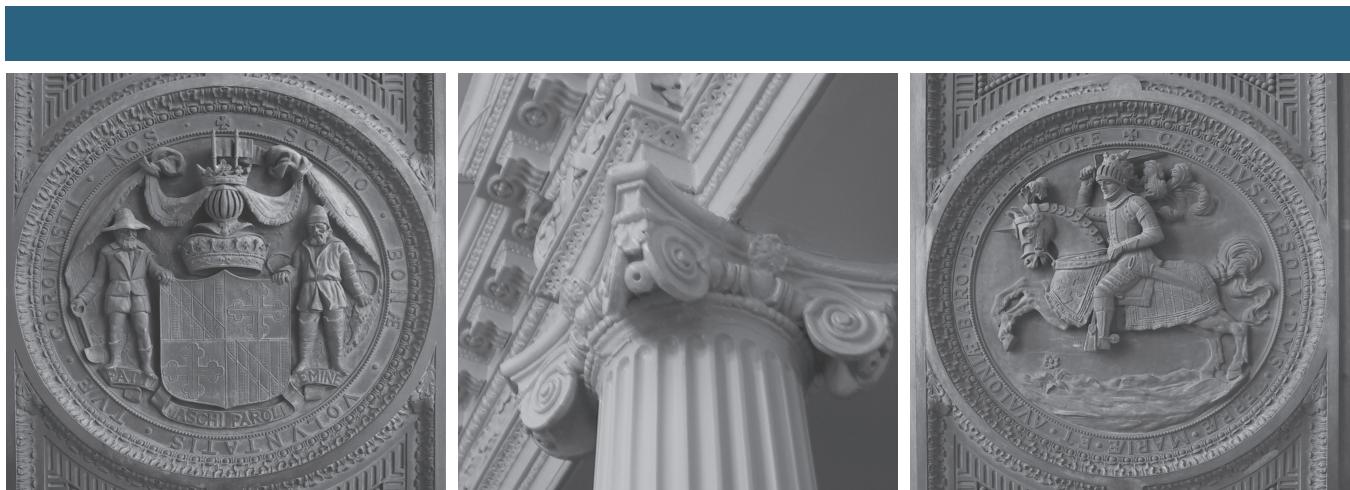


ISSUE PAPERS

2019 LEGISLATIVE SESSION



DEPARTMENT OF LEGISLATIVE SERVICES 2018

Issue Papers

2019 Legislative Session

**Presentation to the
Maryland General Assembly**

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

November 2018

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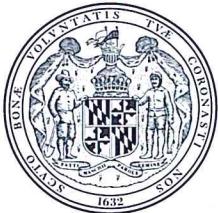
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

November 2018

Ryan Bishop
Director

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 30, 2018.

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,

A handwritten signature in black ink that reads "Victoria L. Gruber".

Victoria L Gruber
Executive Director

A handwritten signature in blue ink that reads "Ryan Bishop".

Ryan Bishop
Director

VLG:RB/mrm

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Operating Budget

Economic and Revenue Outlook

Overall employment growth in Maryland in 2017 slowed from the pace in 2016 with the rate decelerating sharply over the course of the year. This pattern was not seen nationally nor in the neighboring state of Virginia. Economic growth in 2018 is similar to the pace seen in 2017. General fund revenues exceeded expectations in fiscal 2018 by \$339 million, and the estimate for 2019 was revised up by \$332 million.

Economic Outlook

The recession that began in December 2007 officially ended in June 2009, making the recovery phase of the business cycle nine years old. U.S. employment grew 1.4% in 2017, down from growth of 1.7% in 2016. Income growth accelerated in 2017 with total personal income up 4.4% and wage income up 4.6%. In 2016, total personal income grew 2.6% and wage income was up 2.9%. Employment growth has picked up a bit in 2018 with jobs increasing by 1.6% through the first nine months of the year. Nationally, total personal income in 2018 was up 4.5% through August with wage income increasing 4.8%.

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 2017. Payrolls increased by less than 1% in both 2013 and 2014 but accelerated to 1.5% in 2015. The increase, while slower than the U.S. growth, reflects the strongest employment growth in the State since 2005. In 2016, economic growth slowed slightly, but the gap between Maryland and the national economy narrowed. The improvement did not continue in 2017. Maryland employment growth further decelerated to 1.0%, and the rate of growth slowed substantially over the course of 2017. In the first quarter of the year, Maryland payrolls increased by 1.4% compared to the first quarter of 2016, which is just slightly slower than the U.S. economy as a whole. But by the fourth quarter of 2017, Maryland employment was up just 0.7%, which is half the pace of the first quarter. In the first nine months of 2018, Maryland jobs grew by 0.7% compared with 1.6% nationally.

Wage growth in Maryland has also underperformed relative to the U.S. economy. In 2017, Maryland wage and salary income grew 3.5% compared to 4.1% nationally. In the first half of 2018, wages in Maryland were up 3.6% versus 4.8% for the U.S. economy.

In September 2018, the Board of Revenue Estimates (BRE) issued a revised economic forecast for Maryland, its first since March 2018 (**Exhibit 1**). BRE revised the economic outlook largely in line with recent performance. Employment growth for 2018 was revised down slightly from 0.8% to 0.7%, and the projection for wage income growth was lowered from 4.0% to 3.9%. 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 14.9% in 2017 and is projected to exceed 20.0% in 2029.

