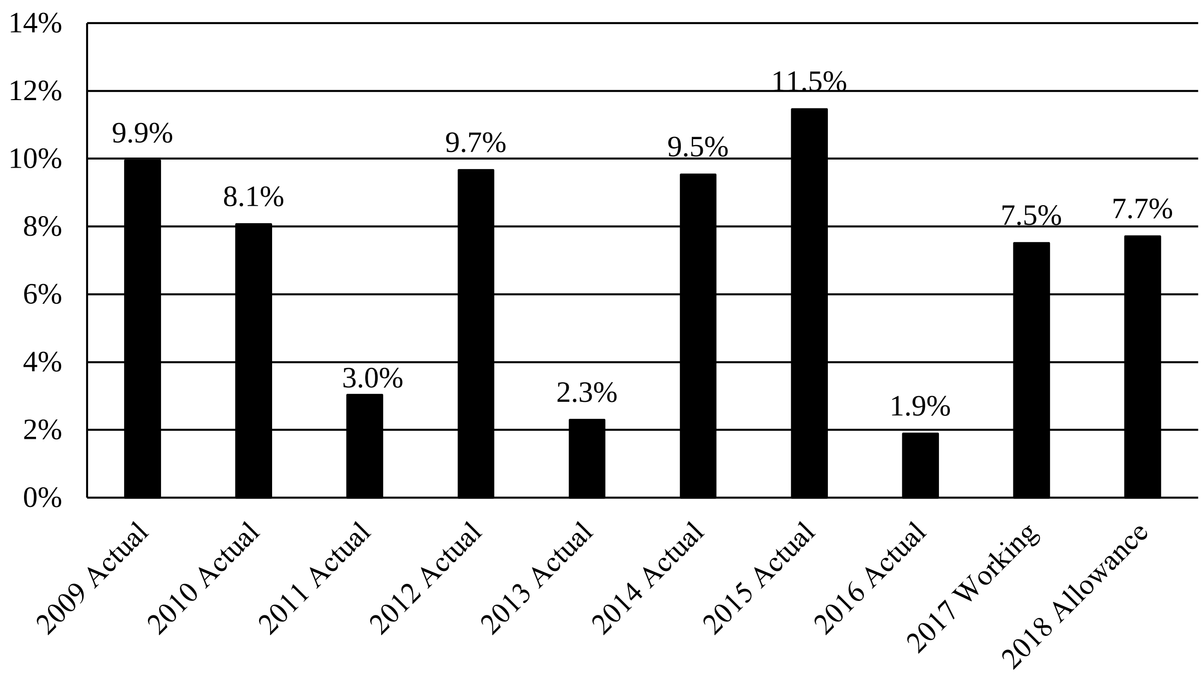
Source: Department of Budget and Management; Department of Legislative Services

[1] Exludes stimulus funding provided by the American Recovery and Reinvestment Act of 2009.

Growth Rate of Federal Funds

High growth rates in fiscal 2009 and 2010, shown in **Exhibit 2**, are primarily due to increasing direct payment programs, such as the Supplemental Nutrition Assistance Program and Medicaid, in response to the recession.[2] Modest growth reflected in fiscal 2013 reflects the start of sequestration and minimal growth in Medicaid. Increases in Medicaid in fiscal 2014 and 2015 are primarily due to the ACA expansion to all persons under 138% of the federal poverty level. Growth of Medicaid funding slows in fiscal 2016 due to transition of the enrollment eligibility system, which required all income-based enrollees to reenroll and resulted in a significant drop in enrollment. Enrollment and expenditures are expected to rebound and surpass prior levels in fiscal 2017.

Exhibit 2
Growth Rate of Federal Funds to the State of Maryland
Fiscal 2009-2018



*Does not include stimulus funding provided by the American Recovery and Reinvestment Act of 2009.

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

[2] Although not reflected in Exhibit 2, fiscal 2009 was the first year in which the State received American Recovery and Reinvestment Act (ARRA) stimulus funding, which would further increase growth rates; the State received the most ARRA funding in fiscal 2010 ($2.0 billion) and fiscal 2011 ($1.9 billion).

Fiscal 2018 Federal Fund Appropriation

The fiscal 2018 federal fund allowance totals $13 billion. **Exhibit 3** shows the distribution of federal funds by department/service area.

Exhibit 3
Federal Funds in Fiscal 2018 Allowance
($ in Millions)

Department/Service Area	Fiscal 2018 Allowance
Judicial and Legal Review	$4.2
Executive and Administrative Control	258.5
Budgetary and Personnel Administration	0.0
General Services	1.3
Transportation	1,119.5
Natural Resources	34.8
Agriculture	3.6
Health[1]	7,866.6
Human Services[1]	1,828.2
Labor, Licensing, and Regulation	178.9
Public Safety and Correctional Services	30.4
Public Education	1,258.2
Housing and Community Development	295.9
Commerce	1.7
Environment	74.3
Juvenile Services	4.8
State Police	6.9
Public Debt	11.5
Total Federal Funds	**$12,979.3**

[1] The Department of Health and Mental Hygiene was renamed the Maryland Department of Health, and the Department of Human Resources was renamed the Department of Human Services in fiscal 2018.

Note: Numbers may not sum due to rounding. The fiscal 2018 allowance includes $11.5 million in ongoing American Recovery and Reinvestment Act of 2009 funding for the Build America Bond credit payments. This funding is expected through fiscal 2026; no new bonds will be issued unless the program is reauthorized.

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

Federal Fiscal 2018 Budget Update

The Budget Control Act (BCA) of 2011 established a Joint Select Committee on Deficit Reduction, charged with reducing the federal deficit by $1.2 trillion over 10 years. Failure of the committee to propose deficit reduction legislation resulted in automatic spending cuts, known as "sequestration," which took effect January 1, 2013. Budget caps were set on discretionary appropriations from federal fiscal year (FFY) 2012 through FFY 2021, and across-the-board (ATB) reductions were applied to nonexempt mandatory funds for the same timeframe. Budget reductions are applied equally between defense and nondefense spending; some major programs, such as Social Security and Medicaid, are exempt from sequestration.

The American Taxpayer Relief Act and the Bipartisan Budget Act (BBA) of 2013 provided some relief to discretionary budget caps in FFY 2013, 2014, and 2015. The BBA of 2015 continued to provide relief by raising spending caps in FFY 2016 by $50 billion and FFY 2017 by $30 billion, split equally between defense and nondefense spending. As a trade off for raising the discretionary caps, nonexempt mandatory fund reductions were extended through FFY 2025.

On September 8, 2017, Congress passed a Continuing Resolution (CR), which extended funding for discretionary programs through December 8, 2017. The CR includes an ATB cut of -0.6791% for most discretionary programs, as required by the BCA. However, the Congressional Budget Office scored the CR as exceeding defense and nondefense caps established by the BCA. Absent legislation to raise these caps, the funding levels could trigger additional sequestration in FFY 2018. The Office of Management and Budget must report 15 days after Congress adjourns to announce any breach of BCA caps and ATB reductions required to remedy it; no cuts are implemented until that process occurs. A -6.6% ATB reduction was applied to FFY 2018 current-law levels to all nonexempt mandatory programs under the BCA. The CR package also included $15 billion for hurricane response efforts, a temporary suspension of the debt limit, and an extension of the National Flood Insurance Program.

The CR did not address funding set to expire on September 30, 2017, including the Children's Health Insurance Program. As of October 3, 2017, legislation was introduced in both houses of Congress. The program is expected to be reauthorized and extended through FFY 2022. Absent reauthorization, Maryland will be required to maintain coverage for the 145,000 children currently enrolled in the program through FFY 2019 at the regular Medicaid matching rate, and current funding for the program will be exhausted sometime in fiscal 2018.

Once a full-year appropriations bill is enacted, CR funding levels will be replaced. On October 5, both the House and Senate passed budget resolutions. These resolutions are vital for Congress' prioritized tax reform legislation as it will both outline the fiscal parameters of a tax bill and allow tax reform to pass through budget reconciliation, thus negating Senate filibuster rules.

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Impact of Pension Costs on the State Budget

State pension costs are a significant long-term liability. Costs have increased substantially in recent years. Efforts have been made to reduce the rate of growth, including enacting pension reforms and requiring local governments to share costs. The growth rate has slowed as these reforms are implemented.

The State provides defined benefit pension plans. These plans require the State to make annual payments into the pension fund that represent the normal cost (the cost of the annual increase in benefits earned by employees). The pension fund invests these funds and makes payments to employees when they retire. This is a long-term liability. Ideally, the assets in the funds are equal to the liability. If the assets are less than the liability, there is an unfunded liability. An unfunded liability requires additional appropriations into the fund. According to the State Retirement Agency's actuary, Maryland's funded ratio at the end of fiscal 2017 was 70.7% for State funded plans. Consequently, the State's appropriation into the pension fund is in excess of the normal cost. A discussion of the funded status of the pension fund is provided in the issue paper *State Retirement and Pension System Investment Performance and Contribution Rates*.

Pensions for State employees, judges, State police, and law enforcement officers are funded in agency budgets and are primarily supported by the General Fund. Positions supported by special funds (such as the Maryland Department of Transportation) and federal funds (such as the Maryland Department of Health) support pension costs with those funds.

About 97% of the teachers' pension fund supports the staff of the local school boards. By statute, the local school boards pay the normal costs (the annual increase in the pension liability), and the State is responsible for any remaining costs (the unfunded liability).

Increase in Pension Costs in Recent Years

State pension costs have increased in recent years. The primary reason for the increased costs are market losses suffered in fiscal 2008 and 2009 when the pension fund lost 5.4% and 20.0%, respectively. This reduced the funded ratio from 80.4% at the beginning of fiscal 2008 to 65.0% at the end of fiscal 2009. To reduce the unfunded liability, higher appropriations are necessary from the State. The amount that the State appropriates each year is determined by the actuarial funding method. It is State policy for the Governor to propose, and the General Assembly to appropriate, the amount certified by the State Retirement and Pension System Board. Total pension contributions increased from $1.0 billion in fiscal 2010 to $1.6 billion in fiscal 2018.

Pension Costs Contained in Response to Increasing Liabilities

In response to increasing liabilities, the State has made efforts to slow the cost growth by reducing benefits, increasing contributions, and requiring local jurisdictions to share in the costs of teacher pensions.

The most significant pension reform was enacted in 2011. Key provisions include:

- reducing cost-of-living adjustments earned after fiscal 2011;
- increasing employee contributions from 5.0% to 7.0% for most employees (judges, for example, were excluded);
- increasing the vesting period for employees hired after June 30, 2011, from 5 years to 10 years;
- reducing the multiplier for employees hired after June 30, 2011, to 1.5% or salary per year worked;[3] and
- appropriating a share of savings to overfund pension contributions.

The State also required local governments to begin sharing in teacher pension costs in fiscal 2013. The funding approach was also modified beginning in fiscal 2017 as the State phases out the corridor method and adopts an actuarial approach.

The State has provided supplemental pension payments. Current law requires that the Administration include a total of $75.0 million in supplemental contributions for pensions for employees, teachers, State police, and law enforcement officers. In addition, the Administration is required to provide appropriate unassigned general fund balances of up to $50.0 million. This is referred to as the pension sweeper. In fiscal 2017, unassigned general fund balance totaled $256.3 million, of which $50.0 million is to be appropriated in fiscal 2019. In sum, fiscal 2019 is required to have $125.0 million in additional contributions. Taken together, these reforms reduce the State's out-year unfunded liabilities.

Pension Cost Outlook

Exhibit 1 shows that total pension costs are expected to increase from $1.6 billion in fiscal 2019 to $2.0 billion in fiscal 2023. This is an annual increase of 4.6%.

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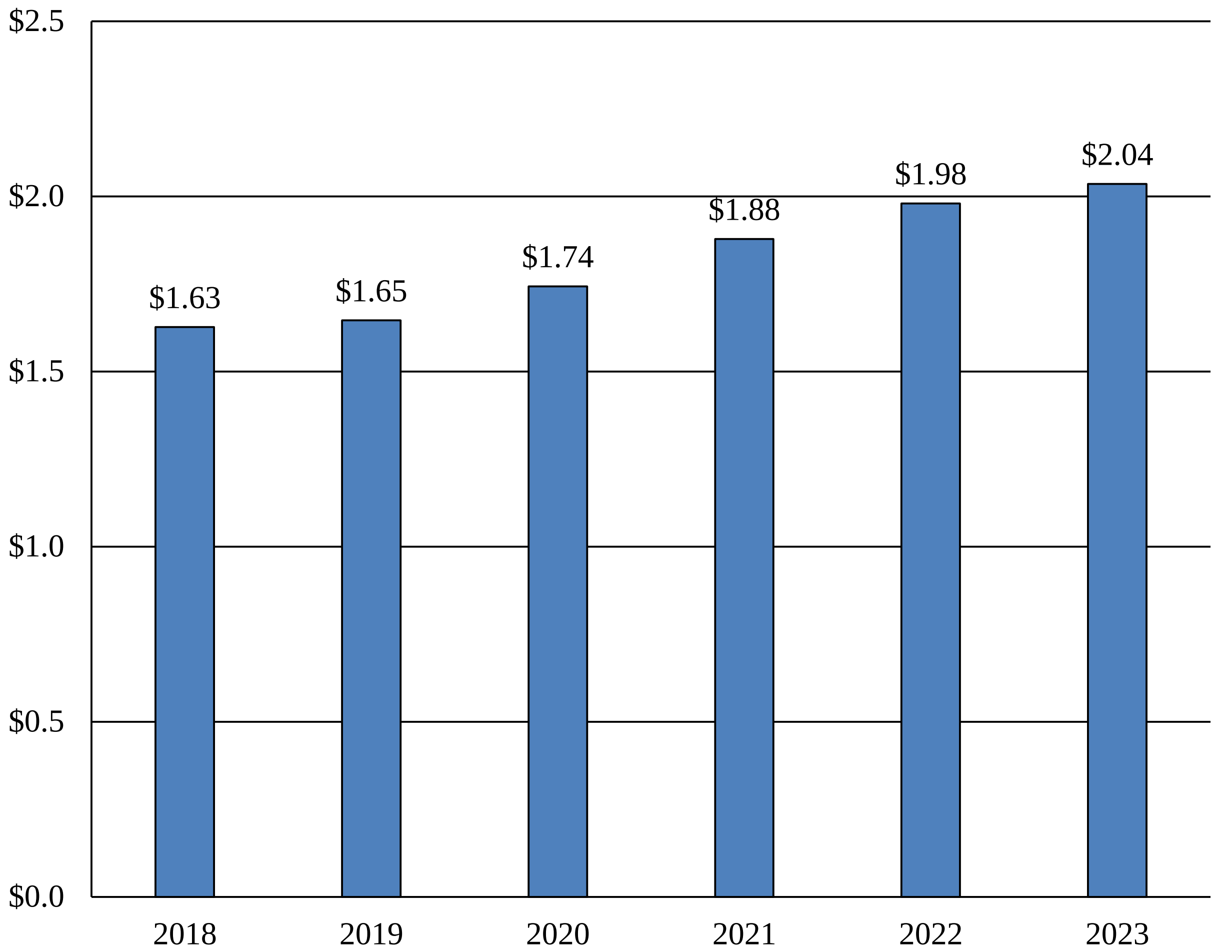
[3] The multiplier remains at 1.8% per year worked for employees hired before June 30, 2011.

Exhibit 1
Total State Pension Costs
Fiscal 2018-2023
($ in Billions)

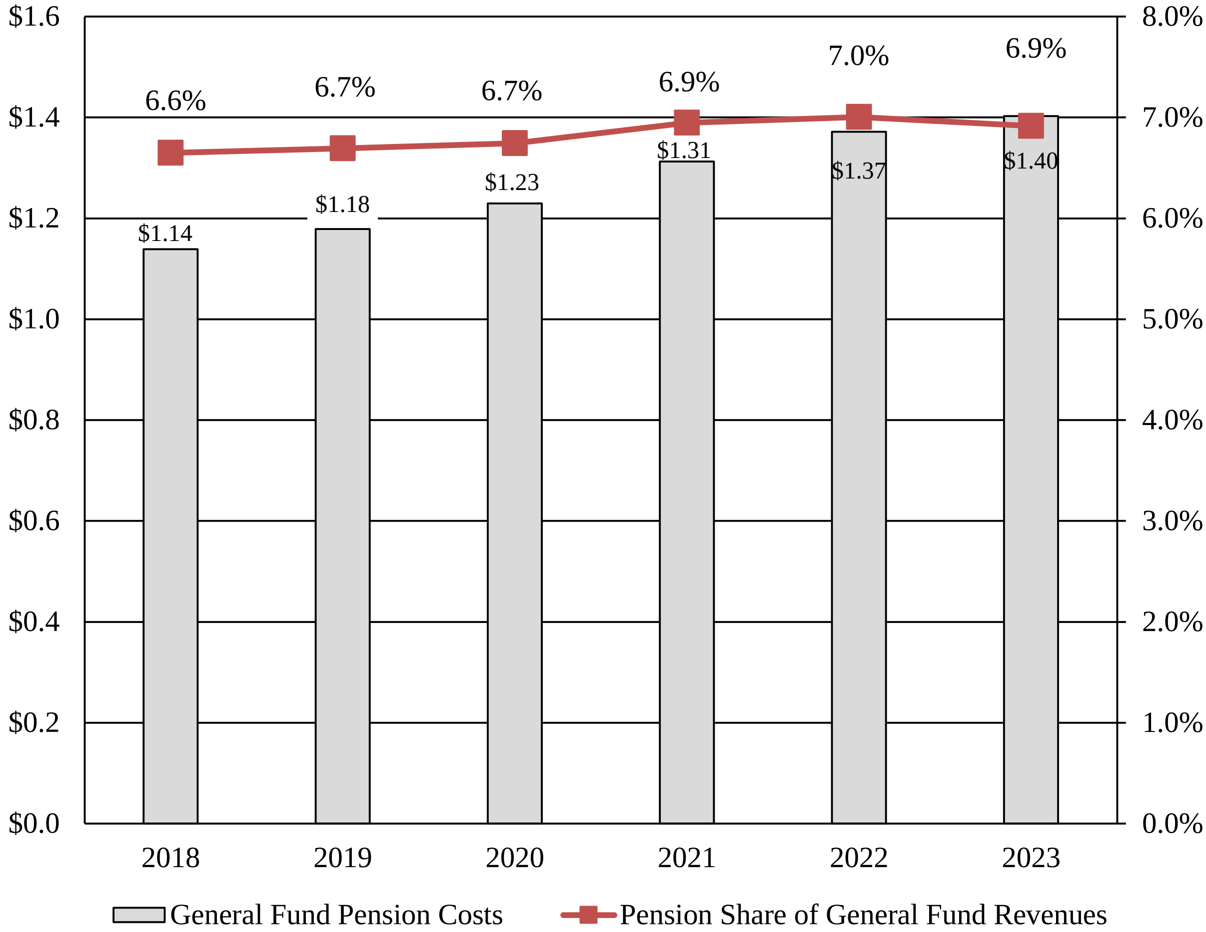


Note: State pension contribution excludes local teacher pension cost sharing and other local contributions.

Source: Gabriel Roeder Smith and Company; Department of Legislative Services

Exhibit 2 shows that general fund costs for pensions range from 6.6% to 7.0% of general fund revenues in the out-years. Increases in pension costs have slowed, in part due to pension reforms. Rapid turnover in system membership has accelerated the benefits of pension reform. The turnover has resulted in nearly one-third of teachers and employees participating in the reformed pension plan.

Exhibit 2
General Fund Pension Costs As a Percentage of General Fund Revenues
Fiscal 2018-2023
($ in Billions)



Note: State pension contribution excludes local teacher pension cost sharing and higher education institutions.

Source: Gabriel Roeder Smith and Company; Department of Legislative Services

Operating Budget

Impact of General Obligation Debt Service Costs on the State Budget

General obligation (GO) bond debt service is a significant long-term liability. Costs have increased substantially in recent years. Efforts have been made to reduce the rate of growth. Since the Great Recession, the State has slowed the increase in new bond authorizations. Additionally, the current Administration is keeping GO bond authorizations at a flat $995 million annually.

State capital construction projects are supported by various bonds, including general obligation (GO), transportation, stadium authority, and bay restoration. These bonds are long-term liabilities that require debt service payments for up to 15 years.

Debt Service Costs Influenced by Bond Authorization Policies

In the last 20 years, the State debt authorization polices have changed. State debt policies have shifted between slow growth, aggressive expansion, managing to the limit, and austerity; specifically:

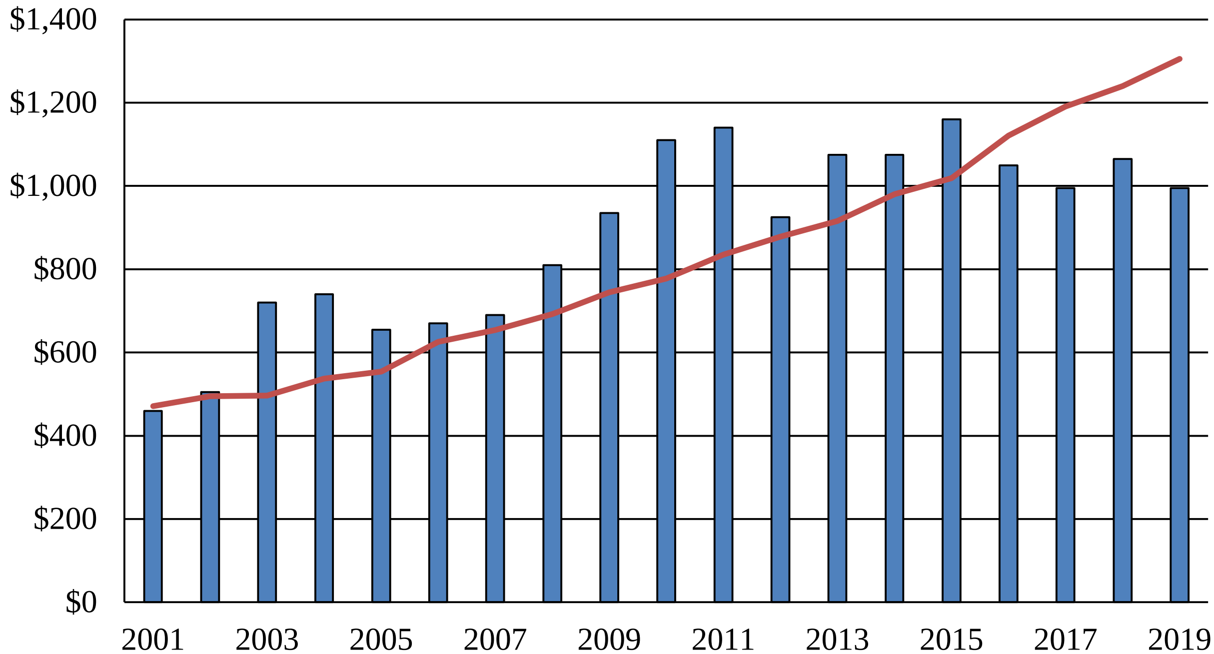
- fiscal 1995 to 2000 was a period of slow growth as GO bond authorizations increased at a moderate rate of $15 million per year;
- the GO program expanded substantially from fiscal 2001 to 2009, which was a period in which the State increased authorizations in excess of what was previously planned in all but one year; and

In response to reaching the 8% debt service to revenues limit in December 2009, the State began to manage debt to remain within affordability limits through fiscal 2016.

In addition, in the fiscal 2016 GO bond bill, the Administration proposed a period of austerity by limiting authorizations to $995 million annually. The General Assembly has not always concurred. The fiscal 2016 capital budget bill, passed by the General Assembly, authorized $1.045 billion in new GO bond authorizations, and the fiscal 2018 capital budget authorized $1.065 billion. These authorizations were within the affordability limits established by the Capital Debt Affordability Committee.

Increased GO bond authorizations after fiscal 2000 have resulted in increased debt service costs. **Exhibit 1** shows that debt service costs have increased from $471 million in fiscal 2001 to $1.306 billion in fiscal 2019. Over the same period, GO debt outstanding has increased from $3.349 billion to $9.663 billion.

Exhibit 1
Changes in General Obligation Bond Authorizations and Debt Service Costs
Fiscal 2001-2019
($ in Millions)



Notes: Fiscal 2000 to 2017 debt service costs are actual costs, fiscal 2018 and 2019 projections presented to the Capital Debt Affordability Committee by the State Treasurer's Office. Fiscal 2019 authorization is consistent with the amount proposed by the Administration. Authorizations prior to fiscal 2019 are authorizations enacted in annual capital budget bills.

Source: State Treasurer's Office; Department of Legislative Services

The exhibit also shows the lag between authorizations and debt service. Because only about one-third of authorized bonds are issued in the first year and because the State does not make principal payments until the third year, debt service cost increases lag increases in authorizations. The same is true when authorizations are decreased. In spite of reducing the capital program from $1.160 billion in fiscal 2015 to $995.0 million in fiscal 2017, debt service costs continue to increase. However, this austerity is expected to slow the increase in debt service costs in the out-years.

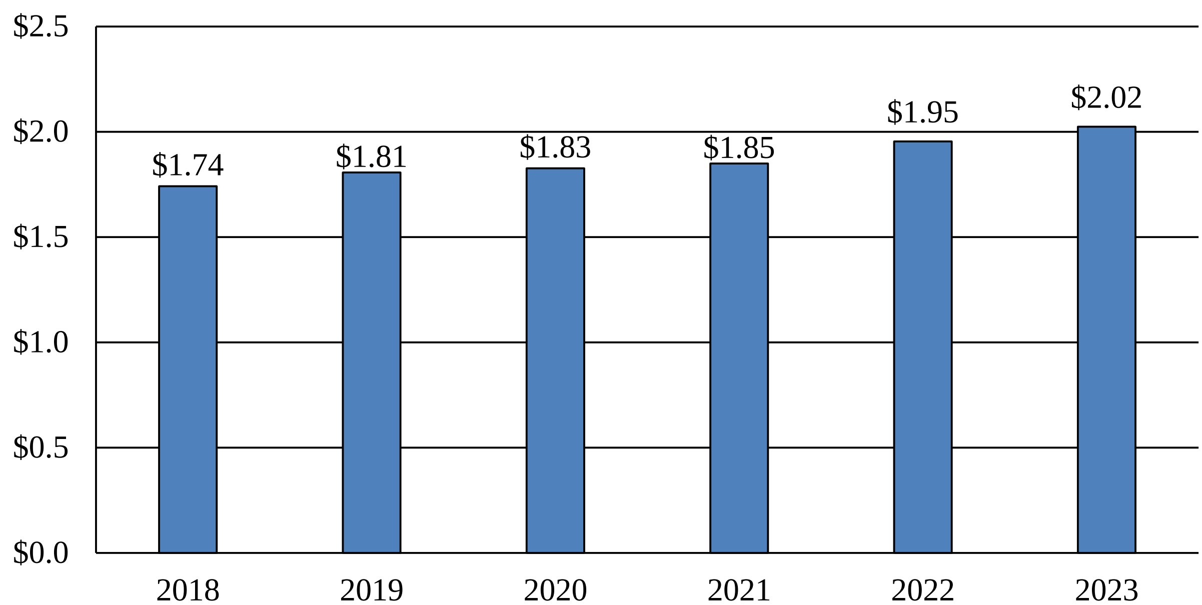
General Fund Support for Debt Service

Debt service is supported by the General Fund. GO bond debt service costs are supported by the Annuity Bond Fund (ABF). The fund's largest revenue sources include State property tax revenues and proceeds from bond sale premiums. Other revenue sources include interest and penalties on property taxes and repayments for local bonds. When the ABF has not generated sufficient revenues to support the entire debt service costs, general funds have subsidized debt service payments. Debt service costs have increased to the point that, unless the State raises property tax rates, general fund subsidies are necessary. General fund appropriations are $260 million in fiscal 2017, and total debt service costs are $1.231 billion.

Debt Service Cost Outlook

Exhibit 2 shows that total debt service costs are expected to increase from $1.7 billion in fiscal 2018 to $2.0 billion in fiscal 2023. This is an annual increase of 3.1%.

Exhibit 2
Combined Debt Service Costs
Fiscal 2018-2023
($ in Billions)

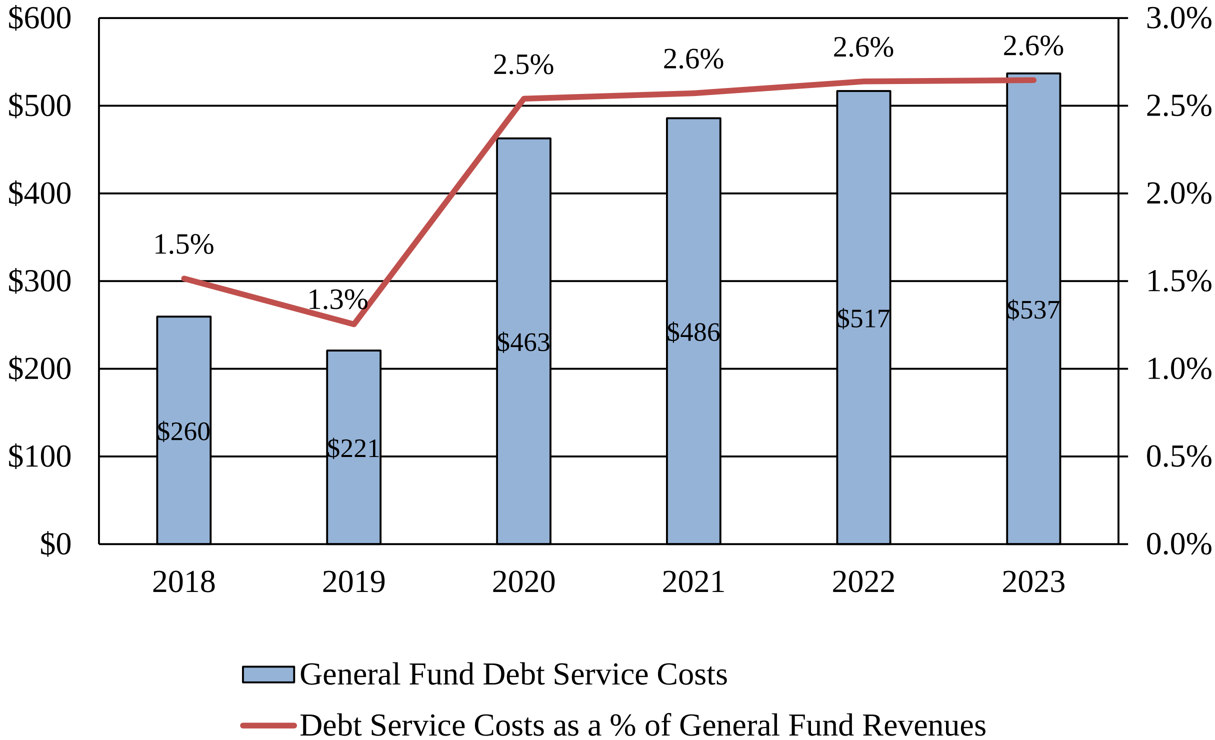


Note: Total State debt service includes transportation, bay restoration, capital leases, and stadium authority debt.

Source: State Treasurer's Office; Department of Legislative Services

Exhibit 3 shows that general fund costs for debt service are 1.5% of general fund revenues beginning in fiscal 2018. The decline in fiscal 2019 general fund debt service appropriations is attributable to unbudgeted premiums in fiscal 2018 and 2019 that reduce the need for general funds. Beginning in fiscal 2021, the forecast assumes only small premiums, so the State will need to appropriate approximately $500 million annually in general funds to avoid increasing State property taxes above the current rate, which is $0.112 per $100 of assessable base.

Exhibit 3
General Fund Debt Service Costs
As a Percentage of General Fund Revenues
Fiscal 2018-2023
($ in Billions)



Source: State Treasurer's Office; Department of Legislative Services

Capital Budget

Debt Affordability

The Capital Debt Affordability Committee recommended a general obligation bond debt limit totaling $995 million for fiscal 2019. This level of capital spending keeps debt service payments below 8% of revenues and debt outstanding below 4% of personal income through the capital planning period that ends in fiscal 2023. The Treasurer's Office estimates that total tax-supported outstanding debt will be $13.8 billion at the end of fiscal 2019, while debt service will be $1.8 billion in fiscal 2019.

Capital Debt Affordability Process

State law requires the Capital Debt Affordability Committee (CDAC) to review the size and condition of all tax-supported debt to ensure that the State's tax-supported debt burden remains affordable. The committee is chaired by the State Treasurer and includes the State Comptroller, the Secretary of Transportation, the Secretary of Budget and Management, and a public member. The chairs of the Capital Budget subcommittees for the Senate Budget and Taxation Committee and the House Appropriations Committee are nonvoting members.

Tax-supported debt consists of tax-exempt and taxable general obligation (GO) debt, transportation debt, Grant Anticipation Revenue Vehicles (GARVEE), bay restoration bonds, capital leases, Stadium Authority debt, and bond or revenue anticipation notes. The committee makes annual, nonbinding recommendations to the Governor and the General Assembly on the appropriate level of new GO and academic revenue debt for each fiscal year.

CDAC began evaluating State debt in 1979. In consultation with rating agencies, investment bankers, and its financial advisor, CDAC has adopted policies to limit State debt outstanding to 4% of personal income and State debt service to 8% of State revenues.

Affordability Ratios

Exhibit 1 shows CDAC's State debt affordability analysis. Debt service to revenues peaks in fiscal 2023 at 7.84%, and debt outstanding to personal income peaks in fiscal 2018 at 3.57%.

GO bonds support the State's capital program, which supports local public school construction, higher education, State facilities, and other capital projects. CDAC recommended that fiscal 2019 GO bond authorizations be limited to $995 million. Total GO debt is projected to be $9.66 billion at the end of fiscal 2019. The State Treasurer's Office projects that GO bond debt service payments will total $1.31 billion in fiscal 2019.

Exhibit 1
Affordability Ratios
Fiscal 2018-2023

Fiscal Year	Projected Debt Outstanding As a Percent of Personal Income	Projected Debt Service As a Percent of Revenues
2018	3.57%	7.75%
2019	3.56%	7.83%
2020	3.51%	7.67%
2021	3.40%	7.67%
2022	3.30%	7.83%
2023	3.19%	7.84%

Source: State Treasurer's Office, September 2017

Transportation bonds are limited obligation instruments, the proceeds of which fund highway and other transportation-related projects. Debt service on these bonds is funded from the Transportation Trust Fund, which is supported by motor vehicle fuel taxes, titling and registration fees, a portion of the corporate income tax, and other Maryland Department of Transportation (MDOT) revenues. State law limits Consolidated Transportation Bonds outstanding to $4.5 billion. CDAC projects that total outstanding transportation debt will reach $2.8 billion in fiscal 2019. Transportation bond debt service is projected to be $339 million in fiscal 2019.

The department also issued GARVEE bonds in fiscal 2008 and 2009. These bonds are supported by federal transportation grants to the State. Chapters 471 and 472 of 2005 limit the total amount of GARVEEs that may be issued at $750 million. The State pledges anticipated federal revenues to support the GARVEE debt service, and the statute specifies that the bonds are considered tax-supported debt. GARVEE debt outstanding is projected to be $49 million at the end of fiscal 2019. GARVEE debt service costs are estimated to be $87 million. The fiscal 2008 issuance matures in fiscal 2019. The fiscal 2009 issuance matures in fiscal 2020, with $51 million in debt service costs. At this time, there are no plans to issue additional GARVEE bonds.

The Bay Restoration Fund was created by Chapter 428 of 2004 to provide grants for enhanced nutrient removal pollution reduction upgrades at the State's major wastewater treatment plants. The fund has several revenue sources and expends funds for both operating and capital program purposes. To date, $330 million has been issued. The Maryland Department of the Environment (MDE) indicates that the final $100 million will be issued in fiscal 2020. Compared to last year's projections, this final issuance has been delayed approximately three years. Bonds are issued based on the cash flow needs of projects. Some projects have been delayed and MDE does not anticipate needing the bonds until fiscal 2020. The department estimates that $253 million in bonds will be outstanding at the end of fiscal 2019. Debt service costs are projected to be $32 million in fiscal 2019.

Capital leases for real property and equipment are also considered State debt if the revenues supporting the debt are State tax revenues. Examples of capital leases include the MDOT Headquarters Office Building and the Prince George's County Justice Center. Debt outstanding for leases is expected to be $179 million at the end of fiscal 2019. Capital lease payments are estimated to be $25 million in fiscal 2019.

The final category of State debt is Stadium Authority debt. Some Stadium Authority debt is also limited obligation debt and represents bonds sold for the construction of the Camden Yards baseball and football stadiums, the Baltimore and Ocean City convention centers, the Hippodrome Theater, and the Montgomery County Conference Center. The facilities' debt service is supported by lottery revenues and other general fund sources. Stadium Authority debt outstanding is expected to be $65 million at the end of fiscal 2019. Debt service payments are projected to be $24 million in fiscal 2019. The Maryland Stadium Authority does not plan to issue any State-supported debt through fiscal 2019.

The University System of Maryland (USM), Morgan State University, and St. Mary's College of Maryland have the authority to issue debt for academic facilities, as well as auxiliary facilities. Unlike the other authorizations, Academic Revenue Bonds are not considered to be State debt; instead, they are a debt of the institutions. Proceeds from academic debt issued are used for facilities that have an education-related function, such as classrooms. Debt service for these bonds is paid with tuition and fee revenues. For fiscal 2019, CDAC recommends $24 million for academic facilities on USM campuses. No issuances are anticipated for Morgan State University, St. Mary's College of Maryland, or Baltimore City Community College.

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Capital Budget

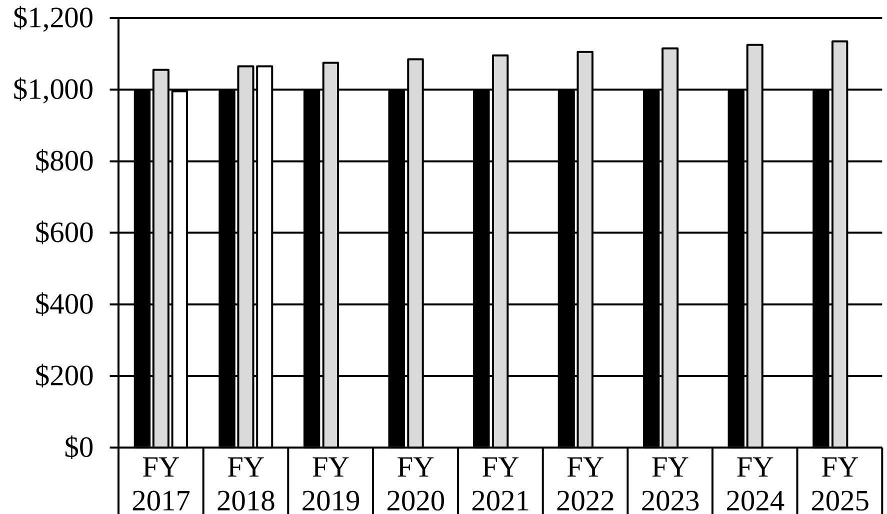
Capital Budget Outlook

On October 1, 2017, the Capital Debt Affordability Committee (CDAC) recommended limiting proposed new general obligation (GO) bond authorization levels to $995 million for the 2018 session. The CDAC's recommendation continues the policy established by the committee in its 2015 and 2016 reports of limiting authorization levels to $995 million for each year in the planning period, which eliminates inflationary increases that more recent recommendations provided. Without an inflationary adjustment, future GO bond authorization levels will be reduced by the impact of construction inflation on commodities and labor and will not keep pace with commitments made by the Administration and General Assembly in the 2017 session.

The Capital Debt Affordability Committee (CDAC) voted to keep the amount of new general obligation (GO) bond authorizations for the 2017 session at $995 million, the same amount recommended by the committee for the 2016 session. The committee further recommended that the State limit for new GO bond authorizations remain at $995 million annually through the planning period, which is also the same recommendation made by the committee in its 2015 report.

Exhibit 1 illustrates recent CDAC-recommended GO bond authorization levels and the level recommended by the 2016 Spending Affordability Committee (SAC). The October 2017 CDAC recommendation continues the policy of scaled back future bond issuances to reduce annual debt service requirements, which are estimated to require increasing levels of general funds to support. Recognizing the need to address the increasing reliance on general funds for debt service, the 2015 and 2016 SAC recommendations established a limit on new GO bond authorizations that increased by 1% on a year-over-year basis. This moderate growth rate limits increases in GO bond authorizations to projected State property tax revenue increases. Since general funds and other State revenues are projected to increase at an annual rate in excess of 1%, this reduces the ratio of debt service to revenues in the out-years.

Exhibit 1
Effect of New Policy on General Obligation Bond Authorizations
Fiscal 2017-2025
($ in Millions)



	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
■ CDAC Recommendations 2015, 2016, and 2017	$995	$995	$995	$995	$995	$995	$995	$995	$995
▢ SAC 2016	$1,055	$1,065	$1,075	$1,085	$1,095	$1,105	$1,115	$1,125	$1,135
□ Legisltive Authorization	$995	$1,065							

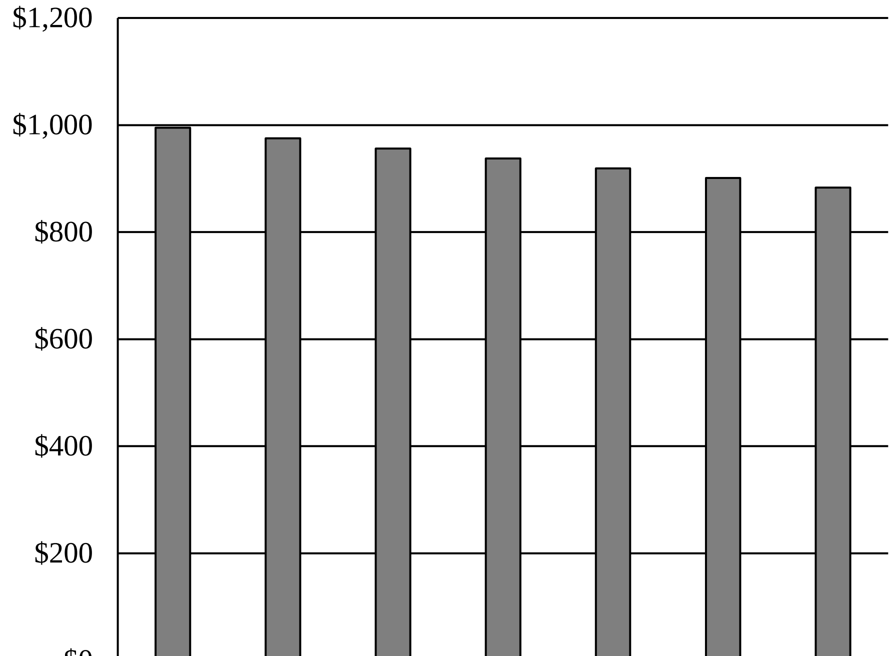
CDAC: Capital Debt Affordability Committee
SAC: Spending Affordability Committee

Source: *Capital Debt Affordability Committee Recommendation of GO Bond Authorizations*, October 2016

CDAC-recommended GO Levels Do Not Provide for Annual Inflationary Increases

To account for the impact of inflation in the construction market, it has been CDAC policy to include annual increases of approximately 3.0% over the previous year's level. As was the case with the committee's 2015 and 2016 recommendations, the 2017 CDAC recommendation does not provide for annual inflationary adjustments and instead keeps planned new GO bond authorization levels at $995 million throughout the planning period. However, since 2006, the average annual increase in the producer price index for components of construction is 2.3%. Without the annual inflationary adjustment, the State's spending power will erode relative to the effects of inflation. **Exhibit 2** illustrates the impact that construction inflation estimated at 2.0% annually would have on future authorization levels.

Exhibit 2
Proposed New GO Bond Authorization Levels – Inflation Adjusted
Fiscal 2019-2025
($ in Millions)



	2019	2020	2021	2022	2023	2024	2025
Inflation Adjusted (2% annual)	$995.0	$975.5	$956.4	$937.6	$919.2	$901.2	$883.5

Source: Department of Legislative Services

Capital Commitments Exceed Programmed Resources

The 2017 session also brought a multitude of pressures on the allocation of GO bond authorizations. As illustrated in **Exhibit 3**, which shows the programmed levels of GO bond authorizations for the remaining four fiscal years in the 2017 *Capital Improvement Program* (CIP), the GO bond capital commitments made in the 2017 session exceed the levels of GO bonds currently programmed and recommended in the forecast period.

Exhibit 3
Commitments Made in 2017 Session Exceed Programmed GO Bond Authorization Levels
Fiscal 2019-2022
($ in Millions)

	FY 2019	FY 2020	FY2021	FY2022
Projects Accelerated/Enhanced/Deferred	$35.839	$29.902	-$30.322	-$2.000
Projects Preauthorized	16.460	26.915	0.000	0.000
Mandates	14.000	14.000	14.000	14.000
Expressions of Intent	29.000	25.000		
Legislative Local Initiatives	15.000	15.000	15.000	15.000
Subtotal	**$110.299**	**$110.817**	**-$1.322**	**$27.000**
Potential Bond Replacement for General Fund PAYGO	66.407	37.907	37.907	18.680
Total	**$176.706**	**$148.724**	**$36.585**	**$45.680**

PAYGO: pay-as-you-go

Source: Department of Legislative Services

These additional commitments include mandates established through legislation, capital programs and projects accelerated by the Administration and the General Assembly, pre-authorization of projects not already included in the CIP, expressions of legislative intent through budget language, and plans for the replacement of diverted transfer tax as required by Chapter 10 of 2016 (Program Open Space – Transfer Tax Repayment – Use of Funds) and programed in the CIP. The impact that these commitments will have on the fiscal 2019 capital budget will depend upon how the Administration intends to treat each individual item, but the estimated impact is approximately $176.7 million above what the CIP could accommodate in fiscal 2019 under the $995 million limit recommended by CDAC.

Revenues and Taxes

Comparative Tax and Revenue Rankings

Based on data compiled by the U.S. Census Bureau, Maryland's overall revenue and spending levels in fiscal 2015 continued to be moderate compared to other states. Maryland remains uniquely reliant on tax revenues, however, with a strong dependence on the individual income tax.

State and Local Government Revenues and Spending

As reflected in **Exhibit 1**, the total State and local government revenues and spending in Maryland are not generally high compared to other states. When comparing all states and the District of Columbia using fiscal 2015 data, Maryland ranks twentieth and eighteenth, respectively, in total state and local government revenues and spending measured on a per capita basis and forty-second and forty-first, respectively, in revenues and spending as a percentage of personal income of residents. However, Maryland relies more on tax revenues and less on nontax revenue sources than most states.

Exhibit 1
Maryland State and Local Government
Revenues and Spending
Fiscal 2014-2015

	Maryland Rank Percent of Total	Maryland Rank Percentage of Personal Income	Maryland Rank Per Capita
Total Revenues	n/a	42	20
Total Spending	n/a	41	18
Revenues			
Taxes	6	17	11
Intergovernmental from Federal Government	26	36	20
Charges and Utilities[1]	44	47	46
Miscellaneous[2]	32	40	27

[1] Charges include higher education tuition, fees, and auxiliary revenues; public hospital revenues; sewer and trash collection; highway tolls; and other user charges and fees. Utilities include gross receipts of publicly owned utilities (water, gas, electric, and transit).
[2] Miscellaneous revenues include interest earnings, net lottery revenues, liquor store revenues, rents, royalties, fines and forfeitures, special assessments, sale of property, and other.

Note: For the rankings, 1 indicates the highest and 51 the lowest.

Source: 2015 Annual Survey State & Local Government Finances, U.S. Census Bureau (September 2017); Population from U.S. Census Bureau (December 2016); Personal Income Data from U.S. Bureau of Economic Analysis (September 2017)

State and Local Tax Revenues Compared to Neighboring States

Exhibits 2 and **3** compare Maryland's State and local tax revenues in fiscal 2015 to other states in the region. Maryland ranks seventeenth among all states in overall state and local tax revenues as a percentage of personal income and eleventh in overall tax revenues on a per capita basis. Maryland's reliance on the income tax is high (third on a percentage of income basis and fourth on a per capita basis) compared to other states, primarily reflecting the statewide local income tax. Generally, Maryland ranks in the bottom half of all states with respect to property taxes and sales taxes measured on a percentage of income basis. Maryland ranks seventeenth in property taxes, twenty-first in corporate income taxes, and twenty-eighth in sales taxes measured on a per capita basis. These comparisons only incorporate the impact of changes made to taxes in Maryland and other states through fiscal 2015.

Exhibit 2
Maryland State and Local Tax Revenues
2014-2015 Tax Revenue as a Percentage of Personal Income
Comparison to Selected States

	Property Tax	Personal Income Tax	Corporate Income Tax	Sales & Selective Taxes [1]	License Fees & Other Taxes [2]	All Taxes
Delaware						
Percent	1.8%	2.7%	0.9%	1.2%	3.5%	10.1%
Rank	48	15	2	50	2	21
District of Columbia						
Percent	4.5%	3.8%	0.9%	3.5%	1.6%	14.3%
Rank	7	4	3	25	5	3
Maryland						
Percent	**2.8%**	**3.9%**	**0.3%**	**2.8%**	**0.7%**	**10.4%**
Rank	**28**	**3**	**30**	**42**	**26**	**17**
New Jersey						
Percent	5.1%	2.5%	0.5%	2.4%	0.6%	11.1%
Rank	3	22	12	44	34	11
North Carolina						
Percent	2.3%	2.7%	0.3%	3.3%	0.5%	9.2%
Rank	40	14	27	29	39	34
Pennsylvania						
Percent	3.0%	2.6%	0.5%	3.1%	0.8%	9.9%
Rank	22	20	13	36	15	24
Virginia						
Percent	2.9%	2.7%	0.2%	2.1%	0.6%	8.6%
Rank	23	12	43	45	33	44
West Virginia						
Percent	2.4%	2.9%	0.3%	4.1%	1.5%	11.2%
Rank	37	10	34	13	6	10
United States Average	**3.1%**	**2.4%**	**0.4%**	**3.5%**	**0.7%**	**10.1%**

[1] Includes the general sales tax along with selective taxes such as excise taxes on alcohol and tobacco products, motor fuel taxes, titling taxes, admissions and amusement taxes, insurance premiums taxes, public utility gross receipts taxes, and others.
[2] Includes death and gift taxes, documentary and stock transfer taxes, severance taxes, and other taxes.

Note: For the rankings, 1 indicates the highest. Rankings are out of 51 except for the personal income tax (out of 44) and the corporate income tax (out of 47).

Source: 2015 Annual Survey of State & Local Government Finances, U.S. Census Bureau (September 2017); Population from U.S. Census Bureau (December 2016); Personal Income Data from U.S. Bureau of Economic Analysis (September 2017)

Exhibit 3
Maryland State and Local Tax Revenues
2014-2015 Tax Revenues Per Capita
Comparison to Selected States

	Property Tax	Personal Income Tax	Corporate Income Tax	Sales & Selective Taxes [1]	License Fees & Other Taxes [2]	All Taxes
Delaware						
Amount	$857	$1,269	$431	$546	$1,666	$4,769
Rank	46	13	4	50	3	19
District of Columbia						
Amount	$3,359	$2,787	$669	$2,613	$1,177	$10,605
Rank	1	2	1	4	4	1
Maryland						
Amount	**$1,558**	**$2,205**	**$167**	**$1,553**	**$374**	**$5,857**
Rank	**17**	**4**	**21**	**28**	**$19**	**11**
New Jersey						
Amount	$3,082	$1,483	$289	$1,470	$357	$6,680
Rank	2	9	8	34	21	5
North Carolina						
Amount	$953	$1,116	$133	$1,373	$217	$3,791
Rank	42	25	28	38	43	38
Pennsylvania						
Amount	$1,482	$1,277	$233	$1,553	$409	$4,954
Rank	21	12	11	29	13	17
Virginia						
Amount	$1,523	$1,423	$98	$1,107	$315	$4,466
Rank	19	10	41	46	27	24
West Virginia						
Amount	$889	$1,050	$103	$1,500	$563	$4,105
Rank	43	27	37	33	8	31
United States Average	**$1,521**	**$1,146**	**$178**	**$1,698**	**$340**	**$4,883**

[1] Includes the general sales tax along with selective taxes such as excise taxes on alcohol and tobacco products, motor fuel taxes, titling taxes, admissions and amusement taxes, insurance premiums taxes, public utility gross receipts taxes, and others.
[2] Includes death and gift taxes, documentary and stock transfer taxes, severance taxes, and other taxes.

Note: For the rankings, 1 indicates the highest. Rankings are out of 51, except for the personal income tax (out of 44), and the corporate income tax (out of 47).

Source: 2015 Annual Survey of State & Local Government Finances, U.S. Census Bureau (September 2017); Population from U.S. Census Bureau (December 2016); Personal Income Data from U.S. Bureau of Economic Analysis (September 2017)

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Revenues and Taxes

Implementation of Casino Gaming

With the opening of the casino in Prince George's County, all six of the casinos authorized in Maryland are in operation. Video lottery terminal revenues in Delaware, Pennsylvania, and West Virginia declined in fiscal 2017. In contrast, table game revenues increased in Pennsylvania in fiscal 2017.

Implementation of Video Lottery Terminals and Table Games

There are six casinos operating in Baltimore City and Allegany, Anne Arundel, Cecil, Prince George's, and Worcester counties, with the facility in Prince George's County being the newest casino to open in December 2016. **Exhibit 1** shows the number of video lottery terminals (VLT) and table games in operation at each facility as of September 30, 2017.

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

Facility	VLTs	Table Games
Allegany	665	17
Anne Arundel	3,872	190
Baltimore City	2,202	176
Cecil	822	21
Prince George's	3,087	168
Worcester	800	0
Total	**11,448**	**572**

VLT: video lottery terminal

Source: State Lottery and Gaming Control Commission

VLT and Table Game Revenues

Exhibit 2 shows actual and anticipated gross VLT and table game revenues for fiscal 2011 through 2020 (not including one-time initial license fees) by facility. **Exhibit 3** shows the same revenues (not including one-time initial license fees) by fund.

Exhibit 2
Gross Gaming Revenues Generated by Facility
Fiscal 2011-2020
($ in Millions)

	2011	2012	2013	2014	2015	2016	2017	Est. 2018	Est. 2019	Est. 2020
VLTs										
Allegany			$2.8	$35.3	$38.0	$41.3	$45.1	$46.6	$47.3	$48.1
Anne Arundel		$28.5	431.1	419.0	391.8	408.8	371.9	355.5	358.4	363.7
Baltimore City					131.9	168.3	168.7	167.3	168.6	171.2
Cecil	$82.7	118.1	76.0	72.1	66.1	65.7	63.1	62.6	63.2	64.1
Prince George's							177.5	329.8	336.4	341.5
Worcester	20.4	48.0	50.4	52.0	53.1	57.6	59.6	61.3	62.2	63.1
Total VLTs	**$103.1**	**$194.5**	**$560.3**	**$578.4**	**$681.0**	**$741.7**	**$885.9**	**$1,023.1**	**$1,036.2**	**$1,051.7**
Table Games										
Allegany			$0.5	$5.9	$6.6	$6.6	$7.6	$7.8	$7.9	$8.0
Anne Arundel			41.6	235.4	233.8	242.0	219.8	187.5	188.6	191.4
Baltimore City					104.1	142.1	135.3	126.1	126.8	128.7
Cecil			6.0	13.6	11.9	11.6	11.3	11.1	11.2	11.3
Prince George's							160.9	298.8	304.5	309.1
Worcester			0	0	0	0	0	0	0	0
Total Table Games			**$48.0**	**$254.9**	**$356.4**	**$402.3**	**$535.1**	**$631.2**	**$638.9**	**$648.5**
Total VLT and Table Games	**$103.1**	**$194.5**	**$608.3**	**$833.3**	**$1,037.4**	**$1,144.0**	**$1,420.9**	**$1,654.3**	**$1,675.1**	**$1,700.2**

VLT: video lottery terminal

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

Exhibit 3
Gross Gaming Revenues Generated by Fund
Fiscal 2011-2020
($ in Millions)

	2011	2012	2013	2014	2015	2016	2017	Est. 2018	Est. 2019	Est. 2020
VLTs										
Education Trust Fund	$50.1	$94.3	$274.7	$277.1	$316.1	$322.0	$361.7	$392.4	$412.0	$418.2
Lottery Operations	2.1	3.9	11.2	11.6	11.9	7.8	9.3	10.2	10.4	10.5
Purse Dedication Account	7.2	13.6	39.1	38.9	46.0	50.1	54.6	59.8	60.5	61.4
Racetrack Renewal Account	2.6	4.9	10.8	9.5	7.1	7.0	8.4	9.8	9.9	10.0
Local Impact Grants	5.7	10.7	30.7	30.8	36.4	39.7	47.5	55.5	56.2	57.0
Business Investment	1.5	2.9	8.4	8.4	9.9	10.8	12.9	0.0	0.0	0.0
Licensees	34.0	64.2	185.4	202.1	253.6	304.3	391.3	480.5	487.2	494.5
Total VLTs	**$103.1**	**$194.5**	**$560.3**	**$578.4**	**$681.0**	**$741.7**	**$885.9**	**$1,008.1**	**$1,036.2**	**$1,051.7**
Table Games										
Education Trust Fund			$9.6	$51.0	$71.3	$80.5	$89.5	$94.7	$95.8	$97.3
Local Impact Grants							17.6	31.6	31.9	32.4
Licensees			38.4	203.9	285.1	321.8	428.1	505.0	511.2	518.8
Total Table Games			**$48.0**	**$254.9**	**$356.4**	**$402.3**	**$535.1**	**$631.2**	**$638.9**	**$648.5**
Total VLT and Table Games	**$103.1**	**$194.5**	**$608.3**	**$833.3**	**$1,037.4**	**$1,144.0**	**$1,420.9**	**$1,639.3**	**$1,675.1**	**$1,700.2**
Education Trust Fund	**$50.1**	**$94.3**	**$284.3**	**$328.1**	**$387.4**	**$402.5**	**$451.2**	**$487.1**	**$507.9**	**$515.5**

VLT: video lottery terminal

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

Gaming in Surrounding States

Since fiscal 2012, gaming revenues at Delaware Park and Dover Downs have each decreased by approximately 30%, while gaming revenues from Charles Town have decreased 37%. Gaming revenues from Philadelphia casinos in fiscal 2017 were similar to revenues in fiscal 2012.