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

<u>Calendar Year</u>	Employment		Personal Income	
	<u>Mar. 2018</u>	<u>Sep. 2018</u>	<u>Mar. 2018</u>	<u>Sep. 2018</u>
2015	1.6%	1.5%	4.5%	5.0%
2016	1.4%	1.2%	3.6%	3.7%
2017	1.1%	1.0%	3.4%	4.1%
2018 Est.	0.8%	0.7%	3.8%	3.6%
2019 Est.	0.5%	0.8%	4.2%	4.2%
2020 Est.	0.6%	0.6%	4.1%	3.9%
2021 Est.	0.4%	0.4%	3.8%	3.7%

Note: The figures for 2017 under the Mar. 2018 columns are estimates.

Source: Board of Revenue Estimates

Revenue Outlook

Fiscal 2018 general fund revenues were above the estimate by \$339 million, or 2.0%. General fund revenues totaled \$17.4 billion in fiscal 2018, an increase of 4.0% over fiscal 2017.

The overattainment was mostly due to the personal income tax, the insurance premiums tax, and the sales tax. General fund personal income tax revenues exceeded the estimate by \$218.7 million and grew 5.4% over fiscal 2017. The overattainment was mostly in payments with returns that grew 3.9% over fiscal 2017 but had been projected to fall 3.5%. A large 33% increase in fourth quarter tax year 2017 estimated payments suggested that taxpayers had accelerated payments that they would normally make when they filed their return. The federal tax bill passed at the end of 2017 created an incentive to do this because it capped the deduction for state and local taxes at \$10,000 beginning with tax year 2018. Despite that, tax year 2017 payments with returns during the tax filing season increased 2.9% over the prior year.

The sales and use tax exceeded the estimate for the first time since fiscal 2015. General fund sales tax revenue was above the estimate by \$34.1 million and grew 2.3% over fiscal 2017. Growth was not even throughout the year with revenues up just 1.8% through the first nine months of fiscal 2018. The last quarter of the fiscal year, however, saw sales tax revenue increase by 4.0% over the same period in fiscal 2017.

Fiscal 2019 general fund revenue collections through September 2018 were up 2.5% from the prior year while ongoing revenues increased 4.8%. Personal income tax revenues grew 6.1% in the first quarter of fiscal 2019 driven primarily by quarterly estimated payments. General fund sales and use tax collections continued the pace seen at the end of fiscal 2018, rising 4.4% in the beginning of fiscal 2019. Fiscal 2019 general fund corporate income tax revenues were up 17.9% through September. General fund lottery revenues fell 8.6% in the first quarter of fiscal 2019. Sales were up just 0.1% due to big declines in Mega Millions and Powerball, both of which had large jackpots in the first few months of fiscal 2018. Excluding those two games, fiscal 2019 lottery sales were up 3.0% year-to-date.

In September 2018, BRE increased its estimate for fiscal 2019 general fund revenues by \$331.6 million, or 1.9% (see **Exhibit 2**). The personal income tax estimate was revised up by \$177.8 million (1.8%) reflecting a significant upward revision for quarterly estimated payments. The general fund sales tax estimate was revised up by \$112.2 million (2.4%). This reflects both the overattainment in fiscal 2018 and additional revenue from out-of-state retailers following the Supreme Court decision allowing states to require those sellers to collect and remit the sales tax (*South Dakota vs. Wayfair*). Total general fund revenues are projected to grow 4.2% in fiscal 2019 and 3.3% in fiscal 2020. Excluding one-time items, revenues are projected to grow 5.7% in fiscal 2019 and 2.6% in fiscal 2020. The strong growth in fiscal 2019 reflects in part a year-and-a-half impact from the federal tax changes that flow through to the Maryland income taxes.

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

	Fiscal 2019			Fiscal 2020		
	BRE Mar. 2018	BRE Sep. 2018	\$ Diff.	% Change 2019/2018	BRE Sep. 2018	% Change 2020/2019
Personal Income Tax	\$10,072	\$10,250	\$178	7.8%	\$10,595	3.4%
Sales and Use Tax	4,750	4,863	112	4.7%	5,026	3.4%
Corporate Income Tax	925	937	12	14.2%	943	0.7%
Lottery	527	529	2	-1.1%	539	2.0%
Other	1,488	1,517	28	-18.6%	1,580	4.2%
Total	\$17,763	\$18,095	\$332	4.2%	\$18,684	3.3%

BRE: Board of Revenue Estimates

Source: Board of Revenue Estimates

Operating Budget

Budget Outlook

In the short-term, the fiscal outlook is favorable. Ongoing revenues exceed ongoing spending by \$431 million in fiscal 2019 and \$2 million in fiscal 2020, primarily due to improved revenue attainment. In the out-years, ongoing revenues are projected to increase by 3.3% annually while ongoing expenditures increase by 4.9% annually, which results in expenditures exceeding revenues by \$1.3 billion in fiscal 2024. Additional spending pressures, such as the recommendations of an education commission that could require a substantial increase in spending and efforts to avoid shifting State retiree prescription drug costs to the federal Medicare program may add to this deficit.