Delaware's fiscal 2017 VLT and table game revenues each decreased by 2.0% from the prior year. West Virginia's fiscal 2017 VLT revenues decreased by 3.1%, and table game revenues declined by 10.5%. Pennsylvania's overall gaming revenues have fared better than in Delaware and West Virginia. Pennsylvania's VLT revenues decreased by 2.2%, but table game revenues increased by 3.3% in fiscal 2017. Only one of the three Philadelphia area casinos experienced a decrease in gaming revenues in fiscal 2017.

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Revenues and Taxes

The Future of Gaming in Maryland: Sports Betting, Online Gaming, and Skill-based Games

Many states and casinos are exploring options for expanding commercial gaming. In an effort to appeal to a younger clientele, states are considering new gaming options, including online gaming and skill-based games. Additionally, legislation before Congress and a case being considered by the U.S. Supreme Court each has the potential to overturn the prohibition on state regulation of sports betting.

Sports Betting and Online Gaming

The latest trend in state gaming legislation involves sports betting. Many states, including Maryland, have considered authorizing sports betting, and legal developments have prompted other states to follow suit. In addition, states continue to pursue legalization of online gaming platforms.

Federal Laws and Authority of States to Regulate

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

The U.S. Department of Justice (DOJ) had long maintained that, despite the reference to a sporting event or contest, the Interstate Wire Act of 1961 (Wire Act) effectively prohibits any telecommunicated wager placed or received by a person located in the United States. However, in a September 2011 memorandum opinion, DOJ determined that the Wire Act only applies to sports-related gambling activities in interstate commerce. This more recent interpretation means that DOJ will no longer contend that states cannot license intrastate Internet gambling or compact with each other to provide interstate gaming.

Two federal statutes, the Wire Act and the Professional and Amateur Sports Protection Act (PASPA), have been used to limit sports betting. The PASPA makes wagering on sports illegal under federal law but exempts certain types of sports wagering in four states: Nevada, since it has licensed and regulated sports books since 1949; and Delaware, Oregon, and Montana, because each had at one time legalized limited sports betting in connection with their state lotteries. In addition to Nevada's expansive sports wagering offerings, Delaware currently is the only state that has opted to take advantage of its PASPA-exempt status by authorizing parlay betting on National Football League (NFL) games.

Sports Betting

Federal and State Legislation

In anticipation of federal action regarding the PASPA, 15 states, including Maryland, introduced sports betting legislation in 2017. Legislation was passed in 2 of those states, Connecticut and Mississippi, contingent upon congressional or judicial action overturning the federal ban.

Congressman Frank A. LoBiondo from New Jersey introduced H.R. 783 in 2017, a bill that would give states a four-year window under the PASPA to legalize sports betting, but no action has been taken on the legislation. Alternatively, Congressman LoBiondo and Congressman Donald L. Norcross officially requested on October 13, 2017, that the House Judiciary Committee hold hearings on the topic of sports betting, arguing that Congress should examine the issue prior to the U.S. Supreme Court's ruling in *Christie v. NCAA*.

Christie v. NCAA

In 2012, New Jersey's legislature passed a law that allowed the state's casinos and racetracks to offer sports betting. A number of sports leagues, led by the National Collegiate Athletic Association (NCAA), sued in federal court to have the state law struck down under the PASPA. The court upheld the constitutionality of the PASPA, thus ruling for the leagues and against New Jersey. New Jersey appealed to the U. S. Supreme Court in 2015 but was denied *certiorari*.

While the state law was struck down, the court left open the possibility that through deregulation, New Jersey casinos could allow sports betting. In 2014, New Jersey repealed the state's laws against sports betting, essentially removing all state control over sports wagering at casinos and racetracks. In August 2015, a three-member panel of the U.S. Court of Appeals for the Third Circuit ruled against New Jersey and struck down the state's attempt at deregulation. The same court agreed to rehear the case *en banc* in 2016 but ruled in favor of the sports leagues. New Jersey again appealed to the Supreme Court on October 7, 2016, and the court granted certiorari, despite a recommendation from the Acting Solicitor General not to do so. Oral arguments are scheduled for December 2017, and a decision is expected possibly as early as spring 2018. This move by the Supreme Court has prompted a flurry of legislative activity and has emboldened the gaming industry to push for state action.

The NCAA was joined by the four major professional sports leagues in its suit against New Jersey. All except for the NFL appear to be softening their stance, acknowledging that a huge black market for sports betting already exists and arguing that transparency and regulation is better for the integrity of the game than the status quo. The National Basketball Association Commissioner recently made headlines calling on Congress to authorize states to legalize sports betting while providing a federal regulatory framework with technological safeguards.

Online Gaming

The U.S. Department of Justice opened the door to online gaming in 2011 when it ruled that the Wire Act only applied to sports betting. Three states have implemented some form of online gaming. Nevada authorized online poker, and Delaware and New Jersey have launched full-scale online gaming operations. Generally, online gaming in each state is limited to residents and visitors physically located in the state. In February 2014, in order to create a larger pool of poker players, Delaware and Nevada entered into a Multi-State Internet Gaming Agreement. The agreement, which is the country's first gaming compact, will allow bettors in both states to compete for the same winnings. Each state will receive a percentage of the rake, or commission, attributable to the players from that state. On October 13, 2017, it was announced that New Jersey would join in the multi-state agreement once an operator and game software are approved.

In 2017, California, Illinois, Massachusetts, Michigan, New York, New Hampshire, Pennsylvania, and West Virginia all considered legislation that would have legalized some form of online gaming. The Maryland General Assembly has not yet considered legislation that would allow for online gaming in the State. In addition, it is unclear if online gaming would be considered an additional form or expansion of commercial gaming that would require voter approval by referendum under Section 1 of Article XIX of the Maryland Constitution.

Skill-based Games

In recent years, state gaming regulators have been studying skill-based video games to address concerns over stagnant slots revenues and an aging slot machine clientele. In addition, the rapid growth of state-sponsored gambling has led to market saturation and cannibalization, prompting gaming industry officials to look for new ways to expand the industry's customer base to include the video gaming generation – the millennials.

Skill-based video games in casinos allow players to increase their chances of winning by how well they perform a particular task presented by the game, unlike slot machines where winners are determined by the machine at random. These games are being promoted as the future of gaming and a way to attract millennials to the casino floor. Blaine Graboyes, CEO and co-founder of GameCo, recently appeared before the Joint Committee on Gaming Oversight in the Maryland General Assembly, testifying that skill-based games will reverse downward slot trends and bring in net new customers. GameCo machines debuted in Atlantic City in 2015 and have since expanded into casinos in Connecticut, Nevada, and North Carolina.

Currently, Massachusetts, Nevada, and New Jersey have made the necessary legislative and regulatory changes to allow skill-based games, with other states expected to follow their lead as manufacturers develop new products. In Pennsylvania, a bill authorizing skill and hybrid slot machines was introduced during the 2017 legislative session. The Maryland General Assembly may need to amend current law to accommodate skill-based gaming before the machines could be introduced in the State's casinos.

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Status of Online Sales Tax Collection

States are limited in their authority to require remote sellers to collect sales and use taxes from online sales. The expansion of electronic commerce in recent years has resulted in an erosion of the sales and use tax base in Maryland and other states. While a number of states have made efforts to require remote sellers to collect these taxes, several federal legislative measures are pending that would authorize states to require the collection of sales and use taxes by remote sellers.

Background

Pursuant to past U.S. Supreme Court rulings, most notably in the 1992 case *Quill Corp. v. North Dakota*, Internet and mail-order retailers were only required to collect sales taxes from purchases made by out-of-state customers if the retailer maintained a physical presence in the customer's home state such as a store, office, or warehouse. When a remote seller is not required to collect sales tax, the customer is ultimately responsible for paying the use tax on the purchase. However, the rate of customer use tax compliance is very low and the tax is difficult to enforce. As the magnitude of online purchases has grown significantly, the inability of state and local jurisdictions to require remote sellers to collect sales tax has led to an erosion of state and local sales and use tax bases and also created an unlevel playing field for brick and mortar businesses. A 2011 study by the Comptroller's Office estimated that uncollected sales taxes from remote sales to Maryland residents could total approximately $294.8 million in fiscal 2018. This figure reflects online sales as well as catalog and mail-order sales.

Streamlined Sales and Use Tax Agreement

The primary objection to requiring remote sellers to collect sales taxes is the complexity of collecting the tax in the large number of taxing jurisdictions throughout the country. There are thousands of state and local taxing jurisdictions with different sets of definitions, tax rates, and administrative practices. Adopted on November 12, 2002, the Streamlined Sales and Use Tax Agreement (SSUTA) was created in an effort to modernize sales and use tax collection. The agreement simplifies sales and use tax collection, provides uniform product definitions, and centralizes administration of tax collections. As of September 2017, 24 states have enacted legislation conforming to the agreement. Although an advisory state, Maryland is not a member to the agreement. Under existing State law, Maryland will adopt the agreement if the authority to require remote sellers to collect taxes on remote sales is provided by federal law.

Federal Legislation

Federal legislation concerning the collection of sales taxes by out-of-state sellers has been introduced in the U.S. Congress for a number of years. Currently, Congress is considering three proposals but has yet to take action.

Remote Transactions Parity Act

The Remote Transactions Parity Act (H.R. 2193) would authorize SSUTA full-member states to require sellers who do not meet a state's small seller exception to collect and remit sales taxes on sales to in-state customers without regard to the seller's location. The Act requires states that have not adopted the agreement to implement a simplified system for the administration of a remote seller's sales and use tax collection responsibilities. The simplified system would feature a single state-level agency to administer all sales and use tax laws and a uniform sales and use tax base among the state and its local taxing jurisdictions. Under the small seller exception, a state may only require the collection of sales and use taxes by a remote seller if the seller (1) has gross annual receipts exceeding specified amounts, which are phased in from $10 million for the first year, to $5 million for the second year, and $1 million for the third year; or (2) utilizes an electronic marketplace for the purpose of making products or services available for sale to the public.

Marketplace Fairness Act

The Marketplace Fairness Act (S. 976) would authorize SSUTA full-member states to require all sellers with gross annual receipts from remote sales exceeding $1 million to collect and remit sales and use taxes with respect to remote sales under provisions of the agreement, but only if the agreement includes minimum simplification requirements relating to the administration of the tax, audits, and streamlined filing. Similar to the Remote Transactions Parity Act, under the Marketplace Fairness Act, states that have not adopted the agreement would be required to implement a simplified system for the administration of a remote seller's sales and use tax collection responsibilities. A remote seller with annual gross receipts from total remote national sales of $1 million or less in the preceding calendar year would be considered a small seller and exempt from collection responsibilities.

Online Sales Simplification Act

Although not yet introduced in either chamber of Congress, the Online Sales Simplification Act would authorize a state to impose or require the collection of a sales, use, or similar tax by a seller on a remote sale only if the state is a member of a tax distribution agreement, *i.e.*, a clearinghouse. Generally, the tax would apply based on the rules and rates in the seller's location, *i.e.*, the origin state. Except under certain circumstances, a destination state would not be allowed to impose any additional tax on a purchaser if the remote seller collects the tax. If a state does not become a party to a clearinghouse, it is not allowed to levy any tax on a remote sale and may not receive any distribution under the terms of the clearinghouse. In addition, the Act specifies that, in the case of a seller located in a state that participates in the clearinghouse but does not impose a sales, use, or similar tax, the seller may either (1) collect a tax using the alternate base and destination rate for each state that participates in the clearinghouse or (2) report sales information for the sale to the clearinghouse.

Laws and Legislation at the State Level

According to the National Conference of State Legislatures, 20 out of 46 states with a state sales tax, including the District of Columbia, create nexus for a remote seller that uses a website to make sales to the state's residents. Under the laws of these states, nexus may be created by a retailer's contract with an affiliate or independent person within the state who posts a link to an out-of-state business on their website and receives a share of revenues from that business. Enforceability hinges on the affiliates of the remote seller having a physical presence in an enacting state, thereby allowing the state to require the seller to collect the sales tax. However, in an effort to avoid the collection requirement, some online retailers have canceled their affiliate arrangements in these state.

Other states, such as South Dakota, have enacted legislation establishing that remote sellers with certain minimum sales thresholds have an economic nexus with the states and must collect and remit sales taxes. For example, under the South Dakota statute, remote sellers with sales of more than $100,000 or over 200 transactions each year are deemed to have created an economic nexus in South Dakota despite no physical presence in the state. Many remote sellers have challenged these statutes. The South Dakota Attorney General has filed a petition for *writ of certiorari* requesting that the U.S. Supreme Court rule on the constitutionality of the South Dakota statute.

Several states have pursued legislation requiring remote sellers to report or disclose sales on which the sellers fail to collect sales and use taxes. For example, under Colorado's law, remote sellers that have over $100,000 of sales to Colorado purchasers and do not collect sales tax must, as of July 1, 2017, notify their Colorado customers that the customers are required to remit use tax on their purchases. In addition, beginning January 31, 2018, remote sellers must provide an annual summary of spending to Colorado customers who purchase more than $500 of goods from the seller. Beginning March 1, 2018, remote sellers must provide an annual report to the Colorado Department of Revenue that includes the customer's name, address, and total purchases. Remote sellers with less than $100,000 of sales to Colorado customers are exempt from these requirements. The U.S. Tenth Circuit Court of Appeals has held that the Colorado law does not violate the Commerce Clause of the U.S. Constitution, and the U.S. Supreme Court denied an appeal of this decision.

In Maryland

Legislation has been introduced in Maryland in recent years, most recently in 2017, that would require the collection of sales and use taxes by remote sellers. However, potential revenue increases depend on several factors, including (1) the number of remote sellers who meet the requirements of the proposals; (2) the amount of sales these remote sellers make to Maryland customers; and (3) the number of these remote sellers who actually begin to collect and remit the sales tax on sales to Maryland customers. Consequently, the Department of Legislative Services is unable to predict with certainty the amount of those increases.

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Revenues and Taxes

Evaluation of the Biotechnology Investment Incentive Tax Credit and the Research and Development Tax Credit

The Tax Credit Evaluation Act requires an evaluation of the biotechnology investment incentive tax credit and the research and development tax credit by July 1, 2018, and the Department of Legislative Services (DLS) evaluated each credit during the 2017 interim. DLS makes numerous recommendations to improve the implementation and processing of biotechnology investment incentive tax credits. DLS determined that the research and development tax credit provides little direct incentive for companies to increase research and development activities and recommends that the credit be allowed to terminate as scheduled.

Tax Credit Evaluation Act

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

To assist the committee in its work, the Department of Legislative Services (DLS) is required to publish a report evaluating the tax credit, which must discuss (1) the purpose for which the tax credit was established; (2) whether the original intent of the tax credit is still appropriate; (3) whether the tax credit is meeting its objectives; (4) whether the goals of the tax credit could be more effectively carried out by other means; and (5) the cost of the tax credit to the State and local governments. During the 2017 interim, DLS evaluated the biotechnology investment incentive and the research and development (R&D) tax credits, as the evaluation committee is required to review these credits by July 1, 2018.

Biotechnology Investment Incentive Tax Credit

Chapter 99 of 2005 established the biotechnology investment incentive tax credit program, which offers a refundable income tax credit for investments in qualified biotechnology companies. An investor who invests at least $25,000 in a qualified Maryland biotechnology company (QMBC) can claim a credit equal to 50% of the investment, not to exceed $250,000, or if the QMBC is located in Allegany, Dorchester, Garrett, or Somerset counties, the credit is equal to 75% of the investment, not to exceed $500,000.

The biotechnology investment incentive tax credit is a budgeted tax credit program subject to an annual overall budgetary limit. The program’s fiscal impact has doubled over time due to an increase in the amounts appropriated to the program. The geographic distribution of participating biotechnology companies is similar to the location of biotechnology clusters within Maryland. Nonresidents are a significant source of investments – making a total of 911 investments that comprised about 6 out of every 10 investment dollars. The report discusses one of the unique challenges that biotechnology companies face, such as securing adequate financing and gaining federal regulatory approval. The report highlights how credit implementation and process issues, such as issuing credits on a first come, first served basis, reduces the program's effectiveness, results in an unequal distribution of credits, and favors repeat over first-time applicants. The report also discusses how the program does not allocate credits in a manner that is most likely to provide financial assistance in the most crucial, early development phases of a biotechnology company.

The report includes a number of recommendations to improve the program. These recommendations include (1) setting aside, in each fiscal year, a portion of credits for first-time applicants and establishing a lifetime maximum on the total credits that can be claimed with respect to each company; (2) lowering the credit percentage and tailoring the credit value based on the company's risk; and (3) establishing a competitive process for the awarding of credits and performance metrics to measure the program's impact.

Research and Development Tax Credit

Chapters 515 and 516 of 2000 established the R&D tax credit to encourage businesses to maintain and increase R&D expenditures in the State. There are two types of credits: (1) a basic credit equal to 3% of the Maryland qualified R&D expenses paid during the tax year, up to the Maryland base amount; and (2) a growth credit equal to 10% of the Maryland qualified R&D expenses paid during the year that exceed the Maryland base amount. There is an annual cap on the program, which Chapter 743 of 2017 expanded by increasing from $9.0 million to $12.0 million the aggregate amount of credits that the Department of Commerce can approve in each calendar year. The program has been oversubscribed since first enacted, so qualified businesses receive a prorated share of the total amount available for both the basic and growth tax credit. Thus, the State credit provides very little direct incentive for companies to increase R&D activities.

DLS concluded that the State R&D tax credit is not a key component in fostering innovation and creating long-term economic growth. Having a skilled workforce appears to be a more significant factor in creating long-term growth. The R&D credit is scheduled to terminate on June 30, 2021. DLS recommends allowing the credit to terminate and considering alternative policies for encouraging R&D expenditures, such as providing research grants to Maryland universities or matching a portion of the federal Small Business Innovative Research program funds. If the General Assembly decides not to allow the credit to terminate, DLS makes several recommendations to improve the program, such as simplifying the tax credit and targeting the credit to new and small technology companies.

Personnel

State Workforce and Payroll

Since fiscal 2016, the total number of budgeted State positions has decreased from 80,874 to 80,505. Declines in State agency positions were partially offset by increases in higher education and judicial positions. From fiscal 2017 to 2018, personnel costs decrease by 0.4%. Salary costs decrease by 0.3%, while other benefit costs decrease by 1.6%. From fiscal 2007 to 2016, the average employee's salary increased at a rate of 2.0% annually. Higher growth in benefit costs results in benefits' share increasing from 25.0% to 31.0% of total costs.

Fiscal 2018 Budgeted Regular Positions and Compensation

Regular full-time equivalent positions are requested by the Administration and authorized by the General Assembly when the State budget is passed. Section 31 of the fiscal 2018 budget bill limits position growth above that level by allowing the Board of Public Works (BPW) to authorize no more than 100 additional positions during fiscal 2018, outside of exempted provisions for hardship, manpower, statutes, block grants, new facilities, and/or emergencies (not including higher education institutions). To date, BPW has abolished 30 positions in the University System of Maryland for cost containment.

Budget spending limits, position caps restricting growth, attrition, and abolitions prompted by budgetary constraints have decreased the nonhigher education Executive Branch workforce from 50,579 positions in fiscal 2016 to 49,469 in fiscal 2018, a reduction of 1,110 positions. **Exhibit 1** shows that the total number of nonhigher education Executive Branch positions decreased by 482 from fiscal 2017 to 2018, primarily as a result of 400 abolished vacant positions in the Department of Public Safety and Correctional Services associated with the downsizing of the Maryland Correctional Institution – Hagerstown. These declines were partially offset by adding 666 positions in higher education institutions from fiscal 2016 to 2018; a net 388 positions were added in fiscal 2018 as a result of flex authority and BPW cuts.

The budgeted expenditure for salaries totals $5.4 billion in fiscal 2018, while other compensation adds another $2.7 billion in costs. **Exhibit 2** shows that salaries decrease slightly in fiscal 2018 from 2017. The decline in salaries is not surprising given that the workforce has shrunk and there were, with limited exceptions, no salary enhancements budgeted for State employees.[1]

[1] State Law Enforcement Officers Labor Alliance officers who missed step increases from fiscal 2010 to 2013 receive compensation in fiscal 2018 as a result of a collective bargaining agreement.

Exhibit 1
Regular Full-time Equivalent Positions Changes
Fiscal 2016 Actual to Fiscal 2018 Legislative Appropriation

Department/Service Area	2016 Actual	2017 Working Approp.	2018 Legis. Approp.	2016-2018 Change	2017-2018 Change
Health and Human Services					
Health	6,353	6,181	6,187	-166	6
Human Services	6,360	6,224	6,224	-136	0
Juvenile Services	2,041	1,998	1,978	-63	-20
Subtotal	***14,754***	***14,403***	***14,389***	***-365***	***-14***
Public Safety					
Public Safety and Correctional Services	11,025	10,954	10,554	-471	-400
Police and Fire Marshal	2,438	2,436	2,436	-2	0
Subtotal	***13,463***	***13,390***	***12,990***	***-473***	***-400***
Transportation	**9,126**	**9,108**	**9,058**	**-68**	**-50**
Other Executive					
Legal (Excluding Judiciary)	1,501	1,475	1,474	-27	-1
Executive and Administrative Control	1,626	1,564	1,559	-68	-5
Financial and Revenue Administration	2,119	2,102	2,099	-20	-3
Budget and Management and DoIT	480	584	582	102	-2
Retirement	213	210	210	-3	0
General Services	578	581	581	4	0
Natural Resources	1,321	1,315	1,333	12	18
Agriculture	380	356	355	-25	-1
Labor, Licensing, and Regulation	1,603	1,513	1,491	-113	-22
MSDE and Other Education	1,940	1,940	1,940	1	0
Housing and Community Development	337	325	324	-13	-1
Commerce	202	193	193	-9	0
Environment	*939*	*894*	*893*	*-46*	*-1*
Subtotal	***13,237***	***13,051***	***13,033***	***-204***	***-18***
Executive Branch Subtotal	***50,579***	***49,951***	***49,469***	***-1,110***	***-482***
Higher Education[1]	**25,632**	**25,909**	**26,298**	**666**	**388**
Judiciary	**3,914**	**3,951**	**3,989**	**76**	**39**
Legislature	**749**	**749**	**749**	**0**	**0**
Grand Total	**80,874**	**80,560**	**80,505**	**-369**	**-55**

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

[1] Fiscal 2018 higher education positions have been adjusted to include positions created and abolished through flex authority and Board of Public Works actions.

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

Exhibit 2
Regular Employee Compensation
Fiscal 2017 Working to 2018 Legislative Appropriation
($ in Millions)

	2017 Working Appropriation	2018 Legislative Appropriation	2017- 2018 $ Change	2017-2018 % Change
Earnings				
Salary	$5,424.3	$5,410.8	-$13.5	-0.25%
Other Earnings[1]	157.2	184.8	27.6	17.58%
Earnings Subtotal	***$5,581.5***	***$5,595.6***	***$14.1***	***0.25%***
Other Compensation				
Health[2]	$1,268.5	$1,234.5	-$34.0	-2.68%
Retirement/Pensions[3]	940.7	926.6	-14.2	-1.50%
Salary-dependent Fringe[4]	408.9	411.2	2.3	0.56%
Agency-related Fringe[5]	107.1	108.6	1.5	1.41%
Other Compensation Subtotal	***$2,725.2***	***$2,680.9***	***-$44.3***	***-1.63%***
Total Compensation	**$8,306.7**	**$8,276.5**	**-$30.2**	**-0.36%**

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

Note: Includes higher education and Judicial and Legislative branches.

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

Unlike most prior years, employee benefit costs decrease in fiscal 2018 from 2017. Overall, health insurance contribution growth is relatively flat in order to reduce a high fund balance; however, the State agency share of contributions decreases by 2.7%, as a result of resetting the cost-share ratio between State agencies and employees/retirees at 80.0%/20.0%. In fiscal 2017, State agencies contributed more than 80.0% of costs. Pension costs decrease by 1.5% in fiscal 2018 due to reduced additional payments (pension sweeper) for one year, as well as demographic trends that limited the growth of pension liabilities. Other salary and agency dependent fringe benefit costs increased slightly in fiscal 2018.

Salary and Benefits History

In its annual personnel report, the Department of Budget and Management provides personnel cost data. **Exhibit 3** shows that fringe benefit costs are increasing at a faster rate than salaries, accounting for 31.0% of the total cost share of an average employee in fiscal 2016 in comparison to 25.0% in fiscal 2007. From fiscal 2007 to 2016, fringe benefits increased by an annual rate of 5.3%, while salaries increased by 2.0% during the same timeframe. Pension contributions are the primary driver of the increase with an annual growth of 12.8%. Health insurance costs, with an annual growth of 2.8%, are lower in fiscal 2016 due to reversions, resulting from high vacancies and position abolitions.

Exhibit 3
Change in Direct Salary and Benefit Costs for the Average Employee
Fiscal 2007 and 2016

	2007	2016	Total Change	Annual Percent Change
Salary	$46,080	$55,310	$9,230	2.0%
Health Insurance Payments	7,579	9,745	2,166	2.8%
Pension Contributions	3,147	9,336	6,189	12.8%
Other Fringe Benefits	4,549	5,246	697	1.6%
Total	**$61,355**	**$79,637**	**$18,282**	**2.9%**
Fringe Benefit Share of Total Cost	**25.0%**	**31.0%**		

Note: Does not include nonbudgeted agencies, higher education, Legislative or Judicial branches. Starting after fiscal 2015, noncontractual temporary employees are excluded. Salary data prior to this change may have been systematically underestimated.

Source: Department of Budget and Management Annual Personnel Reports (Fiscal 2004 and 2016)

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

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

The average employee salary increased from approximately $46,080 in fiscal 2007 to $55,310 in fiscal 2016; however, growth has not been continuous.[3] During that time period, there have been four years with neither general salary increases nor increments, and two years (fiscal 2010 and 2011) where salaries decreased as a result of furloughs. The strongest sustained salary growth of the period was from fiscal 2005 to 2009, when salaries grew at an annual rate of 3.2%. The period with the weakest growth was from fiscal 2009 to 2013, when salaries grew at an annual rate of 0.2%.

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[3] Beginning in fiscal 2015, the Department of Budget and Management used the new Statewide Personnel System to compute the average salary. Under the new system, hourly, daily, temporary, and contractual employees were excluded. Average salary figures prior to fiscal 2015 may be somewhat understated.

State Employee and Retiree Health Plan

In response to rising health care costs, the State has modified its plans by increasing employee costs, such as adding coinsurance to preferred provider organizations. These changes have resulted in a migration of employees into exclusive provider organizations, which provide in-network benefits only and do not have as many additional costs. The wellness program has been modified so that there is no longer a surcharge for nonparticipation. Prescription drug costs continue to increase at a higher rate than other health care costs.

Plan Offerings and Membership Migration

The State offers a generous array of health benefits, including medical, behavioral, prescription drug, dental, vision, life, and accidental death and dismemberment insurance. The plan design allows employees to choose among three types of health plans: Preferred Provider Organization (PPO), which utilizes a national network and provides both in- and out-of-network benefits; Exclusive Provider Organization (EPO), which utilizes a national network and provides in-network benefits only; and Integrated Health Model (IHM), which utilizes a regional network.

EPO plans are the most popular with 51.3% of plan membership in calendar 2017. Migration into EPO plans started when the State introduced coinsurance payments for PPO and point of service (POS) plans in 2012, requiring those members to pay a percentage of out-of-network costs.[4] EPO members have lower premiums because the plans are less costly, and the State's cost-share ratio is 85/15 versus 80/20 for PPO plans. Despite the higher premium cost share of EPO plans, the State saves on health costs by not having to pay out-of-network claims.

Large Fund Balance and Projected Savings

The State closed fiscal 2016 with a $50.8 million surplus in the health insurance account due to higher than expected prescription drug rebates and contributions from State agencies, employees, and retirees exceeding expectations. The excess contributions were largely attributable to one more pay period than normal ending during the fiscal year. State agencies' contributions also exceeded expectations, in part, because the budget assumed the State would pay 80% of premiums even though many employees and retirees enroll in EPO plans, toward which the State pays 85% of the premium. Prescription drug rebates were also underestimated by $35.0 million in fiscal 2016.

[4] POS plans were discontinued in fiscal 2015, except for State Law Enforcement Officer Labor Alliance members.

The fund's balance increased by $141.1 million in fiscal 2017, closing with a $191.9 million surplus, primarily due to State agencies' contributions and prescription drug rebates. State agencies' contributions came in $40.0 million higher than originally budgeted, once again reflecting over 80% share of contributions. Prescription drug rebates came in over $43.0 million higher than originally budgeted, which is more closely aligned with rebates obtained in fiscal 2016. Additionally, costs were $15.6 million less than what was expected, primarily due to slower growth in prescription drug claims.

Projected prescription drug costs decrease in fiscal 2018 and 2019 as a result of anticipated savings from a new pharmacy benefit manager (PBM) contract beginning January 1, 2018. The new PBM is expected to reduce costs in calendar 2018 by about 10% through better prices and enhanced rebates. Modest growth is projected in calendar 2019 due to the implementation of a new drug formulary. The health insurance account would close with significant fund balances under current fiscal 2018 and 2019 assumptions. The Department of Budget and Management could reduce the surplus by implementing two payroll holidays in both fiscal 2018 and 2019. Two payroll holidays would reduce contributions by approximately $130.0 million ($106.9 million State agencies' portion) in fiscal 2018 and $124.0 million ($102.4 million State agencies' portion) in fiscal 2019. Employees and retirees would save over $20.0 million in contributions in both fiscal 2018 and 2019.

Wellness Program

In an effort to address escalating medical and prescription drug costs, the State implemented a wellness program in January 2015. The original program was intended to be phased in over a six-year period and to use both incentives and disincentives to encourage the completion of wellness activities. As of January 2016, all disincentives (*i.e.*, premium surcharges) for nonparticipation were eliminated. Under the current program, copays for primary care physician (PCP) visits are waived if members complete a Health Risk Assessment and select a PCP. Members can also receive $5 off specialist copays by completing age/gender specific preventative screenings, except for Kaiser IHM members.

In August 2017, the U.S. District Court for the District of Columbia ruled that the Equal Employment Opportunity Commission's (EEOC) rules about the fees employers can assess workers who do not participate in wellness programs were arbitrary, and the court sent the rules back to EEOC for revision (*AARP v. EEOC*). The federal district court judge concluded that the commission had failed to adequately justify its conclusion that incentives and penalties up to 30% of the cost of an employee's health insurance coverage does not render plan participation involuntary. This decision could limit the incentives employers may offer to induce employees to participate in wellness programs. A new final rule on EEOC's revised rules is expected in October 2019, with any changes most likely to be implemented in January 2021 to give employers time to adjust.

State Retirement and Pension System Investment Performance and Contribution Rates

The pension fund's fiscal 2017 return on investments was 10.02%, exceeding the assumed rate of return of 7.55%. The system's asset valuation policy smooths gains and losses over five years. The plan's funded status increased to 70.9%, compared to 69.5% at the end of fiscal 2016. Supplemental contributions of $75 million will continue until the system is 85.0% funded, and a pension sweeper provision will direct a portion of unspent State general fund balances to the system.

Fiscal 2017 Investment Performance

The State Retirement and Pension System's (SRPS) investment return for the fiscal year that ended on June 30, 2017, was 10.02%, exceeding the assumed rate of return of 7.55%. The performance was driven primarily by the system's growth equity holdings, which made up 49.0% of the portfolio and returned 18.53% for the fiscal year. Within this asset class, private equity, comprising 10.3% of system assets, had another strong year with a return of 16.44%, outperforming its benchmark of 13.67%. The rate-sensitive asset class returned -2.11%, but was 1.0% (100 basis points) above its benchmark. Absolute return underperformed its benchmark by 2.85% (285 basis points), with a return of 3.31%.

Investment returns exceeded the assumed rate of investment return for the first time in three years. The system as a whole outperformed its policy benchmark by 0.15% (15 basis points). Total system return for fiscal 2013 through 2017 is 7.64%, which is 0.75% (75 basis points) above the plan return benchmark for that period.

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

From fiscal 2016 to 2017, SRPS's funded status (the ratio of projected actuarial assets to projected actuarial liabilities) improved from 69.5% at the end of fiscal 2016 to 70.9% at the end of fiscal 2017 (these figures exclude funding for local governments that participate in the State plan). The total State unfunded liability decreased from $19.121 billion to $18.854 billion.

Several combined factors set the system up for continued improvement in its funding status, including the increasing number of new members entering the system under the reformed benefit structure enacted in 2011, the elimination of the corridor funding method, and continued supplemental contributions above the actuarially determined contribution.

Fiscal 2019 Contribution Rates at Actuarial Determined Contribution Rates

Exhibit 1 shows that the employer contribution rate for the Teachers' Combined Systems (TCS) will decrease from 16.45% in fiscal 2018 to 16.16% in fiscal 2019, and the contribution rate for the Employees' Combined Systems will increase from 19.22% in fiscal 2018 to 19.23% in fiscal 2019. The aggregate contribution rate, including contributions for public safety employees and judges, decreases from 18.34% in fiscal 2018 to 18.15% in fiscal 2019. Based on projected payroll growth and other factors, the SRPS actuary estimates that total employer pension contributions will increase from $1.907 billion in fiscal 2018 to $1.930 billion in fiscal 2019.[5] The contribution rates are the actuarially determined contribution rates and reflect the Board of Trustees decision to lower the investment return assumption from 7.55% to 7.50%. The funding rates and contribution amounts are inclusive of the required $75 million supplemental contribution required by Chapter 489 of 2015.

Exhibit 1
State Pension Contributions
Fiscal 2018 and 2019
($ in Millions)

	2018		2019	
Plan	**Rate**	**Contribution**	**Rate**	**Contribution**
Teachers'	16.45%	$1,122.6	16.16%	$1,130.0
Employees'	19.22%	639.1	19.23%	648.5
State Police	81.36%	79.8	79.41%	83.6
Judges'	46.45%	21.8	44.53%	21.9
Law Enforcement Officers'	40.77%	43.7	40.81%	45.7
Aggregate	**18.34%**	**$1,906.9**	**18.15%**	**$1,929.6**

Note: Except for the Teachers' Combined System (TCS), contribution rates and dollar amounts reflect State funds only, excluding municipal contributions. For TCS, they reflect the combined total of State and local contributions. Figures also reflect the $75 million supplemental contribution established by Chapter 489 of 2015.

Source: Gabriel, Roeder, Smith & Co.

[5] System contributions are based on the fiscal 2017 system valuation presented on October 17, 2017, to the SRPS Board of Trustees by the system actuary, Gabriel, Roeder, Smith, & Co., and include the supplemental contributions established by Chapter 489 of 2015.

Employer contribution rates were subject to multiple influences this year, some exerting upward pressure and others downward pressure. Investment returns over the five-year smoothing period exert upward pressure on the fiscal 2019 contribution rates. Increased membership under the reformed benefits exerts downward pressure on the rates. Chapter 489 eliminated the corridor funding method, which restricted the growth of contribution rates for TCS and the Employees' Combined System, the two largest plans within SRPS. This ensures that the budgeted contribution rate is the actuarially determined rate necessary to fully fund the system.

In addition to eliminating the corridor method and returning the system to full actuarially determined funding, Chapter 489 also provides for a supplemental contribution of $75.0 million each year until the system is 85% funded. Additionally, Chapter 489 included a sweeper provision, which will direct a portion of unspent general funds to the system as additional supplemental payments in fiscal 2017 through 2020. Since fiscal 2017 ended with an unappropriated fund balance totaling $256.3 million, the Administration is required to include an additional $50.0 million appropriation for State pension contributions, the maximum required by Chapter 489.

Under State law, employer contributions to the several systems provide for full funding of the actuarially determined contribution, pay the actuarially determined contribution in full, and additionally provide for regular supplemental payment above the actuarially determined contribution.

Local School Board Contributions to the Teachers' Pension System

Chapter 1 of the first special session of 2012 requires local school boards to make contributions for members of the Teachers' Retirement and Pension systems (TRS/TPS). The contribution amounts are the amounts associated with the normal cost for local employees in TRS/TPS. The normal cost is the portion of the yearly contribution rate, which reflects the amounts needed to fund liabilities that will be accrued in the upcoming year. For fiscal 2013 through 2016, the dollar amounts required to be paid by each local school board were set in statute. Starting in fiscal 2017, statute requires local school boards to pay the full normal cost for their employees in TRS/TPS. The normal cost rate for fiscal 2019 is 4.41%, and the system's actuary projects the local school board normal cost share for fiscal 2019 to be $283.8 million. The system's actuary projects the total State contribution to TCS will be $846.2 million, which consists of $24.6 million of the normal cost,[6] $770.8 million for unfunded liabilities, and $50.8 million in supplemental contributions.

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

Pension Buyouts for Former Members

One strategy private-sector pension plans use to reduce pension liabilities is to offer lump-sum buyouts. Arkansas and Missouri have implemented buyout plans targeting vested former employees who are not yet eligible for retirement. Some of these former employees may not be eligible to retire for another 20 or 30 years. Early indications are that the plans reduce liability and reduce actuarially required annual contribution. However, these savings appear to be minimal. Missouri estimates that the buyout will reduce its funded status from 69.7% to 69.6%. If Maryland is inclined to enact a buyout program, it will need to wait until the computer system is upgraded to be able to calculate individual benefits, which is expected to take two years.

Reduction in Long-term Liabilities

For many years, private-sector sponsors of defined benefit pension plans have developed innovative mechanisms for reducing their accrued liabilities. However, public-sector plans have generally shied away from employing those strategies. One popular strategy among private-sector plans is to offer lump-sum buyout payments to individuals who are no longer enrolled in the plan but who have vested benefits that are collectible as an annuity at the normal retirement age. The lump-sum payments are typically a percentage of the actuarial value of their projected lifetime annuity. Individuals who receive the lump-sum payments forfeit any future service retirement benefits to which they would otherwise be entitled. Recently, state pension plans in Arkansas and Missouri became the first state plans to institute lump-sum buyouts of former members. Early indications are that the buyouts are popular with the target population and reduce accrued liabilities but have only a marginal effect on the overall financial status of the plan.

Traditional defined benefit pension plans carry accrued liabilities for three types of individuals: retirees who are receiving monthly annuity payments, current members who have accrued service credit in the plan, and former members who vested in the plan but separated from employment prior to reaching normal retirement eligibility. It is the latter group that is the target population for buyout plans because the plan continues to carry the liability for payments that may not be made for as many as 20 or 30 years, and many of the former members may be anxious to receive their benefits rather than defer them to some future date.

Arkansas Cash and Savings Help Program

In 2013, the Arkansas General Assembly authorized the Arkansas Teachers Retirement System (ARTRS) to develop a program that provided lump-sum payments to vested former members in lieu of future annuity benefit payments. The resulting Arkansas Cash and Savings Help (CASH) program was expected to last just one year, but it has been extended and expanded multiple times due to its popularity. As designed by ARTRS, the CASH initially applied only to vested former members in its noncontributory plan. ARTRS offered to pay 30% of the actuarial present value of an individual's projected retirement benefit. Eligible individuals were given the option of rolling over the payment into a qualified retirement savings account (*e.g.*, Individual Retirement Account or 401(k) plan) or receiving the payment in cash. Due to the program's popularity, it continues to operate and was expanded to include former members of the contributory plan and those with mixed noncontributory/contributory service credit. As these two groups are also entitled to a return of their accumulated contributions with interest, the program offers to pay them the higher of the CASH lump-sum payment or the sum of their contributions, interest, and 10% premium. Newly separated members, who are entitled to a return of contributions and interest, must wait at least one year to receive the 10% premium (but can claim the CASH payment immediately upon retirement).

According to the ARTRS Executive Director, about 50% of eligible former members accepted the lump-sum payment when it was first offered, and participation rates continue to remain approximately at that level with each new cohort of eligible former members. Since the program's inception, more than 4,000 former members have accepted payments. (At the time of program inception, there were approximately 12,000 inactive former members, but only a portion of those were in the noncontributory plan). Between 10% and 20% of payees have rolled over the payments into qualified retirement accounts; the remainder were paid in cash.

In the first three years, total payments were between $7 million and $9 million, but the executive director estimates that with the program's expansion, payments in the current fiscal year are between $10 million and $15 million. The executive director further estimates that the system has reduced its accrued liabilities by about $60 million since the program's inception, after accounting for the cost of benefit payments. However, with total accrued liabilities of nearly $19 billion, the program's overall effect on system liabilities has been minimal.

Missouri Buyout Program

Legislation passed during the 2017 legislative session authorizes the Missouri State Employees' Retirement System (MOSERS) to offer a buyout program to deferred vested former members for one year. Under the terms of the legislation, MOSERS established a lump-sum payment rate of 60% of the present value of future benefits and notified about 17,000 eligible former members of their eligibility in a series of mailings in September 2017. The deadline for applying for the buyout is November 30, 2017, with payments beginning in December 2017.

Although it is too early to gauge the effect of the program, MOSERS conducted an actuarial projection of the potential effect of a similar program. Based on a 65.0% buyout rate and an estimated 50.0% participation rate, the actuarial analysis estimates a reduction in total accrued liabilities of $296.3 million, resulting in a first year savings of $7.1 million in employer contributions to the plan. Based on its assumptions, the actuarial analysis projected only a negligible positive effect on the plan's overall funded status, from 69.6% funded to 69.7%. Actual effects of the program implemented by MOSERS will not be known until all applications are received and processed. In the weeks immediately following the first of three mailings notifying eligible members, MOSERS had approved lump-sum payments totaling more than $2.1 million to more than 150 former members.

Impediment to Buyout Program in Maryland

Unlike the Maryland State Retirement and Pension System (MSRPS), both ARTRS and MOSERS were able to generate automated benefit projections for each eligible former member. The ARTRS Executive Director advised that, with formulas provided by the system's actuary, ARTRS was able to generate automated lump-sum estimates for all eligible individuals in a single day. MOSERS provided individualized benefit estimates in each letter sent to 17,000 eligible former members. MSRPS is in the process of upgrading its information technology system to enable it to provide automated benefit estimates, which are currently calculated by hand upon request by members or former members who are nearing retirement eligibility. Lacking the capacity to generate automated benefit estimates is a significant barrier to implementing a buyout program in Maryland as MSRPS likely would not be able to generate benefit estimates for up to 50,000 vested former members. Upgrades to the system are not expected to be completed for at least two years.

As **Exhibit 1** shows, MSRPS is a much larger system than the two systems that have implemented buyout programs, both in terms of accrued liabilities and membership. However, liabilities attributable to deferred vested former members are a smaller proportion of total accrued liabilities than the other two systems, so any effort to reduce those liabilities would likely have an even smaller effect on the system's overall financial status than has occurred in Arkansas or Missouri. Nevertheless, such a buyout program has the potential to reduce annual State contributions to the system by millions of dollars over several years, and thus may warrant an actuarial analysis to project any potential benefits to the State.

Exhibit 1
Profile of Deferred Vested Liabilities and Membership
Fiscal 2016
($ in Millions)

	Inactive/Deferred Members	Total AAL	Deferred AAL	% of Total AAL
Maryland SRPS	53,568	$66,282	$1,856	2.8%
Arkansas TRS	12,937	18,811	837	4.4%
Missouri SERS	19,512	12,751	593	4.7%

AAL: Actuarial Accrued Liabilities
SERS: State Employees' Retirement System
SRPS: State Retirement and Pension System
TRS: Teachers' Retirement System

Source: Maryland State Retirement and Pension System; Arkansas Teachers' Retirement System; Missouri State Employees' Retirement System

Personnel

Investment Division Staffing

Currently, the State Retirement Agency (SRA) does not have independent salary and hiring authority. SRA has asked the General Assembly to pass legislation giving the agency this authority. The purpose of the legislation is to allow the Investment Division within SRA to increase staffing levels and salaries in order to internally manage State Retirement and Pension System assets, which are currently managed externally. The General Assembly did not pass the legislation proposed by SRA, expressing concerns that the proposal lacked sufficient detail. SRA was asked to report on the proposal during the interim.

Background

State law establishes the Investment Division within the State Retirement Agency (SRA) to invest the assets of the State Retirement and Pension System (SRPS). Statute also designates the chief investment officer (CIO) as the head of the division and authorizes the CIO to hire external investment managers to invest the system's assets and to terminate those managers at his or her discretion. Currently, SRPS employs external investment firms to manage all of the system's assets. SRPS pays management fees to those firms based on the dollar value of the assets being managed and/or their performance; fee structures vary depending on the type of asset being managed. The system's Investment Division oversees and monitors the performance of the external managers, but does not directly manage any of the system's assets. Investment management fees are nonbudgeted; they are paid from the pension trust fund.

Statute authorizes the SRPS Board of Trustees to establish the qualifications and compensation for the CIO; the board may also determine the qualifications and compensation for the deputy CIO and four managing directors, subject to statutory limitations. Compensation for other division staff, as well as the establishment of any new positions within the division, are subject to standard personnel and budget policies and processes, including the approval of the Secretary of Budget and Management and the General Assembly. Compensation for all Investment Division staff, including the CIO, is a budgeted personnel expense for SRA, whose operating expenses are paid through a per member administrative fee charged against all participating employers, including the State.

During the 2016 interim, the SRPS Board of Trustees asked the Joint Committee on Pensions (JCP) to sponsor legislation giving the board the authority to set compensation levels for all division staff, create and eliminate positions, and approve investment-related expenditures to preserve and enhance the value of SRPS assets. The board's proposal included shifting compensation for Investment Division staff off budget. JCP opted to defer action on the proposal and instead requested a follow-up report from SRA delineating its plan for implementing the new authority if it is granted. SRA's report has not been submitted as of the writing of this issue paper.

Current Staffing and Compensation

Since 2005, the SRPS investment program has grown from 7 investment strategies and 50 separate accounts to 18 strategies and 380 separate accounts. Staffing levels within the division have also grown, from 15 to 23 positions in fiscal 2016, but have not kept pace with the level of growth in assets or accounts. Moreover, only 17 of the 23 positions are investment professionals; the remaining positions perform accounting and support functions. A recent analysis by the Funston Group, a human resources consulting firm, determined that an appropriate staffing level for the system, given its size and complexity, would be 27 investment professionals, not including accounting and support functions. If granted independent personnel authority for the division, the board has advised JCP that it would use that authority to substantially increase the size of the Investment Division; JCP expects a more complete accounting of that anticipated growth in the follow-up report.

The board also advises that compensation for Investment Division staff continues to lag behind that of other public pension plans. In a 2016 analysis that included 51 large public pension plans, compensation for comparable positions in the division lagged behind peer medians by between 20% and 60%, depending on the position.

Effects on Pension Assets

Shifting compensation for Investment Division staff from on-budget to off-budget initially diminishes pension assets but may ultimately result in meaningful growth. Total compensation for the division in fiscal 2018 is approximately $3.6 million, which is paid out of operating funds generated by the per-member administrative fee charged to participating employers. Total compensation could grow to as much as $6.0 million under the board’s proposal, which would be paid out of trust fund assets instead of from operating funds. An annually recurring draw on pension assets at that level could have a cumulative effect on future returns.

However, the board advises that an increase in staffing and compensation would provide the staffing necessary to shift at least some of its management of pension assets from external managers to internal staff, thereby reducing investment management costs. Unlike Maryland, more than half of the largest public pension funds use internal management for at least a portion of their assets. Investment management fees, which are paid from the trust fund, totaled about $370 million in fiscal 2017, and are expected to grow substantially, so any reduction in fees paid by shifting assets from external to internal management could more than offset the compensation paid to division staff.

What cannot be known is how the shift to partial internal management will affect system returns. Previous board requests for increased staffing autonomy have been justified in terms of reducing risk to the system by having more and better qualified staff managing the money; increased returns were not necessarily envisioned. If the new hybrid management strategy generates returns at least as good as (or better than) the current external-only strategy, then the resulting decrease in management fees will provide a net benefit to the system. However, if internal management does not generate comparable returns (net of fees) as current external managers, who provide institutional expertise in their respective mandates, then the net effect on pension assets could be negative.

There are still a number of unanswered questions related to the board's request for staffing autonomy for the Investment Division. Among these are:

- How will such autonomy affect staffing levels and compensation within the division relative to the statutory spending cap to which the board is subject?
- In what ways, if any, will the board implement internal management of assets, and what effect will that have on management fees and returns?
- How will the board address possible public backlash from granting significant pay increases when other State employees are not getting any, or when returns are poor?

Some of these questions will be addressed in the board's follow-up report to JCP, but others will take time before answers become evident.

Medicare Part D Coverage Gap Elimination

The federal Affordable Care Act eliminates the Medicare Part D prescription drug coverage gap by January 1, 2020. State statute currently sets the end date for the Medicare-eligible retiree prescription drug coverage as fiscal 2020, which starts July 1, 2019 – prior to the actual elimination of the coverage gap, which could result in a six-month period where Medicare-eligible retirees are left without coverage unless the statute is amended. The statute is also ambiguous as to whether spouses and dependents of Medicare enrollees will continue to qualify for a State prescription drug benefit in fiscal 2020.

Background

The standard Medicare Part D prescription drug benefit contains a coverage gap, also known as the donut hole, where beneficiaries pay the full cost of their medications while they continue to pay premiums. In calendar 2018, when Medicare beneficiaries' out-of-pocket (OOP) costs combined with the plan's costs exceed $3,750, they enter this gap. Coverage resumes when combined costs reach $5,000, also known as catastrophic coverage, at which time all OOP costs are waived. The federal Affordable Care Act eliminates the coverage gap by January 1, 2020. At that time, Medicare beneficiaries whose costs fall within the gap will pay 25% coinsurance for covered brand-name and generic drugs, the same as pre-gap coverage, until the beneficiary reaches catastrophic coverage.

Currently, the State offers prescription drug coverage to retirees, which acts as wrap-around coverage for retirees eligible for Medicare Part D coverage. Maryland statute dictates that the State will no longer cover Medicare-eligible retirees starting in fiscal 2020 in expectation that the donut hole will be closed. As a result, State retirees will most likely pay higher OOP costs under Medicare's 25% coinsurance in comparison to the State's tiered copayment plan. Eliminating prescription drug coverage to Medicare-eligible retirees is anticipated to save the State approximately $118 million in fiscal 2020, and over $235 million annually in the out-years. These savings are partially offset by the State losing $28 million in Coverage Gap Discount funding as well as Medicare-eligible retirees' prescription drug contributions of approximately $60 million. The scheduled elimination of Medicare-eligible retirees' prescription drug coverage has already reduced the State's retiree health liability, which dropped by approximately $6 billion when the legislation eliminating prescription drug coverage for Medicare-eligible retirees as of fiscal 2020 was enacted.

Uncertainties in Current Statute

There is a potential for lapse in prescription drug coverage created in the statute based on when the Medicare Part D coverage gap is expected to close (January 1, 2020) and when the State will stop covering Medicare-eligible retirees (July 1, 2019). This leaves a six-month gap where Medicare-eligible retirees may fall within the coverage gap and not have wrap-around coverage from the State to maintain copayment levels. Legislation would be needed to amend the statute to align the elimination of State coverage with the expected closing of the donut hole on January 1, 2020.

Additionally, current law does not speak to coverage of non-Medicare-eligible spouses and dependents of Medicare-eligible retirees. Medicare Part D does not offer spousal and dependent coverage. If the State eliminates the wrap-around coverage to these retirees, it is unclear whether their spouses and dependents would be eliminated from the State's plan as well. Legislation clarifying the General Assembly's intent could alleviate confusion about the State's policy.

Education

State Education Aid and Maintenance of Effort

State education aid is estimated to increase by $161 million or 2.5% in fiscal 2019. Several new initiatives will be funded for the first time or will receive increased funding in fiscal 2019, including declining enrollment and supplemental prekindergarten grants that were first funded in fiscal 2018. Mandated funding increases for several programs enacted in the 2016 session that were reduced by the 2017 Budget Reconciliation and Financing Act, including teacher stipends, teacher mentoring, and after-school and summer programs for public school children. Finally, all 24 counties have met their required Maintenance of Effort (MOE) appropriation for schools in fiscal 2018. MOE is expected to increase further in fiscal 2019 for several counties.

State Public Schools Aid Projected to Increase by $161 Million

Public schools are expected to receive an estimated $6.5 billion in fiscal 2019, representing a $160.9 million (2.5%) increase over the prior fiscal year. The increase is comprised of aid that flows directly to local school boards, which is projected to increase by $145.8 million (2.6%), as well as by retirement aid which is projected to increase by $15.1 million (2.1%). The increase in direct aid is largely driven by a slight expected rise in the per pupil foundation amount, projected enrollment increases, and continued phase-in of Net Taxable Income (NTI) education grants.

Foundation and Most Other Direct Aid Programs Will Increase Slightly

The foundation program is the major State aid program for public schools, accounting for nearly half of State education aid. For each school system, a formula determines the State and local shares of a minimum per pupil funding level, or "foundation." The foundation program is projected to total $3.0 billion in fiscal 2019, an increase of $40.3 million (1.3%) over fiscal 2018, as shown in **Exhibit 1**. The increase is attributable to statewide enrollment growth of an estimated 0.6% (5,365 full-time equivalent students) and a 0.8% inflationary increase in the per pupil foundation amount, from $7,012 to $7,065. The 0.8% increase in the per pupil foundation amount in fiscal 2019 is equivalent to the Consumer Price Index for all urban consumers (commonly known as CPI-U) for the Washington/Baltimore Metropolitan Area. Statute provides that the inflationary adjustment is the lesser of CPI-U or the Implicit Price Deflator for State and Local Government (IPD) up to 5.0%. For fiscal 2019, IPD is higher than CPI-U at 2.3%. Although projected enrollment grows statewide, it varies by local school system, from an increase of 1.6% to a decline of 1.2%. Actual enrollment and wealth figures will not be available until January 2018.

Exhibit 1
Estimated State Aid for Education
Fiscal 2018 and 2019
($ in Millions)

Program	2018	Estimated 2019	$ Change	% Change
Foundation Program	$3,005.3	$3,045.6	$40.3	1.3%
Supplemental Grant	46.6	46.6	0.0	0.0%
GCEI	139.1	141.0	1.9	1.4%
NTI Education Grants	49.2	62.2	13.0	26.4%
TIF Education Grants	0.4	0.5	0.1	13.6%
Declining Enrollment Grants	17.2	12.9	-4.4	-25.4%
Compensatory Aid	1,305.5	1,349.7	44.2	3.4%
Student Transportation	276.3	281.3	4.9	1.8%
Special Education – Formula Aid	284.9	288.8	3.9	1.4%
Special Education – Nonpublic	123.6	126.1	2.5	2.0%
Limited English Proficiency	248.7	267.5	18.8	7.6
Guaranteed Tax Base	50.3	49.1	-1.2	-2.3%
Aging Schools Program	6.1	6.1	0.0	0.0%
Head Start/Prekindergarten	20.7	29.8	9.1	44.0%
Other	76.9	89.5	12.6	16.4%
Direct Aid Subtotal	***$5,650.9***	***$5,796.7***	***$145.8***	***2.6%***
Teachers' Retirement	$734.5	$749.6	$15.1	2.1%
Total	**$6,385.3**	**$6,546.2**	**$160.9**	**2.5%**

GCEI: Geographic Cost of Education Index
NTI: Net Taxable Income
TIF: Tax Increment Financing

Source: Department of Legislative Services

Other than the foundation program, the compensatory education and limited English proficiency formulas are projected to have the largest dollar increases among the direct aid programs in fiscal 2019. A portion of the increase in each program is due to projected enrollment growth in students eligible for free and reduced-price meals and English language learners, respectively, and the rest of the increases can be attributed to the slight increase in the per pupil foundation amount.

About three-quarters of State aid to public schools is distributed inversely to local wealth, whereby the less affluent school systems receive relatively more State aid. NTI is one component of calculating local wealth for purposes of State aid for education. Fiscal 2019 is the final year of the phase-in of additional education grants authorized by Chapter 4 of 2013 for counties whose formula aid is higher using November NTI as compared to September NTI. NTI education grants increase to an estimated $62.2 million in fiscal 2019 to be distributed to an estimated 18 school systems.

Changes to State Aid Programs

State aid to public schools was enhanced by several initiatives enacted during the 2017 legislative session, which are reflected in Exhibit 1. Chapters 6 and 607 of 2017 provide declining enrollment and prekindergarten supplemental grants to eligible local boards of education for fiscal 2018 through 2020. A local board is eligible for an enrollment-based supplemental grant if the county's most recent prior three-year average full-time equivalent (FTE) enrollment is greater than the FTE enrollment in the previous school year. A local board is eligible for a prekindergarten grant if the local board offers a full-day program for all four-year-olds who are enrolled in public prekindergarten. In fiscal 2019, it is estimated that $12.9 million in grants will be distributed due to declining enrollment, while $16.3 million will be distributed for prekindergarten enrollment.

Chapters 573 and 574 require the State Board of Education to provide for drug addiction and prevention education (specifically for heroin and opioids) and require each local board of education to establish a policy requiring every public school to store naloxone and authorize school personnel to administer it. Each local board of education or local health department is also required to hire a county or regional community action official or to develop an equivalent program. The Governor must include at least $3.0 million in the fiscal 2019 budget to fund grants to local boards of education for implementation of the bill's policy and training requirements. Funding is also provided for Pathways in Technology Early College High (P-TECH) schools authorized by Chapter 591 of 2017, including two new schools that opened in fall 2017 in Prince George's County and one new school that opened in fall 2017 in Allegany County.

Funding increases in fiscal 2019 for several initiatives that were enacted in the 2016 legislative session and first funded in fiscal 2018, but whose mandated amounts were reduced by the Budget Reconciliation and Financing Act (Chapter 23) of 2017. The Public School Opportunities Enhancement Program receives $7.5 million, as compared to $2.5 million in fiscal 2018, which was its first year. The program assists local school systems, public community schools, and nonprofit organizations in the State in expanding or creating extended day and summer enhancement programs, as well as assisting nonprofit organizations in expanding or supporting existing educational programming during the school day. Initiatives for increased stipends for certain teachers and teacher mentoring under the Teacher Induction, Retention, and Advancement Act (Chapter 740 of 2016) also receive increased funding, from $3.1 million in fiscal 2018 to $8.0 million in fiscal 2019.

State Retirement Costs Increase; Local Costs Virtually Flat

State retirement costs for public school teachers and other professional personnel will total an estimated $749.6 million in fiscal 2019, representing a $15.1 million (2.1%) increase. This slight increase is attributed to an increase in the State contribution rate and modest salary base growth. In addition to the State's share of teacher pension costs, local governments will contribute approximately $296.2 million in fiscal 2019, which is nearly level with the $298.0 million fiscal 2018 local total: $277.0 million for the local share of pension contributions, which is the employer "normal cost" for active members of the State Teachers' Pension or Retirement Systems, as well as $19.2 million toward State Retirement Agency (SRA) administrative costs, a portion of which will go toward SRA information technology upgrades. Fiscal 2019 is the third year in which the *actual* normal cost will be used to determine local contributions; the estimated normal cost was set in statute for each county during the fiscal 2012 to 2016 phase-in period under Chapter 1 of the 2012 first special session. The normal cost for fiscal 2019 is 4.41% of salary base as compared to 4.47% in fiscal 2018; however, this rate decline is expected to be somewhat offset by a statewide increase in the local salary base.

Maintenance of Effort

The Maintenance of Effort (MOE) law requires each county government, including Baltimore City, to provide as much per pupil funding for the local school board as was provided in the prior fiscal year. Beginning in fiscal 2017, the local retirement contribution for the normal cost is included in the highest local appropriation for purposes of calculating the per pupil MOE amount. As of October 2017, the Maryland State Department of Education (MSDE) has certified that the school appropriations of all 24 counties have met the fiscal 2018 MOE requirement. In total, 14 counties significantly exceeded MOE, including Baltimore City.

Several provisions of law have required certain counties to increase their fiscal 2018 MOE appropriation. Fiscal 2018 budget language requires counties that receive increases in their disparity grants in fiscal 2018 to provide the increase to their school systems above the required MOE amount. This includes Baltimore City ($946,445) and Cecil ($196,240), Prince George's ($4,245,462), Washington ($52,938), and Wicomico ($587,801) counties. In addition, Chapters 6 and 607 of 2017 and fiscal 2018 budget language required Baltimore City to increase its education appropriation by $10 million over MOE in fiscal 2018; according to MSDE, this requirement has been met. This amount is required to be included in Baltimore City's MOE calculation in fiscal 2019.

Finally, nine jurisdictions may be required to increase their MOE appropriations in fiscal 2019 as required by Chapter 6 of 2012. Preliminary estimates suggest that statewide per pupil local wealth will increase from fiscal 2018 to 2019. Actual wealth and enrollment figures pertaining to fiscal 2019 aid will be available in January 2018. The required increase is the lesser of the increase in a county's per pupil wealth, the average statewide increase in per pupil local wealth, or 2.5%. In fiscal 2018, nine jurisdictions were required to increase their appropriations due to this provision, ranging from an increase of 0.5% to 2.4%.

Education

The Commission on Innovation and Excellence in Education and Related Workgroups

During the 2017 interim, the Commission on Innovation and Excellence in Education continued their work by focusing on policy strategies pertaining to improving the quality of education provided to Maryland students so that they are better prepared to compete in a global economy. The commission will also be considering the recommendations made by two separately created statutory workgroups that completed their work during the 2017 interim: the Workgroup to Study the Implementation of Universal Access to Prekindergarten for 4-Year-Olds and the Teacher Induction, Retention, and Advancement Workgroup.

Commission on Innovation and Excellence in Education Continues Work

Chapter 701 of 2016 established a 25-member Commission on Innovation and Excellence in Education that must, among other charges, (1) review the findings of the study on adequacy of education funding and related studies completed by Augenblick, Palaich, and Associates (APA) and make recommendations on the funding formulas; (2) review and make recommendations on innovative education delivery mechanisms and other strategies to prepare Maryland students for the twenty-first century workforce and global economy; and (3) review and make recommendations on expanding prekindergarten including special education prekindergarten. The commission submitted a preliminary report to the Governor and selected committees of the General Assembly in December 2016, and must submit its final report by December 31, 2017. However, the commission has decided that it needs to extend its study period into the 2018 interim so that the commission can fully cost out the fiscal impact of implementing the policies it is recommending. The commission will submit its policy recommendations in December of this interim. More information about the commission's work including the interim report is archived here: http://mgaleg.maryland.gov/Pubs/CommTFWorkgrp/2016-Innovation-Excellence-in-Education-Commission.pdf

In January of 2017 the commission asked the National Center on Education and the Economy (NCEE) to perform a gap analysis to help the commission compare Maryland's education system to systems in top-performing countries and states. The gap analysis was designed to help the commission identify policy priorities and implementation strategies to be considered in conjunction with changes to the State aid education formulas. NCEE published the *9 Building Blocks for World-Class Education Systems* and presented it to the commission. Each building block represents a policy area that Maryland should pursue to achieve student outcomes that are comparable to those in top-performing systems and are discussed below.

The commission has met at least monthly throughout the 2017 interim. During these meetings, the commission has explored each building block and gap analysis prepared by NCEE, and divided into smaller discussion groups to develop consensus on various decision points. The commission has also held four public hearings throughout the State for parents, teachers, students, and other members of the public to testify on policies and strategies to make Maryland a top-performing education system.

Two additional workgroups that were established by legislation are completing their work this fall. These workgroups are discussed below, and the final reports of these workgroups will be considered by the commission.

9 Building Blocks for World Class Education Systems

- **Building Block 1: Provide Strong Supports for Children and their Families Before Students Arrive at School**

Building Block 1 addresses policies to improve and intensify early childhood education programs, increase the affordability of high-quality child care, build on the capacity of early childhood educators, and increase supports for children zero to three-year-olds and their families.

- **Building Block 2: Provide More Resources for At-risk Students than for Others**

This building block addresses equity in funding between poor school districts and wealthy ones and whether the State should adjust the weights for the at-risk populations: English language learners; low-income students; and special education students. Building Block 2 also addresses the local wealth calculation and funding the local share of at-risk student weights.

- **Building Block 3: Develop World-class, Highly Coherent Instructional Systems**

- **Building Block 4: Create Clear Gateways for Students through the System, Set to Global Standards, With No Dead Ends**

- **Building Block 7: Create an Effective System of Career and Technical Education and Training**

Building blocks 3, 4, and 7 focus on instructional systems which include curriculum standards and assessments, high school graduation requirements and college and career readiness, and building on career and technology education programs and pathways to industry certification and apprenticeships.

- **Building Block 5: Assure an Abundant Supply of Highly Qualified Teachers with the Necessary Dispositions, Knowledge, and Skills**

- **Building Block 6: Redesign Schools to be Places in which Teachers are Treated as Professionals, with Incentives and Support to Continuously Improve their Practice and the Performance of their Students**

- **Building Block 8: Create a Leadership Development System that Develops Leaders at All Levels to Manage the New Systems Effectively**

Building blocks 5, 6, and 8 address policies affecting teacher quality and recruitment, admission and selection processes for teacher preparation programs, teacher licensure and certification standards, time for teacher mentoring and compensation, and the identification and development of school leaders.

- **Building Block 9: Institute a Governance System that Has the Authority and Legitimacy to Develop Coherent, Powerful Policies and Is Capable of Implementing Them at Scale**

This building block focuses on the governance structure of the State education system as a whole and the roles and responsibilities of the State and local boards of education, Maryland State Department of Education (MSDE), Maryland Higher Education Commission, Professional Standards and Teacher Education Board, and the Governor's P20 Leadership Council in coordinating and implementing State education policies at scale. More specifically, Building Block 9 addresses the State's accountability plan for the K-12 system, teacher and principal accountability, teacher education accountability, and the alignment of the State's education goals and economic workforce objectives.

Workgroup to Study the Implementation of Universal Access to Prekindergarten for 4-Year-Olds

One of the major charges to the commission is to make recommendations pertaining to prekindergarten. Chapters 25 and 779 of 2017 established the Workgroup to Study the Implementation of Universal Access to Prekindergarten for 4-Year-Olds, which was given the charge to estimate the number and portion of eligible 4-year-old children currently being served by publicly funded prekindergarten programs and to submit recommendations regarding an implementation plan to make full-day prekindergarten universally available to 4-year-old children, based on APA's January 2016 report *A Comprehensive Analysis of Prekindergarten in Maryland.* Following five meetings, the workgroup submitted a report in September 2017 to the commission to inform the commission's final report.

Generally, the workgroup recommended that universal high-quality full-day prekindergarten should be provided to all 4-year-old children in a mixed delivery system to include schools (public and private), child care centers, family child care homes, and Head Start programs. Additionally, it was recommended that this should be phased in over at least 10 years. Naturally, there is a gap between the number of slots needed under the workgroup's recommendations and the current services being provided. Maryland's current publicly funded prekindergarten capacity, including both full and half-day, is 28,604 slots. School districts have reported that if they were to only provide full-day prekindergarten given current resources, the statewide capacity for prekindergarten would be 22,258 slots. This means that if, at minimum, the State implemented the workgroup's recommendation to convert half-day slots to full-day for children currently receiving services, there would be a gap of 6,346 slots to maintain current enrollment. The gap between the current estimated capacity for full-day prekindergarten and what would be needed at full implementation of the workgroup's recommendations (full-day prekindergarten for all 4-year-olds) is much larger. It is estimated that Maryland's total population of 4-year-olds who may enroll in publicly funded prekindergarten is 66,770, based on the average enrollment in kindergarten between 2014 and 2016. This indicates a gap of 44,512 slots which would need to be addressed through the workgroup's recommended mixed delivery system. It is also worth noting that during the commission's meetings, much discussion has been given to expanding prekindergarten to 3-year-olds as well, which would represent a need for even more slots.

Teacher Induction, Retention, and Advancement Workgroup

In accordance with Chapter 740 of 2016, the Teacher Induction, Retention, and Advancement Act of 2016, MSDE convened a workgroup of stakeholders, including representatives of primary and secondary education, higher education, and other education policy experts, to determine and recommend effective policies for the recruitment, retention, and promotion of quality teachers in the State. The workgroup submitted an interim report to the Governor and the General Assembly on November 1, 2016, and the final report was received on November 2, 2017.

To cover the extensive list of topics for consideration and recommendation set forth in Chapter 740, the workgroup established five committees composed of representatives from the same stakeholder groups appointed to the workgroup: Committee 1: Teacher Certification; Committee 2: Incentives; Committees 3 and 5: Professional Development and Mentoring; and Committee 4: Revision of the Institutional Performance Criteria (educator preparation program standards). Each committee performed research and held in-depth discussions regarding their topic area and then made recommendations to the workgroup.

While the workgroup adopted 21 recommendations, a few will be highlighted here. First, the workgroup agreed to adopt revisions to the Institutional Performance Criteria and rename them the Maryland Educator Preparation Standards as the new framework for all State-approved education preparation programs. Although the proposed standards did not achieve workgroup member consensus, members agreed they incorporated standards for necessary educator training on cultural competency and educator ethics, better aligned program requirements with existing State content standards, and incorporated the use of data to improve program development.

Another recommendation is that all public school teachers be eligible, including retroactively, for participation in an undergraduate student loan forgiveness program beginning in the teacher's sixth year of teaching after teaching for five years in a Maryland public school. Teachers prepared in a MSDE-approved educator preparation program would be eligible for repayment of up to $25,000, and teachers prepared in an approved out-of-state program would be eligible for repayment of up to $17,500. The workgroup agreed that greater details about the program, including funding sources, remain to be determined.

Lastly, the workgroup recommended adopting a regulation allowing school districts to request from MSDE an adjunct certification for professional individuals to teach short term in specialty subject areas or critical shortage areas as needed or identified by the district.

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Education

State Submits Required Accountability Plan Under the Every Student Succeeds Act

The Maryland State Department of Education submitted its consolidated State plan to the United States Department of Education (USDE) in September 2017, as required by the federal Every Student Succeeds Act. Prior to its submission, the plan was revised to comply with the Protect Our Schools Act of 2017 that set forth requirements for the plan. USDE must approve the plan within 120 days of submission or provide the State with an opportunity to revise and resubmit the plan.

Federal Every Student Succeeds Act

In 2015, President Barack Obama signed the Every Student Succeeds Act (ESSA), the most recent reauthorization of the Elementary and Secondary Education Act (ESEA), which provides federal funds for elementary and secondary education. Under the previous authorization of ESEA, known as No Child Left Behind, each state educational agency was required to hold schools accountable based solely on results of statewide assessments and one other academic indicator. Under ESSA, each state must have a consolidated state plan (plan) that requires accountability based on performance on various academic indicators such as proficiency on assessments and high school graduation rates, and a nonacademic indicator, also known as school quality or student success. The plan was required to be submitted to the U.S. Department of Education (USDE) no later than September 18, 2017, for approval.

Protect Our Schools Act of 2017

During the 2017 legislative session, the General Assembly overrode the Governor's veto of House Bill 978 (Chapter 29), known as the Protect Our Schools Act of 2017 (POSA). Chapter 29 establishes a set of parameters for Maryland's plan, including the number and weights of the academic and nonacademic indicators, the methodology for calculating the composite score, and how the score must be reported. Chapter 29 also set forth requirements for improvement plans for schools that are identified for comprehensive or targeted support and improvement.

Maryland's Consolidated State Plan

The Maryland State Department of Education (MSDE) submitted a draft plan to the Governor and Legislative Policy Committee (LPC) for review and comment on June 30, 2017. The Department of Legislative Services (DLS) provided LPC with an analysis of whether Maryland's plan complied with federal and State law. DLS found several potential issues, including that certain provisions of the plan may conflict with POSA. The Attorney General's Office subsequently advised that the plan did not comply with POSA. The co-chairs of LPC provided comments relaying this information and DLS' analysis to MSDE on August 10, 2017. Prior to submission to USDE, the State Board of Education (State board) revised the plan to comply with POSA.

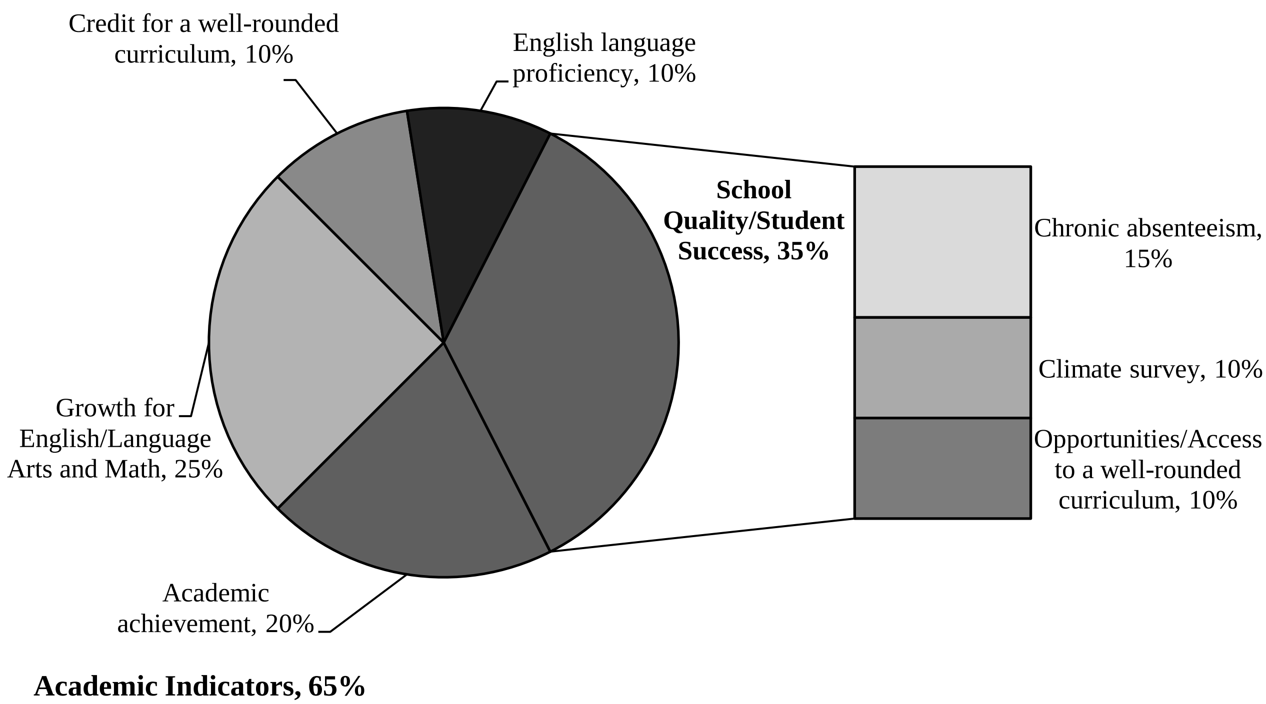
MSDE provided the final plan to Governor Lawrence J. Hogan, Jr. for his signature. However, Governor Hogan sent letters indicating his decision not to sign the plan to the President of the State board and the U.S. Secretary of Education. ESSA requires the State Superintendent of Schools to sign the plan but does not require the Governor to sign it. State Superintendent Karen B. Salmon signed the plan on September 15, 2017, and MSDE submitted the plan on September 18, 2017.

Academic and School Quality Indicators and a Five-star Rating System

As it was submitted to USDE, the accountability system in the plan will operate as follows: each indicator is weighted at least 10% of the composite score, the combined total of the academic indicators does not exceed 65% of the composite score, and a five-star rating system for schools, with green and red arrows indicating positive or negative movement, will be based on all the indicators that comprise the composite score.

Exhibit 1 details the weights for each assigned indicator for elementary and middle schools, and **Exhibit 2** details the weights for the indicators for high schools. As required by Chapter 29, academic indicators comprise 65% of the composite score, and the other 35% is comprised of school quality/student success indicators.

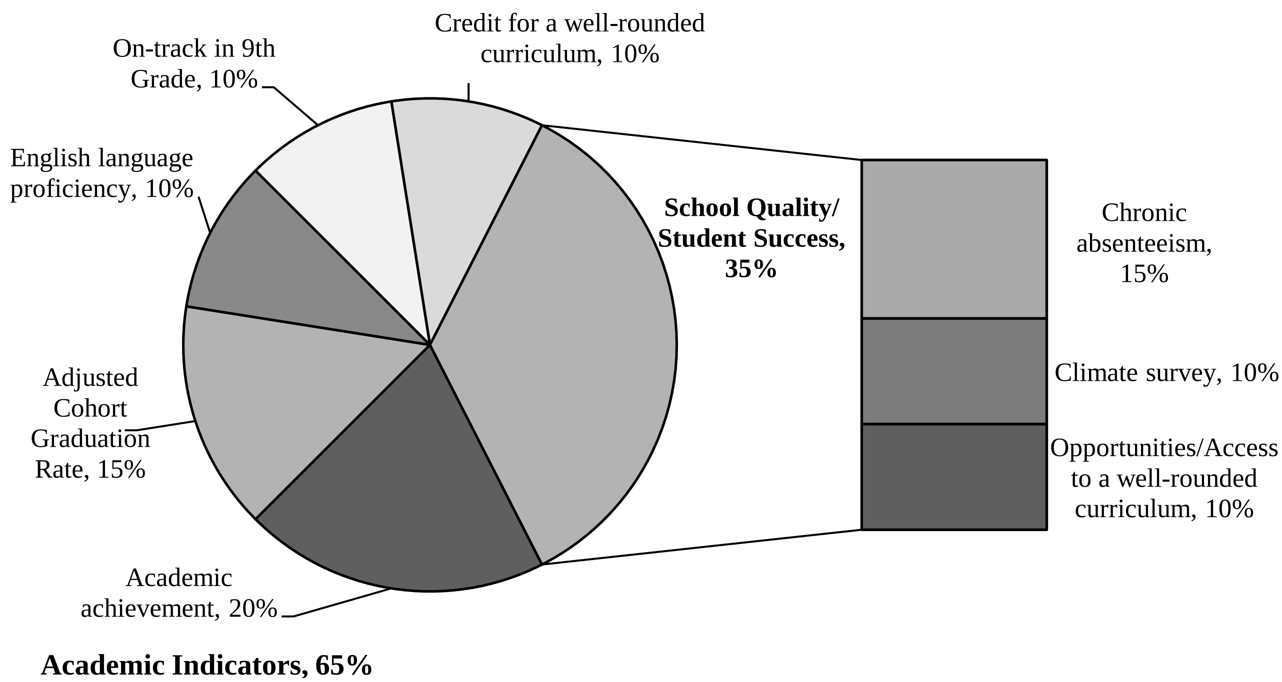
Exhibit 1
ESSA Plan Composite Score Distribution
Elementary/Middle School



ESSA: Every Student Succeeds Act

Source: Maryland State Department of Education

Exhibit 2
ESSA Plan Composite Score Distribution
High School



ESSA: Every Student Succeeds Act

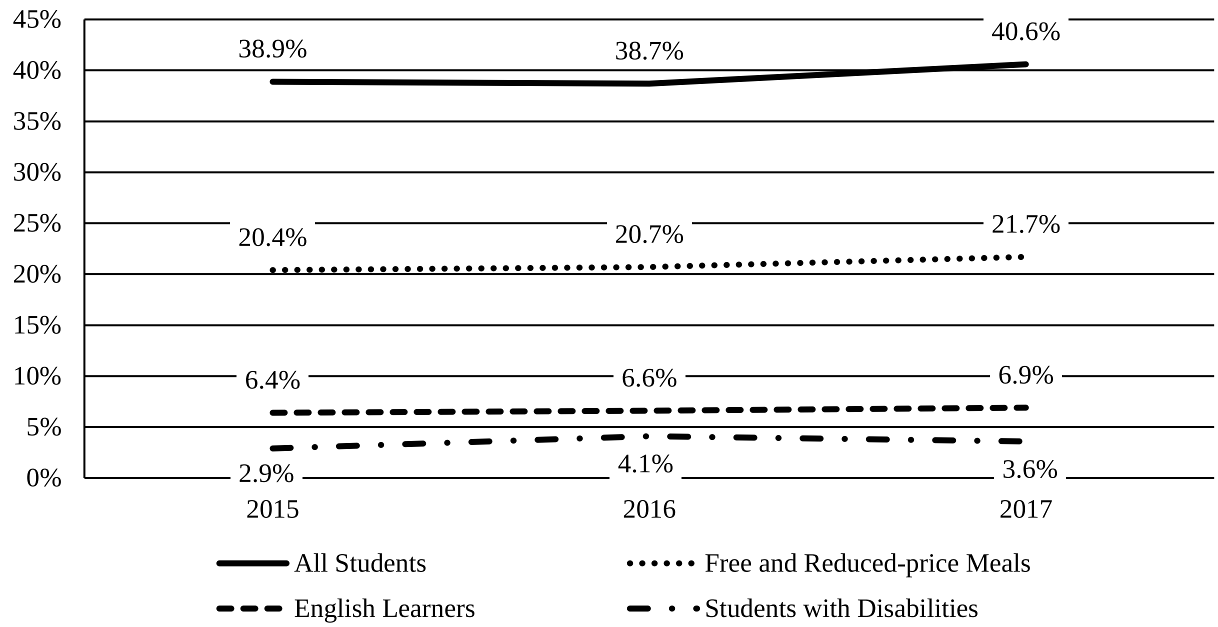
Source: Maryland State Department of Education

According to the plan, using each school's composite score, a statewide percentile ranking will be calculated. The percentile will be converted into a five-star rating system. Using equity gap "rules," which have not yet been developed by MSDE, the equity gap will be factored into a school's final five-star rating, and a school with significant equity gaps may be reclassified into a lower star level.

Assessment Scores Used in Maryland's Plan

The Partnership for Assessment of Readiness for College and Careers (PARCC) assessments were administered for the third year during 2016-2017, and the scores will be used as the baseline for the new accountability system in the State's plan. The PARCC assessments have five performance levels. A score of four or five is considered proficient. On all the PARCC assessments, proficiency gaps between all students and subgroups, including racial and service groups (free and reduced-price meals, English learners, and students with disabilities) remain significant. For example, as shown in **Exhibit 3**, only about 40% of students statewide in grades three through eight earned a four or five on the English/Language Arts PARCC assessment, and the proficiency gaps between all students and subgroups are significant.

Exhibit 3
Proficiency Rates on PARCC by Student Group in 2015-2017
English/Language Arts
Grades 3 through 8



PARCC: Partnership for Assessment of Readiness for College and Careers

Source: Maryland State Department of Education

The State's plan proposes to reduce the percentage of students and subgroups who score nonproficient on PARCC assessments by half by the year 2030. For the academic achievement indicator (20% of the composite score), half of a school's score will be the percentage of students receiving a four or five on a PARCC assessment or the equivalent on the multi-state alternative assessment (MSAA) for students with a severe cognitive disability. The other half of the score for this indicator will be a performance index, equal to the average of all student performance levels on PARCC assessments (or the equivalent on MSAA). The academic growth indicator for elementary and middle schools (25% of the composite score) will be measured by student growth percentile (SGP) on the PARCC assessments. SGP reflects student growth by comparing a student with a student's academic peers who had similar academic performance on the PARCC assessments in the previous year. However, the State board directed MSDE to include in the plan that beginning in 2017-2018, MSDE will study using a growth-to-standard measure in combination with SGP for the accountability system for the 2020-2021 school year. Growth-to-standard reflects student growth by measuring the progress of students toward an agreed upon achievement outcome. The method developed by MSDE will affect the overall composite score calculation and the school rankings.

Next Steps

Maryland's plan, along with the plans submitted by other states, will undergo a peer review process that meets certain requirements, per ESSA. Based on the results of the peer review process, unless the Secretary determines that the plan fails to meet the requirements for a consolidated State plan as detailed in ESSA, the Secretary must approve the plan no later than 120 days after its submission, which will be January 16, 2018. If the Secretary determines that the State's plan fails to meet the requirements, USDE must offer the State an opportunity to revise and resubmit its plan.

Education

Update on School Construction

The 21st Century School Facilities Commission continued to meet during the 2017 interim and will make final recommendations in December 2017. School systems are requesting over $700 million in funding for school construction projects in fiscal 2019. The State share of school construction costs was due to be updated for fiscal 2019 to 2021; however, the Board of Public Works held harmless nine counties whose State share was decreasing in fiscal 2019 and did not approve the State share for fiscal 2020 and 2021, awaiting the recommendations of the 21st Century School Facilities Commission. The first two schools under the Baltimore City Revitalization Program opened for the 2017-2018 school year, with the final schools in the program falling behind schedule and anticipated to open in summer 2021.

21st Century School Facilities Commission

The 21st Century School Facilities Commission was appointed by the President of the Senate and the Speaker of the House of Delegates in early 2016 to, among other things, identify opportunities to make school construction more cost efficient and determine the appropriate role for State agencies to play in the approval and funding of school construction projects. The commission has a broad base of members representing key stakeholders, including legislators, State officials, local school districts and governments, and the construction industry. During the 2016 interim, the commission focused on assessing how the State currently reviews and funds school construction projects against best practices from other states. During the 2017 interim, the commission established two subcommittees to develop recommendations for improving the State's current processes and establish guidelines for funding future projects: the Funding Subcommittee; and the Process, Procedure and Educational Specification Subcommittee. The commission issued an interim report in January 2017 and plans to issue a final report in December of 2017.

School Construction Requests and the State-local Cost-share Formula

School systems submitted their fiscal 2019 school construction requests to the Interagency Committee on School Construction (IAC) in October 2017, totaling over $700 million. IAC will review the projects and make recommendations in December 2017 equal to 75% of the Governor's preliminary allocation. The Governor's *Capital Improvement Program* projected $320 million for projects in fiscal 2019. State and local governments share in the cost of school construction projects. This share is based on a formula, which includes components to recognize local wealth and the proportion of low-income students, enrollment growth, economically distressed counties, and the local school construction funding effort by counties. The State-local cost-share formula is required by Chapters 306 and 307 of 2004 and the Code of Maryland Regulations to be updated every three years. It was supposed to be updated in October 2016 for fiscal 2019 through 2021 but did not go to IAC for approval until September 2017. IAC recommended modifying the local school construction effort component of the cost-share formula to include debt issued by local school systems in addition to counties. Baltimore City Public Schools (BCPS) is presently the only school system with the authority to issue debt.

The updated and revised cost-share formula was submitted to the Board of Public Works (BPW) for approval on October 18, 2017. Current practice establishes cost-shares for three years, including phasing in decreases if the State share decreases by more than five percentage points. For example, if the State share is scheduled to decrease by eight points, the State share decreases by five points in the first year and then by three points the following year. However, because the 21st Century School Facilities Commission is reviewing the factors and process used to calculate the State cost share, BPW voted to approve cost-shares only for fiscal 2019. BPW also voted to maintain the State share in effect for fiscal 2018 for nine school systems in which the State share was slated to decrease. The approved State share percentages of public school construction for eligible costs for fiscal 2019 is outlined in **Exhibit 1**, reflecting BPW's decision to hold harmless all local school systems for one year. The Maryland School for the Blind's State share remains at 93%. The regulations must still be published for public comment and reviewed by the Joint Committee on Administrative, Executive, and Legislative Review before they are finalized.

Baltimore City School Construction and Revitalization

Chapter 647 of 2013, the Baltimore City Public Schools Construction and Revitalization Act, established a new partnership among the State, Baltimore City, and BCPS to fund up to $1.1 billion in public school facility improvements through revenue bonds to be issued by the Maryland Stadium Authority (MSA). To date, one bond issuance of $320.0 million was issued on April 20, 2016, resulting in $385.0 million available for construction. MSA is planning on seeking BPW approval for a second issuance of $426.4 million in 2017. It is expected that MSA will issue a final series of bonds in 2018 for the remaining costs.

The current estimate is that 23 to 28 schools will be replaced or renovated under the program. The specific projects that will be included in the initiative contain more elementary and middle schools and fewer high schools than originally proposed. The schedule has taken longer than originally anticipated, but the first 2 schools, Fort Worthington PreK-8 and Frederick Elementary, were completed in the summer of 2017 and opened for the 2017-2018 school year. Two more schools are anticipated for completion by January 2018. Seven other schools are currently under construction, with an additional 10 schools in some stage of design. The program is currently anticipated to be completed by summer 2021, one year behind the original schedule.

IAC has had continued concerns with the BCPS budget for ongoing maintenance. With the first schools opening in 2017, BCPS will need to find additional funds. The Memorandum of Understanding states that BCPS must include an annual increase over the prior year maintenance appropriation of $3 million until the full agreed upon amount is reached. Baltimore City budget cuts left only a $2 million increase for fiscal 2017; the fiscal 2018 budget includes the required $3 million increase. The BCPS budget will continue to be a critical issue to monitor.

Exhibit 1
State Share of Eligible School Construction Costs
Fiscal 2018-2019

County	2018	2019
Allegany	83%	85%
Anne Arundel	50%	50%
Baltimore City	93%	93%*
Baltimore	52%	56%
Calvert	53%	53%
Caroline	80%	81%
Carroll	59%	59%*
Cecil	63%	66%
Charles	61%	61%
Dorchester	76%	76%*
Frederick	64%	64%*
Garrett	50%	50%
Harford	63%	63%*
Howard	55%	55%*
Kent	50%	50%
Montgomery	50%	50%
Prince George's	63%	70%
Queen Anne's	50%	51%
St. Mary's	58%	58%*
Somerset	100%	100%*
Talbot	50%	50%
Washington	71%	71%
Wicomico	97%	97%*
Worcester	50%	50%

*Indicates the county's State share was held harmless in fiscal 2019.

Source: Interagency Committee for School Construction; Department of Legislative Services

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Higher Education

Initiatives to Tackle the High Cost of Education

New initiatives in Maryland that aid students in affording college include the following: (1) the Maryland 529 State match program; (2) the income tax credit for outstanding student debt; (3) the implementation of 30 credits per year for college completion; (4) the Next Generation Scholars program; and (5) promise programs.

Three New Initiatives Implemented from the College Affordability Act of 2016

The College Affordability Act (Chapters 689 and 690 of 2016) established several initiatives to improve access and success in higher education in Maryland. These included a State match program for college savings, an income tax credit for student loan debt, and 30 credits per year for college completion.

State Match for College Savings

To help students and families before and during college, Maryland 529 (formerly the College Savings Plan of Maryland) is managing the new Save4College State Contribution Program. This will match up to $250 per 529 plan account holder. For the first year of implementation, Maryland 529 received a total of 3,084 applications, of which 2,454 individuals qualified to participate. The remainder consisted of duplicate applications, applications rescinded by the filer, or applications from individuals with an income that was too high to qualify.

Maryland 529 is now validating the income of applicants. As almost 200 applications had incomplete information, Maryland 529 first will be conducting direct mail and phone call follow-up to alert those filers that they may still complete their applications. Families then need to have made contributions to their 529 accounts by November 1, 2017, to complete the qualification for the State match, which will be deposited by December 31, 2017. Assuming all applicants are eligible to receive the match, $613,500 is required. Given that $5.0 million was appropriated in fiscal 2018 for this program, this leaves over $4.3 million unspent. Funding for the match, per statute, increases to $7.0 million in fiscal 2019, so Maryland 529 will work on additional outreach to make individuals in Maryland aware of this opportunity. However, it may turn out that less money than required by the bill will be necessary. The 2018 application cycle for Save4College will open on January 1, 2018, and end on June 1, 2018. Finally, Maryland 529 has a report due by December 1, 2017, on whether the matching program and new marketing plans developed in fiscal 2017 have been effective in reaching low-income families across the State.

Student Loan Debt Relief Tax Credit

The Student Loan Debt Relief Tax Credit assists individuals in Maryland in repaying student loan debt. Beginning in tax year 2017, the Maryland Higher Education Commission (MHEC) may approve refundable tax credits of up to $5,000 per person. Qualifying students must have had at least $20,000 in undergraduate debt, have at least $5,000 of debt remaining, and the tax credit must be used to pay down undergraduate student loan balances. One year ago, MHEC developed a marketing plan to make graduates aware of this opportunity and relied mostly on social media to spread awareness of the tax credit. MHEC received a total of 5,065 applications by the deadline of September 15, 2017. If every student was eligible for the maximum tax credit, the program would cost the State $25.3 million in foregone tax revenue. MHEC will certify all eligible recipients by December 15, 2017. Priority will go to individuals who incurred their loans to pay in-state tuition in Maryland.

State Financial Aid Programs to Keep Students On-time

The College Affordability Act also encourages students receiving aid through the State's largest need-based program, Educational Excellence Awards (EEA), to stay on track for on-time graduation. Beginning in fiscal 2019 and in a student's third academic year, EEA program awardees, which include those with Guaranteed Access Grants, will receive prorated awards based on how many credits the student took in the prior academic year. For example, a student taking at least 30 credits in academic year 2017-2018 is on-time and would receive a full award in academic year 2018-2019, while a student taking less than 30 credits would receive a prorated award. MHEC is currently working with financial aid officers to determine precisely how an academic year is defined and to ensure academic advisors understand how this change affects new and transfer students working to maximize their State financial aid awards.

Next Generation Scholars of Maryland

The Next Generation Scholars program (Chapter 33 of 2016) is jointly administered by MHEC and the Maryland State Department of Education (MSDE) and makes funding available for nonprofit organizations to enhance college and career awareness and college completion for low-income Maryland high school students. Grant funding provides for more personalized guidance and services to students prequalifying for MHEC's Guaranteed Access Grant in eight eligible local jurisdictions. The Guaranteed Access Grant covers up to the cost of tuition and fees at the highest cost public institution in Maryland, $18,400 in fiscal 2018. The Next Generation Scholars program has $4.7 million in fiscal 2018 for grants and about half of the funding was awarded in September 2017 to seven organizations, one of which was an institution of higher education (Morgan State University). Grant awards are for one year and require quarterly updates to MSDE and MHEC. A second round of proposals was solicited in October 2017, since not all eligible jurisdictions were represented by applicants in the first round. Second round funding decisions are expected in December 2017. The growth of Next Generation Scholars is expected to directly increase the number of Guaranteed Access Grant awards issued by MHEC in future years.

The Promise of Free Community College

Promise scholarship programs, which generally cover all tuition and fees regardless of income at community colleges, have become popular nationwide. According to the University of Pennsylvania's Alliance for Higher Education and Democracy, as of May 2017, over 230 programs exist in various forms across 43 states. One of the most studied has been Tennessee Promise, which launched in fall 2014 for students pursuing associate's degrees and workforce training. Early reporting from Tennessee indicates 17% fewer students originated federal loans in fall 2015 over the prior year, and the average federal student loan amount decreased approximately 12%. Another benefit of Tennessee Promise is that Tennessee now leads the nation in the percent of students filing a Free Application for Federal Student Aid due to so many students applying for the Tennessee Promise program. This ensures that students are maximizing all available federal financial aid. However, student retention rates were almost unchanged. In fall 2017, New York launched its own statewide promise program, called the Excelsior Scholarship, which covers tuition for any student whose expected family income is no more than $100,000. This will increase to $125,000 by fall 2019. What makes Excelsior different is that students may use it to attend any undergraduate program, including public four-year institutions.

While no statewide promise program exists in Maryland, several promise-like programs already exist at the county level in Allegany, Garrett, and Wicomico counties for attendance at community colleges. Additionally, in fall 2017, Somerset County has received State funding to launch its own program for residents attending Wor-Wic Community College. Also, after recent legislation created the Task Force to Study a Promise Scholarship Program in Prince George's County (Chapter 647 of 2016), Prince George's Community College launched a promise scholarship in the fall 2017 semester with 87 credit students and 2 noncredit students. Finally, Baltimore City and Baltimore City Community College have indicated that they will implement a free community college program beginning in the fall 2018 semester. Eligibility details for this newest program are not yet available.

Program requirements and eligibility details vary across all programs, and one of the more difficult aspects of a promise program is estimating how much it will cost in a jurisdiction or statewide. Because community college tuition is relatively affordable, the average Tennessee Promise award in the first cohort was only $1,700, excluding students whose financial need was already fully met. This cost Tennessee $15.2 million in fiscal 2016, but this is expected to scale up to about $33 million when fully implemented. Assuming Maryland splits the cost of a promise program with local jurisdictions, and that most students will graduate in two years, the Maryland Association of Community Colleges estimates a total annual cost to the State of $60 million to $70 million.

Questions to resolve for a statewide Maryland program include who would be eligible, whether the program would cover students outside of their service area, and how noncredit programs would fit in. Like tuition moderation, one potential downside to promise scholarships is that the benefit primarily flows to students with some ability to pay for college as the federal Pell grant fully covers the cost of tuition and fees for many low-income students.

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Higher Education

University System of Maryland Fund Balance

Over the past few years, concerns have been expressed about the University System of Maryland's (USM) debt management practices. Specifically, the issue surrounds the policies related to maintaining a certain balance of reserve funds in order to maintain its bond rating. This paper explains the current status of USM's reserve accounts and USM's policy as compared to the debt management policies of other institutions.

University System of Maryland Reserve Fund Policies

Over the past few years there have been concerns regarding the growth of University System of Maryland's (USM) debt reserve fund and the annual requirement for USM institutions to meet targets for transferring money into the fund. Maintaining a reserve fund is common practice among public and private institutions, and it is generally used to support operations in times of revenue shortfalls or emergencies, support future programs or initiatives, and maintain a favorable credit rating. USM maintains one also to help fund capital projects that otherwise may not have the funding to proceed. However, there needs to be a better understanding of the function of the reserve fund and the degree to which it impacts USM's credit rating.

USM's Fund Balances

Total reserve funds are made up of two components, fund balance and plant funds. As shown in **Exhibit 1**, between fiscal 2013 and 2017, USM's fund balance grew 21.5%, or $186.1 million, to $1.1 billion by fiscal 2017. Plant funds, which can only be used for capital expenditures, grew 24.8%, or $192.1 million, during the same time period to $965.7 million in fiscal 2017. Each fund can be further broken down by State supported and non-State supported portions. Overall, State-supported funds account for a larger share of the plant fund than of the fund balance. The total balance of reserve funds grew 23.0%, totaling $2.0 billion in fiscal 2017.

Exhibit 1
University System of Maryland Total Reserve Funds
Fiscal 2013 and 2017
($ in Thousands)

	Non-State-supported	State-supported	Total	2013-2017 % Change
Fund Balance				
2013	$656,180	$210,880	$867,060	
2017	832,723	220,405	1,053,127	21.5%
Plant Funds				
2013	300,290	473,398	773,688	
2017	385,412	580,331	965,743	24.8%
Total Reserve Funds				
2013	956,471	684,278	1,640,748	
2017	1,218,134	800,736	2,018,870	23.0%

Source: University System of Maryland

Reserve funds are one of the financial components used by credit rating agencies in calculating various financial ratios used to assess USM's financial health such as financial leverage and operating reserve ratios. For Moody's, one of three credit rating agencies, wealth and liquidity and leverage measures comprise 45% of the total assessment score. Rating agencies also take into account operating performance and other nonfinancial indicators such as market reputation and student demand. These measures make up the remaining 55% of the Moody's score.

USM maintains credit because it has the authority to issue academic revenue bonds (ARB) and auxiliary revenue bonds. ARBs are backed by tuition revenues to finance academic-related capital projects, and USM is authorized to pledge tuition income from all institutions to support ARBs even though the project is located at a specific campus. Legislative authorization is required, and USM annually introduces legislation for approval. For fiscal 2018, Chapter 143 of 2017 authorized USM to issue $32 million in ARBs. Auxiliary revenue bonds are backed by the revenues associated with the related borrowing activity such as residence halls, student centers, or parking garages. Projects funded with these bonds do not require approval by the General Assembly but are reviewed and approved by the USM Board of Regents. USM issues approximately $115 million of these bonds annually. State statute caps USM's total outstanding debt at $1.4 billion, and it currently totals $1.3 billion.

USM's Policies

USM does not have a formal policy regarding the reserve fund but has a goal that each institution annually transfer 1% of current unrestricted funds to the fund in either the fund balance or the plant fund. There is some flexibility year to year in meeting the goal depending on the needs of the institution.

USM Board of Regent's policy on Debt Management (VIII – 12.00) states: debt will be managed with the objective of maintaining an AA rating from the three major rating agencies, which USM has exceeded since 2010, and available resources must be at least 55% of debt. However, USM's informal policy is maintaining a 1:1 ratio, or 100% coverage. Over the past five years, USM has exceeded its formal and informal targets.

National Perspective

While in general states do not govern reserve fund requirements of public institutions, two states, Wisconsin and Ohio, have reporting requirements for institutions. The University of Wisconsin system is required to report on ending balances for unrestricted funds by source, the extent funds are committed to a certain purpose, and detailed spending plans for balances exceeding 12% of expenditures or how negative balances will be eliminated. Ohio's statute specifies three financial metrics used to assess the financial health of public institutions and that a composite score be determined for each institution. If the composite score falls below 1.75 out of a possible 5.0, the institution is put on financial watch by the state and has to achieve a score of 2.4 for the watch to be terminated.

In general, public institutions that do not issue their own debt are more likely to have reserve fund policies. Of the nine public institution policies reviewed by the Department of Legislative Services, all included transfer targets which were a certain percentage of operating expenditures. Three had reporting requirements if an institution exceeded or did not meet its target.

Public institutions that issue debt tend to have comprehensive debt management policies. Policies of eight institutions were reviewed having the same or higher credit rating as USM and one with a lower rating. Seven of the policies specified debt capacity and affordability ratios and six included providing comparisons to peer institutions.

This analysis leaves open the question of whether Maryland should adopt similar policies to increase the understanding of, and transparency in, USM debt management.

Higher Education

Student Loan Refinancing in Maryland

In 2016, due to ongoing concerns with the ever-increasing costs of higher education, the General Assembly required a study of a potential State student loan refinancing program. The study was completed in 2017; however, in the absence of funding for a consultant, the study was unable to determine whether establishing a State student loan refinancing program is advisable. If the State wishes to pursue establishing a program, the study strongly recommends that a consultant first be hired to conduct a market demand analysis and determine the costs and viability of establishing a State program. The consultant study is estimated to cost $100,000 to $250,000; the General Assembly may wish to mandate funding for the study.

Student Loan Refinancing One of Several Options Recently Considered for Reducing the Costs of Higher Education

The Maryland General Assembly has long been concerned with the ever-increasing costs of higher education and interested in policy options to alleviate these costs. For example, the College Affordability Act of 2016 established a matching grant to help individuals save for college, created a refundable tax credit for undergraduate student loan debt, and increased incentives for students to enroll full time. That same year, the General Assembly separately considered the establishment of a student loan refinancing program to reduce the burden of student loan debt by refinancing existing student loans at potentially better interest rates and/or repayment terms. In many cases, borrowers can pay significantly less over the life of a refinanced loan than they would have otherwise. However, student loan refinancing programs are not without their costs and risks.

In recognition of the complexities surrounding such programs, House Bill 1015 of 2016 (Chapter 290) required the Maryland Higher Education Commission (MHEC) and the Maryland Health and Higher Educational Facilities Authority (MHHEFA), in consultation with the Department of Legislative Services (DLS) and any other appropriate agencies, to study the expansion or creation of an appropriate bonding authority for the refinancing of student loans in Maryland. The study must examine four specific aspects of student loan refinancing:

- whether there are any entities in the State that have bonding authority and currently have the capability and the capacity to offer a student loan refinancing program;

- whether there are any entities in the State that have bonding authority and do not currently have the capability or the capacity to offer a student loan refinancing program, but might be a viable option to offer the program if certain changes were made to the entity;

- student loan refinancing programs offered in other states, including eligibility requirements, essential program characteristics, and start-up and operational costs; and

- the role of counties or other jurisdictions in offering student loan refinancing programs.

Further, the study must make findings and recommendations on (1) the entities in the State that are best suited to offer a student loan refinancing program and whether any statutory changes would be necessary to enable those entities to offer a program; (2) program characteristics that are essential for a successful student loan refinancing program in Maryland; (3) the projected start-up and operational costs for a successful student loan refinancing program in Maryland; (4) best practices and lessons learned from the review of other states' student loan refinancing programs; and (5) the role of counties or other jurisdictions in offering student loan refinancing programs.

Study is Inconclusive on Advisability of Establishing a State Program

The study required under Chapter 290 was anticipated to be completed by a consultant hired by MHEC with access to market-specific data. The fiscal and policy note for House Bill 1015 anticipated $50,000 in funding for the consultant, an estimate that has since been increased; however, no funding was provided by the Governor. Absent that funding, MHHEFA and DLS undertook the study directly with consultation from MHEC. Without the consultant, the central question of whether establishing such a program in Maryland is advisable remains unanswered. The report's findings and recommendations are summarized below.

State Should Approach a Refinancing Program with Caution

The results of the study are inconclusive regarding whether establishing a State student loan refinancing program in Maryland is advisable. There is a finite market for refinancing student loans, and Maryland residents currently have access to refinancing services from several state programs and many private lenders. A State program would have to compete with these established entities. Further, recent trends in federal student loan interest rates and generous federal repayment plans are likely placing downward pressures on demand for refinancing. There are also significant unknowns when discussing program start-up costs, ongoing operating costs, and borrowing costs.

Generally, available student loan information is insufficient to determine the costs, demand for, and long-term viability of a State student loan refinancing program. Therefore, if State policymakers decide to continue pursuing the establishment of such a program, the State should first engage a consultant to study program costs, conduct a market demand analysis, determine market competition, and consider the economic impacts. Due to the experiences of other states, which added refinancing programs to existing direct student loan programs, the consultant study should also consider the possibility and financial implications of concurrently establishing a program to directly provide student loans in addition to a refinancing program. The consultant study is estimated to cost between $100,000 and $250,000 and should be directed by the State entity that would potentially run the program (the study recommends MHHEFA). Given the lack of funding provided by the Governor to date, the General Assembly may wish to consider legislation that requires a consultant to be hired and mandates the associated funding.

Even if the consultant study were to determine that a State student loan refinancing program is feasible, it remains a policy decision as to whether establishing a program is the best use of the State's limited financial resources. Preliminary estimates place start-up costs at 25% to 30% of an initial program size, with the majority of this amount being used as a credit enhancement for the bonds issued to fund the program. Additional funding for operating costs, which could range from $0.5 million to $1.0 million annually for several years before a program is self-funding, would also be required. Some or all of the funding for these costs may need to be in the form of a grant and/or a loan from the State.

MHHEFA is the Entity Best Suited to Operate a Potential Program

If the consultant study determines that a State student loan refinancing program is feasible and the State decides to establish the program, then MHHEFA is the entity best suited to operate the program – likely in conjunction with one or more professional loan servicers to assist with loan administration. While there is no State entity that is perfectly suited to run a State refinancing program, experience and expertise surrounding the issuance of debt is essential to a successful program. MHHEFA's statute would need to be altered to explicitly authorize a student loan refinancing program, but care should be taken not to over-prescribe program details, as the flexibility to respond to changing markets is critical.

Role of Local Refinancing Programs Depends on Whether the State Establishes a Program

Several Maryland counties are also considering whether to create a student loan refinancing program. If the State establishes a program, then the addition of one or more local programs may oversaturate the market and jeopardize the viability of both the State program and the local programs. In this case, if counties still wish to offer support for student loan refinancing, then their role should be limited to providing financial literacy counseling and information regarding the State program and other refinancing options, assistance with loan applications, and similar assistance. Conversely, if the State decides not to establish a program, then one or more local programs may offer a valuable in-state government/nonprofit resource for student loan refinancing. While local programs may wish to focus solely on their residents, in the absence of a State program, it would be the most efficient use of limited resources if one local program served all State residents.

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Higher Education

The Regulation of For-profit Institutions of Higher Education

There are six for-profit institutions of higher education currently operating in Maryland, following the closure of ITT Technical Institute. Legislation was enacted in 2016 that required the Maryland Higher Education Commission (MHEC) to create a guaranty fund to provide tuition and fee refunds to students when a for-profit institution of higher education closes. MHEC proposed regulations that would create this guaranty fund in 2017; although the Administrative, Executive, and Legislative Review Committee has raised several concerns, MHEC has indicated that it will move forward with the regulations. Additionally, now that Kaplan University, a for-profit institution, has been acquired by a public nonprofit institution, it is unclear how this status will change the regulation of the institution by MHEC.

Legislative Initiatives Addressing For-profit Higher Education in Maryland

As a result of the confluence of several issues and a broader concern that "fly-by-night" for-profit institutions would greatly harm students, legislation was enacted in 2011 that for the first time drew a clear distinction in State law between public, private nonprofit, and for-profit institutions of higher education that operate in Maryland. The growing number of students who were enrolling in for-profit institutions, many of whom were taking on a high debt load despite the excessive use of federal student aid at for-profit institutions, and withdrawing within two years of enrollment without receiving a degree, underscored the need for further regulation of for-profit institutions. The potential for fraudulent or deceptive marketing and tuition policies at for-profit institutions was also raised by a 2010 Government Accountability Office report. Chapter 277 of 2011 addressed many of these issues including *authorizing* the Maryland Higher Education Commission (MHEC) to create a guaranty fund to provide refunds to students if a for-profit institution closes or fails to meet its agreements or comply with State law. Despite the authority granted to MHEC by Chapter 277, MHEC did not create a guaranty fund for for-profit institutions of higher education.

Consequently, in 2016, Chapters 552 and 553 revisited the issue of regulating for-profit institutions of higher education in the State. This legislation included the following provisions: *requiring* MHEC to create a guaranty fund to provide a full refund of tuition and fees in the event of a precipitous closure; prohibiting a for-profit institution from enrolling a student if (1) successful completion of the program will not meet specified educational requirements for licensure or certification, (2) the entity that licenses or certifies individuals in the field requires the institution to satisfy a requirement of some sort and the institution does not satisfy the requirement, or (3) the institution is aware or reasonably should have been aware of any other factors that may lead to the ineligibility of the student to pursue or obtain licensure or certification in the State; and including for-profit institutions in net price calculator requirements. The bill took effect on October 1, 2016.

The Closure of ITT Technical Institute – Educational Services, Inc.

A for-profit institution of higher education that had been operating in Maryland, ITT Technical Institute – Educational Services, Inc. (ITT), closed approximately 139 campuses in 37 states on September 6, 2016. In Maryland, this included the ITT-Hanover and ITT-Owings Mills campuses. Although ITT was required by law to inform MHEC at least 30 days before a closure and to provide MHEC with copies of all student records prior to closure, ITT did neither.

Of the 711 Maryland students affected by the ITT closure, 309 had federal loans discharged and 328 were covered by the 11 transfer agreements that MHEC signed with Maryland institutions to allow ITT students to transfer specific credits for specific academic programs and effectuate a teach-out, which allows students to complete their programs of study at another institution. This leaves 74 Maryland ITT students who have not received relief through loan discharge or teach-out. However, MHEC reports that no student complaints have been received.

Proposed Regulations That Create a Guaranty Fund

MHEC published proposed regulations to create a guaranty fund for for-profit institutions on June 23, 2017. This guaranty fund would provide a refund of tuition and fees to students who attend a for-profit institution of higher education that closes, fails to perform any enrollment agreement or contract with the student, or fails to comply with any provisions of the Education Article. The regulations require these institutions to either provide a financial guarantee in a certain amount each year or to make a one-time fund payment.

When reviewed by the Administrative, Executive, and Legislative Review (AELR) Committee, the regulations were found to present potential legal issues of concern. Of note, the proposed regulations *authorize* the payment of an annual fee and *require* a for-profit institution either to furnish a financial guarantee or provide a one-time payment into the fund. Statute *requires* the payment of an annual fee into the fund. An additional concern expressed by stakeholders and several legislators regarding the proposed regulations was that the guaranty fund was not retroactive and, therefore, would not be available to students who were harmed by the ITT closure in 2016. MHEC asserted that because the ITT closure occurred prior to the effective date of Chapters 552 and 553, a retroactive guaranty fund would not comply with the law. However, a letter of advice from the Attorney General's Office, issued on June 15, 2017, suggested that ITT students could be reimbursed with the guaranty fund that would be created in accordance with Chapters 552 and 553.

On July 26, 2017, AELR requested that the Governor and MHEC delay final adoption of the regulations. However, on November 3, 2017, MHEC submitted a letter to AELR that it intends to move forward with the final adoption of the regulations as originally proposed at its December 13, 2017 meeting.

For-profit Institutions of Higher Education That Operate in Maryland

Six for-profit institutions of higher education operate in Maryland as of October 2017: Brightwood College (formerly TESST College of Technology); Lincoln Tech; Stratford University; Strayer University; Fortis College; and, subject to the discussion below, Kaplan University (Kaplan).