Background

Fiscal 2018 closed with a general fund balance of \$589.6 million. General fund revenues totaled \$17.3 billion, an increase of 4.4% over fiscal 2017. **Exhibit 1** illustrates the changes by revenue component compared to the revised estimate from March 2018, adjusted for actions taken during the 2018 session. Personal income taxes were higher than estimated by \$218.7 million. Much of this growth is likely due to higher attainment from capital gains taxes. The stock market has realized significant gains over the past two years, which can result in investors recognizing profits. Sales and use taxes increased by \$34.1 million. Slightly higher attainment was also realized from corporate income taxes and the State lottery. The combination of all other revenues was \$65.0 million above the estimate. Of this, taxes on insurance companies were \$60.0 million higher than the projection.

Exhibit 1
Fiscal 2018 General Fund Revenue Performance
(\$ in Millions)

	<u>Fiscal 2018 Estimated</u>	<u>Fiscal 2018 Actual</u>	<u>Change</u>
Personal Income Tax	\$9,289.1	\$9,507.8	\$218.7
Sales and Use Tax	4,611.7	4,645.8	34.1
Corporate Income Tax	815.1	820.4	5.3
State Lottery	518.4	534.6	16.2
Other	1,752.9	1,817.9	65.0
Total	\$16,987.1	\$17,326.5	\$339.3

Source: Department of Legislative Services

Fiscal 2019 Activity

Exhibit 2 shows that fiscal 2019 is projected to end with a general fund balance of \$801.2 million, which is \$695.4 million higher than what was expected when the budget was enacted in the 2018 session. In large part, this is due to revenue overattainment at closeout shown in Exhibit 1. Revenue from appropriated tax credits also contributed \$4.1 million in additional income, and \$0.5 million was realized from a diversion of gaming revenue from the Small, Minority, and Women Owned Businesses Account. The Board of Revenue Estimates (BRE) revised its forecast for fiscal 2019 to reflect actual fiscal 2018 attainment that increased current year revenues by \$325.2 million. Projections for spending are largely unchanged for fiscal 2019. Lower spending in fiscal 2018 resulted in nearly \$55.0 million in reversions, much of which came from the Maryland Department of Health. The Department of Legislative Services (DLS) is also estimating approximately \$36 million in agency deficiencies to address current year spending needs.

Exhibit 2
Evolution of the Fiscal 2019 General Fund Balance
 (\$ in Millions)

	<u>Fiscal 2019</u>
Estimated Closing Balance (July 2018)	\$105.8
Revenue and Transfers	
Fiscal 2018 Closeout	\$343.4
September 2018 Board of Revenue Estimates Revenue Revision	325.2
Medicare Part D Injunction	6.4
Tax Credit Reimbursements Closeout and September Estimate	1.3
Spending	
Fiscal 2018 Closeout Reversions	\$54.6
Department of Legislative Services Estimated Fiscal 2019 Deficiencies	-35.5
Revised Closing Balance (November 2018)	\$801.2

Source: Department of Legislative Services

Fiscal 2020 to 2024 Forecast

Relative to the forecast prepared following the 2018 session, the fiscal outlook has improved. In July 2018, DLS estimated a fiscal 2020 cash shortfall of \$929 million. However, because of the additional revenue at closeout and the subsequent upward revisions of revenue estimates by BRE for fiscal 2019 and 2020, DLS now projects closing balances of \$801.2 million and \$168.3 million, respectively. Despite these improvements, the structural deficit between ongoing general fund revenues and spending is still forecasted to exceed \$1.3 billion by fiscal 2024.

As seen in **Exhibit 3**, the ongoing general fund budget is projected to grow by \$3.9 billion between fiscal 2020 and 2024. This is an average rate of growth of 4.9% per year, compared to ongoing revenue growth of 3.3% per year. Most of this growth is expected in K-12 education aid due in part to the adoption of a constitutional amendment proposed by Chapter 357 of 2018 that requires that gaming revenues be appropriated on top of existing education aid formulas instead of supplanting general funds. Over \$500 million in additional spending in fiscal 2024 is attributed to this action. Spending on Medicaid also grows by \$1.0 billion over the forecast period, in part because the federal participation rate for the expansion population under the Affordable Care Act phases down to 90% and the phase-down of the special fund hospital assessment. Debt service also continues to grow due to large issuances of general obligation (GO) bonds after the Great Recession, coupled with rising interest rates that will reduce the receipt of bond premiums.

Exhibit 3
Ongoing Spending Growth in the General Fund Forecast
Fiscal 2020-2024
(\$ in Billions)

	<u>Annual % Change</u>	
Ongoing General Fund Revenue		3.3%
K-12 Education	\$1.4	5.0%
Medicaid	1.0	6.5%
State Agency Personnel Expenses	0.4	3.4%
Higher Education Current Service Costs	0.3	4.7%
Debt Service	0.2	13.5%
Developmental Disabilities Administration	0.2	6.9%
Other Local Aid Growth	0.2	4.7%
Other Operating Expenses	0.2	1.0%
Total	\$3.9	4.9%

Source: Department of Legislative Services

Exhibit 4 provides the DLS general fund forecast through fiscal 2024 that shows a projected surplus of \$801 million in fiscal 2019 declining to a \$1.3 billion shortfall by fiscal 2024. This is due to the disparity between ongoing revenue growth of 3.3% per year, compared with spending commitments that grow by 4.9% annually on average. Unlike in past years, the short-term challenge focuses on how near-term surpluses are to be used, without exacerbating the projected structural deficit.

Options for using surplus cash include paying down unfunded liabilities, increasing the balance in the Rainy Day Fund and Catastrophic Event Account, or using some amount for pay-as-you-go capital spending. Use of cash for capital maintenance and infrastructure can save the cost of issuing taxable debt for projects that have a private activity component or could be spent in lieu of issuing GO bonds, either of which also could potentially save future debt service expenditures.

In the longer term several challenges could worsen the outlook. Efforts to shift State retiree prescription drug coverage to Medicare Part D might be overturned by the courts or could be repealed through legislation during the 2019 session; K-12 education enhancements recommended by the Commission on Innovation and Excellence in Education could require a substantial commitment of State and local resources; and a downturn in the economy would negatively impact revenues.

Exhibit 4
General Fund Projections
Fiscal 2019-2024
(*\$* in Millions)

	<u>Working 2019</u>	<u>Baseline 2020</u>	<u>Estimate 2021</u>	<u>Estimate 2022</u>	<u>Estimate 2023</u>	<u>Estimate 2024</u>	<u>Avg. Annual Change 2020-24</u>
Revenues							
Opening Fund Balance	\$590	\$801	\$168	\$0	\$0	\$0	
Transfers	0	0	546	52	47	47	
One-time Revenues/Legislation	-57	0	0	0	0	0	
<i>Subtotal One-time Revenue</i>	\$532	\$801	\$714	\$52	\$47	\$47	
Ongoing Revenues	\$18,178	\$18,713	\$19,263	\$19,843	\$20,569	\$21,303	
<i>Subtotal Ongoing Revenue</i>	\$18,178	\$18,713	\$19,263	\$19,843	\$20,569	\$21,303	3.3%
Total Revenues and Fund Balance	\$18,711	\$19,514	\$19,978	\$19,895	\$20,616	\$21,350	2.3%
Ongoing Spending							
Operating Spending	\$17,220	\$18,300	\$19,586	\$20,670	\$21,809	\$22,624	
Education Trust Fund ¹	528	411	277	160	0	0	
<i>Subtotal Ongoing Spending</i>	\$17,748	\$18,711	\$19,864	\$20,830	\$21,809	\$22,624	4.9%
One-time Spending							
Pay-as-you-go	\$60	\$97	\$93	\$63	\$49	\$49	
Legislation/One-time Adjustments/							
Swaps	93	0	0	0	0	0	
Appropriation to Reserve Fund	9	538	235	114	102	102	
<i>Subtotal One-time Spending</i>	\$162	\$635	\$328	\$177	\$151	\$151	
Total Spending	\$17,909	\$19,346	\$20,192	\$21,008	\$21,960	\$22,775	4.2%
Ending Balance	\$801	\$168	-\$215	-\$1,112	-\$1,344	-\$1,425	
Rainy Day Fund Balance	\$882	\$1,370	\$963	\$992	\$1,028	\$1,065	
Balance Over 5% of GF Revenues	0	434	0	0	0	0	
As % of GF Revenues	5.0%	7.3%	5.0%	5.0%	5.0%	5.0%	
Structural Balance	\$431	\$2	-\$600	-\$987	-\$1,240	-\$1,321	

GF: general fund

¹ The Education Trust Fund is supported by revenues from video lottery terminals and table games.

Source: Department of Legislative Services

Operating Budget

Transportation Trust Fund Overview

The Transportation Trust Fund closed fiscal 2018 with a fund balance \$17 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 2019 to 2024 forecast period. This will reduce the six-year capital program by \$154 million.

Fiscal 2018 Closeout

The Transportation Trust Fund (TTF) ended fiscal 2018 with a fund balance of \$142 million, an amount \$17 million higher than the \$125 million projected ending balance. Revenues exceeded projections by \$45 million, and expenditures were \$28 million higher than projected.

Nonbond-related revenues exceeded projections by a net \$31 million with motor fuel tax attainment accounting for \$25 million of the additional revenues. Revenues from bond sales and premiums were \$14 million higher than projected, while miscellaneous motor vehicle fee revenues closed out \$14 million lower than projected, and titling tax revenue closed \$2 million below the estimate.

On the expenditure side of the equation, operating spending was a net \$24 million higher than estimated. Spending for capital projects exceeded estimates by \$3 million.

Fiscal 2019 to 2024 TTF Forecast

Exhibit 1 shows the fiscal 2019 to 2024 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 \$147 million lower and operating budget spending that is \$47 million higher. The lower revenue and higher spending assumptions require a reduction in bond issuances in fiscal 2020 totaling \$44 million in order to maintain minimum debt service coverage ratios. Based on DLS estimates, the six-year capital program would be \$154 million less than projected in the MDOT forecast, not including mandated capital grants to local governments.