Kaplan University is Acquired by Purdue University

Although Kaplan currently operates in Maryland as a for-profit institution, the recent acquisition of Kaplan by a public nonprofit institution may soon change that status. In April 2017, Purdue University (Purdue) announced that it had acquired Kaplan. The acquisition will create a new legal entity (NewU) that will be an online-focused nonprofit university structured as a public benefit corporation. NewU will not receive any Indiana taxpayer money, instead drawing operating funding from tuition and fundraising ventures. However, NewU will be considered a state institution in Indiana.

Despite some criticism from faculty and other interested parties, the deal was approved unanimously by the Indiana Commission for Higher Education in August 2017 and has been granted initial approval by the U.S. Department of Education (USDE). However, shortly after granting initial approval, USDE asserted that Purdue will need to absorb the known and unknown debts and liabilities of Kaplan as a condition of final approval. Purdue has responded that it would take responsibility only for liabilities tied to NewU, not for potential Kaplan liabilities relating to participation in the federal student aid program that may have accrued prior to the acquisition.

In addition to the pending approval of USDE, NewU must receive the approval of the Higher Learning Commission, the regional accreditor for both Purdue and Kaplan. While awaiting these approvals, and if the approvals are granted, it is unclear how MHEC will regulate this institution in Maryland.

Know Before You Enroll

In an effort to educate students in Baltimore City regarding student loan debt and gainful employment, the Maryland Consumer Rights Coalition (MCRC) launched the "Know Before You Enroll" campaign on September 25, 2017. Funded by a mix of Baltimore-based foundations and corporate sponsors, the strategy includes advertisements on buses that run through communities that have been targeted by for-profit institutions of higher education; public service announcements and earned media on radio and television; the dissemination of informational brochures to high schools, churches, and community action centers; trainings for guidance counselors, coaches, ministers, and other community leaders; and a website that identifies red flags and alternative low or no-cost educational opportunities to for-profit institutions. If more funding becomes available, MCRC intends to expand the "Know Before You Enroll" campaign to include information regarding student loan debt at other institutions of higher education and to expand to other jurisdictions in the State besides Baltimore City.

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Health and Health Insurance

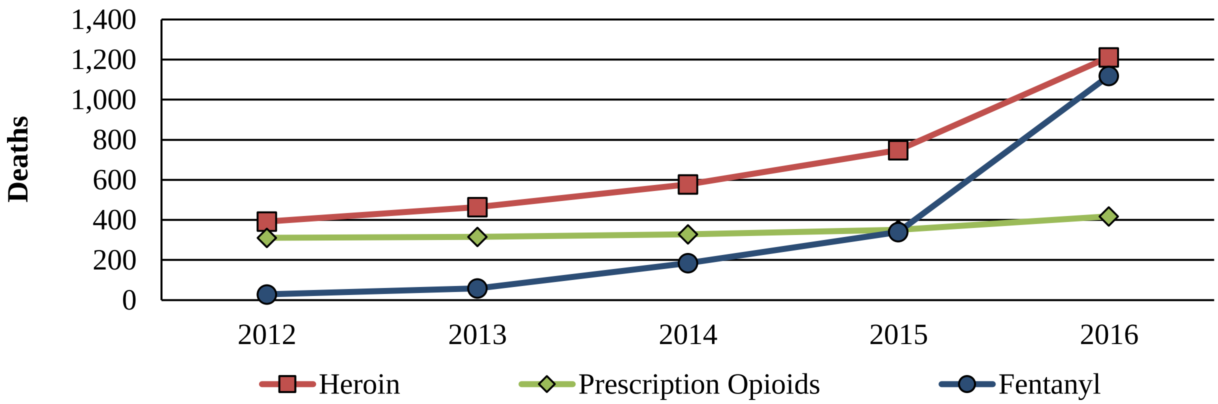
Opioid Overdose Issues

Rates of opioid use and overdose deaths continue to rise at an alarming rate with deaths from fentanyl in the State increasing by 229% from 2015 to 2016. Maryland was the first state in the country to declare a state of emergency on the opioid crisis and has dedicated $50 million over the next five years to address the problem. Several policy initiatives, including comprehensive legislation, establishment of an Opioid Operational Command Center, and Medicaid reforms have also been implemented.

The Opioid Crisis

According to the Centers for Disease Control and Prevention, 91 Americans die every day from opioid overdoses. In Maryland, the rate of opioid-related deaths continues to rise at an alarming rate. As seen in **Exhibit 1**, between 2015 and 2016, prescription opioid-related deaths increased by 19% (from 351 to 418), heroin-related deaths increased by 62% (from 748 to 1,212), and fentanyl-related deaths increased by 229% (from 340 to 1,119). In October 2017, the Maryland Department of Health (MDH) released drug- and alcohol-related intoxication death data for the first half of 2017. The data attributes 799 deaths to fentanyl, a 70% increase over fentanyl-related deaths in the same time period for 2016. In addition, the data attributed 46 deaths in the first half of 2017 to carfentanil. The department began screening for carfentanil (a drug used as an elephant tranquilizer) in 2016, with the substance first appearing as a cause of death in April 2017.

Exhibit 1
Total Number of Drug-related Intoxication Deaths
By Selected Substances in Maryland
2012-2016



Source: Maryland Department of Health

Federal Actions to Address the Opioid Crisis

Several federal actions in the past 18 months have expanded funding for substance use and taken other measures to address the opioid crisis. In 2016, the Comprehensive Addiction and Recovery Act authorized over $181 million annually, and the 21st Century Cures Act (CURES Act) authorized up to $970 million to be distributed through the State Targeted Response to the Opioid Crisis Grants. The grants are to be used by states to increase access to treatment and reduce unmet treatment needs and opioid-related overdose deaths. In 2017, Maryland received a two-year, $20 million grant for the prevention and treatment of opioid abuse. In March 2017, President Donald J. Trump signed an executive order establishing the President's Commission on Combating Drug Addiction and the Opioid Crisis. The commission issued an interim report with recommendations in July 2017, with a final report expected in November 2017. On October 26, 2017, President Trump declared the opioid crisis a public health emergency, to be effective for 90 days. The declaration authorizes the Department of Health and Human Services to expand access to telemedicine in rural areas, waive certain regulations that may be hampering the response to the opioid epidemic, and shift grant funding to address the opioid crisis.

Maryland Actions to Address the Opioid Crisis

Legislative Response

The General Assembly of Maryland passed several comprehensive acts during the 2017 session to address the State's opioid crisis, which addressed prevention, treatment, overdose response, and prescribing guidelines.

Chapter 571 of 2017, the Heroin and Opioid Prevention Effort (HOPE) and Treatment Act, among other things, requires (1) the Behavioral Health Administration to establish crisis treatment centers that provide individuals in a substance use disorder crisis with access to clinical staff, requiring at least one center to be established by June 1, 2018; (2) MDH to establish and operate a toll-free health crisis hotline; (3) certain health care facilities and systems to make available to patients the services of health care providers who are trained and authorized under federal law to prescribe opioid addiction treatment medications, including buprenorphine; (4) each hospital, by January 1, 2018, to have a protocol for discharging a patient who was treated for a drug overdose or identified as having a substance use disorder; (5) the Governor's proposed budget for fiscal 2019 through 2021 to include specified rate adjustments for community behavioral health providers; (6) the Department of Public Safety and Correctional Services and MDH to develop a plan to increase the provision of substance use disorder treatment, including medication assisted treatment (MAT), in prisons and jails; (7) the authorization of the provision of naloxone through a standing order and requires that MDH establish guidelines to coprescribe naloxone to high-risk individuals; and (8) the expansion of private insurance coverage for opioid use disorders by prohibiting certain carriers from applying a pre-authorization requirement for a prescription drug when used for treatment of an opioid use disorder and that contains methadone, buprenorphine, or naltrexone.

Chapter 573 of 2017, the Heroin and Opioid Education and Community Action Act (Start Talking Maryland Act) requires (1) the State Board of Education to expand an existing program in public schools to encompass drug addiction and prevention education that specifically includes instruction related to heroin and opioid addiction and prevention and information relating to the lethal effect of fentanyl; (2) each local board of education to establish a policy requiring each public school to obtain and store naloxone and other overdose-reversing medication to be used in an emergency situation; (3) each local board of education or local health department to hire a sufficient number of community action officials or develop and implement a program that provides community relations and education functions that coordinate forums and conduct public relations efforts; and (4) specified institutions of higher education in Maryland to establish a policy that addresses heroin and opioid addiction and prevention, including awareness training for incoming students, obtaining and storing naloxone, and campus police training.

Chapter 570 of 2017 requires a health care provider, on treatment for pain and based on the clinical judgment of the provider, to prescribe the lowest effective dose of an opioid and a quantity that is no greater than that needed for the expected duration of pain severe enough to require an opioid that is a controlled dangerous substance (CDS). The Act provides that the quantity limitations do not apply to opioids prescribed to treat a substance-related disorder; pain associated with a cancer diagnosis; pain experienced while the patient is receiving end-of-life, hospice, or palliative care services; or chronic pain. A violation of the Act is grounds for disciplinary action by the appropriate health occupations board.

Executive Branch Initiatives

Governor Lawrence J. Hogan, Jr.'s Administration has taken several initiatives to address the opioid epidemic, including establishing an Opioid Operational Command Center (OOCC), declaring a state of emergency for the opioid crisis, providing a supplemental budget appropriation, and implementing Medicaid payment reforms.

Opioid Operational Command Center

In January 2017, Governor Hogan issued an executive order establishing OOCC to facilitate collaboration between State and local public health, human services, education, and public safety entities to combat the heroin and opioid crisis. OOCC will (1) develop operational strategies to continue implementing the recommendations of the Governor's Heroin and Opioid Emergency Task Force; (2) collect, analyze, and facilitate the sharing of data relevant to the epidemic from State and local sources while maintaining the privacy and security of sensitive personal information; (3) develop a Memorandum of Understanding among State and local agencies that provides for the sharing and collection of health and public safety information and data relating to the heroin and opioid epidemic; (4) assist and support local agencies in the creation of opioid intervention teams; and (5) coordinate the training of and provide resources for State and local agencies addressing the threat to the public health, security, and economic well-being of the State. The organizational structure of OOCC is modeled after the Incident Command System structure recommended under the National Incident Management System.

Governor's State of Emergency Declaration and Funding

In March 2017, Maryland became the first state to declare a state of emergency for the opioid crisis, activating the Governor's emergency management authority and enabling increased and more rapid coordination between the State and local jurisdictions. In conjunction with the declaration, Governor Hogan included a supplemental budget appropriation of $10 million, part of a $50 million, five-year commitment to address the State's heroin and opioid epidemic. In July 2017, $22 million was appropriated for fiscal 2018, which includes $10 million in CURES Act funding and will be used for prevention, treatment, and enforcement activities. Prevention efforts include distribution of opioid intervention teams for each jurisdiction, a public awareness campaign, funding to train community teams on overdose response and linking to treatment, a pilot program to create school-based teams for early identification of the problems related to substance use disorders, and distribution of opioid information to health care facilities and providers that offer treatment. Enforcement initiatives include funding to disrupt drug trafficking organizations for the heroin coordinator program and to increase MDH's regulatory oversight of CDS. Treatment funding will be used to expand treatment beds and implement a tracking system to identify available beds; improve access to naloxone; establish a 24-hour crisis center in Baltimore City; expand use of peer recovery support specialists; expand Screening, Brief Intervention, and Referral to Treatment to hospitals and parole, probation, and correctional facilities; increase access to MAT; expand law enforcement diversion programs; and improve the State's crisis hotline.

Medicaid Reforms

Maryland transitioned its Medicaid billing for substance use disorder services to a fee-for-service system on January 1, 2015, as part of the behavioral health integration initiative. Rates were established based on prevailing Medicare rates for those services at that time. Since then, the State has implemented changes to the rates and rate structure, in particular, for the provision of the weekly bundled rate for MAT and methadone services. Effective March 1, 2017, the State rebundled the weekly MAT reimbursement rate to allow opioid treatment programs to bill for outpatient counseling separately. The rebundled rates are intended to encourage the provision of more counseling sessions by allowing for enhanced billing.

In addition, Maryland was granted a waiver to the federal Institutes for Mental Disease exclusion, which will allow the State to receive federal Medicaid reimbursement for the provision of residential treatment for individuals between the ages of 21 and 65 for up to two 30-day stays per year. This new provision has changed substance use disorder residential treatment from an entirely State-funded, limited benefit to a widely available benefit for all Medicaid-eligible beneficiaries. Maryland is only the third state to receive this type of waiver.

Health and Health Insurance

Medical Cannabis Commission and Marijuana Legalization in Other States

The Natalie M. LaPrade Medical Cannabis Commission's recent awarding of medical cannabis grower licenses has been met with significant controversy due to the commission's decision to include geographic diversity as a final factor in choosing the grower finalists and the lack of representation of minority-led businesses among the grower finalists. This controversy has resulted in the filing of lawsuits, the introduction of several pieces of comprehensive legislation, and the initiation of a disparity study of the medical cannabis industry. As Maryland seeks to establish a medical cannabis program, other states are implementing laws legalizing cannabis and early public health effects are being monitored.

Natalie M. LaPrade Medical Cannabis Commission

The Natalie M. LaPrade Medical Cannabis Commission is responsible for the implementation of programs to make medical cannabis available to qualifying patients in a safe and effective manner. The commission oversees licensing, registration, inspection, and testing related to the State's medical cannabis program and provides relevant program information to patients, physicians, growers, dispensers, processors, testing laboratories, and caregivers.

Chapter 251 of 2015 authorized a qualifying patient who has been provided with a written certification from a certifying physician in accordance with a *bona fide* physician-patient relationship to obtain medical cannabis. Chapter 474 of 2016 expanded the types of health care practitioners who may discuss medical cannabis with a patient; complete an assessment of a patient's medical condition; and certify that a patient qualifies for medical cannabis to include dentists, podiatrists, nurse practitioners, and nurse midwives.

Medical cannabis may only be obtained from a grower or dispensary licensed by the commission, and the commission may license no more than 15 growers. There is no established limit on the number of processor licenses. While there is no specific restriction on the number of dispensaries in statute, regulations set a limit of 2 dispensary licenses per senatorial district or up to 94 dispensary licenses statewide. Most states with medical cannabis programs cap the number of growers, processors, and dispensaries in order to manage production and limit the size of the industry. States also typically use a merit-based application process to identify the best applicants and award licenses to those deemed most qualified.

License Application Process

The commission is required to actively seek to achieve racial, ethnic, and geographic diversity when licensing medical cannabis growers and to encourage applicants who qualify as a Minority Business Enterprise. The commission opened applications for grower, processor, and dispensary licenses in September 2015. Towson University's Regional Economic Studies Institute (RESI) was commissioned to review the grower and processor applications through a double-blind review process in which all identifying information was redacted. The scoring system authorized the commission to take into account the geographic location of the growing operation to ensure geographic diversity in the award of licenses. The scoring system did not include a consideration of race, a decision based on a letter from the Office of the Attorney General stating that constitutional limits prohibited the consideration of race or ethnicity for licensing when there is no disparity study that indicates past discrimination in similar programs.

In August 2016, the commission announced the 15 growers and 15 processors who were awarded Stage One license pre-approvals. The evaluation procedures to be used in the award of dispensary licenses were adopted by the commission in November 2016, and the commission announced 102 dispensaries who were awarded Stage One license pre-approvals in December 2016 (this number included 10 pre-approvals issued to applicants who also received grower license pre-approvals). All of the Stage One pre-approvals awarded in 2016 have 365 days from the date of pre-approval notification to complete all necessary steps to obtain final licensure. Should an awardee fail to do so, the commission may not issue a final license.

Controversy Over Geographic, Racial, and Ethnic Diversity

Since the award announcement, there has been significant controversy surrounding two main issues: the decision to include geographic diversity as a final factor in choosing the grower finalists; and the fact that none of the 15 Stage One approved grower finalists are led by minorities.

Geographic diversity became an issue when two companies among the top 15 ranked growers did not receive pre-approval after being replaced by other companies in order to provide geographic representation throughout the State. In July 2016, a subcommittee of the commission unanimously voted to preliminarily approve the top 15 growers based on the RESI scoring, which did not include a consideration of location. Afterward, the subcommittee reversed their vote, which resulted in two lower ranked firms being moved into the top 15 growers in order to achieve geographic diversity. The two companies that were initially included in the top 15 growers but later removed are suing the commission, claiming that the determination of how geographic diversity was to be considered was unclear to applicants. In addition, none of the top 15 growers are minority owned, which prompted a lawsuit by an African American-owned company that was denied a grower license seeking to halt the medical cannabis program until the commission takes action to ensure racial and ethnic diversity among licensed growers.

Several bills relating to the composition of the commission and the number of grower and processor licenses, as well as licensing criteria and the approval process, were introduced during the 2017 legislative session. However, none of these bills passed. One of the more comprehensive bills, House Bill 1443, would have, on an emergency basis, repealed and reconstituted the membership of the commission and required extensive outreach to encourage industry participation by small, minority, and women business owners. The bill also would have required the Maryland Department of Transportation (MDOT) to conduct a disparity study, implement a new Small Medical Cannabis Enterprise Program, and establish a process for certification. The bill would also have increased the cap on medical cannabis grower licenses, instituted a cap for processor licenses, and prohibited the issuance of Stage One pre-approval licenses until the disparity study was completed and only in accordance with a new scoring process that focused on racial, ethnic, and geographic diversity.

In April 2017, Governor Lawrence J. Hogan directed the Governor's Office of Minority Affairs to initiate a disparity study of Maryland's regulated medical cannabis industry to be conducted by MDOT and in cooperation with the commission. According to the commission, the study is underway, but it is unclear as to when the study will be completed. Additionally, in July 2017, Governor Hogan announced nine new appointments to the commission; of these, three appointments filled vacancies, and six replaced commissioners whose terms had expired. As a result of these appointments, minority representation on the commission doubled.

The chair of the commission has stated that the commission is committed to seeking and promoting racial diversity and minority inclusion and will continue to work with the legislature to help solve these complex problems but does not want to further delay the program. At its October 3, 2017 meeting, the commission announced that, as a result of discussions with the Legislative Black Caucus, it intends to form a minority affairs subcommittee on the commission to help address some of the caucus' concerns.

Status of Medical Cannabis Implementation

As of October 23, 2017, the commission has issued final licenses for 14 growers, 12 processors, and 6 dispensaries. Additionally, the commission has approved one-year provisional registrations for three independent testing laboratories. The commission maintains a list of licensees on its website, which can be found at http://mmcc.maryland.gov/Pages/industry.aspx.

The commission anticipates that medical cannabis may be available for sale by the end of fall 2017. However, the commission has also cautioned repeatedly during its meetings that the public should not expect supply to fully and immediately meet demand, as the industry is still in the early stages of production, and any products must meet strict quality control standards, which may further delay availability. On October 3, 2017, the *Baltimore Sun* reported that ForwardGro (the first grower to receive a final license) submitted its first mature crop to a laboratory for testing but that ForwardGro was not able to estimate when the entire testing process would be completed.

Marijuana Legalization in Other States

Although not legal in Maryland, authorization of the recreational use of cannabis has gained momentum across the country. Prior to the November 2016 election, recreational use was legal in four states (Alaska, Colorado, Oregon, and Washington) and the District of Columbia. In the November 2016 election, ballot initiatives to legalize recreational use passed in California, Massachusetts, Maine, and Nevada.

Legalization of marijuana and the associated increase in availability has led to renewed attention to the public health effects. Colorado and Washington both legalized the recreational use of marijuana in 2012, and retail sales began in both states in 2014. These states have recently started collecting and publishing data that may be illustrative of the potential public health implications of legalization, including the impact on youth and adult use, poison control center calls, and impaired driving. Recent reports from Colorado and Washington state agencies indicate that while youth and adult marijuana use has remained relatively stable since legalization, the number of calls to poison control centers and impaired driving incidents involving marijuana have increased.

In its 2016 report to the Colorado General Assembly, Colorado's Retail Marijuana Public Health Advisory Committee stated that 21% of high school students and 13% of adults reported past-month marijuana use in 2015; however, the committee also reported that adolescent and adult past-month marijuana use had not changed since legalization, either in terms of the number of people using or the frequency of use among users. Additionally, the committee reported that marijuana exposure calls to the Rocky Mountain Poison and Drug Center increased from 127 calls in 2013 to 201 calls in 2016, and calls involving young children (8 years of age or less) increased from an average of 5 calls per year to 40 calls in 2016.

In 2017, the Washington State Office of Financial Management reported that 26% of twelfth graders, 17% of tenth graders, 6% of eighth graders, and 1% of sixth graders reported current marijuana use in 2016; however, there were no observed trends in usage for any of these grades between 2006 and 2016. In addition, 12% of adults reported current marijuana use in 2015; use among adults has increased by 14% per year since 2010. Further, between 2011 and 2013, there were an average of 155 marijuana-related calls per year to the Poison Control Center, and from 2014 to 2016, the average number of calls increased to 268.

The Colorado Department of Transportation reports that, in 2016, more than 17% of all driving under the influence arrests from the Colorado State Patrol involved marijuana. Additionally, the number of traffic fatalities involving active tetrahydrocannabinol (THC) increased from 18 in 2013 to 77 in 2016. This data includes fatalities in which alcohol or other drugs may also be present. According to a 2016 report from the Washington Traffic Safety Commission, the percentage of drivers testing positive for cannabinoids who were positive for THC increased from 44% in 2010 to 84% in 2014. Further, the frequency of drivers in fatal crashes that tested positive for THC either alone or in combination with alcohol or other drugs was highest in 2014 (75 drivers) compared to the previous four-year average (36 drivers).

Health and Health Insurance

Health Care Reform in Maryland

Since passage of the federal Patient Protection and Affordable Care Act (ACA) in 2010, the number of uninsured individuals in Maryland has fallen, and nearly 430,000 individuals are covered through the Medicaid expansion or the Maryland Health Benefit Exchange. The impact on the individual market has been less favorable, with steady premium increases and fewer plans offered. Significant actions relating to health care reform have occurred in recent months, including more states seeking a federal waiver to maintain key ACA elements but address problems.

The Impact of Health Care Reform on Coverage

Since passage of the federal Patient Protection and Affordable Care Act (ACA), the percentage of uninsured individuals in Maryland has declined from 11.3% in 2010 to 6.1% in 2016. The largest gains in coverage have occurred through the expansion of Medicaid, with 306,660 individuals enrolled under the expansion as of October 2017.

More than 123,000 individuals were enrolled in a qualified health plan (QHP) through the Maryland Health Benefit Exchange (MHBE) as of October 1, 2017. Enrollees can generally select a plan from one of four metal levels (bronze, silver, gold, or platinum), each of which covers a different percentage of medical expenses. A majority of MHBE enrollees (79.1%) receive a federal advanced premium tax credit (APTC) to help pay their monthly premiums. The APTC is available to individuals with incomes between 100.0% and 400.0% of the federal poverty guidelines. For calendar 2017, the estimated value of the APTC statewide is $288 million. More than half (60.1%) of MHBE enrollees are covered under cost-sharing reduction (CSR) plans, silver-level plans that offer reduced deductibles and copayments.

The Impact of Health Care Reform on Insurance Markets

According to the Maryland Insurance Administration (MIA), more than 500,000 individuals in Maryland were covered under an ACA policy as of March 31, 2017, including MHBE enrollees and those covered outside the exchange. Between 2012 and 2017, enrollment in the individual market has nearly doubled, while small group enrollment has declined by almost 20%.

Between 2014 and 2016, carriers in the individual market experienced underwriting losses of $493 million (19% of revenue). MIA notes that healthy members appear to be leaving the individual market, actual claims have been higher than expected, and claims costs are increasing by approximately 8% annually. In calendar 2018, 19 QHPs will be available through MHBE, down from 24 in 2017. However, only two carriers are participating, with CareFirst BlueCross

BlueShield being the sole carrier in 13 Maryland counties. In the small group market, between 2014 and 2016, carriers had an underwriting gain of $179 million (5% of revenue). MIA notes that the small group market has had favorable claims experience and remains a competitive marketplace with five carriers.

For calendar 2018, MIA approved average rate increases of 33.0% for the individual market, compared with an average requested rate increase of 43.1%. In the small group market, average approved rate increases were 1.7% (an average of 5.2% was requested). MIA also reports that the average deductible in the individual market will increase by $380 (10.1%) in 2018.

Recent Actions Regarding Health Care Reform

State Actions

Chapter 17 of 2017 established the 19-member Maryland Health Insurance Coverage Protection Commission to monitor and assess potential and actual federal changes to the ACA, Medicaid, the Maryland Children's Health Program, Medicare, and the Maryland All-Payer Model and provide recommendations for State and local action to protect access to affordable health coverage. The commission met three times during the 2017 interim and is due to submit the first of three annual reports on its findings and recommendations by December 31, 2017.

Presidential Executive Order

On October 12, 2017, President Donald J. Trump issued an executive order to (1) expand access to association health plans by allowing more employers to form such plans; (2) expand the availability of short-term, limited-duration insurance by allowing such insurance to cover longer periods of time and be renewed (currently, such coverage cannot exceed three months or be renewed); and (3) expand employers' ability to offer health reimbursement arrangements (HRA) to their employees and allow HRAs to be used in conjunction with nongroup coverage.

Elimination of Cost-sharing Subsidy Payments

On October 13, 2017, the Trump Administration announced its decision to end CSR payments to insurers. In response, 19 states' attorneys general (including Maryland's) filed a lawsuit in U.S. District Court to compel continued funding of the payments. According to MHBE, CSR payments to Maryland insurers will total $65 million in calendar 2017. To reflect the loss of CSR payments to insurers, on October 25, 2017, MIA approved additional premium increases for CSR plans only. CareFirst BlueCross BlueShield was granted a 58.2% increase for its HMO product and 76% for its PPO product (after requesting increases of 60.1% and 86.1%, respectively). Kaiser was granted a 43.4% increase (an increase of 33.3% was requested).

In Maryland, approximately 74,000 individuals are enrolled in CSR plans. These enrollees are not anticipated to be impacted by elimination of the CSR payments as insurers will still be required to provide the CSR plans and any increase in silver-plan premiums will likely be offset by an increase in the APTC. However, individuals who purchase standard silver plans and those who are not eligible for the APTCs will face additional premium increases that may make coverage unaffordable. According to MHBE, approximately 22,000 individuals in Maryland have standard (non-CSR) silver plans.

Bipartisan Health Care Stabilization Act of 2017

U.S. Senator A. Lamar Alexander, Jr. and Senator Patty L. Murray have proposed a bipartisan bill to stabilize individual market premiums for calendar 2018 and 2019 and provide additional state flexibility. The proposal would fund CSR payments for two years; streamline the application process for state innovation waivers; give states more funding flexibility to establish reinsurance and high-risk pools; provide access to more flexible health plans; allow purchase of a lower premium "copper" plan; and require regulations for the implementation of health care choice compacts that allow health plans to be offered in more than one state.

State Options under Federal Section 1332 State Innovation Waivers

One option for states to address insurance market issues is a federal State Innovation Waiver (Section 1332 waiver). Under such a waiver, states must provide access to quality health care that is at least as comprehensive and affordable and covers a comparable number of residents as would be covered absent a waiver, without increasing the federal deficit. Waivers can be approved for up to five years and can be renewed. Standards related to QHP establishment, consumer choice and insurance competition, APTCs and CSR plans, and employer-shared and individual-shared responsibility can be waived. The application process is robust, and a state must provide significant data, actuarial analyses and certifications, a detailed 10-year budget plan, analysis of the impact of the waiver on health insurance coverage, and a detailed implementation plan and timeline.

As of October 2017, four states (Alaska, Hawaii, Minnesota, and Oregon) have approved waivers. The Alaska Reinsurance Program will reinsure individuals with 1 or more of 33 identified high-cost conditions to help stabilize premiums using pass-through funding based on the amount of APTCs that would have been paid absent the waiver. Minnesota and Oregon will use the same pass-through funding source for reinsurance programs. Hawaii's waiver exempts the state from having to operate a Small Business Health Options Program.

CareFirst BlueCross BlueShield has proposed that Maryland apply for a Section 1332 waiver to stabilize the individual market. The proposal includes five points to (1) move from multiple insurance options to one standard product in the individual ACA insurance market with a $1,000 deductible and a $3,500 out-of-pocket maximum; (2) establish a stop-loss reinsurance limit of $50,000 per person per year above which costs would be split 80% federal government/20% carriers; (3) reallocate federal funding for APTCs and CSR payments to fund reinsurance and premium subsidies for individuals with incomes up to 400% of the federal poverty guidelines; (4) place a rate stabilization surcharge on the premiums of carriers that do not participate in the individual ACA market; and (5) include other funding mechanisms to promote market stabilization, such as an assessment on hospital rates. According to CareFirst BlueCross BlueShield, the plan would reduce premiums, continue subsidies to low-income enrollees, maintain key elements of the ACA, ease the administrative burden through the simplification of offered products, and may incentivize more carriers to rejoin the ACA market.

Health and Health Insurance

Implementation of the All-payer Model Contract

In January 2014, Maryland replaced its historic Medicare waiver that governs hospital rate setting with the new Maryland all-payer model contract. Performance data indicates that Maryland continues to be on pace to meet or exceed contract requirements. In early 2017, the federal government and State officials began negotiations for a new model to begin January 1, 2019. The Maryland Total Cost of Care Model will be expected to transform health care delivery, improve health and quality of care, and maintain State growth in Medicare spending at a rate that is lower than the national growth rate.

The Maryland All-payer Model Contract

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

Performance on Requirements of the All-payer Model Contract

In October 2017, the Health Services Cost Review Commission released an update on Maryland's performance implementing the all-payer model contract. Generally, implementation has progressed well, and Maryland is on pace to meet or exceed the requirements of the model contract. **Exhibit 1** displays the requirements that the State must meet and the status of the State's performance.

Exhibit 1
Maryland's Performance on the Requirements of the All-payer Model Contract as of October 2017

Requirement	Initial Performance/Status
Total Hospital Cost Growth: Limit annual growth in all-payer hospital per capita revenue for Maryland residents to 3.58% growth.	Per capita revenue for Maryland residents grew by 1.47% from calendar 2013 to 2014, 2.31% from calendar 2014 to 2015, and 0.29% from calendar 2015 and 2016. Calendar 2017 growth year-to-date shows per capita growth of 3.61% but is anticipated to be within target by the end of calendar 2017.
Medicare Total Hospital Cost Growth: Limit Medicare per beneficiary hospital cost growth to produce $330 million in cumulative Medicare savings over five years.	Maryland realized $116 million in savings in calendar 2014, $135 million in calendar 2015, and $287 million in calendar 2016. Calendar 2017 data have not yet been approved for release by CMS.
Population-based Revenue: Shift hospital reimbursement from a per case to a population-based system, with at least 80.0% of hospital revenues shifted to global budgeting over five years.	100.0% of hospital revenue has been shifted to global budgets. HSCRC continues to refine global budget methodology.
Reduction of Hospital Readmissions: Reduce the Medicare readmission rate to below the national average over five years.	Between calendar 2013 and May 2017, the gap between the Maryland and the national all-cause readmission rate among Medicare patients decreased from 1.24% to 0.09%, a 12.38% reduction in readmissions.
Reduction of Hospital-acquired Conditions: Achieve a cumulative reduction of potentially preventable complications of 30.0% over five years.	Compounded with previous reductions, there has been a 45.84% reduction in all-payer case mix adjusted potentially preventable complications since calendar 2013.

CMS: Centers for Medicare and Medicaid Services
HSCRC: Health Services Cost Review Commission

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

Modification to Maryland Patient Referral Law and Waiver from Federal Stark Prohibitions

Under the model contract, there is the potential for new forms of compensation arrangements, such as shared compensation arrangements between hospitals and physicians, that could violate the Maryland Patient Referral Law (MPRL) and the federal Stark anti-kickback prohibitions. To provide additional flexibility under the model contract, Chapters 225 and 226 of 2017 exempt a health care practitioner who has a compensation arrangement with a health care entity from the prohibition against self-referral under MPRL if the compensation arrangement is funded by or paid under (1) a Medicare Shared Savings Program accountable care organization (ACO); (2) an advance payment ACO model, a pioneer ACO model, or a next generation ACO model, as authorized under federal law; (3) an alternative payment model approved by the federal Centers for Medicare and Medicaid Services (CMS); or (4) another model approved by CMS that may be applied to health care services provided to both Medicare and non-Medicare beneficiaries. The federal government will waive the Stark law prohibition on self-referral for provider arrangements that closely manage care and improve quality.

The New Maryland Total Cost of Care Model

The all-payer model contract required Maryland to submit a proposal for a new model to limit Medicare beneficiary total cost of care (TCOC) growth. The new "Maryland Total Cost of Care Model" is designed to (1) improve population health; (2) improve outcomes for individuals; and (3) control growth of TCOC. To accomplish these goals, the model must move beyond hospitals to address Medicare patients' care in the community. Under the new model, the State will be required to address care delivery across the health care system with the objective of improving health and quality of care, while limiting State growth in Medicare spending to a level lower than the national rate.

Initial negotiations with the federal Center for Medicare and Medicaid Innovation were completed in May 2017. The federal government is currently engaged in an internal clearance process that will lead to final approval of the new contract. The State has requested federal approval by fall 2017 to facilitate strategic planning with health care leaders. In 2018, the State will begin a full-year process of engaging stakeholders and planning for the beginning of the new model. Core requirements and expectations of the new model, which are subject to federal approval, include the following:

- The new model will begin January 1, 2019, for a 10-year term. Review of model performance will be ongoing, with a significant reevaluation occurring at the 5-year mark.

- As with the current model contract, hospital cost growth per capita for all payers must not exceed 3.58% per year. The State has the opportunity to adjust this growth limit based on economic conditions, subject to federal review and approval.

- Maryland commits to saving $300 million in annual total Medicare spending for Medicare Part A and Part B by the end of 2023. This savings will build off of the ongoing work of Maryland stakeholders, which began in 2014.

- Federal resources will be invested in primary care and delivery system innovations, consistent with national and State goals to improve chronic care and population health.

- The new model will help physicians and other providers leverage other voluntary initiatives and federal programs to align participation in efforts focused on improving care and care coordination and participation in incentive programs that reward those results. These programs will be voluntary, and the State will not undertake setting Medicare and private fee schedules for physicians and clinicians.

- Maryland will set aggressive quality of care goals and a range of population health goals.

Health and Health Insurance

Medicaid Population and Expenditure Trends

In fiscal 2018, the Medical Assistance Programs have a projected general fund deficit of $102.6 million and projected deficiencies of $85.4 million. For fiscal 2019, expenditures are estimated at almost $11.7 billion, with fiscal 2019 baseline growth of $519.9 million (4.7%), including general fund growth of $223.0 million (6.9%). Projected average monthly enrollment in fiscal 2019 is estimated at 1.42 million individuals.

Maryland's Medical Assistance Programs

Maryland's Medical Assistance Programs (Medicaid, Maryland Children's Health Program (MCHP), Employed Individuals with Disabilities, *etc.*) provide eligible, low-income individuals with comprehensive health care coverage. Funding is derived from both federal and State sources with a federal fund participation rate in fiscal 2019 of 50.0% to 93.5% for Medicaid depending on the eligibility category and 88.0% for MCHP.

Fiscal 2018 Projected Deficit

There is a projected general fund deficit of $102.6 million in fiscal 2018, including $17.2 million in fiscal 2017 behavioral health costs, mainly higher spending on substance use disorder services, carried into fiscal 2018. Fiscal 2018 deficiencies are projected to total $85.4 million and reflect higher than budgeted medical expenses ($52.4 million) largely due to lower estimates of pharmacy rebates and lower than budgeted special fund attainment ($32.9 million) primarily due to a shortfall in Cigarette Restitution Fund (CRF) support.

Fiscal 2019 Medicaid Outlook

As shown in **Exhibit 1**, in fiscal 2019, after adjusting for the Board of Public Works' actions in September 2017, expenditures for the Medical Assistance Programs are estimated to be almost $11.7 billion, a $541.7 million (4.9 %) increase over the fiscal 2018 working appropriation, with general fund growth of $308.3 million (9.8%).

Exhibit 1
Medical Care Programs Expenditures
Fiscal 2017-2019
($ in Millions)

Funds	2017 Actual	2018 Working Appropriation	2018 DLS Estimate	2019 Baseline	Working Appropriation 2018-2019 $ Change	Working Appropriation 2018-2019 % Change
General	$3,007.7	$3,151.9	$3,237.3	$3,460.2	$308.3	9.8%
Special	963.6	1,000.3	967.3	952.8	-47.5	-4.7%
Federal	6,720.0	6,919.1	6,893.2	7,204.8	285.6	4.1%
Reimbursable	70.5	75.2	70.5	70.5	-4.7	-6.3%
Total	**$10,761.8**	**$11,146.5**	**$11,168.3**	**$11,688.2**	**$541.7**	**4.9%**

DLS: Department of Legislative Services

Note: The fiscal 2018 DLS estimate attributes anticipated fiscal 2018 deficiency appropriations to the appropriate fiscal year. Data is for major provider payments only and includes Medicaid-funded behavioral health services.

Source: Department of Legislative Services

Even after taking into consideration potential deficiency requirements, fiscal 2019 baseline growth is $519.9 million (4.7%), with general fund growth of $223.0 million (6.9%). Major drivers of general fund growth are provider rates ($103.0 million), enrollment and utilization ($59.0 million), fiscal 2018 deficiency medical costs rolled into fiscal 2019 ($52.0 million), expectations of lower special fund attainment ($48.0 million) due to the mandated reduction in the Medicaid Deficit Assessment and the availability of CRF support, and the increasing State budget responsibility for the federal Patient Protection and Affordable Care Act (ACA) expansion population after rate and enrollment changes ($26.0 million). Of the total estimated ACA expenditures of $2.9 billion, in fiscal 2019, the State is responsible for 6.5%, up from 5.5% in fiscal 2018. Provider rates include the fiscal 2019 impact of calendar 2018 managed care organization rate increases (3.8%), increased behavioral health rates (3.5%), and regulated (2.5%) and community provider (ranging from 2.0% to 2.9%) rate increases.

As shown in **Exhibit 2**, the fiscal 2019 baseline assumes an average monthly enrollment of 1.42 million individuals, compared to year-to-date enrollment of 1.36 million (a 2.4% annual growth rate). This reflects both a lower rate of growth than assumed during the 2017 legislative session and almost half of the projected enrollment growth in the ACA expansion and MCHP eligibility categories for which the State receives an enhanced federal match.

Exhibit 2
Enrollment and Service Year Per Capita Expenditures
Fiscal 2017-2019

	2017 Actual	2018 DLS Estimate	2019 Baseline	2018-2019 % Change
Enrollment by Category				
Medicaid	895,389	920,251	938.880	2.0%
MCHP	144,294	147,180	150,123	2.0%
ACA Medicaid Expansion	290,718	313,976	329,674	5.0%
Total	**1,330,401**	**1,381,406**	**1,418,678**	**2.7%**
Cost Per Enrollee				
Medicaid	$8,214	$8,266	$8,420	1.9%
MCHP	1,703	1,759	1,830	4.0%
ACA Medicaid Expansion	9,050	8,778	8,928	1.7%
Total	**$7,690**	**$7,689**	**$7,841**	**2.0%**

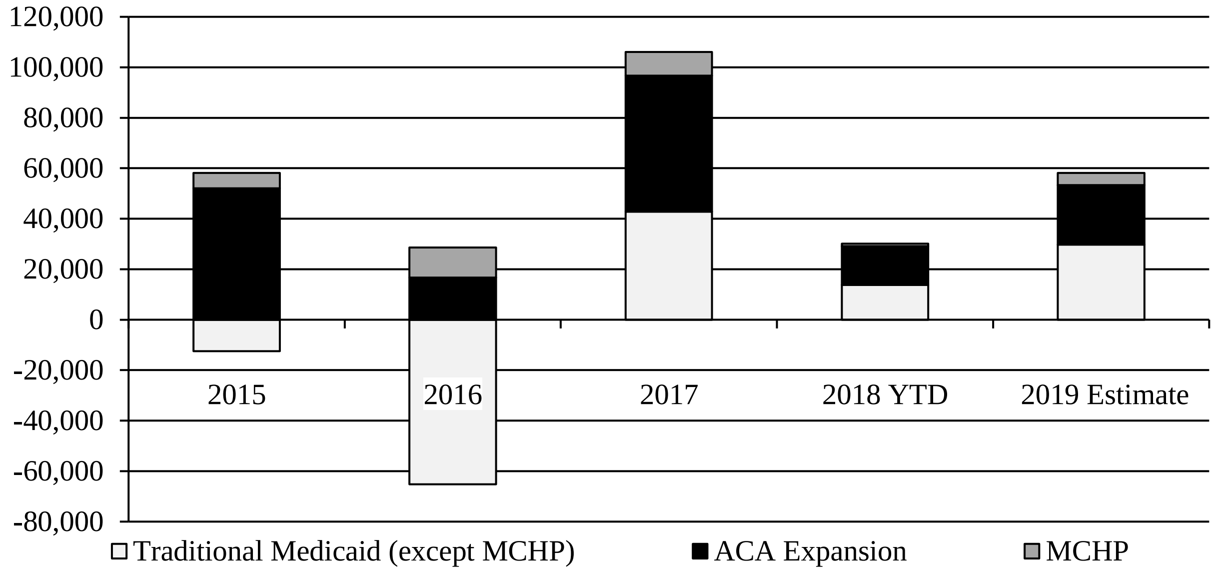
ACA: Federal Patient Protection and Affordable Care Act
DLS: Department of Legislative Services
MCHP: Maryland Children's Health Program

Note: Expenditures by fiscal year are based on the cost of providing services during that fiscal year rather than the fiscal year bills were paid. Cost estimates are based on provider reimbursements and expenditures excluding administrative costs in programs MQ0103, MQ01016, MQ0107, MQ0110, and MQ0111 only.

Source: Maryland Department of Health; Department of Legislative Services

As shown in **Exhibit 3**, between fiscal 2015 and 2018 year-to-date, most of the growth in the Medicaid program has been in the ACA expansion and MCHP enhanced match eligibility categories, dampening the impact of enrollment growth on the State budget.

Exhibit 3
Year-over-year Enrollment Change by Eligibility Category
Fiscal 2015-2019 Estimate



ACA: Federal Patient Protection and Affordable Care Act
MCHP: Maryland Children's Health Program
YTD: year-to-date

Source: Department of Legislative Services

Reauthorization of the Children's Health Insurance Program

Federal authorization for the Children's Health Insurance Program expired September 30, 2017. Both the U.S. House of Representatives and the U.S. Senate have passed reauthorization bills, but they have not been reconciled. Each bill reauthorizes the program for five years, maintains current eligibility, and retains the enhanced 23% federal match through federal fiscal 2019 before phasing it out by federal fiscal 2021, returning to the normal 65% matching rate for Maryland. MCHP currently covers 145,000 children. The program can operate with existing funds through the third quarter of fiscal 2018. If the program is not reauthorized by that time, the State must maintain coverage through federal fiscal 2019 based on existing Maintenance of Effort requirements but at the lower federal Medicaid matching rate of 50%. This would result in deficiency requirements in fiscal 2018 plus an additional $104 million general fund need in fiscal 2019.

Health and Health Insurance

Prescription Drug Pricing and Affordability

Growth in spending on prescription drugs is projected to outpace the average growth in total health spending from 2016 through 2025. This acceleration in prescription drug spending is attributed to market exclusivity provided to brand-name drugs and overall growth in prescription prices. Such concerns prompted Maryland to pass legislation related to price gouging of generic drugs and have led other states to pass legislation promoting pricing transparency.

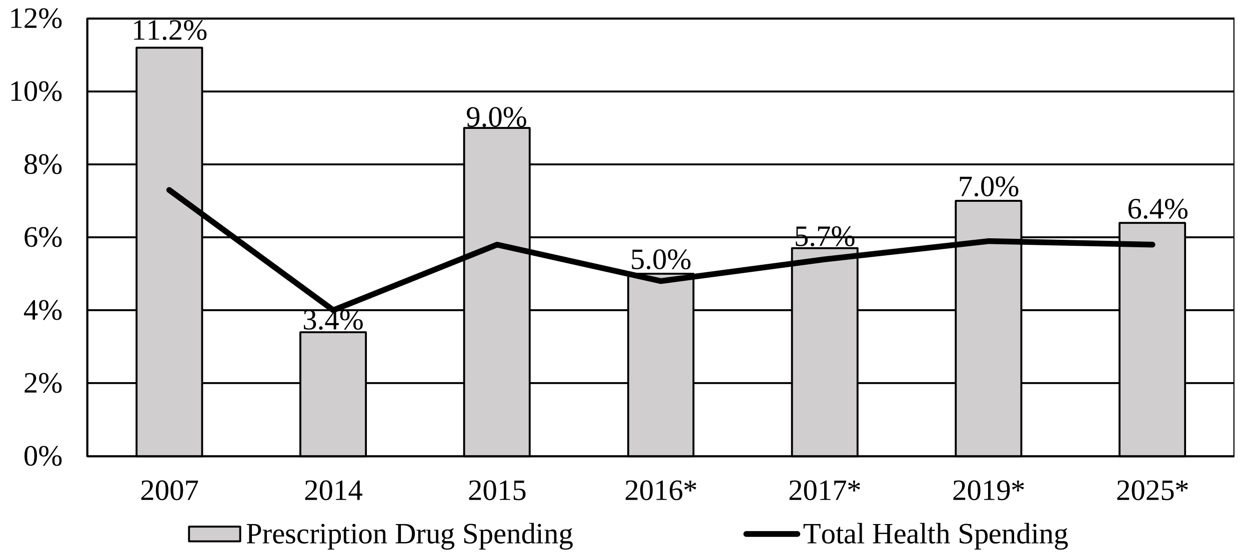
Concerns Regarding the Pricing and Affordability of Prescription Drugs

Controversial increases in the cost of certain prescription drugs and devices, such as Daraprim and EpiPen, have focused attention on the cost of prescription drugs generally and raised questions about how drug prices are set in the marketplace. The cost increases have prompted legislative action in Maryland and other states to provide a remedy for consumers when drug manufacturers engage in price gouging and require drug manufacturers to disclose how drug prices are set. With prescription drugs accounting for the largest component of health insurance premium expenses, at 22.1% on average, and individuals incurring significant out-of-pocket expenses for prescription drugs, prescription drug pricing and affordability continues to be an issue of interest nationwide.

Rising Expenditures on Prescription Drugs

According to QuintilesIMS, the United States spent $450 billion on prescription drugs in 2016, an increase of 5.8% over 2015 levels. Similarly, the U.S. Department of Health and Human Services estimates that spending on retail prescription drugs grew by 4.8% in 2016. **Exhibit 1** shows the rate of spending growth on retail prescription drugs and on total health spending in the United States. Growth in spending on prescription drugs is expected to rise by an average of 6.4% from 2016 through 2025, outpacing the average 5.6% growth in total health spending during this time period. The growth in spending on prescription drugs is projected to slow down from 9.0% in 2015 to 5.0% in 2016 due to decelerating growth in the use of drugs to treat Hepatitis C and the expiration of patents for certain brand-name drugs, prompting a shift by consumers to less expensive generic drugs. However, prescription drug spending is expected to accelerate from 5.7% in 2017 to an average of 7.0% for 2018 and 2019 as fewer brand-name drugs will be losing patent protection. Larger spending on expensive specialty drugs is anticipated to be a main contributor to prescription drug spending growth in the upcoming years.

Exhibit 1
Actual and Projected Growth in Total Health Spending and Retail Prescription Drug Spending, United States
2007-2025



*Growth for 2016 to 2025 is projected.

Source: Centers for Medicare and Medicaid Services, Office of the Actuary; National Health Statistics Group

An August 2016 special communication in the *Journal of the American Medical Association* found that per capita prescription drug spending in the United States ($858 in 2013) is more than twice that of 19 advanced industrialized nations (an average of $400). The study asserted that market exclusivity of brand-name drugs allows manufacturers to set high prices and that generic drugs are slow to market, delayed by manufacturer business and legal practices.

Prohibition on Price Gouging of Generic Drugs

Large increases in prices for certain generic drugs prompted inquiry at the federal level and action by the General Assembly. The U.S. Government Accountability Office examined price trends for generic drugs and found that more than 300 of the 1,441 drugs analyzed had at least one extraordinary price increase of 100% or more between 2010 and 2015 and that the price increases generally persisted for at least one year with no downward movement after the increase.

Concerned that manufacturers of generic drugs may be engaging in price gouging, particularly for drugs that serve a small market of consumers and have a small number of manufacturers, Chapter 818 of 2017 prohibits manufacturers and wholesale distributors from engaging in price gouging in the sale of essential off-patent or generic drugs that are made available for sale in the State. On petition of the Attorney General, a circuit court may issue specified orders, including compelling a manufacturer or wholesale distributor to provide certain statements or records, restraining or enjoining a violation, requiring restitution, or imposing a civil penalty of up to $10,000 for each violation.

The legislation defines price gouging as an "unconscionable" increase in the price of a prescription drug, meaning that it is "excessive" and not tied to the costs of producing the drug, among other criteria. The Association for Accessible Medicines (AAM), representing manufacturers and distributors of generic and biosimilar medicines, has filed a lawsuit in federal court for declaratory and injunctive relief, contending that the law violates the U.S. Constitution by regulating interstate commerce in a manner that violates the Commerce Clause and defining price gouging in a manner that is impermissibly vague. In September 2017, the U.S. District Court for the District of Maryland denied AAM's request for an injunction and dismissed AAM's Commerce Clause challenge but allowed AAM's lawsuit to continue on its vagueness contention. Chapter 818 went into effect on October 1, 2017.

Prescription Drug Price Transparency

Concerns about the cost of prescription drugs have prompted states to consider and pass legislation requiring transparency in drug pricing. California recently enacted a law that requires manufacturers of prescription drugs to notify the state and health insurers at least 60 days before the price of a drug is expected to increase by 16% or more. In addition, Nevada enacted a law requiring manufacturers of diabetes drugs that have increased significantly in price within the past two years to submit a report to the state concerning the reasons for the price increase. The law also requires pharmacy benefit managers to report the rebates negotiated with manufacturers of these drugs. Other state legislation proposals under consideration include the establishment of drug price review boards to review, approve, or adjust launch prices for newly approved prescription drugs or drugs with list prices above certain dollar thresholds. Prescription drug price transparency legislation was introduced in Maryland during the 2017 session which would have required drug manufacturers to file with the Secretary of Health reports with pricing information about certain "expensive" drugs sold in the State and notices before increasing drug prices by specified amounts. The bill did not pass.

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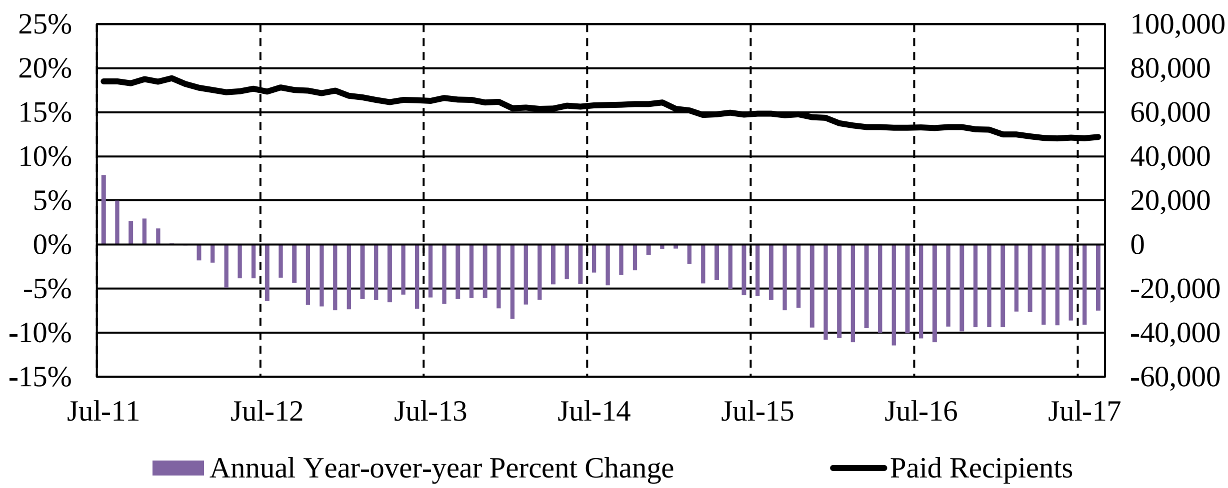
Public Assistance Caseload Trends

The Temporary Cash Assistance (TCA) caseload continued to decline in fiscal 2017 to the second lowest in program history and is projected to continue to decline through fiscal 2019, with small increases in the average monthly grant amount. A $3.6 million TCA general fund shortfall is anticipated for fiscal 2018. The number of Marylanders receiving Supplemental Nutrition Assistance Program benefits also continued to decline, although the number of households receiving the new State supplemental minimum benefit has increased since implementation in October 2016. The Temporary Disability Assistance Program (TDAP) caseload continues to steadily decline. A TDAP surplus of $4.6 million is projected for fiscal 2018 and is likely to cover other public assistance shortfalls.

Temporary Cash Assistance Caseload and Funding Trends

Temporary Cash Assistance (TCA) provides monthly cash grants to needy children and their parents or caretaker relatives and is funded with general funds, federal Temporary Assistance for Needy Families funds, and certain child support collections. As shown in **Exhibit 1**, the TCA caseload has declined on a year-over-year basis in all months since January 2012.

Exhibit 1
Temporary Cash Assistance Caseload
July 2011 through August 2017



Source: Department of Human Services; Department of Legislative Services

The average monthly TCA caseload in fiscal 2017 (50,901) was the second lowest in program history. In August 2017, the number of TCA recipients was 48,847, which is a 35.3% decrease from the December 2011 peak, and is 7.5% lower than August 2015.

As shown in **Exhibit 2**, the Department of Legislative Services (DLS) projects average monthly enrollment in TCA to continue to decline in fiscal 2018 and 2019. The average monthly grant for fiscal 2018 is estimated at $200.33, which is a 2.4% increase over fiscal 2017. The maximum benefit for the federal Supplemental Nutrition Assistance Program (SNAP) decreased beginning October 1, 2017. Combined with an inflationary increase of 1.9% in the Maryland Minimum Living Level (MLL), the TCA maximum benefits must increase to maintain the statutory level of 61.0% of the MLL for the SNAP and TCA benefits combined. A smaller increase in the average monthly grant is expected in fiscal 2019 (0.8%), accounting for an inflationary increase in the MLL. Due to the slightly higher estimated caseload compared to the fiscal 2018 appropriation and a larger average monthly grant, DLS projects a TCA shortfall of $3.6 million in fiscal 2018.

Exhibit 2
Temporary Cash Assistance Enrollment and Funding Trends
Fiscal 2017-2019

	2017 Actual	2018 Approp.	2018 Estimate	2019 Estimate	% Change 2018-2019
Average Monthly	50,901	46,293	46,699	44,298	-5.1%
Average Monthly Grant	$193.79	$195.73	$200.33	$201.83	0.8%
Budgeted Funds in					
General Funds	$21.5	$16.5	$20.1	$15.0	-25.1%
Total Funds	**$118.3**	**$108.7**	**$112.3**	**$107.3**	-4.4%
Estimated Shortfall			**-$3.6**		

Note: Fiscal 2018 working appropriation reflects a reduction taken by the Board of Public Works on September 6, 2017.

Source: Department of Human Services; Department of Legislation Services

Food Supplement Program and State Supplemental Benefit Caseload Trends

SNAP, known in Maryland as the Food Supplement Program (FSP), helps low-income people buy the food that they need for good health. Benefits are provided entirely with federal funds, with administrative costs shared between the State and the federal government.

After peaking in October 2013 (800,222), the number of recipients has generally declined. In August 2017, the number of FSP recipients (670,849) was 16.1% lower than the October 2013 peak, and 7.4% lower than August 2016.

Chapter 696 of 2016 established a State supplemental minimum benefit for households that include an individual who is at least age 62 receiving FSP that ensures that these households receive at least $30 per month. The new benefit is funded with general funds. The Department of Human Services began providing the benefit October 1, 2016. From October 1, 2016, to October 1, 2017, the federal minimum benefit was $16, and the maximum State supplemental benefit was $14. Effective October 1, 2017, the federal minimum benefit was reduced to $15, and the maximum State supplemental benefit became $15. The average benefit in fiscal 2017 of $13.26 was near the maximum benefit at the time. As a result, the average benefit is expected to increase with the new lower federal minimum benefit.

While the overall number of recipients in FSP has declined, the number of households receiving the State supplemental benefit has generally increased since program implementation. In October 2016, 17,564 households received the benefit, while in August 2017, 18,082 households received the benefit (an increase of 2.9%). As shown in **Exhibit 3**, DLS projects a shortfall of $1.2 million in fiscal 2018 due to a higher estimated caseload and average grant.