Exhibit 1
Transportation Trust Fund Forecast
Fiscal 2019-2024
(*\$* in Millions)

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>Total</u> <u>2019-24</u>
Opening Fund Balance	\$142	\$150	\$150	\$150	\$150	\$150	\$150
Closing Fund Balance	\$150						
Net Revenues							
Taxes and Fees	\$2,627	\$2,872	\$2,943	\$3,018	\$3,092	\$3,143	\$17,694
Operating and Miscellaneous	655	610	653	695	702	681	3,996
<i>Subtotal</i>	\$3,282	\$3,482	\$3,596	\$3,713	\$3,794	\$3,824	\$21,690
Bond Proceeds/Premiums	\$675	\$546	\$465	\$415	\$375	\$500	\$2,976
Fund Balance (Increase)/Use	-8	0	0	0	0	0	-8
Total Net Revenues	\$3,949	\$4,028	\$4,061	\$4,128	\$4,169	\$4,324	\$24,658
Expenditures							
Debt Service	\$338	\$354	\$419	\$466	\$510	\$487	\$2,575
Operating Budget	2,084	2,192	2,207	2,302	2,451	2,554	13,790
State Capital	1,527	1,482	1,434	1,360	1,207	1,282	8,293
Total Expenditures	\$3,949	\$4,028	\$4,061	\$4,128	\$4,169	\$4,324	\$25,658
Debt							
Debt Outstanding	\$3,343	\$3,683	\$3,893	\$4,012	\$4,049	\$4,236	
Debt Coverage – Net Income	2.8	2.5	2.6	2.7	2.8	2.6	
Local Highway User Revenue	\$176	\$0	\$0	\$0	\$0	\$0	\$176
Capital Summary							
State Capital (Excl. Local Aid)	\$1,527	\$1,233	\$1,181	\$1,102	\$945	\$1,018	\$7,006
Mandated Local Aid Capital Grants	0	249	254	258	262	265	1,287
Net Federal Capital (Cash Flow)	1,272	1,095	952	856	736	749	5,660
Total Capital Expenditures	\$2,799	\$2,577	\$2,386	\$2,216	\$1,943	\$2,031	\$13,953
GARVEE Debt Service	\$87	\$51	\$0	\$0	\$0	\$0	\$139

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 \$18.3 billion with an average annual growth rate of 2.3%. Motor vehicle fuel tax revenue, the largest TTF revenue source, is projected to grow at an average annual rate of 2.9%.

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 almost \$2.6 billion. The DLS baseline budget estimate for MDOT operations in fiscal 2020 is \$117.7 million (5.7%) higher than the current year legislative appropriation. For fiscal 2021 to 2024, the DLS forecast uses the MDOT estimated operating expenses because MDOT inflates its out-year estimates by 2.7% annually, which matches the five-year average annual increase for the period ending with fiscal 2018, the most recent year for which actual expenditures are available. Both the DLS and MDOT forecasts include \$31 million in fiscal 2022, \$119 million in fiscal 2023, and \$154 million in fiscal 2024 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 fiscal 2020 operating spending, as discussed earlier, results in the need to reduce the amount of bonds issued in fiscal 2020 by \$44 million compared to the MDOT forecast in order to maintain the 2.5 minimum net income debt service coverage ratio.

Capital Expenditures

DLS estimates that the total special and federal fund capital budget, excluding mandated local aid capital grants, will total \$12.7 billion, which is \$154 million less than MDOT's estimate contained in the draft 2019 to 2024 *Consolidated Transportation Program*.

Local Transportation Aid

Fiscal 2019 is the final year in which transportation aid will be distributed to local governments in the form of a share of TTF revenues. Beginning in fiscal 2020, local transportation aid will be provided in the form of mandated capital grants. This change was required by Chapters 330 and 331 of 2018 and increases MDOT's bonding capacity. Chapters 330 and 331 also increased the amount of transportation aid going to local governments to the equivalent of

13.5% of the Gasoline and Motor Vehicle Revenue Account for fiscal 2020 through 2024. After fiscal 2024, the local share returns to the 9.6% level in place prior to enactment of this legislation. Total local aid during this six-year forecast is nearly \$1.5 billion.

Operating Budget

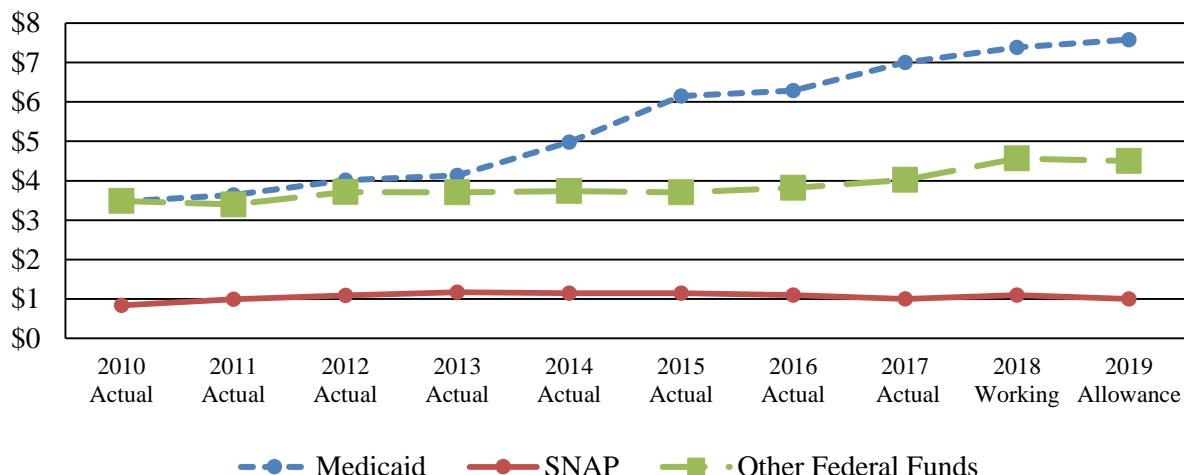
Federal Funds Outlook

In fiscal 2019, the State of Maryland anticipates receiving \$13.1 billion in federal funds. The federal fiscal 2019 budget is funded with a continuing resolution that expires on December 7, 2018.