Exhibit 3

Food Supplemental Program: State Supplemental Benefit Enrollment and Funding Trends

Fiscal 2017-2019

	2017 Actual	2018 Approp.	2018 Estimate	2019 Estimate	% Change 2018-2019
Average Monthly	17,837	17,695	18,314	18,800	2.7%
Average Monthly Grant	$13.26	$8.95	$14.03	$14.28	1.8%
Budgeted Funds in					
General Funds	$2.1	$1.9	$3.1	$3.2	4.5%
Estimated Shortfall			**-$1.2**		

Source: Department of Human Services; Department of Legislative Services

Temporary Disability Assistance Program

The Temporary Disability Assistance Program (TDAP) is a State program for disabled adults that provides a limited monthly cash benefit for clients with a short-term disability (at least 3 months but less than 12 months). TDAP enrollment declined by 8.4% in fiscal 2017, from an average monthly caseload of 18,249 in fiscal 2016, to 16,719 in fiscal 2017, and is projected to continue to decline. In August 2017, the monthly caseload was 15,094. DLS anticipates a surplus in TDAP of $4.6 million due to the declining caseload, as shown in **Exhibit 4**.

Exhibit 4
Temporary Disability Assistance Program Enrollment and Funding Trends
Fiscal 2017-2019

	2017 Actual	2018 Estimate	2019 Estimate	% Change 2018-2019
Average Monthly Enrollment	16,719	14,378	13,163	-8.5%
Average Monthly Grant	$182.77	$182.63	$182.63	0.0%
Budgeted Funds in Millions				
General Funds	$31.1	$25.5	$23.2	-8.8%
Total Funds	**$36.7**	**$31.5**	**$28.8**	**-8.5%**
Estimated General Fund Surplus		**$4.6**		

Source: Department of Human Services; Department of Legislative Services

While DLS is currently projecting shortfalls in both TCA and the FSP Supplemental Benefit, overall funding for public assistance is expected to be nearly sufficient to cover expenditures in fiscal 2018 due to the surplus in TDAP.

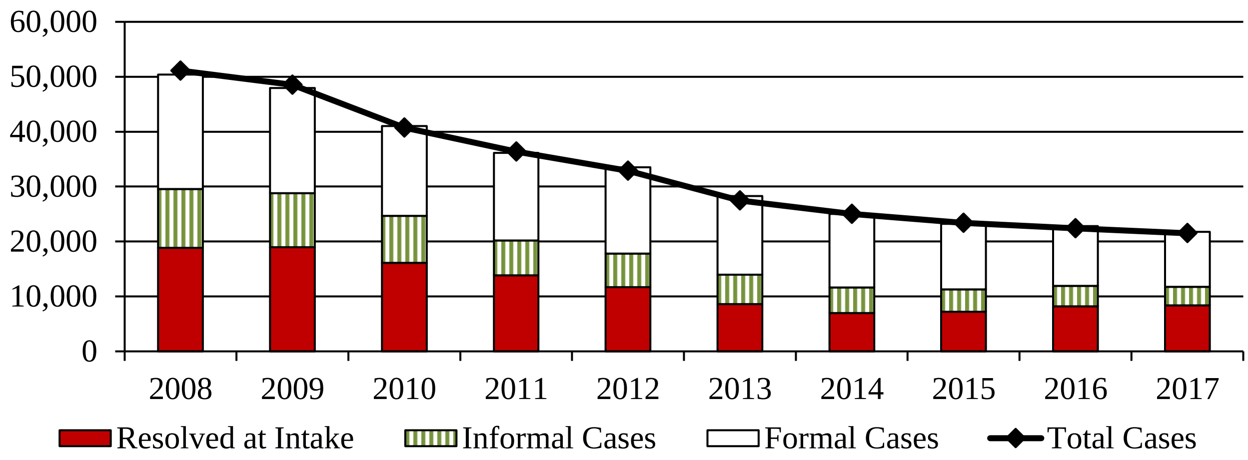
Department of Juvenile Services Caseload Trends

The number of youth in the juvenile justice system continues to decline due to fewer referrals and targeted efforts by the Department of Juvenile Services. The number of juvenile complaints declined to approximately 21,500 in fiscal 2017, with a greater proportion of cases resolved at intake. Out-of-home commitments continued to drop, with sharp declines for the committed care population. The overall detention population has decreased more slowly due to an increase in the number of youth being held while awaiting action from the adult court system. This population now accounts for 39% of the total population in secure detention and has a significantly longer average length of stay.

Juvenile Complaints Continue to Decline

Exhibit 1 details the total number of complaints received by the Department of Juvenile Services (DJS) in the past decade, as well as complaint disposition.

Exhibit 1
Juvenile Complaints and Complaint Dispositions
Fiscal 2008-2017



Note: Total complaints typically are 1% to 2% higher than the sum of those resolved at intake and the informal and formal caseload. The difference relates to jurisdictional issues or cases in which a decision is not recorded.

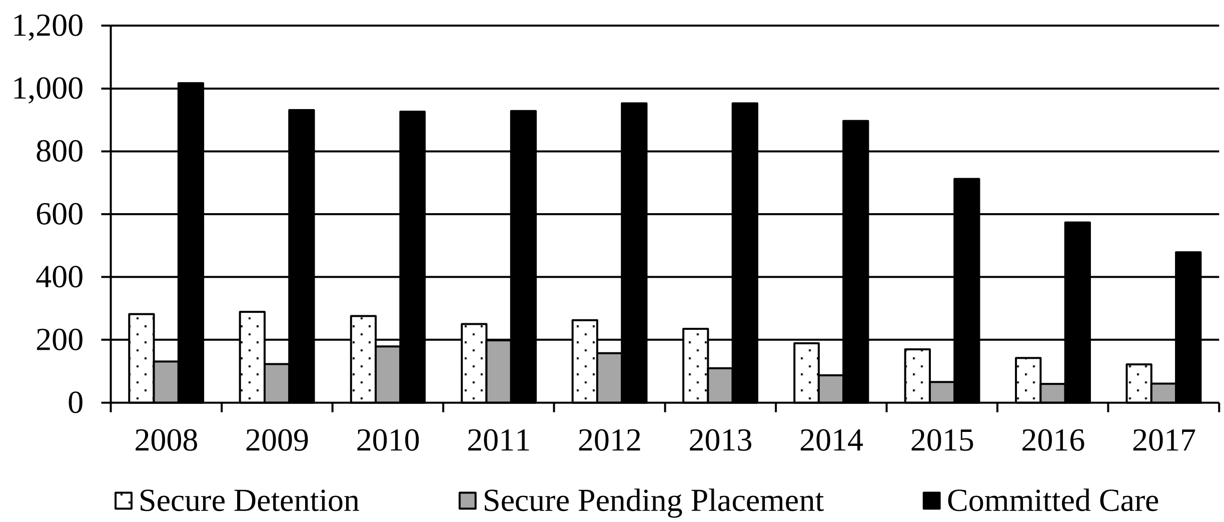
Source: Department of Juvenile Services; Department of Legislative Services

DJS received approximately 21,500 total complaints in fiscal 2017, reflecting a 4% reduction from the prior year and a nearly 60% decrease over the past decade. In fiscal 2017, cases resolved at intake continued to account for an increasing portion of the department's total referrals (39%), in line with efforts to ensure that youth are not unnecessarily entering the juvenile justice system or being placed in secure detention. These were the only types of referrals experiencing an increase in fiscal 2017, growing by 2%, while referrals involving some level of intervention (informal or formal) declined by a combined 8%.

Average Daily Population in Residential Placements Decreasing

Fewer referrals, increased attention on eliminating unnecessary entry into the juvenile justice system, and reductions in pending placement have contributed to steady declines in both the detention and committed populations. **Exhibit 2** provides average daily population (ADP) trends for the more traditional pre- and post-disposition residential placements. This data does not include youth held in a DJS detention facility pending action from the adult court system. In fiscal 2017, an ADP of 183 juvenile court involved youth were held in DJS detention facilities, a nearly 10% reduction compared to fiscal 2016, and a 56% decrease compared to a decade ago when the detention ADP was 413 youth.

Exhibit 2
Selected Average Daily Population Trends
Fiscal 2008-2017



Note: Secure detention does not include the youth charged as adult population.

Source: Department of Juvenile Services; Department of Legislative Services

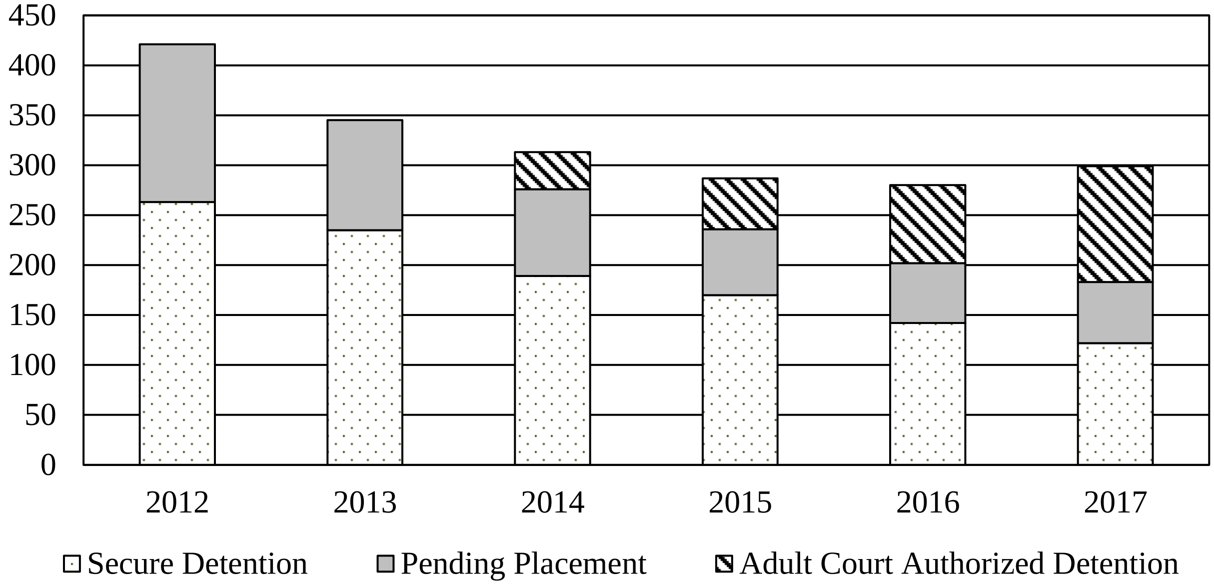
Efforts to increase the use of community-based treatment and reduce the number of youth inappropriately placed in out-of-home care continue to reduce the committed care population. The ADP of 479 youth in committed residential placements in fiscal 2017 reflects a 16% decline from the prior year. Compared to a decade ago when the ADP exceeded 1,000 youth, out-of-home committed care has fallen by more than 53%.

Number of Youth Charged as Adults in Detention Increasing

Legislation enacted in 2015 requires that, in most cases, a court must order a youth charged as an adult who is eligible for transfer to the juvenile system to be held in a juvenile detention facility pending transfer. Since DJS first began accepting this population in fiscal 2014 under an agreement entered into with Baltimore City prior to the passage of the legislation, the ADP for these youth has increased 214%. Simultaneously, the pre-disposition and pending placement populations have each declined by 30% or more. In fiscal 2017, the youth charged as adult population accounted for 39% of the total population in secure detention (up from 28% in fiscal 2016).

Exhibit 3 illustrates the total ADP for youth held in DJS detention facilities since fiscal 2012, including youth awaiting action from the adult court system. In fiscal 2017, the average length of stay for these youth was in excess of 100 days, nearly six times longer than pre-disposition youth. The population reductions for youth involved in the juvenile court system have allowed DJS to absorb the increase in the youth charged as adult population; however, certain facilities are beginning to experience population pressures. The 2015 legislation allows DJS to stop accepting youth involved in the adult court system if capacity becomes a concern. Those youth would then be detained in the local adult correctional facility. This population is discussed in greater detail in the Criminal Law section of this publication under *Juveniles Charged as Adults*.

Exhibit 3
Detention Facilities Average Daily Population
Fiscal 2012-2017



Source: Department of Juvenile Services; Department of Legislative Services

Human Services

Temporary Assistance for Needy Families Block Grant Program

As federal funding has not increased since 1996, the value of the block grant has declined relative to inflation. In Maryland, Temporary Assistance for Needy Families (TANF) funds are increasingly used for other programs such as child welfare and foster care maintenance payments. TANF caseloads continue to decline, reaching the second lowest in program history in fiscal 2017. Maryland is one of only two states with cash assistance benefits that have kept pace with inflation since 1996. Outcome data shows that receipt of some public assistance benefits remains high for Marylanders even five years after leaving TANF.

Overview

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act replaced the Aid to Families with Dependent Children (AFDC) entitlement program and other related programs with the Temporary Assistance for Needy Families (TANF) block grant program. This issue paper provides an overview of TANF funding, spending, caseloads, grant levels, and key outcomes observed over the program's first two decades.

TANF Funding

TANF's primary funding stream is the State Family Assistance Grant. This block grant has not increased to reflect inflation since its establishment in 1996, thus losing more than 30.0% of its original value. Basic block grant spending has annually totaled $16.5 billion to states, tribes, and territories. Maryland's grant has generally been $229.1 million. In federal fiscal 2017 and 2018, the Consolidated Appropriations Act of 2017 reduced each state's block grant by 0.33%. In these two years, Maryland's block grant will equal $228.3 million. President Donald J. Trump's proposed fiscal 2018 budget would reduce the block grant by 10.0%, a reduction of nearly $23.0 million in Maryland. A second key funding mechanism from TANF is the Contingency Fund. This fund is designed to assist in economic downturns by making funds available to states experiencing certain conditions (including increased food assistance recipients or unemployment rates). Maryland has received contingency funds in each year since fiscal 2009 – more than $20.0 million annually since fiscal 2013.

TANF Spending

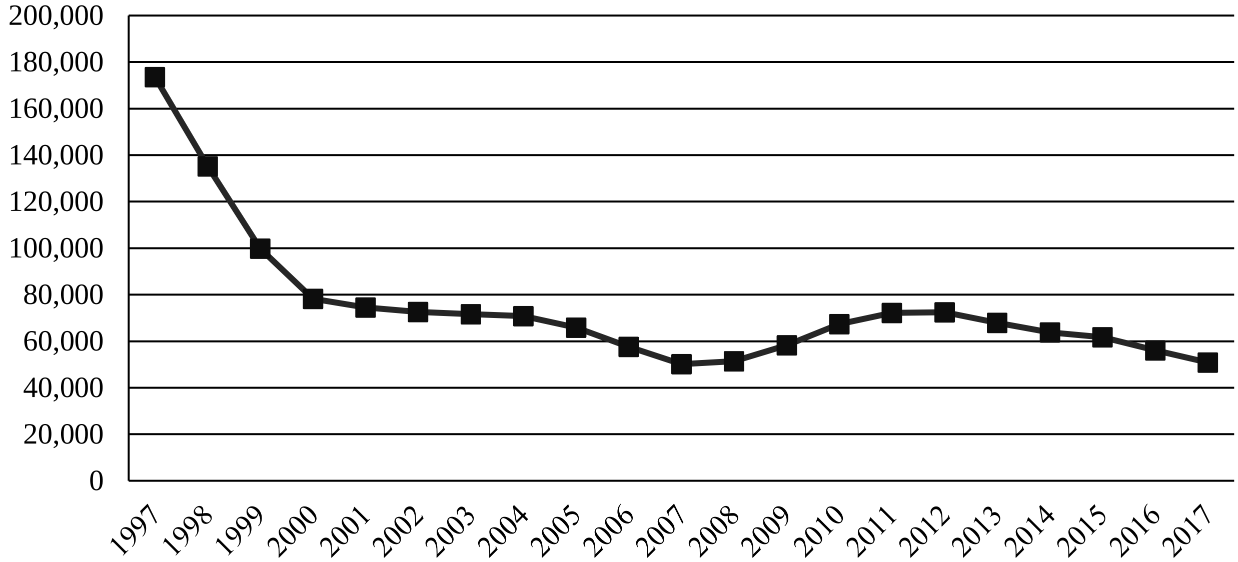
TANF is authorized to be used for four broad purposes: (1) providing assistance to needy families so that children can be cared for in their homes; (2) reducing the dependency of needy parents by promoting job preparation, work, and marriage; (3) preventing and reducing out-of-wedlock pregnancies; and (4) encouraging the formation and maintenance of two-parent families. In Maryland, the cash assistance portion of TANF is known as Temporary Cash Assistance (TCA), and the job training program is known as the Work Opportunities program.

With the flexibility provided under the block grant, TANF spending in Maryland occurs beyond core areas of TANF (cash assistance, child care, and job programs). The degree to which funds are used more broadly has varied over time. TANF funds are sometimes used to relieve general fund need in other programs. In recent years, more TANF spending has occurred in child welfare areas, which is notable given the general fund need due to difficulties in obtaining federal Title IV-E dollars. TANF spending on child welfare and foster care maintenance payments was more than 14% of all TANF spending in each year from fiscal 2008 through 2013. Due to the broad use of TANF and caseload increases during the Great Recession and immediate recovery, Maryland ran a deficit in the TANF program from fiscal 2011 through 2016. The deficit was covered by using the next year's funding to pay current year expenses. In fiscal 2017, Maryland closed with a small but positive TANF balance.

TANF Caseloads

Maryland, consistent with national trends, experienced significant reductions in the TCA caseload following the transition from AFDC to TANF. As shown in **Exhibit 1**, between fiscal 1997 and 2000, the average monthly number of recipients decreased by 55%. The number of recipients continued to decline until fiscal 2007, then increased during the Great Recession and immediate recovery before beginning to decline again. In fiscal 2017, the average monthly number of recipients was 50,901, the second lowest in program history. The monthly number of recipients has been below 50,000 in each month of calendar 2017.

Exhibit 1
Average Monthly Number of TANF Recipients
Fiscal 1997-2017



TANF: Temporary Assistance for Needy Families

Source: Department of Human Services

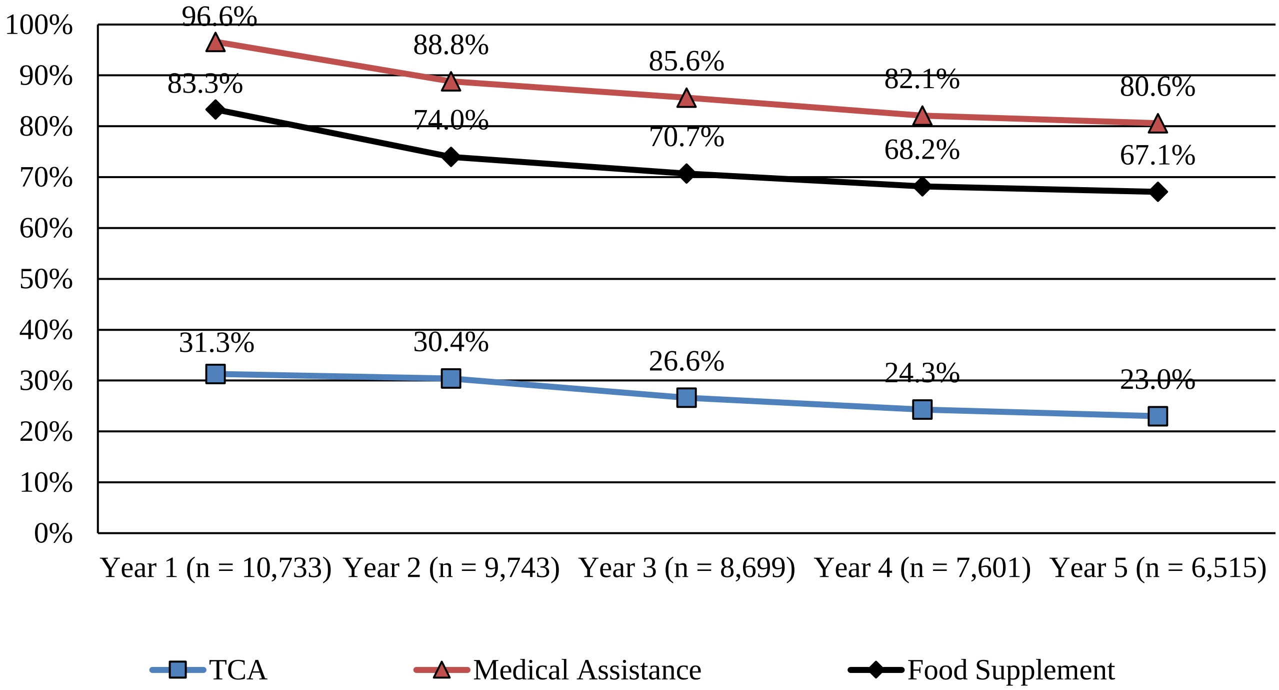
TCA Grant Levels

State cash assistance grant levels have generally not increased, after accounting for inflation, since the beginning of TANF. According to the Urban Institute, only two states (Maryland and Wyoming) had a maximum benefit for a family of three that was higher in July 2015 on an inflation-adjusted basis than the maximum benefit in 1996. Six states had a lower maximum benefit (in nominal dollars). In July 2015, Maryland's maximum benefit for a family of three ($636) was the eighth highest among all states. According to the Missouri Economic Research and Information Center, for the second quarter of 2017, Maryland had the eighth highest cost of living. As a result, benefits in the State would be expected to be more generous than other states. Six of the 10 highest cost-of-living states were in the top 10 in benefit amounts in July 2015. Maryland's maximum grant for a family of three is $677 for federal fiscal 2018.

Outcomes

The University of Maryland School of Social Work presents an annual report on those leaving TCA (the *Life After Welfare* series). The most recent report indicated that about 32% of Great Recession and Great Recession recovery leavers returned to TCA within the first 12 months of exit. While the rate of TCA receipt declines over time to less than 25% by Year 4 after exit, receipt of other public assistance remains high even five years after exit, as shown in **Exhibit 2**.

Exhibit 2
Percentage of Individuals Receiving Public Assistance
One to Five Years After Leaving Temporary Cash Assistance



TCA: Temporary Cash Assistance

Note: Due to the timing of the report, five years of data is not available for all leavers. The exhibit reflects data on individuals leaving TCA from January 2004 through March 2016 (excluding those that returned within 30 days).

Source: University of Maryland School of Social Work, *Life After Welfare: Annual Update*, December 2016

Additional information on TANF and how Maryland has fared under the transition to a block grant program is available in the Department of Legislative Services' report *Overview of the Temporary Assistance for Needy Families Program in Maryland*.

Transportation

Overview of the Draft 2018-2023 *Consolidated Transportation Program*

The Maryland Department of Transportation's draft 2018-2023 *Consolidated Transportation Program* (CTP) lists all capital projects funded in the current fiscal year and those planned for the next five years. Spending over the six-year period of the draft 2018-2023 CTP totals $14.7 billion, a $117 million decrease from the 2017-2022 CTP.

Overview

The *Consolidated Transportation Program* (CTP) is Maryland's six-year capital budget for transportation projects. It is updated annually and includes all major and minor capital projects that the Maryland Department of Transportation (MDOT), its modal administrations, and the Washington Metropolitan Area Transit Authority (WMATA) are undertaking in the current year and over the next five-year planning period. Capital projects for the Maryland Transportation Authority are also included in the CTP but are excluded from this analysis. **Exhibit 1** compares six-year spending contained in the 2017-2022 CTP to the draft 2018-2023 CTP by fund source.

Exhibit 1
Comparison of Six-year Capital Spending by Fund Source
Fiscal 2017-2023
($ in Millions)

	2017-2022 CTP	Draft 2018-2023 CTP	Change	% Change
Special Funds	$8,079.2	$8,214.7	$135.5	1.7%
Federal Funds	5,674.0	5,460.0	-214.0	-3.8%
Other Funds*	1,044.6	1,006.1	-38.5	-8.6%
Total Funds	**$14,797.8**	**$14,680.8**	**-$117.0**	**-0.8%**

CTP: *Consolidated Transportation Program*

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

Note: Numbers may not sum due to rounding.

Source: Maryland Department of Transportation 2017-2022 CTP, draft 2018-2023 CTP

The total funding level in the draft 2018-2023 CTP decreases by $117.0 million (-0.8%) from the 2017-2022 CTP. This net decrease results from decreases in federal funds and other funds partially offset by an increase in special funds. Special funds available for the capital program increase due to small increases in revenue from the motor fuel tax, motor vehicle titling tax, and motor vehicle registration and other fees.

Exhibit 2 compares MDOT's total capital spending in each plan by mode. In the draft 2018-2023 CTP, State highways receives 55.7% of total capital funding, and mass transit (including both the Maryland Transit Administration and WMATA) receives 34.0% of the funding.

Exhibit 2
Comparison of Six-year Capital Spending by Mode
Fiscal 2017-2023
($ in Millions)

	2017-2022 CTP	Draft 2018-2023 CTP	Change	% Change
Secretary's Office	$319.9	$217.8	-$102.1	-31.9%
WMATA	1,538.8	1,631.9	48.1	3.0%
State Highways	7,800.0	8,181.4	381.4	4.9%
Port	876.6	784.3	-92.3	-10.5%
Motor Vehicle	121.5	117.7	-3.8	-3.1%
Mass Transit	3,657.9	3,363.9	-294.0	-8.0%
Airport	438.1	383.8	-54.3	-12.4%
Total	**$14,797.8**	**$14,445.7**	**-$117.0**	**-0.8%**

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

Note: Numbers may not sum due to rounding.

Source: Maryland Department of Transportation 2017-2022 CTP, draft 2018-2023 CTP

The largest changes by amount occur in State highways (a $381.4 million increase) and mass transit (a $294.0 million decrease). Changes to several projects in State highways drives the increase in that mode, and cash flow changes, primarily in the Purple Line project, drive the reduction in mass transit spending. The largest percent decreases occur in the Secretary's Office (-31.9%); the mode of airport (-12.4%), which includes the two public airports in the State; and the mode of port (-10.5%). Approximately half of the reduction in the Secretary's Office is due to reduced spending on system preservation/minor projects. The airport spending reduction is driven by the end of runway improvements and the nearing of completion of concourse improvements, including the international concourse extension. The reduction in spending by the port is driven by a $194.7 million reduction in spending on dredging, which is partially offset by increases in other projects.

Exhibit 3 compares MDOT's six-year capital spending in each plan by category. The largest dollar increase occurs in funding for system preservation/minor projects ($697.0 million). Funding for major projects decreases by $752.7 million, or 9.9%. Reductions in major projects in State highways ($393.1 million) and mass transit ($270.5 million) account for 88.2% of the reduction in major project funding. Spending on system preservation/minor projects in State highways increases by $801.4 million, which is offset by reductions at other modes.

Exhibit 3
Comparison of Six-year Capital Spending by Category
Fiscal 2017-2023
($ in Millions)

	2017-2022 CTP	Draft 2018-2023 CTP	Change	% Change
Major Projects	$7,596.4	$6,843.7	-$752.7	-9.9%
System Preservation/Minor Projects	6,303.5	7,000.5	697.0	11.1%
Development and Evaluation Program	240.8	199.7	-41.1	-17.1%
Other	656.7	636.8	-19.9	-3.0%
Total	**$14,797.4**	**$14,680.7**	**-116.7**	**-0.8%**

CTP: *Consolidated Transportation Program*

Note: Numbers may not sum due to rounding.

Source: Maryland Department of Transportation 2017-2022 CTP, draft 2018-2023 CTP

Transportation

Autonomous Vehicles

Autonomous vehicles, which use automated driving systems (ADS) features, pose a challenge to policymakers who want to encourage innovation while also protecting public safety. Although voluntary federal guidelines provide a basic framework for regulating ADS, Maryland and surrounding jurisdictions are acting to address a number of specific concerns related to autonomous vehicles, including inspections, testing, safe operation, and liability.

Background

Automated driving systems (ADS) features, such as cruise control, have been around for decades. Recent advances in technology, however, have resulted in a proliferation of ADS features that are assuming a greater share of the tasks involved in operating a vehicle. Automotive and technology industry experts predict that fully autonomous vehicles (AV) will be in use within a decade. These advancements have the potential to disrupt the ways people currently travel and how freight is shipped. This disruption could provide benefits, such as reducing the number of traffic fatalities, but could also result in economic losses for certain sectors of the economy and the people currently employed in those sectors. Policymakers at all levels of government are grappling with how best to encourage innovation while ensuring that safety is enhanced and risks to the public are minimized or avoided.

Policy Framework

Federal – Executive

In September 2017, the U.S. Department of Transportation's (USDOT) National Highway Traffic Safety Administration (NHTSA) updated the ADS policy statement it had issued the prior September with the release of a new guidance document titled *Automated Driving Systems 2.0: A Vision for Safety*. NHTSA's guidelines are voluntary and are intended to assist the automotive industry and other stakeholders with the safe development and deployment of ADS technology. The guidance also provides states with best practices for legislation related to ADS. USDOT intends to update its ADS policy annually.

Federal – Legislative

In Congress, the House passed ADS legislation known as the SELF Drive Act (H.R. 3388) in September 2017. The Senate version of ADS legislation, the AV START Act (S. 1885) was passed by the Senate Commerce, Science, and Transportation Committee in October 2017, but has yet to pass the full Senate. The two bills have differences that will need to be resolved including the level of autonomy that will be regulated under the legislation and the degree to, and manner by, which state regulation of ADS may be preempted.

State-level Actions

According to the National Conference of State Legislatures, 21 states and the District of Columbia have passed legislation and the governors of five additional states have issued executive orders related to ADS. The scope of this legislation varies from requiring studies to requiring the creation of comprehensive regulations governing the testing of AVs.

Maryland

In December 2015, the Maryland Department of Transportation (MDOT) established the Connected and Automated Vehicles (CAV) Working Group comprised of elected officials, State and local agency representatives, highway safety organizations, and representatives from the private sector, including the automotive industry. The purpose of CAV is to provide strategic planning for MDOT concerning connected and AVs. Connected vehicles utilize technology that allows any combination of vehicle-to-vehicle communication, vehicle-to-infrastructure communication, or infrastructure-to-vehicle communication.

In November 2016, USDOT released a notice of intent to designate a select number of "proving grounds" across the country to help accelerate the development of AV technology. Both MDOT and the Army Test Center at Aberdeen Proving Ground (APG) submitted applications. MDOT's application would have designated a portion of Interstate 95, from APG to the Fort Meade/University of Maryland region as an AV testing and deployment area, but it was not selected. APG, however, was selected as a test site in January 2017.

During the 2017 legislative session, MDOT submitted departmental legislation (Senate Bill 9) that would have expressly authorized the Motor Vehicle Administration, in consultation with the Department of State Police, to adopt regulations related to (1) the inspection, registration, and safe testing and operation of autonomous and connected vehicles and (2) the safe testing and operation of autonomous technologies on State highways. This legislation did not pass.

Surrounding Jurisdictions

ADS-related legislation has been enacted by Pennsylvania, Virginia, and the District of Columbia (DC). In 2013, DC passed a requirement that a human driver be prepared to take control during the operation of an AV. DC's legislation also restricted conversion of vehicles to AVs to late models, and addressed liability issues. In 2016, Pennsylvania authorized the allocation of funds for intelligent transportation system applications. In the same year, Virginia authorized the viewing of a visual display while a vehicle is being operated autonomously.

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Transportation

Washington Metropolitan Area Transit Authority – Metrorail Safety and Funding

The Washington Metropolitan Area Transit Authority (WMATA), created in 1967 by an interstate compact between Maryland, Virginia, and the District of Columbia, operates the second largest rail transit system and the sixth largest bus network in the United States. On top of mounting capital needs, declining ridership has led to decreasing operating revenue. Maryland is in the midst of discussions with Virginia and the District of Columbia on a stable revenue source and other possible operational changes to WMATA.

Metrorail Safety

The federal Moving Ahead for Progress in the 21st Century Act (MAP-21) requires that a rail transit agency's State Safety Oversight (SSO) agency (1) be legally and financially independent of the rail transit agency it oversees and (2) have investigative and enforcement authority to ensure that its safety findings are addressed. Subsequently, the Federal Transit Agency (FTA) found that the Washington Metropolitan Area Transit Authority's (WMATA) SSO agency failed to comply with MAP-21's requirements and, in October 2015, assumed direct safety oversight for the WMATA metrorail system. By February 2017, FTA began withholding transit funding until the compact signatories – Maryland, Virginia, and the District of Columbia – establish a compliant SSO agency.

Washington Metrorail Safety Commission Compact

In response to FTA's actions, Chapter 3 of 2017 established the Washington Metrorail Safety Commission (MSC) compact establishing MSC to act as the SSO agency for the WMATA metrorail system. Identical legislation was also approved by all other compact signatories and given federal approval in August 2017. MSC is funded independently of WMATA by the compact signatories and, when available, by federal funds. The compact signatories must unanimously agree on adequate funding levels for MSC and make equal funding contributions to cover the operations that are not funded by federal funds.

However, the enactment of MSC legislation is only the first step in fully establishing MSC and restoring withheld transit funding. FTA indicates that in order for it to certify MSC as WMATA's SSO agency, the compact signatories must also:

- submit a certification and documentation to FTA showing that MSC has (1) independence from WMATA; (2) enforcement and investigation authority; (3) adequate staffing and training; (4) FTA grant recipient status; and (5) met general program requirements;

- participate in a transitional hand-off period whereby FTA officials work side-by-side with new MSC officials to ensure they are capable of conducting all oversight responsibilities required by federal law; and

- verify with FTA that MSC's enforcement and oversight capabilities as well as its inspection, investigation, and audit activities are adequate and meet all statutory requirements.

A timeline for MSC's certification has yet to be established.

WMATA Funding

WMATA's operations are funded through operating revenues and subsidies provided by the compact signatories. Since fiscal 2012, WMATA has seen a decline in ridership, resulting in decreased operating revenues. Service quality and reliability issues, combined with the disruptions caused by WMATA's maintenance initiative, are cited as leading factors in the ridership decline. WMATA instituted fare increases and a reduction of service for fiscal 2018 in order to address declining operating revenues related to the decline in ridership.

WMATA's six-year capital program is comprised of mostly state, local, and federal funds. General parameters on capital funding levels are typically established in a six-year Capital Funding Agreement developed through negotiations between WMATA and its local funding partners.

WMATA Report

On April 19, 2017, WMATA released a report titled *Keeping Metro Safe, Reliable, and Affordable*, which proposed a number of funding and operation alterations. The report called for compact signatories to establish a "stable revenue source to generate $500 million per year" for capital projects. The report further stated that WMATA has $25 billion in unfunded capital needs and will need $15.5 billion over the next 10 years for its most critical capital projects. Additionally, the report notes that, without a change to WMATA's business model, operating subsidies from compact signatories will continue to increase.

Compact signatories have yet to agree on a stable revenue source for WMATA, although some organizations and government officials have suggested a regional sales tax as such a source. In a letter dated September 11, 2017, Governor Laurence J. Hogan, Jr. committed an additional $500 million over four years ($125 million per year) for WMATA from the State's Transportation Trust Fund. The funds are contingent upon Virginia, the District of Columbia, and the federal government doing the same. In the letter, Governor Hogan stated that the increased funding "would give the region and the jurisdictions who are party to the compact four years to formulate a long-term, more permanent solution to WMATA's fiscal challenges."

Business Regulation

Renewable Energy and Public Service Commission Initiatives

Although the Renewable Portfolio Standard requirements were recently increased, there is discussion of increasing the goals further. EmPower Maryland goals were also recently ramped up. The offshore wind development off the coast of Ocean City has been approved by the Public Service Commission (PSC); however, recent resistance has surfaced by Ocean City officials. Electric cooperatives are seeking adjustments to their distribution rates to more closely align the revenues received with fixed costs. PSC is considering many aspects of grid modernization through various workgroups.

Renewable Energy Portfolio Standard

Maryland's Renewable Energy Portfolio Standard (RPS) requires that renewable sources generate specified percentages of Maryland's electricity supply each year, increasing to 25% by 2020, including 2.5% from solar energy. These percentages were increased to their current levels by Chapters 1 and 2 of 2017 after a successful override of vetoed 2016 legislation. Maryland's RPS operates on a two-tiered system with corresponding renewable energy credits (RECs) for each tier. One REC represents the "generation attributes" of one megawatt-hour (MWh) of electricity or about the average monthly energy usage of one residential account. Tier 1 includes preferred sources, with carve-outs for solar energy and offshore wind energy. Tier 2, which phases out after 2018, now includes only large hydroelectric sources. For the 2015 compliance year, the most recent for which data are available, electricity suppliers retired approximately 8.0 million RECs at a cost of $126.7 million. Of that amount, the Tier 1 nonsolar cost was $85.0 million, the Tier 1 solar cost was $39.0 million, and the Tier 2 cost was $2.6 million. In 2018, RPS requirements are 15.8% for Tier 1 renewable sources, including at least 1.5% from solar energy, and 2.5% from Tier 2 renewable sources.

There has been continued discussion related to increasing the RPS percentages beyond their current levels, including doubling the requirement to 50% and increasing the requirement to 100%. Any increase will likewise increase the overall compliance costs of the program.

EmPower Maryland

In 2008, the General Assembly passed the EmPower Maryland Energy Efficiency Act, Chapter 131, which set target reductions of 15% in per capita electricity consumption and peak demand, respectively, by 2015 from a 2007 baseline. By the end of 2015, the utilities had achieved 99% of their energy consumption goal and 100% of the peak demand goal. The utilities are now working toward achieving newly established post-2015 electric energy efficiency goals designed to achieve an annual incremental gross energy savings equivalent to 2% of each utility's weather-normalized gross retail sales baseline, with a ramp-up rate of 0.20% per year. Except for the Southern Maryland Electric Cooperative (SMECO), the utilities each exceeded their 2016 energy efficiency and conservation goals. Through 2016, the utilities had spent a combined $2.08 billion on various programs and saved 6.5 million MWh.

Offshore Wind

Chapter 3 of 2013 created a "carve-out" for energy derived from offshore wind in the State RPS. The amount is set by the Public Service Commission (PSC) each year based on the projected annual creation of offshore wind renewable energy credits (ORECs) by qualified offshore wind projects, which must apply for and receive PSC approval, and may not exceed 2.5% of total retail sales. In May 2017, PSC awarded ORECs to two projects to be built off the coast of Maryland. Combined, the two projects will total 368 megawatts in capacity. Each company was awarded ORECs at a levelized price of $131.93 per MWh for 20 years, beginning in 2021 for U.S. Wind, Inc. and 2023 for Skipjack Offshore Energy, LLC.

According to PSC's independent consultant, the net ratepayer impacts projected to be less than $1.40 per month (in 2012 dollars) for residential customers and less than 1.4% of the annual bills of commercial and industrial customers – below the statutory ceilings of $1.50 per month (2012 dollars) and 1.5%. These impacts will not take effect until electricity is actually generated by the projects. U.S. Wind's project is expected to be operational in early 2020, and Skipjack anticipates being in operation near the end of 2022.

Ocean City officials recently expressed concern with the distance of the wind turbines from the beach of Ocean City, indicating that they want construction to take place as far offshore as possible to protect coastal views and its tourism industry. The wind farm, as approved by PSC, would be built 17 miles offshore, 5 miles farther east than developers had originally planned. As a result of seeking congressional help, an amendment was added to a spending bill to prohibit the federal government from reviewing wind farms less than 24 miles off the coast; however, no final action had been taken on that amendment as of October 20, 2017.

Electric Fixed Charges

SMECO and the Choptank Electric Cooperative are seeking adjustments to their electric distribution rates in Case Nos. 9456 and 9459, respectively. Generally, in addition to other changes sought, both companies are seeking PSC approval to increase the revenue received through certain fixed charges on customer bills. While this does create a more predictable revenue stream for the electric companies and can more closely align fixed distribution costs with their associated customer charges, increasing fixed charges at the expense of volumetric charges can create disincentives for customers to reduce energy consumption.

Other Public Service Commission Activities

PSC is involved in a number of other regulatory and related activities. Under the umbrella of Public Conference 44, through which PSC is considering many aspects of grid modernization, various workgroups are studying alternative rate designs such as time-of-use rates, energy storage, electric vehicles, customer choice, and interconnection standards, among others. Seven rate cases have been filed in 2017 to date: Pepco; Delmarva Power and Light; SMECO; Choptank; Thurmont; Easton; and Columbia Gas. PSC is also considering the merger of Washington Gas with AltaGas, a Canadian energy company. In addition, PSC continues to experience a significant number of requests for siting residential and commercial solar installations.

Business Regulation

Personal Vehicle Rentals and Travel Insurance

Personal vehicle rental programs offer consumers an alternative to traditional vehicle renting. Unlike the rental vehicle industry, personal vehicle rental programs are largely unregulated and maintain that there are differences including that the programs are facilitators of transactions and do not own vehicles. Two standing committees of the General Assembly are reviewing the issues related to regulation of this "car sharing" industry, including insurance requirements. The National Association of Insurance Commissioners (NAIC) is developing a national framework for model legislation to modernize the regulation of travel insurance. Once NAIC adopts model legislation, states are encouraged to consider passage of the legislation in their states.

Personal Vehicle Rentals

What are Personal Vehicle Rentals?

Personal vehicle rental (also known as peer to peer car sharing) programs, such as Turo and Getaround, are becoming more popular in the State as alternatives to traditional vehicle rentals from companies like Enterprise and Hertz. Similar to how Airbnb allows a person to rent his or her home directly to customers using the Airbnb program, personal vehicle rental programs facilitate a vehicle owner to rent his or her private vehicle to another person through an online financial transaction that takes place on the program's website between the vehicle owner and the renter. In some cases, the renter may pick up the vehicle directly from the owner's home, while in others both parties may arrange another location to pick up and drop off the vehicle. The financial transaction takes place between the vehicle owner and the renter with the personal vehicle rental program acting as a broker, which guarantees some level of protection for, and good faith between, the vehicle owner and the renter. For example, Turo provides additional insurance for rented vehicles and requires driver's license information and payment information from the person renting the vehicle.

Regulatory Framework Discussed for Personal Vehicle Rentals

Senate Bill 1056 of 2017 and its cross file House Bill 1520 of 2017, which both failed, would have established a regulatory framework for personal vehicle rentals in the State. The bills would have specified the types of vehicles that could be rented through such a program, required the person renting a vehicle to hold a driver's license, specified the manner in which such a rented vehicle must be insured, established recordkeeping requirements, and required payments for and returns of rented vehicles to be administered in a certain manner. In essence, the bills would have applied a framework for personal vehicle rentals that was substantively similar to the framework for traditional vehicle rentals. Turo, a personal vehicle rental program that operates largely on the West Coast but also operates in Maryland, opposed many provisions of the bill, arguing that their program does not fall into a similar framework that applies to traditional vehicles because the personal vehicle rental program does not own any rental vehicles.

After the 2017 session, and in response to a request from the Senate Finance Committee, the Maryland Insurance Administration (MIA) convened a workgroup to discuss the insurance issues important to regulation of personal vehicle rental programs. The workgroup included Turo, traditional vehicle rental companies, insurers, and other interested parties. From the discussions, two major insurance issues were identified.

First, legislation may need to determine which insurance policies are active on a rented vehicle, and when the active policies are primary or secondary to another insurance policy, in the event that a rented vehicle is involved in an accident. In Maryland, motor vehicle liability insurance is compulsive. Generally, with some exceptions, the owner of a vehicle registered in the State is required to secure the mandatory minimum insurance requirements on the owner's vehicle. In addition to this insurance, during a rental period, Turo provides a $1.0 million commercial policy for the vehicle owner and allows the vehicle renter to purchase higher insurance coverages up to the same Turo policy amount at the time of rental. If the renter refuses to purchase a policy from Turo, a Turo policy meeting Maryland's mandatory minimum insurance requirements covers the vehicle for the renter instead. The vehicle renter may also have his or her own insurance policy that covers vehicle rentals. In the event of an accident, it may be unclear which of the insurance policies is responsible for liability and property damages.

Second, the workgroup discussed the possibility of requiring limited lines insurance licenses for the sale of insurance during personal vehicle rental transactions. Limited lines licenses are generally required when insurance is being sold incidental to the actual product or service being sold and the salesperson is not a licensed insurance producer. For example, when renting a storage room, the salesperson may also sell insurance for the property being stored. The salesperson is required to obtain a limited lines insurance license in order to sell insurance. With personal vehicle rentals, a case could be made that insurance is being sold to the vehicle renter since the renter has multiple options to purchase insurance as part of the financial transaction on the program's website.

Other Concerns Related to Personal Vehicle Rentals

In addition to the insurance issues identified by the workgroup, legislation is likely needed to answer the following questions about the regulation of personal vehicle rentals. What kind of safety requirements should be in place to ensure only safe vehicles are rented? What kind of taxes or fees (*i.e.*, sales tax and airport concession fees) should be imposed on rental programs, vehicle owners, and/or vehicle renters? Which agency should have regulatory authority over personal vehicle rentals? What additional consumer protections, like disclosures to renters, are needed? Traditional vehicle rental companies have defined safety requirements for rented vehicles and pay certain fees and taxes. Any proposed legislation is likely to consider whether personal vehicle rentals should be regulated in a substantively similar manner for certain aspects of their rental vehicle business.

Several members of the Senate Finance Committee and several members of the House Environment and Transportation Committee are jointly holding a meeting in late November 2017 to review these issues and hear from the interested parties prior to session. At this meeting, MIA is anticipated to report its findings and recommendations that were developed subsequent to its earlier workgroup discussions with Turo, traditional vehicle rental companies, insurers, and other interested parties.

Travel Insurance

What is Travel Insurance?

Travel insurance is coverage for personal risk incident to planned travel. A travel insurance policy covers incidents and situations such as the interruption or cancellation of a trip, the loss of baggage or personal effects, any damage to accommodations or a rental vehicle, or sicknesses, accidents, or deaths that occur during travel. Travel insurance does not include a major medical plan that provides comprehensive medical protection for a traveler on a trip lasting six months or longer. Travel insurance is authorized to be sold in the State as one of eight limited lines of insurance.

State Legislation and a National Framework for Model Legislation

Senate Bill 702 and House Bill 964 of 2017, which both failed, would have significantly altered the regulation of travel insurance in the State. While travel insurance is currently regulated in the State, the measures would have modernized the State's provisions in a manner that would have been consistent with model legislation that the travel insurance industry is advocating for all states to adopt. Among other requirements, the bills would have clearly defined which services and products are considered as "insurance," for example, a travel assistance service sold by a company is not insurance; allowed the services of a travel protection plan, which may include insurance, to be sold for one price instead of separately; established additional consumer protections; and specified who may sell and administer travel insurance.

The National Association of Insurance Commissioners (NAIC) recently convened a workgroup to develop a national framework for model legislation to modernize the regulation of travel insurance. NAIC regularly develops model legislation concerning new and existing insurance issues and encourages its member regulators, which includes MIA, to adopt the legislation. Although NAIC has not officially adopted the model legislation for travel insurance, it released a draft for public comment in October 2017. The draft model legislation addresses many of the same issues that were included in the 2017 State legislation. Following the 2017 session, the Senate Finance Committee and the House Economic Matters Committee jointly requested the Insurance Commissioner to report to the committees by the end of November 2017 on the status of the NAIC workgroup's actions.

Business Regulation

Medical Marijuana Money and the Banks

The majority of states have comprehensive public medical cannabis programs. Marijuana remains classified as a Schedule I substance under the federal Controlled Dangerous Substances Act. As an illegal activity, financial transactions through banks involving proceeds generated by marijuana-related conduct can form the basis for prosecution. Legitimate businesses are seeking methods to process deposits and payments since proposed changes to federal law to allow them to have access to financial services through banks have not passed.

Medical Cannabis Overview

According to the National Conference of State Legislatures (NCSL), 29 states, DC, Guam, and Puerto Rico have comprehensive public medical cannabis programs. Additionally, another 18 states allow for the use of "low THC, high cannabidiol (CBD)" products for medical reasons in limited situations or as a legal defense. Further, also according to NCSL, 22 states (including Maryland) and DC have decriminalized small amounts of marijuana, and 8 states and DC legalized small amounts of marijuana for adult recreational use.

In Maryland, the medical cannabis program was established in 2013 (Chapter 403). The Natalie M. LaPrade Medical Cannabis Commission currently allows for the licensure of growers, processors, and dispensaries and the registration of their agents. The program also establishes a framework to certify certain providers, qualifying patients (including veterans), and their caregivers to provide medical cannabis legally under State law via written certification. Licensees are using a variety of methods to overcome the reluctance of many financial institutions to serve marijuana-related businesses. Marijuana is illegal at the federal level, and therefore exposes participants in any marijuana-related activities to federal prosecution.

Marijuana Regulation at the Federal Level

Controlled dangerous substances (CDS) are listed on one of five schedules (Schedules I through V) set forth in federal statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Dangerous Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision. Marijuana remains classified as a Schedule I substance under the Controlled Dangerous Substances Act.

Although possession of marijuana remains illegal at the federal level, the U.S. Department of Justice (DOJ) announced in August 2013 that it would focus on eight enforcement priorities when enforcing marijuana provisions of the Controlled Dangerous Substances Act. The guidelines also state that, although DOJ expects states with legalization laws to establish strict regulatory schemes that protect these eight federal interests, DOJ is deferring its right to challenge their legalization laws. Further, in 2014 and 2015, the U.S. Congress passed federal spending measures that contained provisions that effectively terminate federal enforcement against legal medical marijuana operations by prohibiting federal spending on actions that impede state medical marijuana laws, often referred to as the Rohrabacher-Farr Amendment.

In February 2014, the U.S. Treasury Department, in conjunction with DOJ, issued marijuana guidelines for banks that serve "legitimate marijuana businesses." The February 2014 guidelines reiterated that the provisions of money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act remain in effect with respect to marijuana-related conduct. Further, the guidelines state that financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under these provisions. However, the guidelines also establish that prosecutors should apply the eight enforcement priorities listed in the August 2013 guidance document when deciding which cases to prosecute.

Although the federal government appears to have relaxed its position on the enforcement of marijuana laws, marijuana remains a CDS under federal law, and residents of states that have legalized marijuana are not immune from federal prosecution. In addition, DOJ has reserved the right to file a preemption lawsuit against states that have legalized marijuana at some point in the future. Further, the above-mentioned federal policies were adopted under a previous administration and are subject to change under the new administration.

Proposed Changes to Federal Law

Members of the 115th U.S. Congress have introduced two bills to address the challenges that medical marijuana poses to the banking industry: the SAFE Banking Act (S. 1152 – 115th Congress: SAFE Banking Act); and the SAFE Act of 2017 (H.R. 2215 – 115th Congress: SAFE Act of 2017). Both bills include safe harbor provisions and protections for depository institutions that provide services to cannabis-related legitimate businesses.

The Committee on Banking, Housing, and Urban Affairs held hearings on the SAFE Banking Act on June 8, 2017, but has taken no further action. Although the SAFE Act was referred to the Committee on Financial Services and the Committee on the Judiciary, no hearings have been held. On September 21, 2017, however, the Committee on the Judiciary referred the SAFE Act to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations.

Measures to change the current enforcement scheme for marijuana-related activity also has begun. On September 6, 2017, the U.S. House Rules Committee blocked a floor vote to keep in place the Rohrabacher-Blumenauer Amendment, formerly known as the Rohrabacher-Farr Amendment, that prohibits federal spending that interferes with states' implementation of their medical marijuana laws. The committee also blocked floor votes on two other amendments that would have benefited the marijuana industry. The Rohrabacher-Blumenauer Amendment, however, remains law until the bill's expiration on December 8, 2017. The amendment was included in the Hurricane Harvey emergency aid and spending package bill.

Overcoming Banking Challenges

According to an August 2017 article in the *Boston Herald*, of the more than 12,000 financial institutions in the country, only about 350 are serving customers in marijuana-related businesses. Medical marijuana businesses need access to financial institutions and other financial systems to deposit money, make payroll payments, and accept payments.

In order to address the inability of marijuana-related businesses from using many commercial payment products, some marijuana-related businesses are using two methods to process payments. According to an August 2017 *New York Daily News* article, "How Cannabis Businesses Can Overcome Credit and Banking Obstacles," marijuana-related businesses are changing the Merchant Category Code (MCC) used to access open-loop payment systems and using closed-loop payment systems.

Open-loop payment card organizations (*e.g.*, Visa and MasterCard) assign an MCC to a business when the business first accepts payments through the organization. The payment card organization assigns an MCC based on what it determines makes up the majority of the business in question. Altering the description of a marijuana-related business may result in an MCC that allows a marijuana-related business to use the payment card organization. This practice, however, could become quite problematic for businesses. Closed-loop payment systems provide payment services directly to merchants and cardholders by the owner of the network without involving third-party financial institution intermediaries. Amercanex International Exchange, for example, has a closed-loop payment system that marijuana-related businesses may use. According to Amercanex's website, it offers a treasury and cash management system under which participants may deposit cash; pay their bills, payroll, and taxes on time and in compliance with local regulations; and accept payments from others within and outside the cannabis industry.

Marijuana-related businesses have used other tools to access financial services. Some businesses are using cashless ATMs. Cashless ATMs allow customers to insert their debit or credit cards in an ATM, but instead of dispensing cash to the customer, hold the cash and divert it to the marijuana-related business. Although this tool prevents the marijuana-related business from having direct contact with a financial institution, it can be cumbersome for business accounting and costly for customers because of fees. Other services that companies are providing include e-checks, closed-loop payment cards, and blockchain recordkeeping, for which special authentication is embedded to the actual documentation to facilitate trustworthy recordkeeping.

In Maryland, marijuana-related businesses have been able to partner with various companies for their financial services needs. According to the February 9, 2017 article "Company Eyes Elkton Medical Marijuana Dispensary" in the *Cecil Daily* newspaper, Severn Bank in Anne Arundel County allows marijuana-related businesses to deposit its cash profits.

Business Regulation

Alcoholic Beverages Regulation

Craft brewers have expressed concern with a few aspects of Chapter 813 of 2017 which made numerous changes to on-premises sampling and sale of beer by a Class 5 brewery, including the allowable beer barrel limit to be produced. Alcoholic beverages manufacturers are likely to advocate allowing wineries to operate satellite stores that sell wine in locations where none is produced, as similarly allowed in surrounding states.

The Three Tier System

In Maryland, the production, distribution, and sale of alcoholic beverages are regulated by the "three tier system." In its purest form, the system authorizes manufacturers (tier one) to sell only to wholesalers (tier two); wholesalers to sell only to retailers (tier three); and retailers to sell only to consumers. Generally, the Comptroller issues statewide licenses to manufacturers and wholesalers, while all jurisdictions (*i.e.*, the City of Annapolis, the City of Baltimore, and the 23 counties) license retailers to operate within their boundaries.

Brewery Licenses

Along with distillers of spirits and operators of wineries, brewers in Maryland are classified as manufacturers. Brewers are required to obtain a Class 5 brewery license, a Class 6 pub-brewery license, a Class 7 micro-brewery license, or a Class 8 farm brewery license. Each license is issued by the Comptroller and specifies the amount of beer that may be brewed each year, the type of location that may be licensed, and the manner in which beer may be sold. According to the Comptroller's Office, there are currently 35 licensed Class 5 breweries; 1 licensed Class 6 pub-brewery; 28 licensed Class 7 micro-breweries; and 16 licensed Class 8 farm breweries.

A *Class 5 brewery license* authorizes the license holder to establish and operate a plant for brewing and bottling malt beverages; contract to brew and bottle beer with and on behalf of Class 2 rectifying licensees, Class 5 brewery licensees, Class 7 micro-brewery licensees, Class 8 farm brewery licensees, or the holder of a nonresident dealer's permit; sell and deliver beer to a licensed wholesaler or an authorized person outside of the State; serve beer samples to participants in a guided tour or other organized event at the brewery; and annually sell 2,000 barrels or, if certain conditions are met, 3,000 barrels of beer at the brewery for on-premises consumption.

A *Class 6 pub-brewery license* is issued for a brewery located immediately adjacent to a restaurant where the malt beverage that the brewery produces is sold to the public. A holder of a pub-brewery license may not brew more than 2,000 barrels of malt beverage each calendar year.

A *Class 7 micro-brewery license* may be issued only to a holder of a Class B beer, wine, and liquor (on-sale) restaurant license. A micro-brewery may brew and bottle, or contract to brew and bottle, not more than 22,500 barrels of malt beverages annually. Of that amount, the micro-brewery may sell at retail for on-premises consumption up to 4,000 barrels of beer each year.

A *Class 8 farm brewery license* allows the license holder to sell and deliver beer manufactured in a facility on the licensed farm, or in a facility other than one on the licensed farm, to a licensed wholesaler or an authorized person outside the State. The beer to be sold and delivered must be manufactured with an ingredient from a Maryland agricultural product, including hops, grain, and fruit, produced on the licensed premises. Beer that the license holder produces may be sold for on-premises consumption. In addition, the license holder may sell or serve certain foods, such as baked goods, cured meat, cheese, salads, and prepackaged sandwiches. A Class 8 farm brewery may brew, bottle, or contract for not more than 15,000 barrels of beer each calendar year. Also, the brewery may sponsor a multibrewery activity at the licensed farm or a brewery promotional event.