Federal Funds to the State of Maryland

Federal funds to the State have grown 5.9% annually from fiscal 2010 to 2019; the fiscal 2019 federal fund allowance totals \$13.1 billion.¹ As shown in **Exhibit 1**, Medicaid accounts for \$7.6 billion in fiscal 2019, or 57.9%, of total federal funds. Increases in Medicaid funding since fiscal 2007 are primarily due to enrollment growth during the recession. Starting in fiscal 2014, Medicaid funding increases dramatically as a result of the Affordable Care Act (ACA) expansion.

Exhibit 1
Medicaid, SNAP, and Other Federal Funds
Fiscal 2010-2019
(\$ in Billions)



SNAP: Supplemental Nutrition Assistance Program

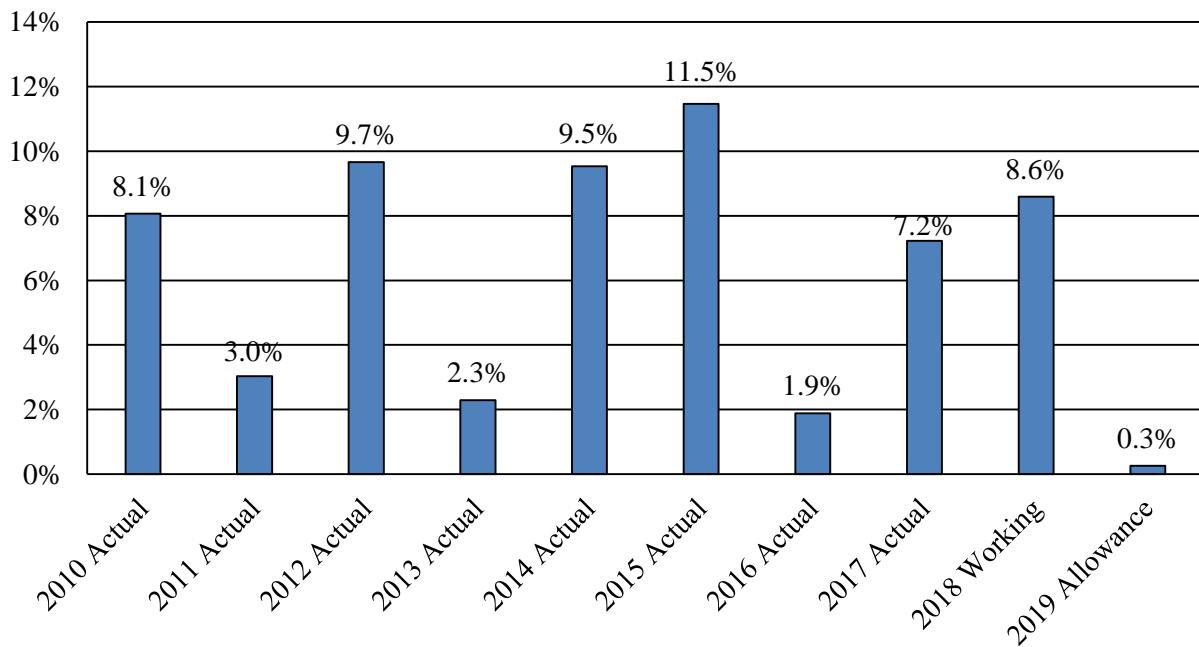
Source: Department of Budget and Management; Department of Legislative Services

¹ Excludes stimulus funding provided by the American Recovery and Reinvestment Act of 2009. Funding was provided from fiscal 2009 to 2017.

Growth Rate of Federal Funds

High growth in fiscal 2010, shown in **Exhibit 2**, is primarily due to increases in direct payment programs, such as the Supplemental Nutrition Assistance Program (SNAP) and Medicaid, in response to the recession. Modest growth reflected in fiscal 2013 reflects the start of sequestration and minimal growth in Medicaid. Increases in fiscal 2014 and 2015 are primarily due to Medicaid, reflecting increased funding as a result of the ACA expansion of Medicaid eligibility 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 that required all income-based enrollees to reenroll and resulted in a significant drop in enrollment. Enrollment and expenditures in Medicaid rebound and surpass prior levels in fiscal 2017 by \$710 million. Other major changes in fiscal 2017 include an increase of \$112 million in federal transit capital investment grants and a decrease of \$100 million in the Food Stamps program.

Exhibit 2
Growth Rate of Federal Funds to the State of Maryland
Fiscal 2010-2019



Note: Does not include stimulus funding provided by the American Recovery and Reinvestment Act of 2009. Funding was provided from fiscal 2009 to 2017.