Chapter 813 of 2017 – Class 5 Brewery License Expansion

In January 2017, the alcoholic beverage conglomerate Diageo announced its plans to open a large Class 5 brewery in Baltimore County. The company planned for the brewery to produce beer other than its trademark Guinness stout, but it showed interest in establishing a tap room to sell and sample the stout along with its other products. Chapter 813 of 2017 made this possible. However, despite passage of Chapter 813, the craft brewers continue to have concerns about several provisions of the new law, including on-premises consumption, hours of operation, and contract brewing. The legislation became law without the Governor’s signature under Article II Section 17(c) of the Maryland Constitution.

On-premises Consumption

Chapter 813 raised the annual beer barrel limit allowable to be produced for on-premises sales and sampling from 500 barrels to 2,000 barrels. The law also allowed a brewery to sell or serve an additional 1,000 barrels annually if the additional beer is sold to and purchased back from a licensed wholesaler and the brewery receives permission from the Comptroller’s Office. Representatives of craft breweries argued that the 2,000-barrel limit was too low and the process involved in achieving the 1,000-barrel addition was too cumbersome. However, few brewers in the State currently produce close to this barrel limit. Opponents of raising the barrel limit, who were chiefly retailers, argued that a brewery able to sell more beer for on-premises consumption would pose direct competition to neighboring taverns and restaurants, a charge that craft brewers denied.

Hours of Operation

Chapter 813 limits the hours during which a brewery may sell and serve beer for on-premises consumption. As a result of a contested compromise, the hours of sale are limited from 10 a.m. to 10 p.m. daily for breweries licensed after April 1, 2017, but later hours for breweries existing before that date are allowed. Opponents of allowing breweries to extend their hours of sale argued that doing so would in effect make breweries become a bar or nightclub.

Contract Brewing

"Contract brewing" is the practice by which one brewery contracts with a second brewery to complete some or all of the brewing process on behalf of the first brewery. An early version of the 2017 legislation would have prohibited contract brewing; however, after heavy opposition, contract brewing was authorized in the final version of the bill. Opponents of contract brewing warned that a brewer could contract out most or all of its product to other brewers – in which case the brewer would cease being a brewer and in effect become a retailer.

The Comptroller's Reform on Tap Task Force

In April 2017, the Brewer's Association of Maryland (BAM) published a number of criticisms of the bill that became Chapter 813. Specifically, BAM expressed concerns over the limited operating hours for new breweries and the bill's requirement that a brewery purchase its own beer back from a licensed wholesaler. Subsequently, the Comptroller established the "Reform on Tap" Task Force (RoT). The RoT Task Force's stated goal is to modernize Maryland's beer laws and promote economic growth across the State. The RoT Task Force plans to publish its findings before the end of 2017.

One of the most contentious issues the RoT Task Force discussed was the length of the franchise agreement brewers sign with wholesalers. Currently, a brewer who is unhappy with the brewer's distributor must wait 180 days to end the franchise agreement. Brewers argue that the period is too long, while distributors insist that the law remain unchanged. Distributors say it is the responsibility of the brewer to do their due diligence when selecting a distributor. Brewers say if they try to leave prematurely, distributors stop promoting the product immediately, and their sales are hurt severely, possibly resulting in bankruptcy. Brewers argue that this threat gives distributors undue leverage over the brewers. Brewers repeatedly reference the need for flexibility in selecting a distributor, citing the "free market." Distributors dismiss the brewers' position, indicating that alcohol is a regulated industry. This issue remains unresolved.

After its meeting on October 25, 2017, the RoT Task Force issued preliminary conclusions:

- The Maryland craft beer industry has emerged as one of the State's most powerful economic engines, generating $638 million in annual economic activity, supporting 6,547 Maryland jobs, and generating $288 million in wages and $53 million in State and local taxes.

- The craft beer activity in Maryland has occurred in spite of Maryland's laws, which impose arbitrary limits on the amount of beer that craft brewers can produce and sell. Despite the remarkable efforts of craft brewers, Maryland still lags behind neighboring states in economic impact, jobs, and income generated by this industry. Virginia is actively recruiting brewers operating in Maryland.

- To realize the full potential of this industry, and to catch up and ultimately surpass other states, Maryland must change its laws.

Winery Licenses

The Comptroller issues two classes of licenses for wineries: the Class 3 winery license; and the Class 4 limited winery license. According to the Comptroller's Office, there are currently 4 licensed Class 3 wineries and 87 licensed Class 4 limited wineries.

A holder of a *Class 3 winery license* authorizes the license holder to establish and operate a plant for fermenting and bottling wine; import bulk wine from the holder of a nonresident dealer's permit; sell and deliver wine to a licensed wholesaler, and a person in or outside the State authorized to acquire wine. The license holder may serve or sell at retail wine made at the plant from products grown in the State in limited quantities to a participant in a guided tour of the plant. Like a holder of a Class 3 winery license, a holder of a *Class 4 limited winery license* may ferment and bottle wine and sell and deliver wine to a licensed wholesaler or person authorized in or out of State to acquire wine or pomace brandy.

Three major characteristics distinguish a Class 4 limited winery license from a Class 3 winery license:

- A limited winery license allows the holder each year not only to ferment and bottle wine but also to distill and bottle not more than 1,900 gallons of pomace brandy made from available Maryland agricultural products.

- A limited winery license allows the license holder to produce only wine from available Maryland agricultural products; however, if on or before January 31 of each year, the Maryland Department of Agriculture determines that the supply of Maryland agricultural products is insufficient, then a limited winery license holder is free to use out-of-state products in an unlimited quantity. The department consistently has declared an insufficiency for many years.

- A limited winery license, like a Class 8 farm brewery license, allows the holder to provide to a consumer baked goods, cured meat, cheese, salads, prepackaged sandwiches, and many other types of food. A limited winery license holder may also hold a promotional event or other organized activity on the licensed premises.

Satellite Operations

Alcoholic beverages manufacturers gain far more profit per unit of sale when they sell their product directly to consumers than when they sell it to wholesalers. Acquiring authorization to establish satellite stores, in which a winery may sell its wine at retail at off-premises locations where no wine is produced, has been a longstanding priority for the winemakers. Winery advocates argue that Maryland wineries are placed at a disadvantage because surrounding states allow their wineries to operate satellite operations.

Further, satellite operations are needed, the advocates say, because Maryland wineries often are in remote localities that are not easily accessible to customers who might be interested in tasting their wine. Opponents of satellite operations are chiefly alcoholic beverages retailers. They argue that a satellite operation merely is a storefront used to sell wine. Their operations have nothing to do with the actual production of wine, thus allowing the holder of a manufacturing license (*i.e.*, a limited winery license) to compete unfairly against neighboring retail package stores. Moreover, if the Maryland Department of Agriculture declares that the supply of Maryland agricultural products is insufficient, a winery satellite operation would not be bound to sell only wine produced with Maryland grapes.

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Business Regulation

The Availability and Accessibility of Rural Broadband/High-speed Internet

Following the creation of the Task Force on Rural Internet, Broadband, Wireless, and Cellular Service, the Governor established through executive order the Office of Rural Broadband in the Department of Information Technology. The office is examining the availability and accessibility of high-speed Internet in rural areas of the State. Although enhancements are being explored, the cost of the enhancements may be an impediment to implementation.

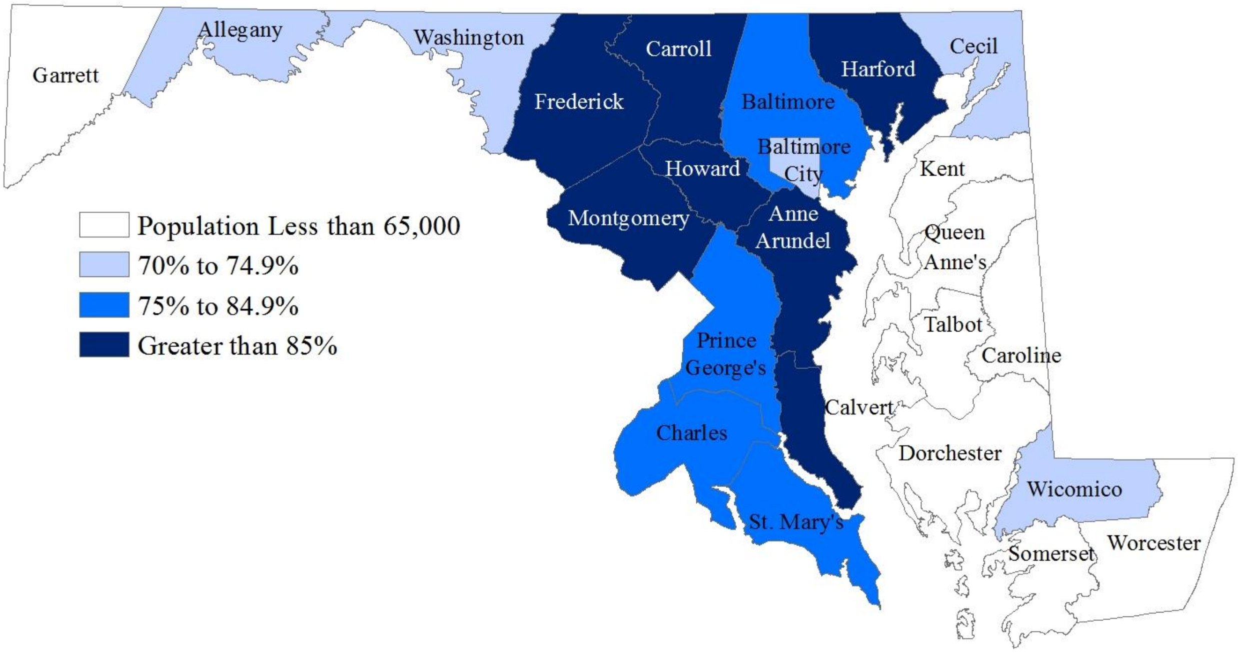
Broadband in Maryland

Broadband, or high-speed Internet, is a technique that enables the transmission of large amounts of data. Different methods of Internet include fiber-optic, cable, Digital Subscriber Line (DSL) which uses unused telephone lines, and satellite. Broadband access via fiber-optic or cable is continuous and faster than non-broadband Internet service that uses dial-up access through a standard telephone line.

While broadband is available to a majority of Maryland's households, it is not ubiquitous. The U.S. Census Bureau's American Community Survey collects data on the number of households per county that have broadband in their homes. Unfortunately, the data is only collected for counties with at least 65,000 inhabitants. Of the 24 counties in Maryland, this means that data is available for only 16 counties. Of these 16 counties, **Exhibit 1** shows that 7 counties have greater than 85% of households with broadband and 5 have less than 75% of households with broadband. No data is available for 8 counties. Although there is no U.S. Census data for these 8 counties, since these are sparsely populated rural counties, it is reasonable to expect that a number of them have lower rates of broadband availability.

Of the 5 counties that have less than 75% of households with broadband, these figures are depressed by two factors: availability and affordability. Four of these counties (Allegany, Cecil, Washington, and Wicomico) have the smallest populations among the 16 counties for which there is reported data. The fifth jurisdiction, Baltimore City, has high concentrations of poverty.

Exhibit 1
Percent of Households with Broadband



Source: U.S. Census Bureau's American Community Survey, 2014

Task Force on Rural Internet, Broadband, Wireless, and Cellular Service

Chapter 621 of 2017 established the Task Force on Rural Internet, Broadband, Wireless, and Cellular Service to study and make recommendations regarding how Western Maryland counties; Southern Maryland counties; Eastern Shore counties; and Frederick, Carroll, and Harford counties can work together to obtain federal assistance to improve Internet, broadband, wireless, and cellular services and accessibility to those areas of the State. The task force has held two meetings that have included presentations regarding the mapping of broadband service in Maryland; an overview of the Maryland Broadband Cooperative, which is a public-private partnership between State and local governments and telecommunication companies serving Maryland; county-level broadband challenges; and State agency involvement in broadband services. Task force members and attendees have also been assigned to small groups to discuss specific broadband issues, such as what the minimum broadband service speed should be and the roles of State and local governments in addressing access to last mile broadband. The task force plans to meet for a third and final time prior to the issuance of its report, which is due by November 30, 2017.

Governor Creates the Office of Rural Broadband

In order to be responsive to concerns about the availability of broadband in rural areas of the State, on August 11, 2017, the Governor signed Executive Order 01.01.2017.14 which creates the Office of Rural Broadband in the Department of Information Technology (DoIT). The Governor will designate a Rural Broadband Director who serves at the pleasure of the Governor. As of October 16, 2017, this position has not been filled.

The office is required to assist local jurisdictions in their improvement of accessing of high-speed Internet; identifying and coordinating the delivery of sources of funds including federal funds specifically identified for this purpose; working with local economic development agencies to identify areas with a demand for better Internet services; investigating new technologies that would increase high-speed Internet availability; and developing policy, regulations, or legislation relevant to increasing broadband availability.

Other State agencies involved with this effort are the Department of Housing and Community Development, Maryland Department of Transportation, Department of Commerce, and Maryland Department of Planning. The order required that these agencies report on their efforts to identify and coordinate resources and technology within 45 days of the signing of the order – a date that has already passed and the reports have not been completed. The order also requires that State agencies work with local jurisdictions and other stakeholders, such as the Maryland Broadband Cooperative and Rural Maryland Council. By April 2018, the office is required to have developed a demonstration project to increase the availability of broadband on both the Eastern Shore and in Western Maryland.

The office will also need to settle on a definition for broadband/high-speed Internet. The current Federal Communications Commission (FCC) definition is download speeds of 25 megabits per second. According to the website statista.com, the average Internet connection speed was 18.75 megabits per second in the first quarter of 2017.

Possible Approaches to Enhance Rural Broadband Availability

DoIT is examining the following approaches to address the lack of high-speed Internet access in rural areas:

- **Use unused mid-mile fiber:** DoIT advises that there is unused fiber in rural areas of the State. DoIT could release a request for proposals that allows a telecommunications company to use its unused fiber to expand Internet services in these areas;
- **Adding microwave towers:** There already is a system of towers and other broadband infrastructure throughout the State. Additional towers could be built onto this system.
- **Improved cell phone technology:** Current 4G cell phone technology provides download speeds of 4 to 12 megabits per second, which is slower than the FCC definition of broadband/high-speed Internet access. The next technology (5G) is expected to

substantially increase download speeds. However, the technology is not yet completed and, insofar as it took two to three years to implement the last upgrade, it is unlikely to be available for a number of years.

- **Reusing copper wires:** In recent years, telecommunications companies have added fiber-optic cables and migrated services provided on copper cables to the newer fiber-optic cables, thus leaving copper cables unused. These unused copper cables could be used for high-speed Internet. Although copper cables provide less capacity, this may not be an issue since most will be used in less populated areas that require less capacity. It is also unclear as to the condition of the copper cables, the extent to which there are gaps in the copper cables, and the cost of preparing the copper cables for high-speed Internet.
- **Use Television White Space:** Television White Space refers to the unused television channels between the active ones in the VHF and UHF spectrum. These are typically referred to as the "buffer" channels. In the past, these buffers were placed between active television channels to protect broadcasting interference. It has since been researched and proven that this unused spectrum can be used to provide broadband Internet access, while operating harmoniously with surrounding television channels. DoIT advises that this is being tested in Tennessee and North Carolina. It is unclear as to the extent that this technology can be used or how long it will be until the technology will be ready.
- **Low-flying satellite systems:** Satellites have been used to communicate for decades. However, this technology has not been effective with respect to high-speed Internet. The problem is the gap in time between a satellite receiving a request and responding, known as extreme latency. To reduce this problem, companies such as Google and the Virgin Group have been experimenting with lower flying satellites. However, the technology is years away, if it will ever be deployed.

Despite these possible enhancements, the office will need to overcome the cost of implementation and other cost-related challenges. Currently, Internet providers are reluctant to invest to build the infrastructure required for high-speed Internet access in rural and other areas of the State. Factors adding to high cost include:

- **Fixed costs spread over a smaller population**;
- **Difficult terrain in Western Maryland:** DoIT advises that infrastructure is more expensive to build in mountainous and rocky terrain; and
- **Larger properties that may require long lines on some properties:** For example, some properties may have driveways that are thousands of feet long, requiring long cables from the line to the house.

Public Safety

Baltimore City

After the U.S. Department of Justice conducted an investigation of the Baltimore Police Department, it found that the police department engaged in a pattern or practice of constitutional violations and identified systemic deficiencies in training and practices within the department. The U.S. Department of Justice and Baltimore City eventually entered into a consent decree to implement meaningful reforms. As Baltimore City commences implementation of the consent decree, the city continues to experience a surge in violent crime, including homicides. Elected officials and stakeholders have engaged in numerous discussions during the past few months to develop potential solutions to Baltimore City's violent crime problem.

Police Reform

U.S. Department of Justice Investigation

Following the 2015 death of Freddie Gray while in police custody and the subsequent civil unrest, the leadership of Baltimore City requested that the U.S. Department of Justice Civil Rights Division (DOJ) conduct an investigation of the Baltimore Police Department (BPD). On August 10, 2016, DOJ released the results of its extensive investigation.

DOJ determined that BPD engages in a pattern or practice of:

- making unconstitutional stops, searches, and arrests;
- using enforcement strategies that produce severe and unjustified disparities in the rates of stops, searches, and arrests of African Americans;
- using excessive force; and
- retaliating against people engaging in constitutionally protected expression.

DOJ concluded that this pattern or practice is at least partly the result of past "zero tolerance" policies and continues to be driven by critical deficiencies in BPD's systems to train, equip, supervise, and hold officers accountable, and to build relationships with the broader Baltimore City community.

Consent Decree

Prior to the release of the report, DOJ and Baltimore City entered into an agreement, in principle, in an effort to avoid litigation against the city and begin the process of instituting meaningful reforms within BPD. In the agreement, both parties committed to complete negotiations, with input from the community, for a court-enforceable consent decree.

On January 12, 2017, the United States filed a complaint in the U.S. District Court for the District of Maryland against BPD, the Mayor, and the Baltimore City Council alleging that the defendants had engaged in a pattern or practice of conduct by law enforcement officers that deprives persons of rights, privileges, and immunities secured by the Constitution and laws of the United States, in violation of several federal statutes. On the same date, the parties jointly filed a motion seeking entry of a proposed consent decree to resolve litigation of the case. On April 7, 2017, the court approved the consent decree with modifications and entered it as an order. The court will retain jurisdiction over the case until it determines that full compliance with the consent decree has been achieved.

The consent decree requires BPD to:

- establish a Community Oversight Task Force;
- provide training to police officers on community policing and engagement, impartial policing, and how to interact with youth;
- review, revise, and implement policies on:
  - stops, searches, and arrests;
  - use of force;
  - safe transportation;
  - protecting citizens' First Amendment rights;
  - handling sexual assault investigations;
  - body-worn cameras;
  - supervision;
  - misconduct investigations and discipline;
  - recruitment, hiring, and retention; and
  - staffing, performance evaluations, and promotions;

- implement a crisis intervention team program;
- strengthen community outreach to youth;
- pursue partnership efforts between BPD and the Baltimore City School Police Force; and
- establish an employee assistance program offering no- or low-cost counseling and mental wellness services to sworn officers.

The consent decree also provides for appointment of an independent monitor to assess and report on whether the requirements of the consent decree have been implemented and to provide technical assistance in achieving compliance.

On October 2, 2017, the court appointed Mr. Kenneth Thompson, a Baltimore-based attorney, as monitor of the consent decree. The monitoring team under Mr. Thompson includes law enforcement officials, civil rights prosecutors, and community mediators with connections in Baltimore City. Mr. Thompson's team, in consultation with the city and DOJ, must create a first-year implementation plan for reforms by early January 2018, and will hold four public meetings for citizens to offer recommendations. In addition, the team has created a website to provide periodic updates on its process, and will open two offices in the city.

Violent Crime Surge

Freddie Gray's death sparked riots in Baltimore followed by a crime wave including an increase in murders. The city experienced a total of 344 homicides in 2015, which is second only to the 353 homicides recorded in 1993, when the population was 100,000 higher. In 2016, there were 318 killings. In 2017, homicides in Baltimore City are continuing at a record pace. Through October 7, 274 people have been killed in the city.

City Efforts to Address the Problem

During summer 2017, Mayor Catherine Pugh and Police Commissioner Kevin Davis promised policy changes to try to address the violence in the city. In July, Commissioner Davis assigned 150 officers to new "district action teams" designed to focus on the most violent areas of the city. These uniformed officers work with other intelligence and undercover units to target repeat violent offenders and provide commanders with critical response capabilities beyond the scope of patrol units.

Also in July 2017, Mayor Pugh introduced a bill in the Baltimore City Council that proposed making illegally possessing a handgun within 100 yards of a city park, school, church, public building, or place of public gathering a misdemeanor punishable by a minimum of a year in jail and a fine of $1,000. Commissioner Davis supported the bill, but the city council was divided. Opponents contended that mandatory minimum sentences have not been shown to reduce crime and that constraining judges' authority can lead to unjust outcomes. The council ultimately amended the measure to exempt a first-time offender from the mandatory minimum sentence unless the handgun is being carried in connection with the commission of a crime.

In August 2017, Mayor Pugh released a crime-fighting plan that involves getting more officers onto the streets, improving the training and technology available to police, going after illegal gun possession, improving police-community relations, enhancing cross-agency coordination, increasing access to health services, engaging youth, and creating more housing, educational, and economic opportunities for city residents. Mayor Pugh said she has met with groups including DOJ and the U.S. Conference of Mayors to study crime reduction strategies.

State Efforts to Address the Problem

The level of violence also has been a source of concern for Governor Lawrence J. Hogan, Jr., who has pledged to work with city leadership and law enforcement to combat the crisis. Discussions between Governor Hogan and Mayor Pugh during summer 2017 resulted in a State commitment to provide more parole and probation officers in the city and grant funding to put computers in patrol cars.

In August 2017, Governor Hogan called for a meeting with members of the Baltimore City Criminal Justice Coordinating Council to discuss possible solutions for addressing the violence in Baltimore City. The council was formed in 1999 to address systemic problems affecting criminal justice in Baltimore City. The council's members include the Mayor, judges, the city council president, the Governor, the Attorney General, the Police Commissioner, the State's Attorney for Baltimore City, and other officials and stakeholders. In calling for the closed-door meeting, Governor Hogan said he was concerned that 60% of gun offenders convicted in the city have more than half of their sentences suspended and indicated that he intended to question the judicial members of the council about their sentencing practices. However, the three Baltimore City judges who sit on the council declined to attend the meeting on the basis that the rules of judicial conduct require them to remain independent from calls for tougher sentencing.

After the council's judicial members declined to meet with the Governor to discuss sentencing practices and the council decided not to develop a crime reduction plan for the city, Governor Hogan became dissatisfied with the council. In September 2017, Governor Hogan announced that he was defunding the Baltimore City Criminal Justice Coordinating Council and transferring its entire $219,000 operating budget to Mayor Pugh's administration to be used toward fighting violent crime. The council's annual budget was primarily used for compensation for its two employees.

Public Safety

The Justice Reinvestment Act

Many provisions of Chapter 515 of 2016, also known as the Justice Reinvestment Act, went into effect on October 1, 2017. The Justice Reinvestment Oversight Board met three times between January and August of 2017, and looked at multiple issues related to the implementation of the Act. State agencies continue to work to implement the Act's requirements.

Background

Chapter 42 of 2015 established the Justice Reinvestment Coordinating Council (JRCC) within the Governor's Office of Crime Control and Prevention (GOCCP). The council was required to use a data-driven approach to develop a statewide policy framework for sentencing and corrections policies to further reduce the State's incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism. The council and its subcommittees met numerous times in 2015 to analyze criminal justice data and review relevant research. Based on its findings, JRCC developed a comprehensive set of recommendations intended to focus prison resources on serious and violent offenders, strengthen community supervision efforts, improve and enhance release and reentry practices, support local corrections systems, and ensure oversight and accountability.

Chapter 515 of 2016, the Justice Reinvestment Act, implemented many of the recommendations made by JRCC by altering provisions relating to sentencing, corrections, parole, and offender supervision. In addition, the Act (1) altered provisions relating to criminal gangs; (2) increased maximum penalties for second-degree murder and first-degree child abuse resulting in death; (3) modified provisions regarding drug treatment; (4) expanded expungement provisions; and (5) provided for the reinvestment of savings from changes in incarceration policies. Many of the provisions of the Act took effect October 1, 2017. In the lead-up to the October 1 effective date, the Justice Reinvestment Oversight Board (Oversight Board), tasked with overseeing implementation of the Act, met three times between January and August of 2017 to review efforts being made by State agencies to comply with the Act's requirements.

Court-ordered Drug Treatment

Among the efforts reviewed by the Oversight Board were those taken by the Maryland Department of Health (MDH) to implement the Act's changes to court-ordered drug treatment. Under the Act, MDH is required to facilitate placement for a defendant in a drug treatment program within 21 days of a court's order committing the defendant for drug treatment. Treatment bed availability is currently tied to contracts for services between MDH and three service providers in the State: Gaudenzia, Jude House, and New Horizons. These three service providers have been contracted to provide treatment beds for court-ordered residential drug treatment services through December of 2017. However, MDH anticipates that the expiration of these contracts, as well as upcoming changes in how MDH pays for services, from a contractual model to a pay-for-service model, will allow for an expansion of services and result in significant improvements in efficiency in providing placements.

MDH indicates that, in anticipation of the Act's effective date, it has been able to reduce wait times for drug treatment placements. According to MDH, from fiscal 2012 through 2014, the estimated average wait time for court-ordered residential drug treatment was 167 days, with a median wait time of 133 days. At the Oversight Board's April 2017 meeting, MDH reported that in the first four months of 2017, the wait time for placement had been lowered to an average of 91 days, with a median wait time of 85 days. As of the board's August 2017 meeting, MDH reported that it was focused on continuing to accelerate the placement process to reach the 21-day placement requirement.

Implementation by the Department of Public Safety and Correctional Services

The comprehensive and expansive changes under the Act required significant planning and preparation on the part of the departments and agencies that it affects. Following the Act's passage, the Department of Public Safety and Correctional Services (DPSCS) identified 10 substantive provisions of the Act for which DPSCS is responsible, and assembled 10 corresponding teams, known as "Innovative Teams," within the department. Each team was charged with planning for the implementation of specific requirements contained in the Act, including administrative release, diminution credits, evidence-based training, and medical and geriatric parole. The teams have been meeting often to implement the Act's requirements.

Establishment of Performance Measures

The Performance Incentive Grant Fund is a special fund administered by GOCCP to make use of the savings accrued from implementing the Act's provisions. Under the Act, the Oversight Board is required to establish performance measures to track and assess the outcomes of the various provisions of the Act as well as the effectiveness of grants provided under the Performance Incentive Grant Fund. As of August 2017, GOCCP was in the process of finalizing these performance measures. GOCCP has indicated that there will likely be more than 100 separate data measures, which will include data pertaining to:

- Division of Correction intakes and releases;
- local detention center intakes, releases, and pretrial detentions;
- parole releases;

- recidivism;
- sentencing;
- restitution payments and collections;
- inmate vocational and educational courses;
- sanctions for parole violations; and
- substance use disorder assessments and treatment.

In addition, the Act requires each county to annually report specified data from the prior calendar year regarding individuals held in pretrial detention. As of the Oversight Board's August 2017 meeting, GOCCP had compiled preliminary data showing (1) the number of individuals being held in pretrial detention in each county on January 1, 2017; (2) the average lengths of stay; (3) the reasons for not securing release; (4) the primary offenses charged; and (5) case statuses.

Applications to Reduce Mandatory Minimum Sentences

The Act eliminated mandatory minimum sentences for specified felony offenses relating to drug distribution, and authorized a person who received a mandatory minimum sentence for one of those offenses on or before September 30, 2017, to apply to the court to modify or reduce the sentence. The Oversight Board reviewed data regarding the potential number of applications to modify or reduce mandatory minimum sentences following the October 1, 2017 effective date and found that, as of October 2017, approximately 490 sentences were eligible for modification or reduction under the Act. Of that number, approximately 174 (35%) of the sentences were from Baltimore County.

Public Safety

State Correctional System

Statewide, declines in the correctional, detention, and supervision populations continue. While the Department of Public Safety and Correctional Services continues to close or partially close aging facilities, it maintains high vacancy rates, particularly in correctional officer positions. These vacancies have contributed to an increase in both overtime spending and assaults.

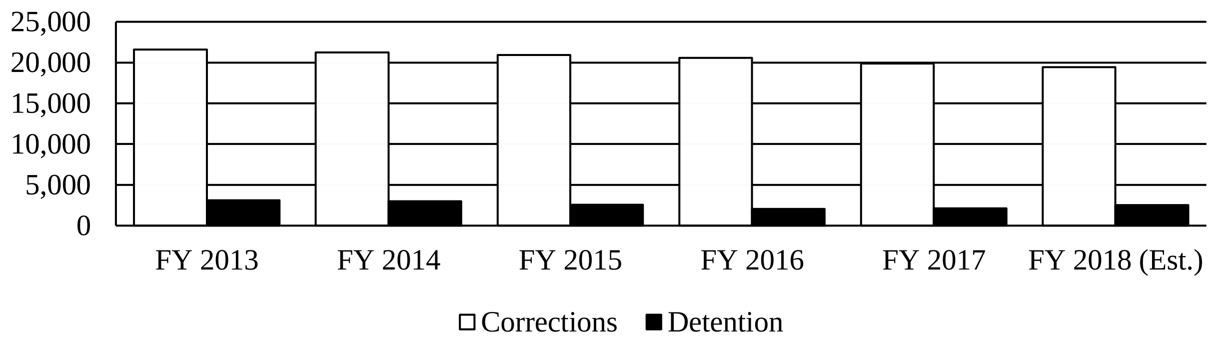
Background

The Department of Public Safety and Correctional Services (DPSCS) is a principal department of State government, responsible for operating 22 State correctional facilities and three Baltimore City detention facilities, whose combined average daily population is approximately 22,203 inmates. In addition, the department supervises offenders on parole and probation. DPSCS has a fiscal 2018 budget of over $1.4 billion and approximately 10,550 employees, which accounts for 13.2% of the total State workforce and 8.2% of all general fund expenditures.

Population Trends

The number of offenders in DPSCS custody continues to decline. **Exhibit 1** shows the average daily population (ADP) of sentenced and detained individuals in DPSCS custody since fiscal 2013. The number of incarcerated offenders in the State is now under 20,000 for the first time since the 1990s, and is predicted to fall further in fiscal 2018.

Exhibit 1
Average Daily Population
Fiscal 2013-2018

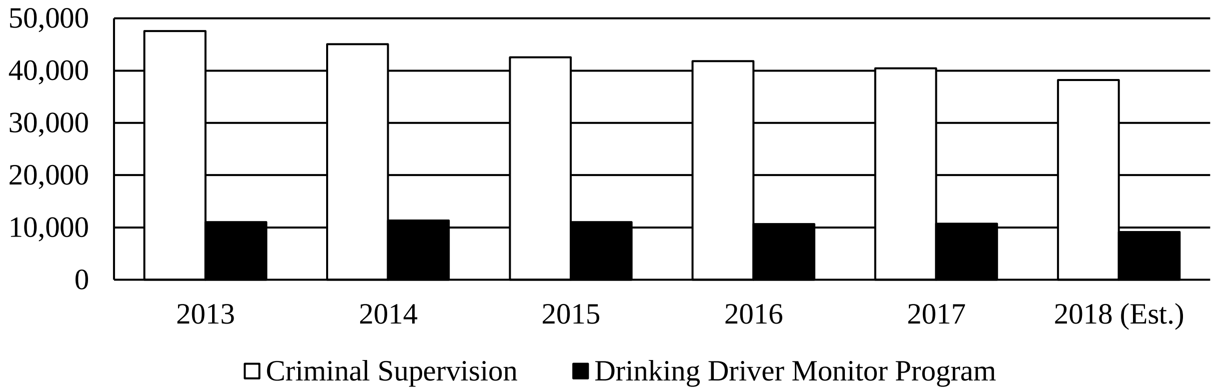


Note: Fiscal 2018 average daily population reflects first quarter data only.

Source: Department of Public Safety and Correctional Services ADP report

Exhibit 2 depicts the total number of active cases under community supervision, which includes parole, probation, and mandatory release cases. Since the peak in 2013, cases under criminal supervision have fallen by 15%. During the same timeframe, Drinking Driver Monitor Program (DDMP) cases decreased by 3%. Overall, the Division of Parole and Probation supervised a total of 40,432 criminal supervision cases and 10,713 DDMP cases in fiscal 2017. Total active cases in all categories are expected to decrease by an additional 4.8% in fiscal 2018.

Exhibit 2
Community Supervision Active Cases
Fiscal 2013-2018



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

Capital Plan and Facility Openings and Closures

As the number of offenders continues to decline, DPSCS continues to close older facilities. In fiscal 2018, the department partially closed the Maryland Correctional Institution in Hagerstown, resulting in the abolishment of nearly 400 vacant positions and reallocation of existing staff to alleviate staffing shortages at other facilities.

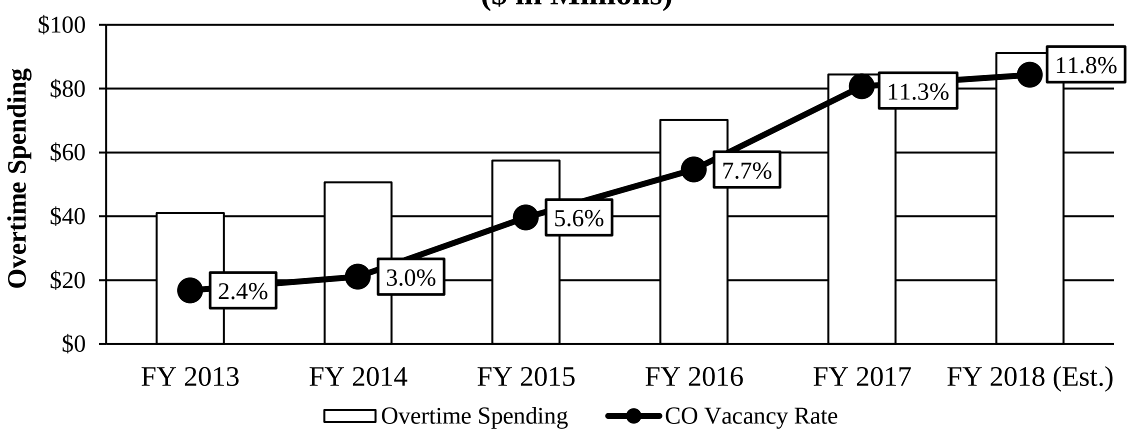
On June 28, 2016, U.S. District Judge Ellen L. Hollander approved the settlement agreement in *Duvall v. Hogan*, a class-action suit on behalf of detainees in the Baltimore City Detention Center regarding aging prison infrastructure and other deficiencies that affect health, safety, and security in Baltimore City jails. The agreement stipulates an overhaul of the jail's health care system and major improvements to the facilities, including accommodations for people with disabilities. Pursuant to the *Duvall* agreement, multiple facilities in Baltimore City have also been shut down. In fiscal 2016, DPSCS closed the aging men's and women's detention facilities; however, this closure resulted in the department mixing different classifications of detainees in order to accommodate the population, which contributed to an increase in the number of assaults in the region. Most recently, as of August 2017, DPSCS depopulated the Jail Industries building, resulting in the relocation of 350 detainees to the Jessup Correctional Institution and 113 offenders to the Metropolitan Transition Center.

Consistent with the declining inmate population, the Administration's five-year *Capital Improvement Program* remains focused on improving services and inmate support space, as well as replacing aging and inefficient facilities. To this effect, the Baltimore City Youth Detention Center (YDC) has been completed and opened in September 2017. The new 60-bed facility cost $37.4 million in total and currently houses 12 juveniles who are detained while awaiting charges in adult court. The YDC includes enhanced medical and dental services, a full educational curriculum, and provides juveniles the opportunity to obtain a high school degree. Funding was provided in the fiscal 2018 capital budget to begin designing the demolition of the antiquated facilities within the Baltimore City Correctional Complex; however, no commitment has been made regarding a replacement facility.

Correctional Officer Recruitment and Retention

Vacancies in State facilities continue to rise, resulting in increased overtime spending for the department, as shown in **Exhibit 3**. In addition, polygraph testing requirements and strict drug use standards implemented in an effort to reduce corruption, have contributed to the low numbers of correctional officers hired. To improve recruitment, DPSCS is offering new correctional officers $5,000 in financial incentives to join the department. A new officer will receive $2,000 upon completion of the training academy and an additional $3,000 after successful completion of the one-year probationary period. Further, existing employees are eligible to receive a $500 bonus for the recommendation of a successful correctional officer candidate.

Exhibit 3
Correctional Officer Vacancy Rate and Overtime Spending
Fiscal 2013-2018
($ in Millions)



Note: Fiscal 2018 estimate is based on year-to-date overtime expenditures through the first quarter of the fiscal year.

Source: Department of Public Safety and Correctional Services Budget Data

Facility Safety and Security

State and local corrections facilities have recently experienced several instances of corruption impacting both officer and inmate safety. In addition, previously mentioned issues, including a large number of correctional officer vacancies and the movement of detainees into dormitory housing, have resulted in an increase in assaults in some facilities. Further, the department has been dealing with contraband smuggling. To address these concerns, the department will use the following new equipment and policies:

- 161 portable CellSense body scanners will be installed at 24 correctional facilities (these scanners can detect the smallest pieces of metal and other contraband and can scan through walls);

- $1.0 million in initial funding for detection equipment designed to stop airborne drones from dropping contraband onto prison property;

- continued use of the Managed Access cellphone blocking system in Baltimore City detention facilities (to date, the implementation of this technology has resulted in a 98% decrease in illicit cellphones in those facilities); and

- increased Canine Unit patrols along the exterior perimeters of facilities and service and access roads as well as during visitation hours (patrols around buildings are designed to prevent inmates from contraband "fishing," which occurs when inmates cast string or rope through windows to capture banned items from co-conspirators on the street).

Criminal Law

Bail Reform and Pretrial Services

Recent changes to the Maryland Rules have resulted in a decline in the number of defendants being held on bail. In conjunction with these changes, criminal justice advocates continue to press for implementation of a uniform statewide pretrial services system, to provide social services and result in improved pretrial dispositions.

Background

On February 7, 2017, the Maryland Court of Appeals adopted amendments to the Maryland Rules changing how judicial officers make pretrial release decisions. The amended Rules favor non-financial conditions of release over bail and state that defendants cannot be held solely because they cannot afford to post bail. The new Rules went into effect on July 1, 2017. While bills were introduced last session both to abrogate bail and expand how bail may be imposed under the Maryland Rules, no legislation was approved.

Impact of New Rules on Pretrial Dispositions

As expected, judicial officers are both releasing more low-risk defendants and holding more high-risk defendants without bail. As shown in **Exhibit 1**, the attention on the rulemaking process and the Rule itself have had a significant impact on pretrial dispositions. Comparing the third quarter of 2016 with the third quarter of 2017, the percentage of defendants assigned bail has decreased from 41.8% to 22.2%, a decline of nearly 50%, while the number of those released and held without bail have increased by 8 and 12 percentage points, respectively.

Exhibit 1
Pretrial Dispositions
July 2016 - September 2017

	Total Initial Appearances	Total Unsecured Releases[1]	Percent	Assigned Bail	Percent	Held without Bail[2]	Percent
Jul. - Sep. 2016	36,235	17,080	47.1%	15,154	41.8%	3,214	8.9%
Oct. - Dec. 2016	32,197	16,552	51.4%	10,705	33.2%	4,209	13.1%
Jan. - Mar. 2017	34,872	18,393	52.7%	10,231	29.3%	5,510	15.8%
Apr. - Jun. 2017	35,154	18,568	52.8%	9,822	27.9%	6,037	17.2%
Jul. - Sep. 2017	35,999	19,782	55.0%	7,995	22.2%	7,555	21.0%

[1] Includes arrestees released due to lack of probable cause.

[2] Includes fugitives held without bail.

Source: *Maryland Judiciary*

Pretrial Services

Maryland does not have a statewide pretrial services program. In the absence of a State system, only 13 of the 24 jurisdictions across the State offer a pretrial program, as shown in **Exhibit 2.** Those that do provide pretrial services have different levels of resources and expertise and offer different services. Two counties, Kent and Charles, are implementing pretrial services for the first time with assistance from other jurisdictions and the Judicial Branch. Expansion of pretrial services may provide judicial officers with more and better information about defendants as they decide whether and under what conditions they will be released. These programs may also expand and improve the monitoring options available while defendants are on pretrial release.

Exhibit 2
Jurisdictions with Pretrial Services*

Jurisdictions with Pretrial Services	Jurisdictions without Pretrial Services
Anne Arundel County	Allegany County
Baltimore City	Caroline County
Baltimore County	Cecil County
Calvert County	Dorchester County
Carroll County	Garrett County
Charles County	Howard County
Frederick County	Queen Anne's County
Harford County	Somerset County
Kent County	Talbot County
Montgomery County	Washington County
Prince George's County	Worcester County
St Mary's County	
Wicomico County	

*As of October 2017

Source: Maryland Judiciary; Department of Legislative Services

National Developments

There have been major changes to bail rules in several other jurisdictions across the country over the last year. New Mexico, Connecticut, Arizona, Indiana, Illinois, and New Orleans have amended laws or court rules to decrease utilization of bail. The California and Texas state legislatures both nearly passed broad bail reform legislation in 2017, and are likely to pursue passage of similar measures in the near future. There is also evidence of an emerging view among judges that the Constitution protects individuals from being held solely because they cannot afford bail, as is illustrated by recent decisions in Harris County, Texas (Houston) and against the U.S. Department of Immigration and Customs Enforcement in the Ninth Circuit Court of Appeals.

Criminal Law

Truth in Sentencing

The Justice Reinvestment Act was enacted with the goal of prioritizing prison beds for violent offenders and reducing nonviolent prison populations. However, with the recent increase in homicides and other violent crimes in Baltimore City, some policymakers are also calling for an overall reexamination of sentencing policies so that violent and repeat offenders are required to spend more time behind prison bars.

Background

In August 2017, prompted by the increase in homicides and other violent crime in Baltimore City, Governor Lawrence J. Hogan, Jr. expressed a belief that violent, repeat offenders are not receiving sufficiently long prison sentences and that judges are inappropriately opting for probation or suspended sentences rather than incarceration for individuals with violent criminal histories. The Governor then announced plans to introduce truth in sentencing legislation as part of a criminal justice package during the 2018 legislation session.

Parole and Diminution Credits

The difference between societal expectations about what a prison sentence means and the time actually served by an offender has been a longstanding public safety issue. An individual who has been sentenced to serve a specified amount of time of incarceration often actually serves a lesser period of time than the time specified, due to parole or diminution credits or both.

Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order. In Maryland, a person incarcerated for a nonviolent crime is generally eligible for parole after having served 25% of the person's sentence. A person incarcerated for a violent crime is generally eligible for parole after having served 50% of the sentence, and a person sentenced to life imprisonment is subject to more limited parole eligibility.

Diminution credits are days of credit awarded to an inmate to shorten the time required to be served in custody. Diminution credits are earned for good conduct, completion of work tasks, educational attainments, and participation in special projects or programs. The purpose of these credits is to encourage good inmate behavior and promote an interest in activities that will occupy an inmate's time while confined and prove useful after release. In general, inmates are awarded good conduct credits at the rate of 10 days per month. An inmate serving a sentence for a crime of violence is awarded good conduct credits at the rate of 5 days per month. An inmate may earn up to a total of 30 days of diminution credits per month, depending on the nature of the inmate's offense and when it was committed, and the inmate's work and participation level while incarcerated.

The Governor's office has not released details of the proposed legislation. However, truth in sentencing laws in other states often require violent offenders to serve a greater portion of their sentences in incarceration before becoming eligible for release by eliminating or restricting parole eligibility or diminution credits. A related concept, mandatory minimum sentencing, requires that an individual convicted of a particular offense receive, at a minimum, a specified statutorily prescribed sentence. A mandatory minimum sentencing provision often prohibits a judge from suspending any part of the sentence and precludes parole during the pendency of the sentence.

Evolution of Truth in Sentencing Laws

Truth in sentencing laws gained popularity in the mid-1990s following enactment of the federal Violent Crime Control and Law Enforcement Act of 1994 (1994 Crime Act). Among other provisions, the 1994 Crime Act established the Violent Offender Incarceration and Truth in Sentencing (VOI/TIS) Incentive Grant Program. The VOI/TIS program authorized the U.S. Department of Justice (DOJ) to provide approximately $9.7 billion in grants between 1996 and 2001 for states to build prisons or jails to increase secure confinement space for offenders convicted of violent crimes. Some grants were available to states that implemented laws requiring a person convicted of a violent crime to serve at least 85% of the person's imposed sentence. The 1994 Crime Act defined "violent crime" as murder, nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. According to DOJ, approximately $2.7 billion in VOI/TIS grants were awarded to states between fiscal 1996 and 2001 for construction, expansion, or renovation of correctional facilities.

Five states (Delaware, Minnesota, Tennessee, Utah, and Washington) enacted truth in sentencing laws prior to the 1994 Crime Act. As of January 1999, 28 states and the District of Columbia had truth in sentencing laws that met the 85% requirement under the 1994 Crime Act. Maryland was not among these states, since offenders convicted of committing violent crimes in the State are generally required to serve only 50% of the sentence imposed for the violent crime before becoming eligible for parole consideration. According to a February 1998 report by the U.S. General Accounting Office, of the 27 states that received federal incentive grants in fiscal 1997, 11 reported that the grants were a partial factor in the state's decision to enact a truth in sentencing law and 4 states reported that the grants were a key factor in the state's decision to enact truth in sentencing legislation.

Justice Reinvestment Act

While requiring individuals convicted of a crime of violence to serve longer sentences does not directly conflict with recent criminal justice reform efforts in the State, those recent efforts have primarily focused on reducing incarceration or using alternatives to incarceration, mainly for nonviolent offenders. The most notable of these efforts is Chapter 515 of 2016, also known as the Justice Reinvestment Act.

The Act alters provisions relating to sentencing, corrections, parole, and offender supervision. While the Act increased the maximum penalties for second-degree murder and specified child abuse offenses, it also reduced maximum criminal penalties for specified drug-related offenses and repealed mandatory minimum penalties imposed on specified subsequent drug offenders. The Act also increased deductions for diminution credits for inmates serving sentences for various offenses, excluding crimes of violence. Most of the Act's provisions went into effect on October 1, 2017.

Several states have enacted legislation with similar criminal justice reforms. Though the legislation varies among the jurisdictions, a common goal among these efforts is to prioritize the use of prison beds for violent and repeat offenders and to reinvest savings from the overall decrease in use of prison space into alternatives to incarceration for low-level offenders aimed at reducing recidivism.

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Criminal Law

Juveniles Charged as Adults

Chapter 442 of 2015 created a presumption that juveniles whose cases are statutorily excluded from the juvenile court and who are facing charges in the adult criminal system will be held in a juvenile detention facility pending the outcome of the reverse waiver process. These juveniles are currently experiencing an average length of stay in detention that is nearly six times that of a youth whose case is before the juvenile court. Concerns have been raised regarding the lack of proper programming for youth confined for such lengthy periods of time. Previously introduced legislation may be considered to expand the jurisdiction of the juvenile court to require all juvenile cases to begin in the juvenile court, where statutory timeframes for processing cases is shorter, thus reducing the average length of stay for juveniles in detention.

Background

Despite its name, the juvenile court does not have jurisdiction over all cases involving juveniles, including those in which a juvenile is at least age 16 and is alleged to have committed specified violent crimes. However, subject to certain exceptions, the adult criminal court may transfer such cases to the juvenile court if a transfer is believed to be in the interest of the child or society and other conditions are met. This process is referred to as a "reverse waiver." Prior to 2015, courts electing to detain a juvenile who had been charged as an adult were authorized, but not required, to order the juvenile to be held in a Department of Juvenile Services (DJS) facility (instead of an adult detention facility) pending a reverse waiver decision.

Interest in the pretrial detention of these juveniles escalated approximately 10 years ago as the Department of Public Safety and Correctional Services began planning to build a new youth detention center to accommodate juveniles charged as adults in Baltimore City. The issue was further heightened after a report by the National Council on Crime and Delinquency indicated that over two-thirds of juveniles who were committed to an adult detention facility in Baltimore City left without a conviction in adult court, yet spent an average of three months detained. In 2013, DJS started entering into agreements with local jurisdictions, including Baltimore City, to hold juveniles charged as adults within its juvenile detention facilities pending reverse waiver decisions.

Legislative Action

Chapter 442 of 2015 altered the law regarding the pretransfer detention of juveniles charged as adults to create a presumption that the juveniles should be held in a juvenile detention facility. Specifically, effective October 1, 2015, a court must order a juvenile charged as an adult who is eligible for transfer to the juvenile system to be held in a juvenile detention facility unless (1) the juvenile is released on bail, recognizance, or other pretrial condition; (2) there is no capacity at a secure juvenile facility; or (3) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others, and states the reasons for the finding on the record.

Impact of Detaining Juveniles Pending Reverse Waiver Determinations

In fiscal 2017, the first full fiscal year following the implementation of Chapter 442, there were 397 admissions to DJS detention facilities of juveniles charged as adults pending a transfer determination; the average daily population (ADP) was 116. Juveniles awaiting disposition in the juvenile court, which is subject to strict procedural time limits, had an average length of stay of approximately 17 days in fiscal 2017. Conversely, juveniles awaiting a reverse waiver decision had an average length of stay of 103 days; according to preliminary data in fiscal 2018, the average length of stay has increased to 132 days. Although DJS has thus far generally been able to accommodate these individuals within available capacity, the longer lengths of stay associated with these cases may begin to more significantly impact DJS resources. While Chapter 442 does allow an exception when DJS does not have capacity, other issues are associated with extended detention periods. Although juveniles in detention facilities have access to medical and behavioral services and attend school within the facility, programming is generally designed for shorter lengths of stay. The problem is further exacerbated since juveniles pending adult court action tend to be those who have committed more serious crimes and potentially need more intensive services in order to properly facilitate rehabilitation.

Potential Legislative Considerations

Legislation has previously been introduced, most recently as Senate Bill 215 and House Bill 471 in the 2017 session, to expand the original jurisdiction of the juvenile court to include juveniles whose cases currently begin in the adult system as referenced above. Such an expansion would subject these cases to the stricter statutory timeframes as required by the juvenile process, thus reducing the average length of stay, and correspondingly, the ADP within DJS detention facilities. While there has been concern regarding the severity of the types of cases that the juvenile system would be responsible for handling, proponents argue that judges would still have the option to waive appropriate cases to the adult system, and DJS could reallocate resources from detention to committed programs.

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Courts and Civil Proceedings

Backlog of Civil Asbestos Cases

A significant backlog of civil asbestos cases has developed in the Circuit Court for Baltimore City, according to litigators who represent plaintiffs. The court has implemented a new case management strategy for the asbestos docket, aimed at identifying and prioritizing cases that are ready to proceed to trial. However, additional measures may be proposed during the 2018 session to encourage the fair and speedy resolution of asbestos-related claims.

Background

Committee narrative in the 2014 *Joint Chairmen's Report* directed the Judiciary to undertake a study of the asbestos docket in the Circuit Court for Baltimore City. Specifically, the budget committees raised concerns about a backlog of approximately 11,000 civil asbestos cases filed in the circuit court and requested that the Judiciary evaluate options for resolving the pending cases in a more expeditious manner. In response, the circuit court conducted and submitted an assessment of its asbestos case inventory and proposed a plan to implement a new strategy to manage the docket.

At the time of the circuit court's report, which was completed in 2015, plaintiffs' attorneys estimated that their collective case inventories included nearly 30,000 cases, with about 12,000 of these being delayed from resolution by the court's failure to assign sufficient judicial resources to the docket. Defense counsel uniformly disputed the plaintiffs' assertions, arguing that the actual backlog of viable cases was much smaller and that the plaintiffs' attorneys themselves were often responsible for the delay in bringing cases to trial. For its part, the circuit court stated that it could not definitively conclude how many cases were being delayed because the court lacked essential information about the individual cases on the docket. The pleading regimen used in asbestos litigation provides very little information to the court about individual claims. Moreover, the selection of cases for scheduling is largely controlled by plaintiffs' counsel. Therefore, the court could not assess for itself how many cases were viable and to what degree the cases were prepared for trial.

To address these issues, the circuit court proposed adopting a new approach to managing the asbestos docket based on case management techniques used for mass tort litigation in the U.S. District Court for the Eastern District of Pennsylvania. The essential features of this approach would include:

- selection of cases for examination and scheduling;
- enhanced information gathering for the cases selected to enable the court to identify cases that merit the investment of trial resources;

- dismissal of cases lacking demonstrable viability; and
- enhancement of alternative dispute resolution requirements.

The court proposed an implementation timeline that would conclude on June 30, 2017, with an evaluation and assessment of the progress made thus far.

Recent Developments

Interim Briefing on the Backlog of Civil Asbestos Cases

On October 17, 2017, the Senate Judicial Proceedings Committee held a briefing on the asbestos docket. Representatives from the Judiciary, the plaintiffs' bar, and the defense bar were invited to share their experiences with the circuit court's new case management approach, update the committee on the current status of the case backlog, and offer suggestions for how management of the docket could be further improved. The briefing highlighted a fundamental disagreement between plaintiffs' attorneys and defense attorneys regarding the size and nature of the backlog. Plaintiffs' attorneys report that approximately 22,000 cases are still pending on the "active" asbestos docket. An additional 7,000 cases are on the court's "inactive" docket, which is comprised of cases filed by plaintiffs who allege exposure to asbestos but who are not currently impaired. No activity occurs in these cases until they are transferred to the active docket, either because the plaintiff has developed measurable indications of impairment or because the plaintiff has passed away. **Exhibit 1** provides an overview of the backlog, as reported by plaintiffs' counsel.

Exhibit 1
Pending Asbestos Cases as of October 2017
(As Reported by Plaintiffs' Counsel)

	Asbestosis	Lung Cancer	Other Cancer	Mesothelioma	Total
Active Docket	15,852	4,369	1,674	220	22,115
Inactive Docket	6,899	83	35	6	7,023
Total	**22,751**	**4,452**	**1,709**	**226**	**29,138**

Source: Testimony submitted to the Senate Judicial Proceedings Committee by the Law Offices of Peter Angelos, PC

Attorneys for the defendants question how many of these cases are really viable. They point out that over 2,900 cases have been (or will soon be) closed since the inception of the circuit court's new docketing procedures. Some of these cases had already been resolved but had never been removed from the docket. Others lack sufficient documentation to proceed. The circuit court began holding status conferences for randomly selected cases earlier this summer. At the status conference, plaintiffs' counsel must provide certain information to the court, including:

- a statement of ongoing interest, certifying that counsel has spoken directly with the client and that the client intends to proceed with the case;
- all medical records relating to the plaintiff's claim; and
- the plaintiff's work/exposure history, including identification of each work site at which exposure to asbestos is alleged.

If a plaintiff fails to submit this information within a specified time period, the defendant may file a motion to dismiss the case. Plaintiffs' attorneys argue that this process is overly burdensome and unnecessary. However, the circuit court reports that nearly 140 cases have already been dismissed as a result of the status conferences.

Statute of Repose Litigation

Although not directly related to the backlog, a case pending before the Maryland Court of Appeals could have a major impact on the asbestos docket. In *Duffy v. CBS Corp.*, No. 41 September Term, 2017, Md. App., the Court of Special Appeals held that the statute of repose in § 5-108 of the Courts Article barred certain claims arising from a plaintiff's alleged exposure to asbestos during the construction and installation of a turbine generator in 1970. The Court of Appeals has granted a *writ of certiorari* to review this decision. Plaintiffs' attorneys estimate that as many as 25,000 pending asbestos cases could be barred if the lower courts' interpretation of § 5-108 is upheld.

Looking Ahead

During the 2018 session, the General Assembly will likely be asked to allocate additional resources to the asbestos docket. The Judiciary may request additional funding and administrative staff to support the circuit court's case management efforts. Legislation may also be introduced to increase the number of circuit court judgeships, with or without a certification of need by the Court of Appeals. Such an increase would not be without precedent. Chapter 148 of 1996 added four additional judges to the Circuit Court for Baltimore City over a two-year period, largely in an effort to address the asbestos case backlog.

Legislation may also be introduced to address the Court of Special Appeals' decision in *Duffy v. CBS Corp.* and to clarify the application of § 5-108 of the Courts Article to injuries arising from exposure to asbestos. It is likely that such legislation would be drafted to apply retroactively, in order to preserve pending asbestos claims.

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Courts and Civil Proceedings

Child Conceived Without Consent – Termination of Parental Rights

Recent federal legislation provides additional grant funding for states that enact laws to allow the mother of any child conceived through rape to seek court-ordered termination of the parental rights of the rapist based on clear and convincing evidence of rape. Efforts to enact similar legislation in Maryland, most recently in 2017, have been unsuccessful.