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

Fiscal 2019 Federal Fund Appropriation

The fiscal 2019 federal fund allowance totals \$13.1 billion. **Exhibit 3** shows the distribution of federal funds by department/service area. The areas with the most federal funding are (1) health, primarily due to Medicaid funding; (2) human services, primarily due to SNAP and other social service grants; (3) transportation; and (4) public education. These four areas receive 93.6% of federal funding to the State.

Exhibit 3
Federal Funds in Fiscal 2019 Allowance
(\$ in Millions)

<u>Department/Service Area</u>	<u>Fiscal 2019 Allowance</u>
Judicial and Legal Review	\$4.4
Executive and Administrative Control	204.4
Budgetary and Personnel Administration	4.5
General Services	1.3
Transportation	1,227.3
Natural Resources	36.6
Agriculture	4.6
Health	8,068.5
Human Services	1,724.1
Labor, Licensing, and Regulation	153.9
Public Safety and Correctional Services	29.7
Public Education	1,227.2
Housing and Community Development	295.7
Commerce	1.5
Environment	75.8
Juvenile Services	5.3
State Police	6.9
Public Debt	12.8
Total Federal Funds	\$13,084.6

Note: Numbers may not sum due to rounding.

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

Federal Fiscal 2019 Budget Update

For the first time in 22 years, Congress passed 5 of 12 annual appropriations bills prior to the start of the federal fiscal year (FFY). These bills included funding for military, labor, education, health and human services, energy, veterans affairs, Legislative Branch, military construction, and water projects. These appropriation bills represent 75% of FFY 2019 discretionary funding. Congress did not pass the remaining FFY 2019 appropriations bills by the October 1 deadline but authorized a Continuing Resolution (CR) to extend funding for discretionary programs without a FFY 2019 appropriation through December 7, 2018, or until enactment of final appropriations. Some of the programs extended in the CR include the Temporary Assistance for Needy Families and Child Care Development Fund. The CR did not include across-the-board spending cuts, unlike most CRs in recent years. Additional spending cuts are not required because the CR abides by FFY 2019 caps established in the Bipartisan Budget Act (BBA) of 2018. Congress will need to either pass the remaining appropriations bills or another CR to ensure continued government operations.

Congress passed the BBA of 2018 in February 2018 that established a budget resolution for FFY 2019. The resolution expressed intent to raise caps on discretionary spending established by the Budget Control Act of 2011. The BBA of 2018 proposes to increase spending in FFY 2018 by 11% for nondefense spending and 14% for defense spending and to increase spending in FFY 2019 by 3% for both defense and nondefense spending. In addition to increases in discretionary spending caps, the BBA of 2018 did the following:

- extended the timeframe for sequestration of nonexempt mandatory funding through FFY 2025;
- provided additional disaster relief assistance;
- suspended the debt limit;
- offset a portion of new spending with cuts and changes to other programs;
- incorporated a host of tax extenders and modifications;
- extended, implemented, and reauthorized certain health and human service programs; and
- created a committee on budget process reform.

Operating Budget

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 2018 was 71.6% 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 \$1.7 billion in fiscal 2020.

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% of salary per year worked;² 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.

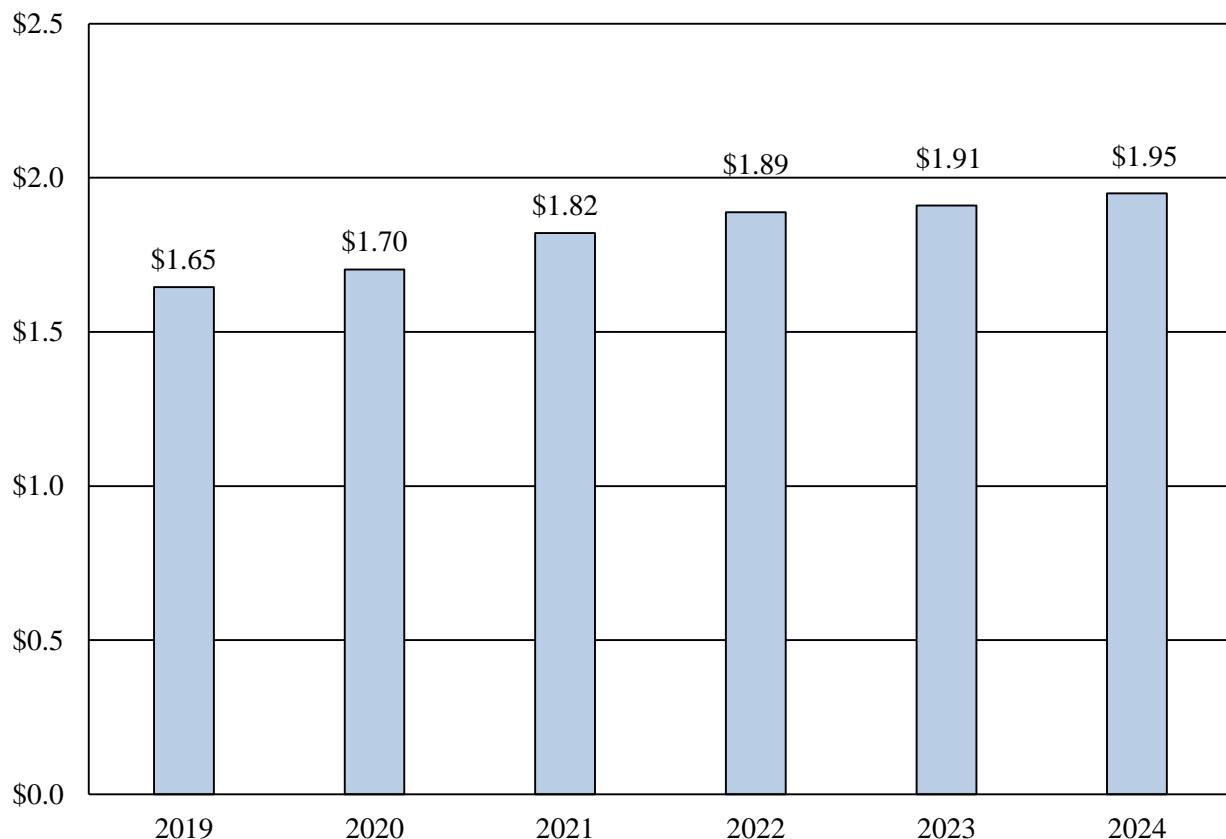
The State has provided supplemental pension payments. Current law requires that the Administration include a total of \$75.0 million in supplemental contributions for pensions for employees, teachers, State police, and law enforcement officers. In addition, the Administration is required to provide appropriate unassigned general fund balances of up to \$50.0 million. This is referred to as the pension sweeper. In fiscal 2018, the unassigned general fund balance totaled \$503.8 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 \$1.65 billion in fiscal 2019 to \$1.95 billion in fiscal 2024. This is an annual increase of 3.4%.