Background

The National Conference of State Legislatures (NCSL) reports that various studies over the last two decades estimate that between 17,000 and 32,000 rape-related pregnancies occur in the United States every year. Although studies vary widely on the specific outcome of pregnancies resulting from rape, some women elect to carry their pregnancies to term and either raise the children or place them for adoption. In some states, including Maryland, a man who fathered a child through rape may assert or attempt to assert parental rights over the child. Parental rights may include the rights to custody and visitation, as well as the right to consent before a child can be adopted.

Current Maryland Law

Maryland law does not contain specific provisions limiting or terminating the parental rights of an individual who fathered a child through rape. Under current law, parents are the joint natural guardians of their minor child, and courts are guided by the best interest of the child in making custody and visitation decisions. The General Assembly has limited the discretion of the courts to award custody or visitation in cases where there is a finding that a party has committed "abuse" (which includes rape or sexual offense) toward the other parent of the party's child, the party's spouse, or any child in the party's household. However, courts have not denied all visitation except under exceptional circumstances. For example, in *Arnold v Naughton*, 61 Md. App. 427 (1985), cert. denied, 303 Md. 295 (1985), the Court of Special Appeals held that a finding that a noncustodial parent sexually abused the child did not preclude all visitation rights to that parent. A court could order limited, supervised visitation without abusing its discretion.

When determining whether to terminate a parent's rights to a child in an adoption or guardianship proceeding, a juvenile court must give primary consideration to the health and safety of the child and consideration to all other relevant factors needed to determine whether terminating the parent's rights is in the child's best interests, including whether the parent has been convicted of a "crime of violence" (which includes rape) against a minor offspring of the parent, the child, or another parent of the child or has been convicted of conspiring or aiding the commission of these crimes. A termination of parental rights terminates the parent's duties, obligations, and rights to the child and eliminates the right of the parent to object to the adoption of the child.

Other States and Federal Law

According to NCSL, as of April 2017, approximately 45 states and the District of Columbia have enacted legislation specifically regarding the parental rights of perpetrators of rape resulting in the conception of a child. Approximately 30 of the states allow or require the complete termination of parental rights; the remaining states and the District of Columbia deny or restrict some aspect of parental rights, such as custody or visitation. Of the states in which parental rights may be terminated completely, at least 14 do not require a conviction prior to the termination of parental rights.

The federal Rape Survivor Child Custody Act, enacted in 2015 as part of the Justice for Victims of Trafficking Act, included congressional findings that (1) rape is one of the most under prosecuted serious crimes, with estimates of criminal conviction occurring in less than 5% of rapes; and (2) the clear and convincing evidence standard is the most common one for termination of parental rights. Accordingly, the law provides additional federal grant funding for states that have enacted laws to allow the mother of a child who was conceived through rape to seek court-ordered termination of the parental rights of the rapist. In order for a state to be eligible for additional federal funding, the court must be authorized to grant the termination of parental rights (the complete and final termination of the parent's right to custody of, guardianship of, visitation with, access to, and inheritance from a child) on clear and convincing evidence of rape. In federal fiscal year 2016, 12 states applied for and received additional funding.

Recent Legislative Activity

The General Assembly has considered legislation in past sessions that would terminate the parental rights of a father of a child conceived through sexual violence perpetrated against the child's mother. Proponents of such legislation argue that a victim of sexual assault who becomes pregnant and chooses to have the child should not be forced into an ongoing relationship with the perpetrator of the abuse, including facing the rapist in court during any future proceedings regarding the child. Additionally, proponents assert that the rapist should not be allowed to exert control over the victim's life by having the right to object to an adoption of the child. Proponents further argue that perpetrators may attempt to coerce victims into not reporting the crime or not cooperating with law enforcement by threatening to assert parental rights over the child. Primary areas of debate have revolved around whether parental rights should be terminated without first requiring a conviction for the underlying sexual offense and how to ensure that a respondent is afforded adequate protections, such as proper notice and legal assistance, prior to the termination of parental rights.

Most recently, Senate Bill 574 and House Bill 428 of 2017, as introduced, would have authorized a court to terminate parental rights if the court finds, by clear and convincing evidence, that (1) the respondent committed an act of nonconsensual sexual conduct that resulted in the conception of the child at issue and (2) terminating parental rights is in the best interest of the child. The bills also would have required a determination by the court that the respondent had been served in a specified manner. However, if the parties were married at the time of conception, the bills would have prohibited a court from terminating parental rights unless the respondent had been convicted or the parties were separated under specified conditions. Additionally, the bills would have established a statute of limitations for the filing of an action and included provisions regarding a party's entitlement to the assistance of counsel and the impact of the termination of parental rights case on pending or future proceedings.

As passed by the House, the legislation was amended to limit the circumstances under which a court could terminate parental rights if the parties were married at the time of conception and to alter rules regarding the assignment of counsel to unrepresented parties. The version passed by the Senate included several substantial changes, such as reducing the applicable statute of limitations, requiring an action to be brought by a parent of the child and not by the child's court-appointed guardian or court-appointed attorney, and striking a provision that would have prohibited the court from requiring the publication of the name or personally identifying information of the petitioner or the child. Although a conference committee was appointed, the legislation ultimately did not pass.

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Environment and Natural Resources

The Status of Chesapeake Bay Restoration

Maryland is working on its Phase III Watershed Implementation Plan in the midst of federal budget deliberations that raise questions about the U.S. Environmental Protection Agency – Chesapeake Bay Program's enforcement authority and overall viability. At the same time, a request for proposals has been issued for sediment removal behind the Conowingo Dam as implementation of the Phosphorus Management Tool on agricultural lands begins to ramp up. Finally, nutrient trading regulations have been submitted for publication and Aligning for Growth discussions continue about the role of development in maintaining the Total Maximum Daily Load beyond calendar 2025.

Chesapeake Bay Total Maximum Daily Load

In December 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under the federal Clean Water Act and in response to consent decrees in the District of Columbia and Virginia. This TMDL sets the maximum amount of nutrient and sediment pollution that the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by calendar 2025, with measures in place to achieve at least 60% of pollution reductions by calendar 2017.

Phase III Watershed Implementation Plan

As part of the Chesapeake Bay TMDL, bay jurisdictions (Delaware, District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia) must develop watershed implementation plans (WIP) that identify the measures being put in place to reduce pollution and restore the bay. WIPs are submitted to EPA for review and evaluation and (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) help to provide "reasonable assurance" that sources of pollution will be cleaned up, which is a basic requirement of all TMDLs. In calendar 2010, each bay jurisdiction submitted a Phase I WIP that details how the jurisdiction plans to achieve its pollution reduction goals under the TMDL. In calendar 2012, the bay jurisdictions submitted Phase II WIPs that establish more detailed strategies to achieve the TMDL on a geographically smaller scale. A Phase III WIP, which must be submitted to EPA in calendar 2018, will ensure that all practices are in place by calendar 2025 so that restoration goals can be met.

Chesapeake Bay Program Funding and Enforcement Authority

President Donald J. Trump's federal fiscal 2018 budget request deleted the $73 million in funding for the Chesapeake Bay Program, which would have resulted in a critical reduction of bay water quality monitoring funding for Maryland and the elimination of the program's coordination activities between the bay jurisdictions. Congress passed the federal fiscal 2018 budget continuing resolution on September 7, 2017, which maintained funding for the program at the federal fiscal 2017 level through December 8, 2017. On September 14, 2017, the House of Representatives passed an appropriations bill that reduced federal fiscal 2018 funding for the program by $13 million to $60 million, but it still needs to be considered by the Senate.

Currently, EPA reviews each bay jurisdiction's progress toward its two-year milestones. If a jurisdiction's plans are inadequate, or if its progress is insufficient, EPA may take action to ensure pollution reductions, including increasing oversight of State-issued pollution permits, requiring additional pollution reductions, prohibiting new or expanded pollution discharges, redirecting federal grants, and revising water quality standards to better protect local and downstream waters. However, in addition to the fiscal 2018 program funding reduction legislation, the House of Representatives adopted an amendment prohibiting EPA from using any funds to take enforcement actions against any bay jurisdictions in the event that a state does not meet the goals mandated by EPA's Chesapeake Bay TMDL.

Conowingo Dam

Relicensing

The Conowingo Dam – a peaking hydroelectric facility that uses reservoir storage to generate electricity during peak electricity demand periods – has been described as the biggest best management practice on the Susquehanna River because it collects sediment and phosphorus that would otherwise flow into the bay. However, the dam, owned by Exelon Corporation, has reached capacity in terms of sediment storage. In addition, the dam is in the midst of relicensing by the Federal Energy Regulatory Commission (FERC); its license expired on September 1, 2014, and it will receive automatic one-year renewals until it is relicensed. Additionally, relicensing is on hold until the Maryland Department of the Environment (MDE) determines whether it will grant a Clean Water Act – Section 401 water quality certification, which is required before FERC can act on an application for licensing. The water quality certification, in turn, is on hold until enhanced monitoring and modeling data has been incorporated into the approved Chesapeake Bay model as part of the midpoint assessment.

The modeling data has been incorporated into the Phase 6 watershed model, but the final Phase 6 watershed model has not been adopted. In the meantime, Exelon Corporation applied for the current water quality certification for the dam's relicensing on May 17, 2017. As a result, MDE has until mid-May 2018 to complete its review.

Sediment Removal

The Maryland Environmental Service (MES) released a request for proposals in September 2017 for a pilot dredging and innovative reuse and beneficial use project on approximately 25,000 cubic yards of sediment in the Maryland portion of the Susquehanna River upstream of the Conowingo Dam. The due date for bids was November 2017. This request follows a request for information released in August 2016 to identify cost-effective dredging solutions, including beneficial and/or innovative uses. MES received 13 responses to the request for information: all 13 responses included dredging proposals and 2 responses included beneficial reuse proposals for the dredged material – a lightweight aggregate for road material or an additive to be put on farmland and road fill.

Phosphorus Management Tool

The Phosphorus Management Tool (PMT) was developed by scientists at the University of Maryland and is used to identify agricultural lands where the soil is saturated with phosphorus and has a high risk of runoff. The PMT is a component of the State's WIP and is being used to reduce phosphorus loads. Regulations incorporated the PMT into the State's existing nutrient management planning process in 2015. The regulations also added recordkeeping and reporting requirements and established a PMT Transition Advisory Committee within the Maryland Department of Agriculture (MDA).

Collecting the PMT data has been a challenge for MDA; first, because of the reluctance of some nutrient management planners to release the data for their client farmers and second, because of the need to do field level evaluations to collect data to fill information gaps. In general, fields with a phosphorus Fertility Index Value (FIV) of less than 150 are not subject to additional phosphorus management restrictions while fields with FIVs greater than 150 are subject to increasing restrictions on the management of phosphorus. PMT data available as of August 2017 indicates that 86.5% of acres have reported their FIV data. The acres fall into the following phosphorus FIV categories: FIV less than 150 – 877,336 acres (79.4%); FIV of 150 to 499 – 210,023 acres (19.0%); and FIV greater than 500 – 17,771 acres (1.6%). Fields with a FIV greater than 500 are not allowed to apply phosphorus. The PMT also divides farms into tier groups for management purposes. The exact phosphorus management practices needed will depend on whether the particular fields fall into low, medium, or high PMT risk categories, but, in general, there will be a significant number of acres transitioning to the revised management regimen in the next few years.

Nutrient Trading and Aligning for Growth

The Maryland Water Quality Trading Advisory Committee has been meeting regularly since January 2016 on the State's nutrient trading policy, which informs what is now called Aligning for Growth. The January 2016 *Draft Maryland Trading and Offset Policy and Guidance Manual – Chesapeake Bay Watershed* has been updated with a draft April 17, 2017 document, which reflects a greater focus on trading to meet stormwater permits.

Nutrient trading has shifted from a way to *maintain* the TMDL cap to a way to *meet* the TMDL cap. In particular, it has become a way to meet inexpensively, and perhaps temporarily, the load reductions necessary from the stormwater sector. For instance, Anne Arundel, Baltimore, Charles, Frederick, and Harford counties proposed, in their July 2016 stormwater financial assurance plans, to trade with wastewater treatment plants for up to half of the needed reductions in their five-year stormwater permits, as required by Chapter 124 of 2015.

MDE anticipates publishing proposed nutrient trading regulations in the December 8, 2017 issue of the Maryland Register. As of November 15, 2017, the regulations provide for a voluntary cross-sector market-based approach to reducing the cost of meeting the TMDL that complements the regulatory structure currently in place. Trading of credits, or units of pollution reduction, is proposed within three trading geographies: the Potomac River Basin; Patuxent River Basin; and Eastern Shore and Western Shore River basins, including the Maryland portion of the Susquehanna Basin. Various measures are in place to mitigate concerns that credits do not materialize or water quality may be degraded, including a credit reserve, uncertainty ratios, and an anti-degradation policy specifying that trading may neither cause nor contribute to local water quality impairments or prevent the attainment of local water quality standards. The success of nutrient trading will be determined by the transparency and accountability of the trades.

In terms of meeting the TMDL cap, the Administration is still working on an Aligning for Growth policy. One of the major challenges has been addressing stormwater and septic loads from new development. This arises from the fact that agricultural land converted to urban land and land using septic systems results in less nutrient and sediment loading despite the fact that the State does not want to incentivize development on agricultural land. As of September 2017, two Aligning for Growth policy options addressing new development have been presented: (1) a septic/forest conversion option in which loads from new septic systems are offset by some amount and stormwater loads from converting forestland is offset; and (2) a per capita loading option that creates both a county and State individual loading benchmark – generally lower in urban areas with infrastructure in place – to which all new development would be compared with a requirement to offset any loading greater than the benchmark. Any final Aligning for Growth option will require stakeholder buy-in to be effective.

Policy Implications

Maryland is nearing the deadline for the Phase III WIP, due in calendar 2018. The Phase III WIP will guide the actions that need to be taken to reduce nutrient and sediment reductions sufficiently to meet the 2025 TMDL. Maryland and the other bay jurisdictions will need EPA – Chesapeake Bay Program coordination and enforcement in order to reach the 2025 TMDL, but the program's funding and enforcement authority are far from assured. In addition, Maryland may be called upon to reduce a greater level of sediment and phosphorus, depending on the deliberations surrounding the allocation of the loading from the Conowingo Dam. On the Eastern Shore, PMT implementation will result in a significant number of acres of agricultural lands transitioning to new management regimes. In addition, nutrient trading could provide cost reductions for nutrient load reductions, but only if the program is run in a transparent fashion with accountability. Finally, whether Maryland is able to maintain the TMDL cap may be determined by the effectiveness of a final Aligning for Growth policy.

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Environment and Natural Resources

Climate Change Programs in Maryland

Maryland has already taken several steps to address the causes and consequences of climate change in the State. However, a recent shift in federal climate change policy may influence State and regional efforts going forward.

Climate Change

According to the Intergovernmental Panel on Climate Change, the world's temperatures are climbing, and human activities are very likely contributing to this increase. Continued global warming is expected to affect sea levels and weather patterns, resulting in impacts on human health, the environment, and the economy. Maryland is one of the most vulnerable states to see sea level rise due to its 3,100 miles of tidal shore line and low-lying rural and urban lands, which are further impacted by land subsidence. The State is already experiencing significant loss of land from sea level rise, which has risen about eight inches in the last 100 years.

Although there is no guiding federal legislation to address the causes and consequences of climate change, many state and regional efforts are underway. Maryland has taken a number of climate change-related actions, including, among other things, developing a Sea-level Rise Response Strategy for Maryland (2000); requiring the State to establish a Renewable Energy Portfolio Standard (Chapters 487 and 488 of 2004); passing the Healthy Air Act (Chapters 23 and 301 of 2006), Clean Cars Act (Chapters 111 and 112 of 2007), EmPower Maryland Energy Efficiency Act (Chapter 131 of 2008), and Greenhouse Gas Reduction Act (GGRA) (Chapters 171 and 172 of 2009); participating in the Regional Greenhouse Gas Initiative (RGGI) (2007-present); establishing the Maryland Commission on Climate Change (MCCC) (by executive order in 2007 and codified by Chapter 429 of 2015); creating the Coast Smart Council (Chapter 415 of 2014); and reauthorizing the GGRA (Chapter 11 of 2016).

Recent State Activity

Maryland Commission on Climate Change

MCCC is responsible for advising the Governor and General Assembly on ways to mitigate the causes of, prepare for, and adapt to the consequences of climate change. MCCC's responsibilities also include public outreach, education, and maintaining an inventory of the State's greenhouse gas (GHG) emission sources and sinks. MCCC, its steering committee, and its four working groups continue to meet regularly, report annually, and play a major role in the development of the State's climate action plans. MCCC's annual report, which will be released by the end of the year, is expected to include recommendations relating to the GGRA and programmatic actions by the Maryland Department of the Environment (MDE) and other State agencies, transportation sector emission reductions, healthy soils and carbon sequestration, environmental justice, federal actions, and outreach.

Greenhouse Gas Emissions

In 2009, the GGRA was enacted to require the State to develop plans, adopt regulations, and implement programs to reduce GHG emissions by 25% from 2006 levels by 2020. The 25% by 2020 emissions reduction requirement was set to terminate December 31, 2016, unless reauthorized by legislation. The *2015 Greenhouse Gas Emissions Reduction Act Plan Update*, a progress report required under the GGRA, indicated that Maryland was on target to exceed the required 25% emissions reduction by 3.71 million metric tons of carbon dioxide-equivalent, but also concluded that more reductions are needed to minimize the impacts of climate change. In addition, MCCC's 2015 report recommended adopting a goal and developing a plan to reduce GHG emissions by 40% from 2006 levels by 2030, with continued inclusion of safeguards, exemptions, studies of those exemptions, reassessment provisions, and other relevant language contained in the GGRA.

In response to the previously mentioned reports, the General Assembly passed legislation (Chapter 11 of 2016) to repeal the termination date on existing GHG emissions reduction requirements and required the State to develop plans, adopt regulations, and implement programs to reduce GHG emissions by 40% from 2006 levels by 2030. This 2030 reduction requirement terminates December 31, 2023. A draft 40% by 2030 plan is expected to be released by MDE in 2018. In addition, by October 1, 2022, MDE must report on the progress toward achieving the 2030 reduction requirements and the reductions needed by 2050 to avoid the most dangerous impacts of climate change, based on contemporary science.

Adaptation and Response Strategies

Although efforts to substantially reduce GHG emissions are essential to reducing the most dangerous impacts of climate change, some changes in climate are unavoidable. Therefore, adaptation and response strategies are also necessary to address the impacts of climate change. In Maryland, several adaptation and response strategies are underway, including:

- the Coast Smart Council, which develops specified "Coast Smart" siting and design criteria for capital projects to address sea level rise and coastal flood impacts;
- MCCC's Adaptation and Response Working Group, which is implementing a comprehensive strategy for reducing the State's climate change vulnerability that includes providing State and local governments with tools to plan for and adapt to more extreme weather and sea level rise; and
- technical and financial assistance programs offered by several State agencies to help communities assess their vulnerability to coastal flood hazards, identify natural and nature-based features that improve coastal resiliency, and incorporate "Coast Smart" practices into local project planning and infrastructure improvements.

Regional Greenhouse Gas Initiative

In 2007, Maryland joined RGGI, a cap-and-trade program established in conjunction with eight other northeastern and mid-atlantic states. Each state limits carbon dioxide emissions from electric power plants, issues carbon dioxide allowances, and establishes participation in carbon dioxide allowance auctions. A single carbon dioxide allowance represents a limited authorization to emit one ton of carbon dioxide. Total allowances in the Maryland program are 19.1 million in 2017, which decreases over time to 17.7 million by 2020. In August 2017, the participating states agreed to further reduce the program's carbon pollution cap by another 30% from 2020 to 2030.

Recent Federal Activity

In the absence of federal legislation on climate change in recent years, federal climate change policy has been largely implemented by executive order. In 2017, however, President Donald J. Trump's Administration acted to rescind several previous executive orders and policies that were intended to reduce GHG emissions, promote energy conservation and efficiency, promote federal coordination of preparedness and resilience planning, and promote regional actions to address climate change. The administration also announced the intent to withdraw the United States from the Paris Climate Agreement, proposed the repeal of the Clean Power Plan, and proposed cuts in the federal funding of research, weather forecasting, and education related to climate change. This recent shift in federal leadership and support may make existing state-based efforts to address climate change more difficult and less effective. Among other things, without stronger national standards, GHG emissions transported into Maryland from upwind states will likely continue to hinder State efforts to maintain healthy air quality.

Policy Implications

Although Maryland is actively engaged in addressing the causes and consequences of climate change, the anticipated recommendations of the MCCC may lead to legislative proposals to further strengthen State efforts. In addition, the recent shift in federal policy may influence State climate change policy and partnerships with other states. Recently, some states, through the U.S. Climate Alliance, have committed to supporting the Paris Climate Agreement and pursuing aggressive climate action to meet their share of the U.S. target under that agreement and the Clean Power Plan targets. Legislative proposals for similar commitments may emerge in Maryland.

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Environment and Natural Resources

Forest Conservation Act

Enacted in 1991, the Forest Conservation Act (FCA) has resulted in the retention and planting of more than 90,000 acres of forestland in the State. However, as Maryland continues to lose forestland to development associated with population growth, concerns remain that the FCA may not be doing enough to further the State's no net loss of forest policy.

The Role of the Forest in Protecting the Environment

Due to their ability to capture, filter, and retain water, as well as absorb pollution from the air, forests play an important role in protecting the environment. Other benefits of forests include flood control, wood products, renewable energy, climate moderation, higher property values, aesthetics, and recreational opportunities. Before the enactment of the Forest Conservation Act (FCA) in 1991, the State was experiencing significant and increasing losses in forest acreage. During the 1970s, approximately 5,000 acres of forestland were lost per year. From 1980 to 1985, this rate of loss increased to approximately 10,000 acres per year, and from 1985 to 1990, the rate of loss increased to approximately 14,000 acres per year. Although the annual rate of loss has decreased since then, Maryland continues to lose forestland to development associated with population growth.

The Forest Conservation Act

To mitigate forest loss, the General Assembly passed the FCA to provide minimum forest conservation requirements for land development. The FCA applies to any public or private subdivision plan or application for a grading permit or sediment control permit by any person, including a unit of State or local government, on areas 40,000 square feet (approximately 0.9 acres) or greater. Exemptions from the FCA include commercial forestry, clearing to facilitate navigable air space, and clearing to which other forestry requirements apply (including highway construction and clearing for public utilities or in the critical areas).

Under the FCA, a proposed construction site is evaluated for existing vegetation and a forest conservation plan is developed establishing, based on FCA formulas, how forest area is required to be retained, afforested (planting in nonforested areas), or reforested (replacement of cleared forest). If afforestation or reforestation requirements cannot be reasonably accomplished, payment known as a fee-in-lieu payment may be made into a forest conservation fund to be used by the State or the local government for afforestation and reforestation off site, or into a forest mitigation bank which are areas of land that have been afforested or reforested for the purpose of selling credits to others for compliance with FCA afforestation and reforestation requirements.

No Net Loss of Forest Policy

A 10-year review of the FCA (1992 through 2002) completed by the Department of Natural Resources (DNR) in 2004, found that the FCA had resulted in the retention of 79,174 acres of forestland, planting of 13,611 acres of forestland, and clearing of 42,906 acres of forestland. Thus, during the review period, more forest acreage was *cleared* than planted under the FCA.

The Task Force to Study a No Net Loss of Forest Policy was established by the General Assembly in 2008 to develop a specific plan to achieve and maintain a no net loss of forests. The task force issued a final report in January 2009 that included various recommendations for modifications to the FCA relating to limiting exemptions and improving the effectiveness of mitigation of forest loss. To this end, Chapter 298 of 2009 required DNR to cooperate with forest stakeholders to (1) determine the meaning of no net loss of forest for the purpose of State policy and (2) develop proposals for the creation of a policy of no net loss of forest. In 2013, the General Assembly established the policy of the State to achieve no net loss of forest by maintaining at least 40% of all land in Maryland under tree canopy (Chapter 384 of 2013).

Legislative Initiatives in 2017

Senate Bill 365/House Bill 599 of 2017, as introduced, would have strengthened the FCA as an implementation tool for the no net loss of forest policy by (1) increasing the rate of reforestation required when forest is cleared; (2) limiting the exemption for cutting or clearing of public utility rights-of-way for specified electric generating stations; and (3) allowing for increased rates to be established for payments made to the State Forest Conservation Fund or a local forest conservation fund. Senate Bill 365 was subsequently amended by the Senate to establish the Task Force on the Forest Conservation Act Offset Policy to review specified issues relating to the impact of development on forested land and the extent to which forest loss is offset through reforestation policies under the FCA. However, the amended version of Senate Bill 365 and House Bill 599 did not pass in the House.

Policy Considerations

Although the 2017 legislation did not pass, the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee committed to continuing their review and oversight of the FCA with respect to making it a tool to maintain a no net loss of forest. In the 2018 session and beyond, these committees may consider (1) altering the statutory no net loss of forest policy to better reflect the intent of the General Assembly and various stakeholders; (2) addressing the required rates of afforestation and reforestation under the FCA; (3) modifying FCA exemptions; (4) updating and streamlining the process for collecting and using fee-in-lieu funds; and (5) clarifying reporting requirements.

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State Government

Cybersecurity of Election Systems

Amid efforts by Russian hackers seeking to compromise election systems in Maryland and other states during the 2016 presidential election, agencies of the State and U.S. government, academics, and a variety of other organizations are redoubling efforts to guard against cyberattacks on election infrastructure that could disrupt the voting process and undermine public confidence in the integrity of elections. During the interim, committees of the General Assembly held a hearing to review a recent audit that found deficiencies in the cybersecurity policies of the State Board of Elections and heard testimony from experts on additional measures that could strengthen the cybersecurity of the State's election system.

Introduction

Maryland's election systems were among those targeted in a major Russian hacking campaign intended to interfere with the 2016 U.S. presidential election. Although this campaign did not compromise the vote counting process, and the attacks on election systems in most states, including Maryland, were unsuccessful, federal and state authorities intensified their efforts to ensure the cybersecurity of election infrastructure. Committees of the General Assembly held a hearing on a recent report by the Office of Legislative Audits that found deficiencies in the cybersecurity practices of the State Board of Elections (SBE). The committees also heard testimony on measures that could strengthen safeguards against cyberattacks, such as requiring independent audits of electronically tabulated election results using the paper ballots provided by the State's new optical scan voting system.

The Nature of the Threat

U.S. intelligence agencies found that agents of the Russian government launched a far-reaching campaign to influence the 2016 U.S. presidential election. The Central Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency declared in a report released in January 2017 that Russian President Vladimir Putin personally ordered this campaign, which included cyberattacks on state and local election systems, releasing damaging information obtained by hacking U.S. candidates and political parties, and a misinformation campaign aimed at manipulating public opinion. President Putin's goals included undermining faith in the U.S. democratic process and influencing the outcome of the presidential race, the report stated. The scope and intensity of this campaign alarmed the Obama Administration, which feared Russia could seriously compromise or disrupt the voting process by hacking election systems. President Barack Obama personally confronted President Putin about the election interference and threatened retaliation, but President Putin denied involvement. In December 2016, the Obama Administration sanctioned Russia for its actions by closing two Russian facilities in the United States, expelling 35 Russian diplomats, and sanctioning nine Russian entities and individuals.

U.S. intelligence agencies stated in the January 2017 report that "Russian intelligence obtained and maintained access to elements of multiple U.S. state or local electoral boards," but the vote tallying process was not targeted or compromised. In addition, since 2014, "Russian intelligence has researched U.S. electoral processes and related technology and equipment." The U.S. Department of Homeland Security (DHS) later reported that voter registration databases or election agency public websites in 21 states were probed by Russian hackers in 2016. Most of these attacks were apparently unsuccessful, but hackers did breach the voter registration database in Illinois and accessed data on as many as 90,000 voters there. The attackers may also have attempted to delete or manipulate voter data in Illinois. Russian hackers also stole the username and password of a local election official in Arizona but did not actually breach the voter registration database there. Hackers could create chaos at the polls by manipulating or deleting voter registration records. By targeting voters in a particular geographic area, party, or demographic, they could affect the outcome of an election. Russian intelligence also launched a "spear-phishing" campaign in which fake emails purportedly from an election vendor were sent to over 100 local election officials in an attempt to trick them into opening an attachment infected with powerful malware that would give the hackers full control over the officials' computers. Some voting system vendors were also the target of hacks. The full extent of Russian activities in the 2016 election may not be publicly known due to the information being classified or the activities remaining undetected. Intelligence officials expect Russia to use what it learned in 2016 to launch cyberattacks against future U.S. elections, including efforts to manipulate vote counts, as it has attempted to do in other nations.

National Efforts to Protect Election Systems

In the months leading up to the election, federal authorities alerted state election officials to the threat of hacking, and DHS offered a variety of voluntary services to states to help secure their systems. Most states took advantage of this assistance, which included services such as risk and vulnerability assessments and cyber hygiene scans of Internet-facing systems, including online voter registration systems. In January 2017, DHS took the extraordinary additional step of declaring state election systems to be "critical infrastructure," which signifies that securing election systems is a high federal priority, as important as securing other crucial systems such as the energy grid or financial sector. The designation also allows for improved communication between state and federal authorities and expedites federal assistance to states that want help to secure their systems. Federal officials will not exercise any authority over state election systems as a result of the critical infrastructure designation. In making the designation, DHS overruled the objections of some state election officials who feared it could lead to greater federal power over election technology, an area that has traditionally been under state control.

Other agencies and organizations are taking important steps to protect the nation's election infrastructure. The U.S. Election Assistance Commission (EAC) is a federal agency that sets voluntary standards for voting machines and acts as a clearinghouse for information about election administration. EAC stepped up its efforts to inform election administrators about best practices for cybersecurity and facilitated communication between cybersecurity experts and election administrators. EAC also is poised to adopt updated voluntary voting system guidelines in 2018 that will enhance security and ensure for the first time that all federally certified voting systems produce paper records that can be independently audited to ensure the accuracy of the vote tally.

At the annual DEFCON hacker's conference in July 2017, a group of researchers demonstrated that 25 pieces of election equipment, many of them widely used, could be hacked with relatively little difficulty. The researchers subsequently formed a coalition to improve election cybersecurity with national security leaders, academic institutions, and government associations, including the National Conference of State Legislatures. The Belfer Center at Harvard's Kennedy School launched a bipartisan "Defending Digital Democracy" initiative in July 2017 to bring together election officials, national security experts, and cyber experts at companies such as Facebook and Google to devise ways to better protect elections from cyberattacks. Additionally, the National Election Defense Coalition, a nonpartisan group of cybersecurity experts and civil rights and national security organizations supported by many computer scientists at the nation's leading universities, has as its primary mission, advocacy in Congress and the states for voting on paper ballots and using those ballots to audit election results as a safeguard against hacking.

Developments in Maryland

Russian hackers tried to penetrate Maryland's online voter registration system in August 2016. The probe was detected and the system was not breached. SBE knew from a cybersecurity information sharing service that the foreign Internet address used in the attack was suspicious and blocked it within a few days. If the hackers had penetrated the system, they could have stolen voters' personal information, but would not have been able to access the voter registration database, which is offline. SBE reported the incident to federal officials and requested cybersecurity assistance from DHS. A month after the attack, DHS began scanning SBE's Internet-connected systems remotely every week to detect any vulnerabilities. In November 2017, DHS will perform a risk and vulnerability assessment of SBE's systems. SBE is also in discussions with DHS about additional cyber and physical services, including a physical security review of selected warehouses used by local boards of elections and assessments of selected vendors' security practices. DHS has briefed SBE on the 2016 Russian attack on its website, but no one at SBE has received a classified briefing on the incident because the process of obtaining security clearances for SBE staff is not complete.

SBE takes various steps to help secure its systems from cyberattacks. To access the online voter registration system, an individual must enter several pieces of information to authenticate their identity. An election official reviews each change before it is entered in the voter registration database, which is hosted separately in two secure locations and is not connected to the Internet. Only election officials who have undergone background checks may access the voter registration database through a secure network. There are two levels of user authentication to access the database. Voter registration data is encrypted. All transactions are logged and the system is monitored and subject to regular audits. Maryland's voting system for casting and tabulating votes is federally certified and tested against federal performance and security standards. The certified voting system is never connected to the Internet. Other crucial systems, such as the election management system and the election results reporting system, are also not connected to the Internet. SBE has a written cyber incident response plan and tests that plan.

The Office of Legislative Audits issued an audit report in April 2017 that found serious deficiencies in SBE's cybersecurity practices. The findings included the following:

- SBE allowed too many local board employees to have access to the voter registration database who did not need that access to do their jobs;
- SBE did not ensure that personal information of registered voters that it shared with the Electronic Registration Information Center was properly safeguarded;
- SBE unnecessarily retained the full Social Security number of 14% of registered voters;
- SBE did not adequately authenticate certain voters who requested absentee ballots; and
- SBE did not adequately back up a system that supplies information to the electronic poll books or address how the system would function in the event of a disaster.

The Education, Health, and Environmental Affairs Committee and the Ways and Means Committee held a joint hearing on September 6, 2017, to review the audit findings and discuss other policy issues relating to election cybersecurity. At the hearing, SBE reported that all of the legislative auditor's recommendations had been implemented or were in the process of being implemented, except the recommendation concerning the authentication of absentee voters, which SBE said requires legislative action. The committees also heard testimony from the chair of the EAC concerning that agency's efforts to improve election cybersecurity. Two computer science professors and the Brennan Center for Justice testified in favor of conducting post-election audits of election results by examining the paper ballots cast by voters using the State's optical scan voting system. They testified that this type of audit is crucial to provide assurance that the election results are not corrupted by hacking of the voting machines that tabulate the votes. These experts stated that SBE's current audit procedure, which reviews only digital images of the voted ballots rather than the ballots themselves, is not sufficient because the ballot images could differ from the actual ballots due to tampering by hackers or unintended errors.

State Government

Voter Registration Reform

The General Assembly has taken action in recent years to make it easier to register to vote by allowing voters to register and vote on the same day at an early voting center and expanding electronic voter registration opportunities at State agencies. Legislation was considered, but not passed, in the 2017 session to expand same-day voter registration to Election Day and implement an "opt-out" automatic voter registration program.

Introduction

The General Assembly has taken action in recent years to make it easier to register to vote. In 2013, the General Assembly authorized eligible individuals to register and vote on the same day at early voting centers, beginning with the 2016 elections, and passed legislation in 2016 that expanded opportunities to register to vote at State agencies. However, it is estimated that more than 500,000 Maryland residents remain eligible but unregistered to vote. To further address the issue, legislation to offer same-day registration on Election Day and to register individuals when they do business with certain State agencies unless they opt out (commonly referred to as "automatic voter registration") was considered in the 2017 session.

Same-day Registration

Maryland

Maryland currently allows any eligible resident to appear at any early voting center in the county of residence and apply to register to vote by showing proof of residency, which includes a Maryland driver's license or identification card, a utility bill, bank statement, government check, paycheck, or other government document that has the individual's name and current address. Also, any individual who is already registered and has moved may update the voter's address and cast a regular ballot at an early voting center.

To expedite the same-day registration process, the State Board of Elections (SBE) generates a list of individuals who are "pre-qualified" to register to vote because they hold a State driver's license or identification card and are not found to be ineligible to vote based on the information available to SBE. An individual who is pre-qualified and shows proof of residency is allowed to cast a regular ballot that is counted in the early voting center. Other individuals who apply to register are required to cast a provisional ballot that is set aside to be counted after SBE confirms that the individual is not ineligible based on the information available to it. All individuals who register at an early voting center are also required to sign an oath under penalty of perjury attesting that they meet all the qualifications for voter registration. A substantial majority of the same-day registrants in the 2016 elections were required to cast provisional ballots.

Separate lines for individuals applying to register at an early voting center, served by separate election judges, are used to prevent the registration process from slowing the check-in process for registered voters. Additionally, electronic poll books communicate with other early voting centers in real time, thus preventing an individual from voting more than once. Costs incurred to implement same-day registration include additional election judges, additional electronic poll books, and some one-time costs for new technology.

A State constitutional amendment is required to implement same-day registration on Election Day in Maryland because the current constitutional language presumes that registration is closed for a period of time before Election Day. The two houses of the General Assembly passed different versions of a constitutional amendment authorizing same-day registration during the 2017 session, but the legislation ultimately failed.

Other Jurisdictions

There are currently 15 states and the District of Columbia that allow same-day registration. Of these jurisdictions, only Maryland and North Carolina limit same-day registration to the early voting period. A majority of the jurisdictions allow individuals to register at all precinct polling places on Election Day, while the rest provide same-day registration only at one or more voting centers or at another central location within a local jurisdiction. All jurisdictions require prospective voters to show some form of identification and many also require at least some same-day registrants to cast provisional ballots that are only counted once the voter's eligibility is verified. Several jurisdictions report little or no added cost for implementing same-day registration, while others report additional costs for poll workers to process new registrations or for new technology, such as electronic poll books. Several jurisdictions report that costs for processing registrations are simply shifted and incurred later in the process, rather than before the registration deadline.

Automatic Voter Registration

Background

Under the federal National Voter Registration Act of 1993, state motor vehicle agencies and certain other state agencies that provide public assistance or serve individuals with disabilities are required to provide voter registration services to individuals completing a transaction with the agency. The required services include providing a voter registration application and assistance with completing the application, transmitting the completed voter registration applications to election officials, and allowing individuals who have moved to update their voter registration address.

"Automatic voter registration" generally proposes to make two major changes to the process of voter registration at state agencies. First, an applicant's voter registration is captured and transmitted to election officials electronically instead of on paper. Second, an individual is automatically registered to vote unless the individual affirmatively opts out. As a result, voter registration becomes an integrated part of doing business with a state agency.

Maryland

Maryland has taken significant actions to implement electronic registration at State agencies, but it has not yet adopted automatic voter registration. The Motor Vehicle Administration implemented an electronic voter registration system in 2012, which resulted in a significant increase in the number of registrations. The General Assembly further expanded electronic voter registration under the Freedom to Vote Act of 2016. The Act, introduced as an automatic registration bill, was amended to provide voter registration opportunities to individuals who may not have a driver's license or identification card by requiring the Maryland Health Benefit Exchange, the local departments of social services in the Department of Human Services, and the Mobility Certification Office in the Maryland Transit Administration to implement electronic registration. The health exchange and the paratransit office are now operating electronic registration systems, while the local departments of social services are working to implement electronic registration by the statutory deadline of December 1, 2019. In an October 2017 report, SBE and the Department of Information Technology recommended expanding electronic registration to additional agencies, such as the local health departments, which would require funding and planning. However such efforts are not currently underway.

Legislation proposing automatic voter registration was introduced during the 2017 session, but ultimately failed. Rather than merely offering voter registration services to an individual during an agency transaction, the legislation would have required automatic registration of the individual to vote, unless the individual affirmatively declined.

Other Jurisdictions

Ten states and the District of Columbia have adopted automatic voter registration. Of these jurisdictions, all but two allow individuals to opt out of voter registration while they are transacting business at a state agency. Oregon and Alaska notify individuals of the ability to opt out through a mailing sent after a transaction with an agency is complete. Additionally, all but two jurisdictions have limited automatic registration to the motor vehicle agency. Little data is available on how many automatically registered voters actually turn out to vote because automatic registration has been implemented only very recently. Oregon, which was the first state to adopt automatic registration in 2015, reported that 43% of automatically registered voters cast ballots in the 2016 presidential general election.

State Government

Redistricting Legal Challenges

Maryland's redistricting of the Sixth Congressional District in 2011 has been challenged in federal court as unconstitutional partisan gerrymandering. The case has been stayed pending the outcome of a similar case being heard by the U.S. Supreme Court. The outcome of the U.S. Supreme Court case will affect how Maryland may draw district lines in the future.

Introduction

Every 10 years following the decennial census, Maryland is required to redraw the boundaries of the legislative and congressional districts to account for changes in the State's population. This process is known as redistricting. Political or partisan gerrymandering occurs when district lines are drawn in a manner that discriminates against a political party. While courts recognize that redistricting is an inherently political process, the legal question becomes how much political involvement is too much, thereby denying a citizen the equal protection of the laws in violation of the Fourteenth Amendment to the U.S. Constitution or, most recently asserted, First Amendment rights.

In 1986, the U.S. Supreme Court determined in *Davis v. Bandemer*, 478 U.S. 109 (1986), that partisan gerrymandering is unconstitutional and is a claim that may be heard in the courts. Eighteen years later, in *Vieth v. Jubelirer*, 541 U.S. 267 (2004), a plurality of the Supreme Court concluded that claims of partisan gerrymandering could not be heard in the courts because there were no "judicially discernible and manageable standards for adjudicating" the claims. As a result of these cases, there remains great uncertainty in the legal landscape, including conflicting interpretations of these legal precedents in the lower courts across the country.

Maryland Redistricting Challenge

On October 20, 2011, the General Assembly passed, and the Governor signed into law, a new congressional districting plan. The plan included a substantial redrawing of the boundaries of the Sixth Congressional District. The redrawn district excluded previously included majority Republican voting counties and parts of counties, and included majority Democratic voting areas in Frederick and Montgomery counties. Prior to the election of a Democrat in 2012, the district had consistently voted for a Republican representative for at least 20 years.

On November 5, 2013, seven Republican residents of the Sixth Congressional District filed suit in the U.S. District Court for the District of Maryland (*O. John Benisek, et al v. Linda H. Lamone, et al)* claiming a violation of their First Amendment rights by alleging that the 2011 redistricting of the district was undertaken purposefully to dilute the weight of the Republicans' votes based on their voting histories and party affiliation and that it achieved that purpose. In April 2014, the District Court dismissed the suit for failure to state a claim and refused to convene a required three-judge panel of the District Court. The U.S. Court of Appeals for the Fourth Circuit affirmed. On December 8, 2015, the U.S. Supreme Court unanimously reversed and remanded the case back to the District Court to convene the three-judge panel. On August 24, 2016, the three-judge panel denied the defendant's motion to dismiss and ordered the parties to enter pretrial discovery. On August 24, 2017, the District Court stayed further proceedings in the case pending the hearing of *Gill v. Whitford* by the Supreme Court.

Legal Redistricting Challenge in the U.S. Supreme Court

On October 3, 2017, the U.S. Supreme Court heard oral arguments in *Gill v. Whitford*. In this case, a three-judge panel of the District Court in Wisconsin struck down the 2011 Wisconsin state assembly electoral map as unconstitutional partisan gerrymander that violated both the Equal Protection Clause and the plaintiffs' First Amendment rights to freedom of association under the U.S. Constitution, even though the map complied with traditional redistricting principles. The three-judge panel concluded that the map displayed both bad intent and bad effect, citing evidence that the map makers used special partisan measurements to ensure that the map maximized Republican advantages. The ruling was the first instance in over three decades of a federal court invalidating a redistricting plan for partisan gerrymandering.

Those defending the state assembly maps argued to the Supreme Court that the social science metrics used to measure the intent and effects part of the lower court's test were not a uniformly accepted neutral standard and use of this method would have the effect of shifting responsibility for redistricting from elected public officials to federal courts determining the outcome of the inevitable litigation. The party seeking to affirm the lower court's ruling argued that the method chosen by the lower court to measure the fairness of the maps met the "judicially discernible and manageable" standard desired by the Supreme Court in *Vieth.*

While there are several important issues under consideration by the Supreme Court in this case, the threshold question is whether partisan gerrymandering claims may be heard by the courts going forward. To determine this, the courts agree that plaintiffs must show discriminatory intent by those responsible for redistricting and a discriminatory effect. The extent of that discriminatory effect, *i.e.*, how much partisanship is too much and whether this can be accurately measured and objectively applied, remains the subject of debate and the reason that this case is being closely followed.

Conclusion

Even though it is not clear how the Supreme Court will rule, what is certain is that its holding in *Gill* will directly affect the decision of the District Court in the Maryland *Benisek* case. If the Supreme Court determines that the test and standard used by the lower court in *Gill* violated the holding in *Vieth* that political gerrymandering claims cannot be heard by the courts, it is likely that the plaintiffs' claims in *Benisek* will fail. If, however, the Supreme Court does find that partisan gerrymandering claims can be heard and that there is a standard by which such claims can be adjudicated, those standards will likely be applied to the redistricting of Maryland's Sixth Congressional District.

Local Government

State Aid to Local Governments

State aid to local governments is projected to total $7.7 billion in fiscal 2019, representing a $180.9 million, or 2.4%, increase over the prior year.

Local governments are projected to receive $7.7 billion in State aid in fiscal 2019, representing a $180.9 million, or 2.4%, increase over the prior fiscal year. Most of the State aid in fiscal 2019, as in prior fiscal years, is targeted to public schools, while funding for counties and municipalities will account for 9.0% of total State aid. Public schools will receive $6.5 billion in fiscal 2019, 85.0% of total State aid. Counties and municipalities will receive $694.4 million, community colleges will receive $326.4 million, libraries will receive $81.2 million, and local health departments will receive $55.4 million. In terms of year-over-year funding enhancements, State aid for public schools will increase by $160.9 million (2.5%), library aid will increase by $2.4 million (3.1%), community college aid will increase by $8.7 million (2.7%), and local health department grants will increase by $4.4 million (8.5%). Also, county and municipal governments will realize an estimated $4.6 million increase in State aid, or 0.7% over fiscal 2018. **Exhibit 1** shows the change in State aid by governmental entity for fiscal 2019. **Exhibit 2** shows the change in State aid by major programs.

Exhibit 1
State Aid to Local Governments
($ in Millions)

Governmental Entity	FY 2018	FY 2019	$ Change	% Change
Public Schools	$6,385.3	$6,546.2	$160.9	2.5%
County/Municipal	689.8	694.4	4.6	0.7%
Community Colleges	317.7	326.4	8.7	2.7%
Libraries	78.7	81.2	2.4	3.1%
Local Health Departments	51.1	55.4	4.4	8.5%
Total	**$7,522.7**	**$7,703.6**	**$180.9**	**2.4%**

Source: Department of Legislative Services

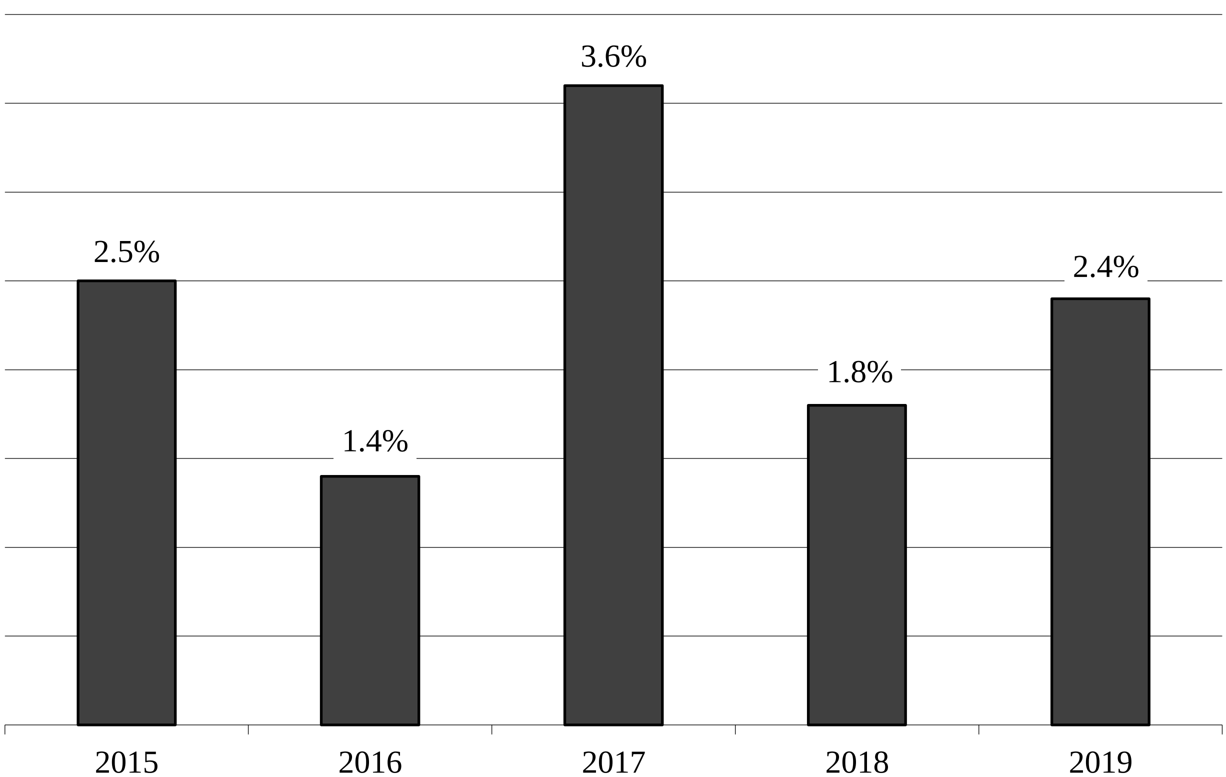
Exhibit 2
State Aid by Major Programs
Fiscal 2017-2019
State Funds
($ in Millions)

	FY 2017	FY 2018	FY 2019 Baseline	FY 2018-2019 $ Change	FY 2018-2019 % Change
Public Schools					
Foundation Program	$2,962.0	$3,005.3	$3,045.6	$40.3	1.3%
Supplemental Grant	46.6	46.6	46.6	0.0	0.0%
Geographic Cost Index	136.9	139.1	141.0	1.9	1.4%
Net Taxable Income Education Grants	39.7	49.2	62.2	13.0	26.4%
Tax Increment Financing Education Grants	0.0	0.4	0.5	0.1	13.6%
Declining Enrollment Grants	0.0	17.2	12.9	-4.4	-25.4%
Foundation – Special Grants	19.4	0.0	0.0	0.0	
Compensatory Aid	1,309.1	1,305.5	1,349.7	44.2	3.4%
Student Transportation	270.8	276.3	281.3	4.9	1.8%
Special Education – Formula Aid	279.6	284.9	288.8	3.9	1.4%
Special Education – Nonpublic Placements	121.6	123.6	126.1	2.5	2.0%
Limited English Proficiency Grants	227.0	248.7	267.5	18.8	7.6%
Guaranteed Tax Base	54.5	50.3	49.1	-1.2	-2.3%
Aging Schools Program	0.0	6.1	6.1	0.0	0.0%
Head Start/Pre-kindergarten	6.1	20.7	29.8	9.1	44.0%
Other Education Programs	64.1	76.9	89.5	12.6	16.4%
Subtotal Direct Aid	***$5,537.5***	***$5,650.9***	***$5,796.7***	***$145.8***	**2.6%**
Retirement Payments	$787.0	$734.5	$749.6	$15.1	2.1%
Total Public School Aid	**$6,324.5**	**$6,385.3**	**$6,546.2**	**$160.9**	**2.5%**
Libraries					
Library Aid Formula	$36.4	$40.7	$42.0	$1.3	3.1%
State Library Network	17.0	17.7	18.4	0.7	3.8%
Subtotal Direct Aid	***$53.4***	***$58.4***	***$60.3***	***$1.9***	**3.3%**
Retirement Payments	$20.9	$20.3	$20.8	$0.5	2.4%
Total Library Aid	**$74.3**	**$78.7**	**$81.2**	**$2.4**	**3.1%**
Community Colleges					
Community College Formula	$234.4	$235.2	$243.9	$8.8	3.7%
Other Programs	33.5	37.9	36.3	-1.7	-4.4%
Subtotal Direct Aid	***$267.9***	***$273.1***	***$280.2***	***$7.1***	**2.6%**
Retirement Payments	$46.5	$44.6	$46.2	$1.6	3.5%
Total Community College Aid	**$314.3**	**$317.7**	**$326.4**	**$8.7**	**2.7%**
Local Health Grants	**$49.5**	**$51.1**	**$55.4**	**$4.4**	**8.5%**
County/Municipal Aid					
Transportation	$209.6	$219.9	$185.8	-$34.1	-15.5%
Public Safety	127.2	131.6	132.8	1.2	0.9%
Program Open Space	27.2	40.7	65.1	24.4	59.9%
Disparity Grant	132.8	138.8	147.4	8.6	6.2%
Gaming Impact Grants	65.0	87.0	88.2	1.1	1.3%
Neighborhood Revitalization Grants	21.5	25.6	28.5	2.9	11.2%
Teacher Retirement Supplemental Grant	27.7	27.7	27.7	0.0	0.0%
Other Grants	17.5	18.5	18.9	0.5	2.5%
Total County/Municipal Aid	**$628.6**	**$689.8**	**$694.4**	**$4.6**	**0.7%**
Total State Aid	**$7,391.1**	**$7,522.7**	**$7,703.6**	**$180.9**	**2.4%**

Source: Department of Legislative Services

Exhibit 3 shows the annual change in State aid to local governments, beginning with fiscal 2015. The projected growth of 2.4%, or $180.9 million, in fiscal 2019 is well within the range of annual growth exhibited in recent fiscal years. This reflects a $163.8 million (2.4%) increase in direct aid to local governments as well as a $17.2 million (2.1%) increase in State retirement aid for local government employees. Most of the net growth is accounted for by an estimated $145.8 million increase in direct State aid to public schools. Growth in the foundation program and the compensatory aid program drives much of this increase. The State's foundation program for public schools increases by an estimated $40.3 million (1.3%). The increase is attributable to the rise in the per pupil foundation amount from $7,012 to $7,065 (0.8%) and an estimated 0.6% increase in full-time equivalent students. The compensatory aid program is expected to increase by $44.2 million (3.4%). This program provides additional funding to local school systems based on their enrollment of students eligible for free and reduced-price meals. The projected increase is due to a 2.7% increase in the number of children who are eligible for free and reduced-price meals and from the increase in the per pupil foundation amount.

Exhibit 3
Annual Change in State Aid to Local Governments
Fiscal 2015-2019



Source: Department of Legislative Services

Approximately 9.0% of State aid is allocated to county and municipal governments to finance general government, transportation, public safety, and recreation projects. County and municipal governments will receive $694.4 million in fiscal 2019, an increase of $4.6 million above the prior fiscal year. The major State aid programs assisting county and municipal governments include highway user revenues, disparity grants, neighborhood revitalization, teacher retirement supplemental grants, police aid, gaming impact aid, Program Open Space, and local voting system grants.

State retirement costs for public school teachers, librarians, and community college faculty total $816.6 million in fiscal 2019. The projected $17.2 million (2.1%) increase over fiscal 2018 in retirement aid is attributed to an increase in the State contribution rate and modest salary base growth. In addition to the State's share of pension costs, local governments will contribute approximately $296.2 million in fiscal 2019 for teacher retirement, $277.0 million for the local share of pension contributions, and $19.2 million toward State Retirement Agency (SRA) administrative costs, a portion of which will go toward SRA information technology upgrades. Local governments will also cover approximately $950,500 in administrative costs for community college employees.

Local Government

Allocation of State Aid Among Local Jurisdictions

The majority of State aid to local governments is distributed inversely to local property and income wealth so that jurisdictions with greater capacity to raise revenue from local sources receive less State aid.

Reliance on State Aid

State aid is the largest revenue source for 13 county governments in Maryland, representing 27.9% of total county revenues. In Anne Arundel, Baltimore, Calvert, Carroll, Garrett, Kent, Queen Anne's, Talbot, and Worcester counties, State aid is the second largest revenue source after property taxes, while in Howard and Montgomery counties, State aid is the third largest revenue source after both property and income taxes.

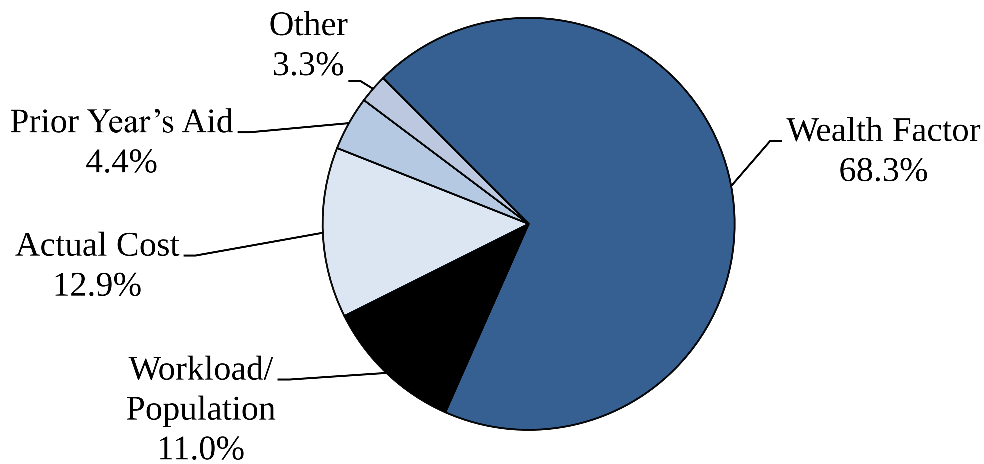
Dependence on State aid varies, with less affluent jurisdictions relying on State aid as their primary revenue source, while more affluent jurisdictions rely more heavily on local property and income taxes. For example, State aid accounts for 18.2% of total revenues in Montgomery County but reaches 55.6% in Caroline County. This difference is due to the fact that State aid is distributed inversely to local wealth. Utilizing local wealth measures to distribute State aid attempts to offset the inequalities in the revenue raising capacity among local jurisdictions.

State aid is the fourth largest revenue source for municipalities, representing 5.8% of total revenues. The reliance on State aid varies across the State, ranging from 1.4% of total revenues for municipalities in Talbot County to 22.1% for the one municipality in St. Mary's County, where State aid is the second largest revenue source. Most State aid to municipalities is targeted to transportation, police protection, parks and recreation services, and community development projects.

Distribution Basis for State Aid

The State utilizes nearly 80 programs to allocate funding to local governments. Programs that distribute funding inversely to local wealth accounted for close to 70% of State aid in fiscal 2018. Most of these programs also base State aid on a workload measure, such as school enrollment or population. In fiscal 2000, around 56% of State aid was distributed based on local wealth. The increased utilization of local wealth as a basis to distribute State aid improves fiscal equity among jurisdictions by making certain jurisdictions less dependent on their own tax base to fund public services. **Exhibit 1** shows State aid by the basis for distribution.

Exhibit 1
State Aid by Basis for Distribution
Fiscal 2018



Trends
($ in Millions)

	FY 2000	% of Total	FY 2018	% of Total
Wealth Factor	$1,935.5	56.1%	$5,141.0	68.3%
Workload/Population	697.0	20.2%	828.5	11.0%
Actual Cost	513.4	14.9%	967.5	12.9%
Prior Year's Aid	146.1	4.2%	334.5	4.4%
Other	158.3	4.6%	251.2	3.3%
Total	**$3,450.3**	**100.0%**	**$7,522.7**	**100.0%**

Source: Department of Legislative Services

Wealth Equalizing and Targeting of Education Aid

Because funding public education is a shared State and local responsibility, part of the State's constitutional responsibility to provide a "thorough and efficient system of free public schools" involves offsetting the disparities in taxable wealth among the counties. The State education aid structure compensates for wealth differences by providing less education aid per pupil to the more wealthy jurisdictions and more education aid per pupil to the less wealthy jurisdictions through a number of "wealth-equalized" funding formulas. Although most State aid formulas are designed to have the State pay roughly one-half of program costs, the State's education aid share for the less wealthy jurisdictions is higher than 50%, and the State's education aid share for more wealthy jurisdictions is lower than 50%. **Exhibit 2** illustrates the inverse relationship between local wealth and direct State education aid per pupil.

Enhanced targeting of State education aid was a primary goal of the Bridge to Excellence in Public Schools Act (Chapter 288 of 2002). The targeted funds are based on enrollment-driven formulas for three groups: (1) special education students; (2) students eligible for free and reduced-price meals; and (3) students with limited English proficiency. The Targeted Student Index shown in Exhibit 2 compares for each county the sum of students in each of these categories to full-time equivalent enrollment. Because a student may be in more than one of these groups, an index result of over 100% is possible, as in the case of Baltimore City.

Results of the State Education Aid Structure

Exhibit 2 shows how State education aid per pupil is driven by each county's wealth and by the share of its student population that is identified as being at greater risk of performing below State standards. For example, the exhibit shows that Baltimore City has the fifth lowest wealth per pupil in fiscal 2018 and the student population with the greatest needs. As a result, Baltimore City received the second most direct State education aid per student at $11,218. Somerset County, with the third lowest wealth per pupil in the State and a student population with relatively high needs (second highest), received the highest per pupil direct State education aid amount at $11,765. Talbot and Worcester counties, which have the highest wealth per pupil figures in fiscal 2018, received the two lowest levels of direct State education aid per pupil, at $3,293 and $3,155, respectively.

Exhibit 2
Local Needs and Wealth and Direct State Aid Per Pupil
Fiscal 2018

	Targeted Student Index			Local Wealth Per Pupil			Direct Education Aid Per Pupil	
1	Baltimore City	109.1%	24	Wicomico	$283,779	1	Somerset	$11,765
2	Somerset	91.7%	23	Caroline	285,245	2	Baltimore City	11,218
3	Prince George's	90.9%	22	Somerset	291,642	3	Wicomico	10,181
4	Dorchester	79.5%	21	Allegany	311,055	4	Caroline	10,174
5	Wicomico	76.5%	20	Baltimore City	340,780	5	Allegany	9,943
6	Allegany	72.3%	19	Washington	356,801	6	Dorchester	9,403
7	Caroline	70.9%	18	Dorchester	359,296	7	Prince George's	8,928
8	Kent	66.2%	17	Cecil	398,741	8	Washington	8,025
9	Baltimore	63.4%	16	Prince George's	405,426	9	Cecil	7,217
10	Washington	60.8%	15	Charles	414,050	10	Charles	6,767
11	Montgomery	60.5%	14	St. Mary's	448,575	11	St. Mary's	6,170
12	Cecil	60.4%	13	Frederick	453,109	12	Garrett	6,110
13	Talbot	60.1%	12	Harford	485,299	13	Baltimore	6,101
14	Worcester	57.9%	11	Calvert	496,518	14	Frederick	6,064
15	Garrett	57.6%	10	Carroll	500,361	15	Harford	5,719
16	Charles	48.9%	9	Baltimore	515,624	16	Kent	5,359
17	Anne Arundel	47.8%	8	Howard	593,937	17	Carroll	5,354
18	Harford	45.4%	7	Queen Anne's	606,384	18	Calvert	5,305
19	St. Mary's	43.7%	6	Garrett	638,598	19	Queen Anne's	4,658
20	Frederick	42.7%	5	Anne Arundel	650,047	20	Howard	4,557
21	Queen Anne's	39.8%	4	Montgomery	752,454	21	Anne Arundel	4,556
22	Howard	35.3%	3	Kent	856,102	22	Montgomery	4,456
23	Carroll	32.2%	2	Talbot	1,054,710	23	Talbot	3,293
24	Calvert	31.7%	1	Worcester	1,169,718	24	Worcester	3,155
	Statewide	**63.9%**		**Statewide**	**$529,345**		**Statewide**	**$6,628**

Targeted Student Index equals the sum of students with disabilities, students eligible for free and reduced-price meals, and students with limited English proficiency divided by the number of full-time equivalent (FTE) students. Because of overlap among these three at-risk populations, the figure may be greater than 100%. Per pupil measures are based on FTE.

Source: Department of Legislative Services

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Local Government

Local Revenue Trends

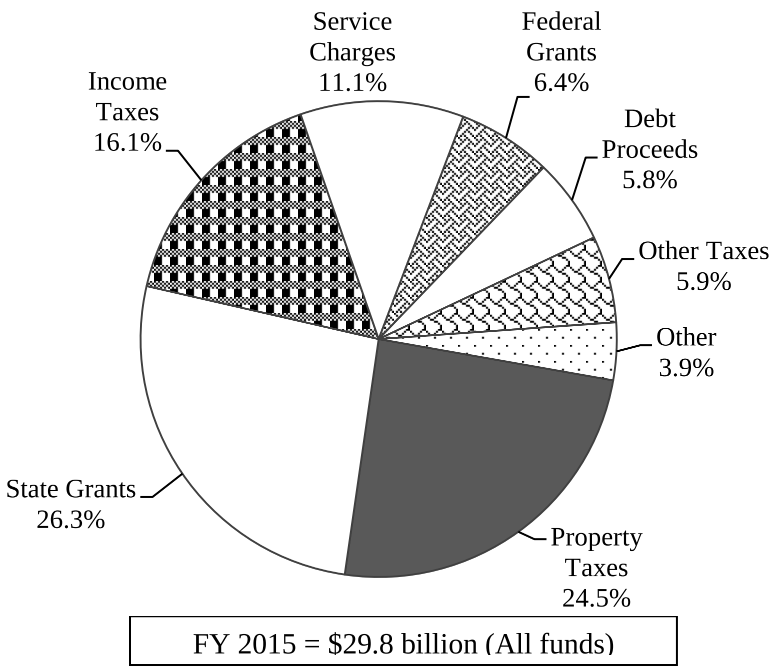
Local taxes account for approximately 47% of county revenues and represent the primary local revenue source for most counties. Overall, county governments are projecting a modest increase in local tax revenues in fiscal 2018. This modest increase in local tax revenues is influenced by two primary factors: a rebound in local income tax collections due to improvements in the overall State economy, and moderate growth in property tax collections.

General fund revenues for county governments are projected to total $15.2 billion in fiscal 2018. As shown in **Exhibit 1**, this represents a 3.0% average annual increase over the amount of general fund revenues collected in fiscal 2016. The projected growth in general fund revenues is slightly below the estimated growth in local tax revenues, which includes both general and special fund revenues. The average annual increase in local tax revenues is projected at 3.3% in fiscal 2018. In total, local governments are projected to collect $15.2 billion in local tax revenues, a $1.0 billion increase since fiscal 2016. **Exhibit 2** shows the growth in local tax revenues in fiscal 2016 through 2018.

The local government revenue outlook is influenced by two primary factors: a rebound in local income tax collections due to improvements in the overall State economy; and moderate growth in property tax collections. Local governments are projected to collect $5.4 billion in local income tax revenues in fiscal 2018, a $323.6 million increase since fiscal 2016. This represents an average annual increase of 3.1% over the two-year period. Property tax collections are expected to increase by $584.3 million over the two-year period, representing an average annual increase of 3.8%. Local property tax collections will total $8.2 billion in fiscal 2018. Local property tax collections have begun to grow in recent years after several years of steady decline due to the downturn in the State's housing market. As shown in **Exhibit 3**, property assessments declined sharply in recent years and only began to increase beginning in fiscal 2014.

Two other local revenue sources significantly affected by the downturn in the housing market include recordation and transfer taxes. At the height of the real estate market, local governments collected over $1.2 billion in recordation and transfer taxes in fiscal 2006. As shown in **Exhibit 4**, by fiscal 2011, collections totaled only $511.8 million. In fiscal 2018, local governments are projecting $909.3 million in recordation and transfer tax collections. This represents a $397.5 million increase over the amount collected in fiscal 2011 and illustrates that recordation and transfer tax collections continue to rebound. A more detailed depiction of the growth in local tax revenues in fiscal 2018 is provided in **Exhibit 5**.

Exhibit 1
Sources of Revenue for Counties and Baltimore City

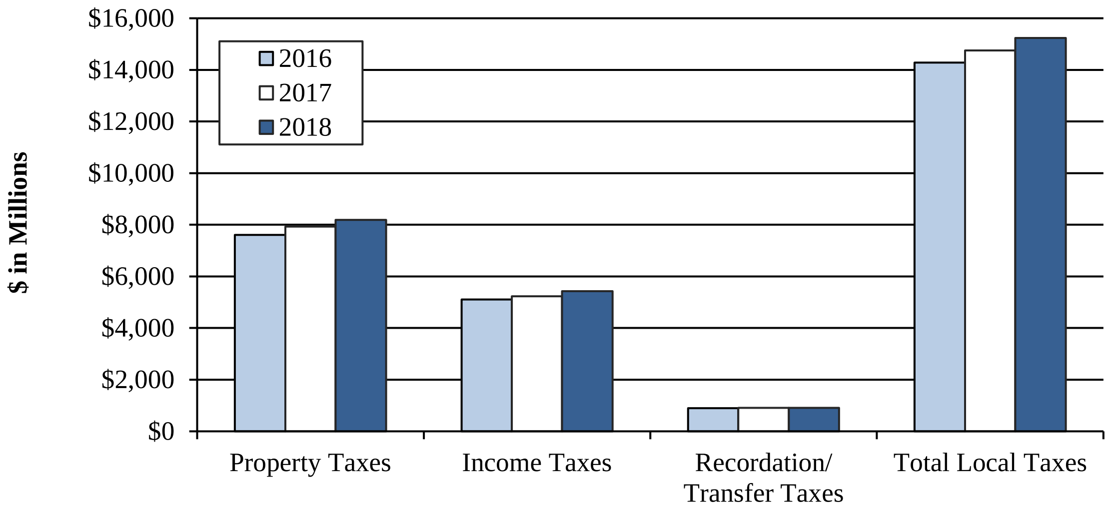


Average Annual Change
Fiscal 2016-2018

Property Taxes	3.8%
Income Taxes	3.1%
Recordation Taxes	3.1%
Transfer Taxes	-1.0%
Hotel/Motel Taxes	2.4%
Admissions Taxes	2.4%
Total Local Taxes	3.3%
General Fund Revenues	3.0%

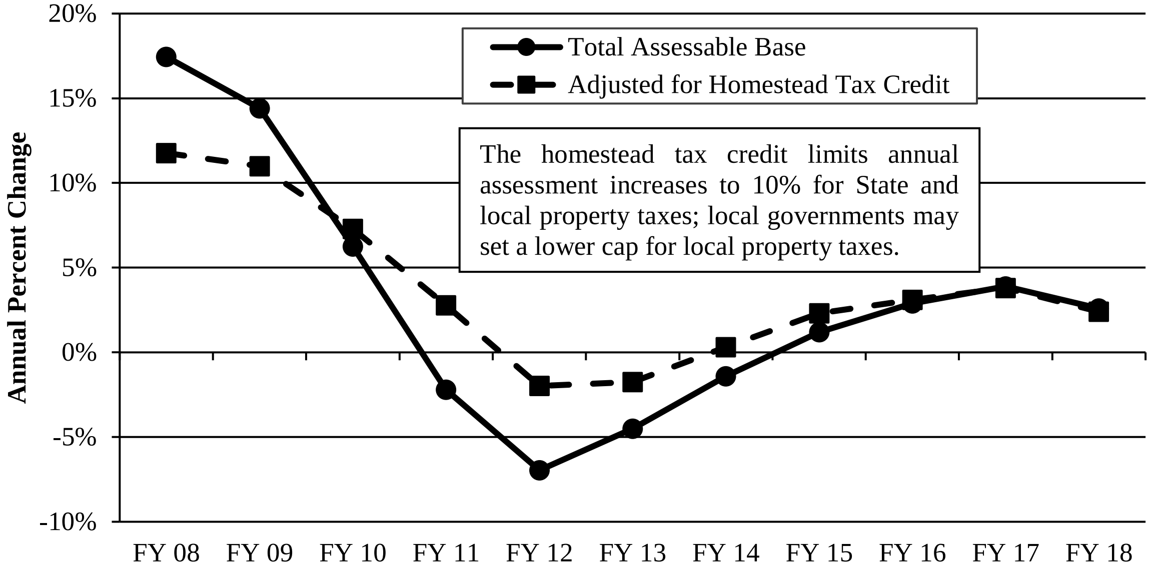
Source: Department of Legislative Services; county budgets

Exhibit 2
Local Tax Revenue Inches Upward
Fiscal 2016-2018



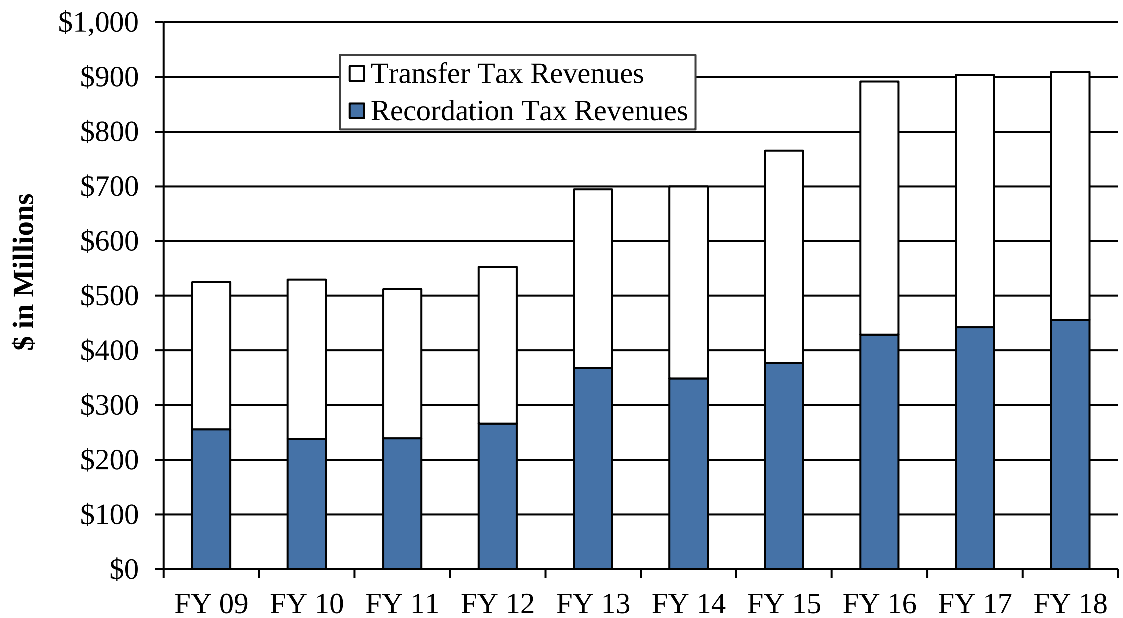
Source: Department of Legislative Services; county budgets

Exhibit 3
Homestead Tax Credit Softened Impact on County Assessable Base



Source: Department of Legislative Services; county budgets

Exhibit 4
Real Estate Recovery Impacts Recordation and Transfer Taxes



Source: Department of Legislative Services; county budgets

Exhibit 5

Total Local Taxes for Fiscal 2016-2018

County	FY 2016	FY 2017	FY 2018	FY 2016-2017 $ Difference	FY 2017-2018 $ Difference	Average Annual Difference
Allegany	$71,521,999	$71,796,593	$71,371,072	$274,594	-$425,521	-0.1%
Anne Arundel	1,274,902,920	1,328,520,600	1,345,206,600	53,617,680	16,686,000	2.7%
Baltimore City	1,380,437,747	1,388,760,729	1,424,510,901	8,322,982	35,750,172	1.6%
Baltimore	1,759,834,301	1,779,325,289	1,827,917,957	19,490,988	48,592,668	1.9%
Calvert	223,675,579	235,283,103	270,477,103	11,607,524	35,194,000	10.0%
Caroline	40,697,966	39,857,076	41,191,925	-840,890	1,334,849	0.6%
Carroll	364,816,796	369,298,862	383,517,190	4,482,066	14,218,328	2.5%
Cecil	170,295,178	171,183,958	180,947,475	888,780	9,763,517	3.1%
Charles	365,301,070	359,994,700	373,700,900	-5,306,370	13,706,200	1.1%
Dorchester	45,087,348	45,354,488	45,597,783	267,140	243,295	0.6%
Frederick	519,465,483	526,663,401	546,787,923	7,197,918	20,124,522	2.6%
Garrett	66,261,467	67,119,264	67,293,226	857,797	173,962	0.8%
Harford	539,693,992	545,171,000	563,813,500	5,477,008	18,642,500	2.2%
Howard	1,128,383,353	1,141,994,580	1,185,553,381	13,611,227	43,558,801	2.5%
Kent	44,072,278	44,631,864	45,459,411	559,586	827,547	1.6%
Montgomery	3,487,580,291	3,765,195,791	3,875,743,012	277,615,500	110,547,221	5.4%
Prince George’s	1,883,266,329	1,953,187,700	2,033,534,400	69,921,371	80,346,700	3.9%
Queen Anne’s	119,233,931	119,825,725	124,521,361	591,794	4,695,636	2.2%
St. Mary’s	206,098,799	210,119,902	215,418,202	4,021,103	5,298,300	2.2%
Somerset	23,600,954	22,992,379	23,381,272	-608,575	388,893	-0.5%
Talbot	73,190,006	72,079,000	75,136,400	-1,111,006	3,057,400	1.3%
Washington	209,291,703	208,969,940	217,007,410	-321,763	8,037,470	1.8%
Wicomico	116,529,364	113,638,860	117,710,693	-2,890,504	4,071,833	0.5%
Worcester	173,232,295	171,603,788	181,063,458	-1,628,507	9,459,670	2.2%
Total	**$14,286,471,149**	**$14,752,568,592**	**$15,236,862,555**	**$466,097,443**	**$484,293,963**	**3.3%**

Source: Department of Legislative Services; county budgets

Local Government

Local Government Tax Actions

Two county governments had to raise the local property tax rate in order to balance their budgets and improve funding to public schools, with one county increasing the rate above the charter limit. However, six county governments were able to reduce property tax rates.

Local Government Tax Rates

More local jurisdictions chose to decrease local tax rates in fiscal 2018 than chose to increase them. As shown in **Exhibit 1**, eight counties changed their local property tax rates, with six counties decreasing their rates and two counties increasing them. The rate increase in Talbot County exceeded the county's charter limit. In addition, Cecil County increased both its income tax rate and its hotel rental tax rate. No county altered its recordation, transfer, or admissions and amusement tax rate. A comparison of local tax rates for fiscal 2017 and 2018 is provided in **Exhibit 2**.

Exhibit 1
Counties Changing Local Tax Rates
Fiscal 2016-2018

	Fiscal 2016		Fiscal 2017		Fiscal 2018	
	▲	▼	▲	▼	▲	▼
Real Property	5	4	4	2	2	6
Local Income	1	1	2	0	1	0
Recordation	0	0	1	0	0	0
Transfer	2	0	0	0	0	0
Admissions/Amusement	1	0	0	0	0	0
Hotel Rental	1	0	1	0	1	0

Note: ▲ represents a tax rate increase and ▼ represents a tax rate decrease.

Source: 2017 Local Government Budget and Tax Rate Survey, Department of Legislative Services, Maryland Association of Counties

Exhibit 2
Local Tax Rates – Fiscal 2017 and 2018

	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel Rental	
County	**FY 2017**	**FY 2018**	**CY 2017**	**CY 2018**	**FY 2017**	**FY 2018**	**FY 2017**	**FY 2018**	**FY 2017**	**FY 2018**	**FY 2017**	**FY 2018**
Allegany	$0.977	$0.976	3.05%	3.05%	$3.50	$3.50	0.5%	0.5%	7.5%	7.5%	8.0%	8.0%
Anne Arundel	0.915	0.907	2.50%	2.50%	3.50	3.50	1.0%	1.0%	10.0%	10.0%	7.0%	7.0%
Baltimore City	2.248	2.248	3.20%	3.20%	5.00	5.00	1.5%	1.5%	10.0%	10.0%	9.5%	9.5%
Baltimore	1.100	1.100	2.83%	2.83%	2.50	2.50	1.5%	1.5%	10.0%	10.0%	8.0%	8.0%
Calvert	0.952	0.952	3.00%	3.00%	5.00	5.00	0.0%	0.0%	1.0%	1.0%	5.0%	5.0%
Caroline	0.980	0.980	2.73%	2.73%	5.00	5.00	0.5%	0.5%	0.0%	0.0%	5.0%	5.0%
Carroll	1.018	1.018	3.03%	3.03%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Cecil	0.991	1.041	2.80%	3.00%	4.10	4.10	0.5%	0.5%	6.0%	6.0%	3.0%	6.0%
Charles	1.205	1.205	3.03%	3.03%	5.00	5.00	0.5%	0.5%	10.0%	10.0%	5.0%	5.0%
Dorchester	0.976	0.974	2.62%	2.62%	5.00	5.00	0.75%	0.75%	0.5%	0.5%	5.0%	5.0%
Frederick	1.060	1.060	2.96%	2.96%	6.00	6.00	0.0%	0.0%	0.0%	0.0%	5.0%	5.0%
Garrett	0.990	0.990	2.65%	2.65%	3.50	3.50	1.0%	1.0%	6.0%	6.0%	6.0%	6.0%

	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel Rental	
County	**FY 2017**	**FY 2018**	**CY 2017**	**CY 2018**	**FY 2017**	**FY 2018**	**FY 2017**	**FY 2018**	**FY 2017**	**FY 2018**	**FY 2017**	**FY 2018**
Harford	$1.042	$1.042	3.06%	3.06%	$3.30	$3.30	1.0%	1.0%	5.0%	5.0%	6.0%	6.0%
Howard	1.190	1.190	3.20%	3.20%	2.50	2.50	1.0%	1.0%	7.5%	7.5%	7.0%	7.0%
Kent	1.022	1.022	2.85%	2.85%	3.30	3.30	0.5%	0.5%	4.5%	4.5%	5.0%	5.0%
Montgomery	1.038	1.013	3.20%	3.20%	4.45	4.45	1.0%	1.0%	7.0%	7.0%	7.0%	7.0%
Prince George's	1.374	1.374	3.20%	3.20%	2.75	2.75	1.4%	1.4%	10.0%	10.0%	7.0%	7.0%
Queen Anne's	0.847	0.847	3.20%	3.20%	4.95	4.95	0.5%	0.5%	5.0%	5.0%	5.0%	5.0%
St. Mary's	0.852	0.848	3.00%	3.00%	4.00	4.00	1.0%	1.0%	2.0%	2.0%	5.0%	5.0%
Somerset	1.000	1.000	3.20%	3.20%	3.30	3.30	0.0%	0.0%	4.0%	4.0%	5.0%	5.0%
Talbot	0.547	0.571	2.40%	2.40%	6.00	6.00	1.0%	1.0%	5.0%	5.0%	4.0%	4.0%
Washington	0.948	0.948	2.80%	2.80%	3.80	3.80	0.5%	0.5%	5.0%	5.0%	6.0%	6.0%
Wicomico	0.952	0.940	3.20%	3.20%	3.50	3.50	0.0%	0.0%	6.0%	6.0%	6.0%	6.0%
Worcester	0.835	0.835	1.75%	1.75%	3.30	3.30	0.5%	0.5%	3.0%	3.0%	4.5%	4.5%

Notes: The real property tax rates shown for Charles, Howard, Montgomery, and Prince George's counties include special tax rates. Real property tax is per $100 of assessed value. Income is a percentage of taxable income. Recordation tax is per $500 of transaction.

Source: 2017 Local Government Budget and Tax Rate Survey, Department of Legislative Services, Maryland Association of Counties

Property Tax

For fiscal 2018, six counties (Allegany, Anne Arundel, Dorchester, Montgomery, St. Mary's, and Wicomico) decreased their real property tax rates. Cecil and Talbot counties increased their real property tax rates. Real property tax rates range from $0.571 per $100 of assessed value in Talbot County to $2.248 in Baltimore City.

Local Income Tax

Cecil County was the only jurisdiction to change its local income tax rate for calendar 2018, increasing the rate from 2.8% to 3.0%. Local income tax rates range from 1.75% in Worcester County to 3.2% in Baltimore City and Howard, Montgomery, Prince George's, Queen Anne's, Somerset, and Wicomico counties.

Recordation Tax

No county altered its recordation tax rate for fiscal 2018. Recordation tax rates range from $2.50 per $500 of transaction in Baltimore and Howard counties to $6.00 per $500 of transaction in Frederick and Talbot counties.

Transfer Tax

No county altered its transfer tax rate for fiscal 2018. Local transfer tax rates range from 0.5% in eight counties (Allegany, Caroline, Cecil, Charles, Kent, Queen Anne's, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. Five counties (Calvert, Carroll, Frederick, Somerset, and Wicomico) do not impose a tax on property transfers.

Admissions and Amusement Tax

No county altered its admissions and amusement tax rate for fiscal 2018. Caroline and Frederick counties are the only jurisdictions that do not impose an admissions and amusement tax. Currently, admissions and amusement tax rates range from 0.5% in Dorchester County to 10.0% in six jurisdictions (Baltimore City and Anne Arundel, Baltimore, Carroll, Charles, and Prince George's counties).

Hotel Rental Tax

One county, Cecil, increased its hotel rental tax rate in fiscal 2018, from 3.0% to 6.0%. No other county altered its hotel rental tax rate. Hotel rental tax rates range from 4.0% in Talbot County to 9.5% in Baltimore City.

Tax Limitation Measures

Five charter counties (Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico) have amended their charters to limit property tax rates or revenues. In Anne Arundel County, the total annual increase in property tax revenues is limited to the lesser of 4.5% or the increase in the Consumer Price Index (CPI). In Montgomery County, the growth in property tax revenues is limited to the increase in the CPI; however, this limitation does not apply to new construction. In addition, the limitation may be overridden by a unanimous vote of all nine county council members. In Prince George's County, the general property tax rate is capped at $0.96 per $100 of assessed value. Special taxing districts, such as the Maryland-National Capital Park and Planning Commission, are not included under the tax cap. In Talbot and Wicomico counties, the total annual increase in property tax revenues is limited to the lesser of 2% or the increase in CPI.

Counties may exceed the charter limitations on local property taxes for the purpose of funding the approved budget of the local boards of education. If a local property tax rate is set above the charter limit, the county governing body may not reduce funding provided to the local board of education from any other local source and must appropriate to the local board of education all of the revenues generated from any increase beyond the existing charter limit. Any use of this authority must be reported annually to the Governor and the General Assembly. This authority was adopted at the 2012 regular session to ensure that counties have the fiscal ability to meet new maintenance of effort requirements. In fiscal 2013, Talbot County became the first jurisdiction to exercise this new authority by establishing a $0.026 supplemental property tax rate for the local board of education. No jurisdiction exercised this authority in fiscal 2014 or 2015. In fiscal 2016, Prince George's County became the second county to exercise this authority by enacting a $0.04 supplemental property tax rate to fund its schools. In fiscal 2017, Talbot County again exceeded its charter limit by establishing a $0.0086 supplemental property tax rate for public education. Montgomery County exceeded the charter limit through a unanimous vote by the county council. In fiscal 2018, Talbot County exceeded its charter limit again by approving a $0.0159 supplemental property tax rate for the board of education.

Local Government

Local Government Salary Actions

All county governments and boards of education provided salary enhancements to their employees in fiscal 2018, with 17 counties and 15 boards of education providing cost-of-living adjustments and 16 counties and 21 boards providing step/merit increases.

Local Salary Actions

All 23 counties and Baltimore City are providing some type of salary enhancements in fiscal 2018, either in the form of cost-of-living adjustment (COLA), general salary increase (GSI), step/merit increase, or combination of enhancements. This compares with 23 jurisdictions providing salary enhancements in the prior year. In a few instances, the salary enhancements are limited to certain groups of local employees. More specifically, 17 counties have indicated that they provided their employees with a COLA or GSI in fiscal 2018, compared to 14 in fiscal 2017. Sixteen counties are providing step or merit increases in fiscal 2018, compared to 17 in fiscal 2017.

Similarly, all local boards of education are providing salary enhancements to their employees, with salary actions still pending in Prince George's County. Fifteen boards of education are providing COLAs or GSIs for their employees in fiscal 2018, compared to 16 boards that did so in fiscal 2017. Additionally, 21 boards of education are providing step or merit increases in fiscal 2018, the same number as in the prior fiscal year. **Exhibit 1** compares local salary actions in fiscal 2017 and 2018, while **Exhibits 2** and **3** show specific local salary actions for fiscal 2018.

State Salary Actions

For comparison purposes, the State awarded no salary enhancements of any kind to its employees in fiscal 2018, and only merit increases were awarded in fiscal 2017 with no general salary increase.

Exhibit 1
Local Government Salary Actions
Fiscal 2017 and 2018

	County Government		Public Schools	
Salary Action	**FY 2017**	**FY 2018**	**FY 2017**	**FY 2018**
COLA/GSI				
No COLA/GSI	10	7	7	7
COLA/GSI	14	17	16	15
Still Pending	0	0	1	2
Step/Merit Increases	17	16	21	21
	State Government		**CPI-Urban Consumers[1]**	
	FY 2017	**FY 2018**	**FY 2017**	**FY 2018**
COLA Amount	0.0%	0.0%	1.9%	1.6%
Step/Merit Increases	Yes	No		

COLA: cost-of-living adjustment
CPI: Consumer Price Index
GSI: general salary increase

[1]Forecast of the CPI for 2017 (actual) and 2018 (estimate) is an average forecast taken from Moody's Analytics and IHS, Inc.

Source: 2017 Local Government Salary Action Survey, Department of Legislative Services

Exhibit 2
County Government Salary Actions in Fiscal 2018

County	COLA/GSI	Step/Merit	Additional Comments
Allegany	2.0%	No	
Anne Arundel	Varies	Yes	Most county employees received a 2% COLA. Detention officers, police officers, and police management received a 3% COLA. Police sergeants and lieutenants received a 2% COLA. Firefighters and certain employees in the Sheriff's Office did not receive a COLA.
Baltimore City	Varies	Pending	Some employee groups awarded either a 1% or 2% COLA, but salary increases for the majority of city employees not settled.
Baltimore	2.0%	Yes	
Calvert	1.0%	Yes	County employees continuously employed since July 2015 received a longevity step. This second step recognized service during the years when step increases were not granted due to budgetary and economic constraints.
Caroline	3.0%	No	New salary scale implemented for county employees, resulting in a 3% average salary increase. Sheriff's Office employees received a 2% COLA.
Carroll	1.5%	Yes	Sheriff's Office awarded 2.9% COLA for law enforcement officers, 2.5% COLA for detention center officers, and 1% to 4% COLAs for civilian personnel. Executive positions received a 3.29% COLA.
Cecil	0.0%	Yes	
Charles	0.0%	Yes	
Dorchester	0.0%	Yes	
Frederick	2.0%	No	
Garrett	1.0%	Yes	
Harford	0.0%	Yes	Merit-based salary increase of 4% per qualified county employee.
Howard	2.0%	Yes	

County	COLA/GSI	Step/Merit	Additional Comments
Kent	3.0%	No	
Montgomery	2.0%	Yes	
Prince George's	1.0%	Yes	1% COLA awarded mid-year (January 2018). Firefighters awarded 4% COLA, deputy sheriffs awarded 1.5% COLA, while police officers did not receive a COLA. Several employee groups still in negotiations (correctional officers and civilian personnel within the police, fire, sheriff, and correctional departments).
Queen Anne's	0.0%	Yes	
St. Mary's	0.0%	Yes	
Somerset	3.5%	No	Employees on executive pay scale awarded 1% COLA.
Talbot	0.0%	Yes	
Washington	5.0%	No	
Wicomico	2.0%	No	
Worcester	1.0%	Yes	
Total Jurisdictions Granting Increases	**17**	**16**	

COLA: cost-of-living adjustment
GSI: general salary increase

Exhibit 3
Board of Education Salary Actions in Fiscal 2018

School System	COLA/GSI	Step/Merit	Additional Comments
Allegany	0.5%	Yes	
Anne Arundel	0.0%	Yes	Paraeducators, office assistants, and technicians represented by the Secretaries and Assistants Association of Anne Arundel County received a 1.1% COLA. In addition, employees at the top of the pay scale and not eligible for a step increase received a 1% COLA. Nonrepresented employees in a position without an applicable step structure received a 2% COLA.
Baltimore City	Pending	Yes	School system still in contract negotiations with various employee unions regarding the COLA amount for fiscal 2017 and 2018. Merit increases for teachers and administrators based on evaluation ratings and professional development courses.
Baltimore	2.0%	Yes	
Calvert	0.0%	Yes	School employees received two step increases as outlined in their negotiated agreement.
Caroline	1.0%	Yes	Support services employees received a 2% COLA; teachers and administrators received a 1% COLA.
Carroll	2.0%	Yes	
Cecil	1.5%	Yes	
Charles	0.0%	Yes	Teachers and administrators did not receive a COLA; however, school support staff received a 2% COLA.
Dorchester	1.0%	Yes	
Frederick	5.75%	No	School system in the process of revising salary scales for all three bargaining units. Teachers are in year two of a four-year transition.
Garrett	0.0%	Yes	
Harford	2.5%	Yes	

School System	COLA/GSI	Step/Merit	Additional Comments
Howard	2.0%	Yes	
Kent	0.0%	Yes	Teachers at the top of the pay scale received a $500 COLA in lieu of a step increase.
Montgomery	1.0%	Yes	
Prince George’s	Pending	Pending	
Queen Anne’s	1.0%	No	
St. Mary’s	0.0%	Yes	
Somerset	1.25%	Yes	
Talbot	1.0%	Yes	1% COLA effective May 1, 2018.
Washington	3.3%	Yes	Teacher salaries based on new pay scale, with an average increase of 3.3%. Support staff awarded a 1% COLA.
Wicomico	1.0%	Yes	
Worcester	0.0%	Yes	Teachers at the top of the pay scale received a 1% COLA in lieu of a step increase.
Total Jurisdictions Granting Increases	**15**	**21**	

COLA: cost-of-living adjustment
GSI: general salary increase

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Local Government

Evictions in Residential Rental Property

Several issues and concerns have received attention in the media lately regarding the eviction process in residential rental property. This paper highlights the current scope of the problem and proposed legislation.

Reform of Eviction Process

Proposed Legislation

After months of study in 2016 by a workgroup of landlord and tenant stakeholders, a consensus measure, House Bill 1487 of 2017, proposed several changes to the judicial process by which a landlord may repossess property for failure to pay rent. Proposed changes included (1) requiring a landlord to disclose in a complaint whether a property is an "affected property" under the State's lead hazard abatement laws; (2) extending certain time limits, including the time for scheduling a trial after a complaint is filed and for a continuance; (3) expanding the reasons for a continuance; and (4) specifying a time limit by which a landlord may file a complaint after a failure to pay rent. The bill also established that certain provisions preempt any similar public local laws or ordinances. While the House passed an amended version of the proposal, the bill was given an unfavorable report by the Senate Judicial Proceedings Committee.

Definition of "Rent"

Whether a tenant's rent payments are current is a central question in most rent court proceedings. A landlord must show that a tenant has failed to pay rent to succeed in a summary ejectment proceeding, and a tenant cannot sue a landlord concerning the condition of the home if the tenant is not current on rent. A recent Court of Appeals decision, *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016), calls into doubt the types of payments that are considered rent. The Court of Appeals held that variable fees and charges for utilities and other services, such as trash removal, do not constitute rent for residential leases. While the holding only applied to one class of cases, the opinion implies it should be used in all cases unless the General Assembly adds a definition of "rent" to statute.

Local Landlord-tenant Laws

Both the Public Local Laws of Baltimore City and the Baltimore City Code contain various provisions concerning residential evictions. In addition to annual registration and licensing requirements for residential rentals, minimum lease requirements, and livability standards, the city's laws contain specific provisions concerning warrants of restitution, a tenant's right to redemption, rent escrow, retaliatory evictions, and holding over.

Other than Baltimore City, no major jurisdiction has local laws that impose specific rights or obligations on landlords and tenants in an eviction action. Several counties have local ordinances requiring that a writ of possession must be executed by the local sheriff or that the disposal of the personal property of a tenant after eviction be accomplished in a certain manner, but these provisions tend to be routine. The few municipalities that have ordinances dealing with evictions tend to have comparable routine provisions concerning the sheriff's execution of a writ of possession and the disposal of a tenant's personal property.

While not dealing directly with the eviction process, several counties and a small number of municipalities have local landlord-tenant laws that (1) require rental housing to be licensed or registered; (2) impose minimum livability standards, some with specific penalties for noncompliance; (3) mandate specific rental lease terms; or (4) provide complaint resolution services. For example, Montgomery County's Commission on Landlord-Tenant Affairs is a local quasi-judicial body created to issue decisions and orders in landlord-tenant cases that have the force of law. Basically, these local laws seek to minimize landlord-tenant disagreements or miscommunications so that issues can be resolved before an eviction action becomes necessary.

Right to Legal Representation for Low-income Tenants

"Civil Gideon," which would establish a right to publicly funded legal counsel for low-income individuals in certain civil cases, has been proposed in response to concerns of inequity between parties in landlord-tenant cases. The concept is derived from *Gideon v. Wainwright*, 372 U.S. 335 (1963), in which the U.S. Supreme Court affirmed the right of an indigent defendant to assistance of counsel in criminal cases before a state court. In the past few years, San Francisco, New York City, and Washington, DC have implemented programs using general funds to provide publicly funded legal counsel for tenants in housing cases. New York's program extends to representation in administrative hearings before the city's housing authority. Legislation in Massachusetts has also been introduced to require representation for low-income tenants; however, the legislation does not address funding.

Alternative Dispute Resolution in the Baltimore City Rent Court

From April to September 2016, the District Court of Maryland's Alternative Dispute Resolution Office conducted a pilot mediation program in the Baltimore City rent court. Over the course of six months, a mediator was available to assist willing parties on 36 days. Over those 36 days, there were mediations in 37 cases, 30 of which resulted in settlements. In addition, exit interviews showed that over 80% of participants were satisfied with the mediation process. Based on these results, the Judiciary has permanently extended alternative dispute resolution services in the Baltimore City rent court.

While this program will benefit those landlords and tenants who accept mediation, it will likely not have a large impact on the administration of rent court. In 2016, there were over 150,000 cases, over 1,000 per court day, on rent court dockets in Baltimore City. During the pilot program, mediators resolved on average one case per docket. It remains to be seen whether there is enough time, space, and personnel in the permanent arrangement to divert more than a few cases per day from the rent court docket in Baltimore City.

Local Government

9-1-1 Funding and Modernization

Maryland's statewide 9-1-1 system was established in 1979 and is based on a landline phone system. As analog landline communication is phased out, Maryland will need to move to a next generation 9-1-1 system, which presents funding, technical, and operational challenges.

Maryland's 9-1-1 System

In 1972, Charles County became the first county in Maryland to adopt a 9-1-1 system. A statewide system was later established by Chapter 730 of 1979. The legacy 9-1-1 model, which is based on a landline phone system, consists of local public safety access points (PSAPs) connected to an analog wireline phone network to deliver emergency calls via a circuit-switched architecture. However, 70% of 9-1-1 calls are now made from cell phones, and an increasing amount are made via Voice over Internet Protocol (VoIP) networks, presenting a challenge as to how to process and obtain accurate caller location and phone number information.

The 9-1-1 system is funded through the 9-1-1 trust fund administered by the Department of Public Safety and Correctional Services (DPSCS). The fund includes investment earnings and funding from (1) the State 9-1-1 surcharge (25 cents per subscriber per month); (2) the county additional charge (up to a maximum of 75 cents per monthly telephone bill); and (3) the prepaid wireless E 9-1-1 fee (60 cents per retail transaction, collected at the point of sale). All counties and Baltimore City have established the additional charge at 75 cents.

The State 9-1-1 surcharge is distributed to counties at the discretion of the Emergency Number Systems Board (ENSB) in response to county 9-1-1 system enhancement requests. The county additional charge and the county portion of the prepaid wireless E 9-1-1 fee remittances are distributed quarterly to each county in prorated amounts according to the level of fees collected in each jurisdiction. Investment earnings from the fund are also allocated among the counties, prorated on the basis of the total fees collected in each county. The State surcharge and 25% of all collected prepaid wireless E 9-1-1 fees may be used to reimburse counties for the cost of enhancing the 9-1-1 system. The county additional charge and the remaining 75% of all collected prepaid wireless E 9-1-1 fees may be spent on maintenance and operation costs of 9-1-1 systems.

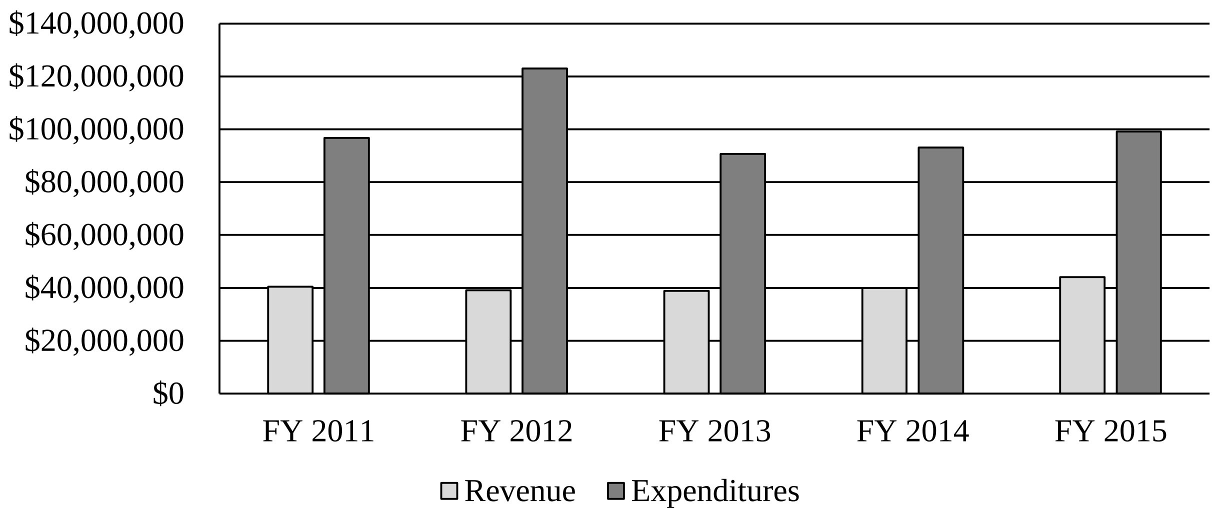
Local Government Challenges to Next Generation 9-1-1 Modernization

As analog landline communication is phased out completely, state and local governments are preparing for "next generation" technology that will allow 9-1-1 centers to access not only more accurate information about caller location, but also information that will assist emergency personnel in communicating with callers and responding more efficiently. This Next Generation 9-1-1 (NG 9-1-1) technology will allow PSAPs to receive text, chat, video, location, and various other types of data from a single 9-1-1 call. However, local governments face challenges both in maintaining existing 9-1-1 systems and in transitioning to NG 9-1-1 systems.

Funding Challenges

County expenditures for 9-1-1 systems consistently outweigh 9-1-1 fee revenues. **Exhibit 1** shows the total 9-1-1 fee revenues collected and total county 9-1-1 operational expenditures per fiscal year from fiscal 2011 to 2015. Across all counties, 9-1-1 fee revenues offset 44.5% of operational expenditures in fiscal 2015. However, the percentage offset varies significantly by county. For example, in fiscal 2015, the county with the lowest percentage offset was Talbot (3.7%), compared to the county with the highest percentage offset, which was Montgomery (99.4%).

Exhibit 1
Total County 9-1-1 Fee Revenue and Operational Expenditures
Fiscal 2011-2015



Note: Prepaid wireless E 9-1-1 fee revenues were first collected in fiscal 2014. County operational expenditures are costs as reported by county-selected independent auditors and typically include 9-1-1-related personnel salaries and benefits, recurring maintenance and service fees, mapping maintenance and updates, network associated fees, and capital expenditures not covered by the Emergency Number Systems Board.

Source: Emergency Number Systems Board annual reports (FY 2011-2015)

Technical and Operational Challenges

While Maryland offers enhanced 9-1-1 capabilities for all wireline, wireless, and VoIP calls, NG 9-1-1 will use IP-based hardware and software to provide call identification, location determination, call routing, and call signaling for emergency calls. Next generation-capable PSAPs will receive and process incoming calls by means of Emergency Services IP Networks (ESInets), which will support many more modes of emergency communication than the voice-centric legacy system. The ESInets can also be configured to receive text, audio, and machine-generated data from telematics applications (*e.g.*, automatic collision notification systems in vehicles), medical alert systems, and sensors and alarms of various types.

Establishing an IP-based network requires selecting a telecommunications provider and upgrading equipment as necessary. However, the required components and specifications needed for an IP-based network in Maryland have yet to be determined. Consideration must be given to the sufficient bandwidth, reliability, and redundancy needed for transport of 9-1-1 calls and data. In addition, NG 9-1-1 will require all legacy 9-1-1 data to be validated and synchronized with geospatial data to obtain geographic-based location information from a caller. Local, state, and regional jurisdictions must also develop standards for the interoperability, certification, and security of their corresponding ESInets.

Other operational concerns include how to (1) maintain duplicate or parallel systems during the transition to NG 9-1-1 to ensure operational reliability; (2) update training and hiring specifications to address the additional skills required; and (3) mitigate increased work-related stress of call-takers from additional inputs (such as graphic pictures and audio) and increase retention rates.

Status of Next Generation 9-1-1 Implementation

ENSB has contracted with a consultant to (1) recommend a procurement strategy for NG 9-1-1; (2) analyze county geographic systems data for readiness; (3) assess county customer premise equipment for next generation readiness; and (4) provide grant writing assistance. After a procurement strategy is finalized, ENSB is expected to submit a request for proposals to implement a statewide NG 9-1-1 system. DPSCS is required under the 2017 *Joint Chairmen's Report* to submit an update to the Senate Budget and Taxation Committee and the House Appropriations Committee on the status of the contractor, progress made, associated costs, timelines, and funding sources and options by June 30, 2018.

Recently Proposed Legislation

As originally introduced, Senate Bill 244 of 2017 would have altered the funding structure and purposes of the 9-1-1 trust fund by, among other things, expanding the purpose of the fund to include funding for the capital and operating costs of planning an enhanced 9-1-1 system and requiring the State surcharge and county additional charge to apply to each phone line under a phone bill or account, rather than to only each bill or account. The legislation did not pass.

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Local Government

2018 Legislative Agenda – Maryland Municipal League

The Maryland Municipal League has three legislative priorities for the 2018 session, one of which is an ongoing effort from prior years concerning the enhancement of local transportation funding. New priorities center on exemptions from the Maryland Public Information Act and the siting approval for personal wireless facilities.

Highway User Revenues

Most municipalities in Maryland rely upon State shared highway user revenues (HUR) to maintain and improve public roads within their municipal corporate limits, and more than half of all municipalities rely on police aid to assist in providing law enforcement services. Aside from these two revenue sources, municipal governments in Maryland receive limited State support to finance public services. As a result, most municipal governments in Maryland rely on property taxes and service charges to finance public services. In fiscal 2010, Maryland's municipal governments received reduced State funding resulting from decreases in their share of HUR and police aid to help balance the State's operating budget. Although full funding for police aid was restored in the fiscal 2014 budget, State support for local roadways has not been restored to prior funding levels.

Prior to the reduction in State support in fiscal 2010, municipalities received 2.5% of highway user revenues. In fiscal 2018, the municipal share of HUR totals only 0.4%, resulting in a sharp decline in State funding. Municipalities received $46.8 million in HURs in fiscal 2007, compared to approximately $7.3 million in fiscal 2018. However, the fiscal 2014 budget included a grant of $15.4 million to assist municipalities with local transportation projects. State funding for these grants has continued, with funding totaling $16.0 million in fiscal 2015, $19.0 million each in fiscal 2016 and 2017, and $20.1 million in fiscal 2018. Even with the grants, the reduction in State funding continues to affect the ability of local governments to provide transportation services within their communities.

The Maryland Municipal League (MML) has adopted, as one of its 2018 legislative priorities, the reinstatement of funding for municipal HURs and the creation of protections to ensure that municipal HUR are not diverted to the State's general fund in the future.

Public Information Act Request Denials

Some Maryland municipalities have created email or phone subscription systems for the purpose of alerting individuals about local news, public notices, and emergency alerts. The telephone numbers and email addresses of these subscribers, as well as other identifying information supplied when registering for the subscription system, could be subject to disclosure as part of a request made under the Maryland Public Information Act (MPIA). MML believes requests for this information may be driven by commercial or political considerations. The release of personal contact information could subject subscribers to unwanted solicitations and communications or "spamming," cybersecurity attacks, and identify theft. MML has expressed concern that allowing disclosure of this information could discourage individuals from subscribing to local government notifications to avoid these risks while serving no useful governmental purpose.

To address these concerns, MML has adopted as a 2018 legislative priority the authority of municipalities to deny the MPIA requests that would require the release of email addresses and phone numbers provided by residents for the purpose of subscribing to emergency alerts and municipal newsletters. This authority would not apply to the MPIA requests related to individuals who comment on public policy matters related to the operation of government.

Personal Wireless Facility Siting Approval

The Federal Communications Commission (FCC) is responsible for managing the radio frequency spectrum, including that portion made available for use by private mobile services. All commercial mobile services fall within the definition of personal wireless services and provide subscribers with the ability to access or receive calls from the public switched telephone network, including through cellular or mobile telephones and pagers. Personal wireless facilities are transmitters, antenna structures, and other types of installations used for the provision of personal wireless services. These facilities are commonly referred to as "cellular" or "cell phone" towers, "cellular" or "cell phone" antennas, or "cell sites."

47 U.S.C. § 332(c)(7) preserves state and local government authority over decisions regarding the placement, construction, and modification of personal wireless service facilities but sets forth specific limitations on that authority. Specifically, a state or local government may not unreasonably discriminate among providers of functionally equivalent services, may not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services, must act on applications within a reasonable period of time, and must make any denial of an application in writing supported by substantial evidence in a written record. The federal statute also prohibits state and local decisions based directly or indirectly on the environmental effects of radio frequency (RF) emissions if the provider is in compliance with FCC RF rules.

In response to several attempts by personal wireless services to site facilities on private property without obtaining local approval, the final priority that MML has adopted for the 2018 legislative session is to work to protect the authority of a municipality to assert local control over the siting and installation of personal wireless facilities and to impose fees for permit review of personal wireless facility projects and for rental of space by personal wireless facilities located within municipal rights-of-way.

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Local Government

2018 Legislative Agenda – Maryland Association of Counties

The Maryland Association of Counties has four legislative priorities for the 2018 session, two of which are ongoing efforts from the prior year. Ongoing priorities include reinvesting in local infrastructure projects and enhancing State funding for school construction. New priorities center on aligning public access laws with modern technologies and improving the State's Emergency 9-1-1 systems.

Local Infrastructure Fast Track for Maryland (LIFT4MD)

Local infrastructure includes roads, bridges, public transit, water and sewer systems, dams, wastewater treatment plants, public buildings, conduits, and fiber. Maryland counties and municipalities have no local revenue source targeted toward infrastructure costs, and most local governments have relied on State shared highway user revenues (HUR) to maintain and improve these facilities.

In fiscal 2007, prior to budget reconciliation legislation reducing the local share of HUR to help balance the budget, the local distribution of HUR was as follows: $281.6 million (15.2%) to counties; $226.6 million (12.3%) to Baltimore City; and $46.8 million (2.5%) to municipalities. In fiscal 2018, the distribution was $27.4 million (1.5%) to counties, $140.8 million (7.7%) to Baltimore City, and $7.3 million (0.4%) to municipalities.

During the 2017 session, legislation was introduced that would have increased the minimum distribution of local HUR to counties from fiscal 2018 through 2023 (with the exception of the Baltimore City distribution in fiscal 2018 which would have decreased slightly before increasing in subsequent years). This legislation was not passed.

For the 2018 session, the Maryland Association of Counties (MACo) continues to prioritize attention to local infrastructure, including calling for the following actions by State leaders:

- approve meaningful new fiscal 2019 funding for local transportation infrastructure;
- restore the historic 30% local share of transportation revenues;
- inventory the condition of local infrastructure across the State, using existing resources – assessing the needs and revenue sources targeted for each area; and
- prioritize additional funding for local infrastructure, should the State receive extra infrastructure support from the federal government.

Strong and Smart State Funding for School Construction

MACo continues to maintain that the State's commitment to school construction funding needs to remain strong and smart to best serve the modern needs of schoolchildren, educators, and communities. MACo contends that strong State funding will recognize modern cost factors in order to achieve new environmental and energy standards, satisfy heightened needs for technology, ensure student safety, fulfill community resource needs, and mesh with evolving teaching methods.

County governments share responsibility for financing K-12 school construction with the State, whose funding depends on statutory formulas and regulations. Therefore, MACo advocates efforts to promote the smartest and most effective funding for modern schools and urges State policymakers to retain the State's strong commitment to this top funding priority. In addition, MACo supports reasonable school construction improvements including alternative financing, public-private partnerships, and innovative models of school construction and design.

Align Public Access Laws with Modern Technologies

While MACo considers the Maryland Public Information Act (MPIA) to have created a balanced framework for guaranteeing public access to open information while protecting sensitive and private material, MACo has expressed concern that the rapid adoption of new technologies has strained the implementation and effect of these laws, potentially chilling their otherwise beneficial use. As part of its legislative agenda for 2018, MACo will encourage the State to clarify and reframe the MPIA to better accommodate resident electronic engagement, personal surveillance footage from first responders and other county officials, and the release of sensitive personal information.

Advancing Maryland Next Generation 9-1-1 Systems

Emergency 9-1-1 systems are falling behind advancements in technology that are widely used by the general public, including text messaging, pictures and video from cell phones, emails sent from cell phones, and vehicle telematics such as Onstar. Legacy 9-1-1 systems cannot collect and deliver this information to 9-1-1 centers. The Next Generation 9-1-1 system will provide the capability for these new technologies to interface with the 9-1-1 network and improve wireless caller location, accommodate incoming text/video, and manage crisis-driven call overflows.

Legislation introduced during the 2017 session, but not passed, would have expanded the purpose of the 9-1-1 trust fund to include reimbursing counties under certain circumstances for the capital and operating costs of an enhanced 9-1-1 system that would provide (1) automatic number identification; (2) automatic location identification; and (3) any other technological advancements required by the Emergency Number Systems Board.

As part of its 2018 legislative agenda, MACo urges a concerted statewide effort to guide the transition to Next Generation 9-1-1, including harnessing the expertise and needs of front-line county managers.

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