² The multiplier remains at 1.8% per year worked for employees hired before June 30, 2011.

Exhibit 1
Total State Pension Costs
Fiscal 2019-2024
(**\$ in Billions**)

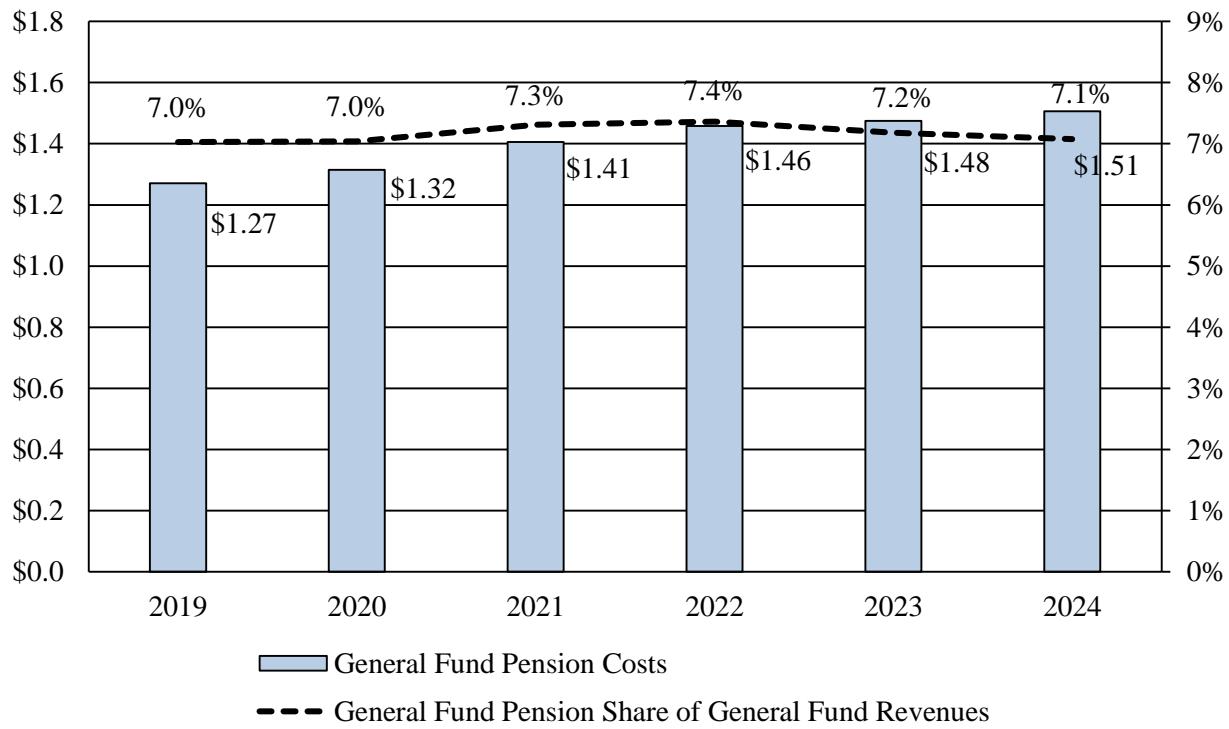


Note: State pension contribution excludes local teacher pension cost sharing and other local contributions.

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

Exhibit 2 shows that general fund costs for pensions hover near 7% of general fund revenues over the forecast period. 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 2019-2024
(\$ 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.

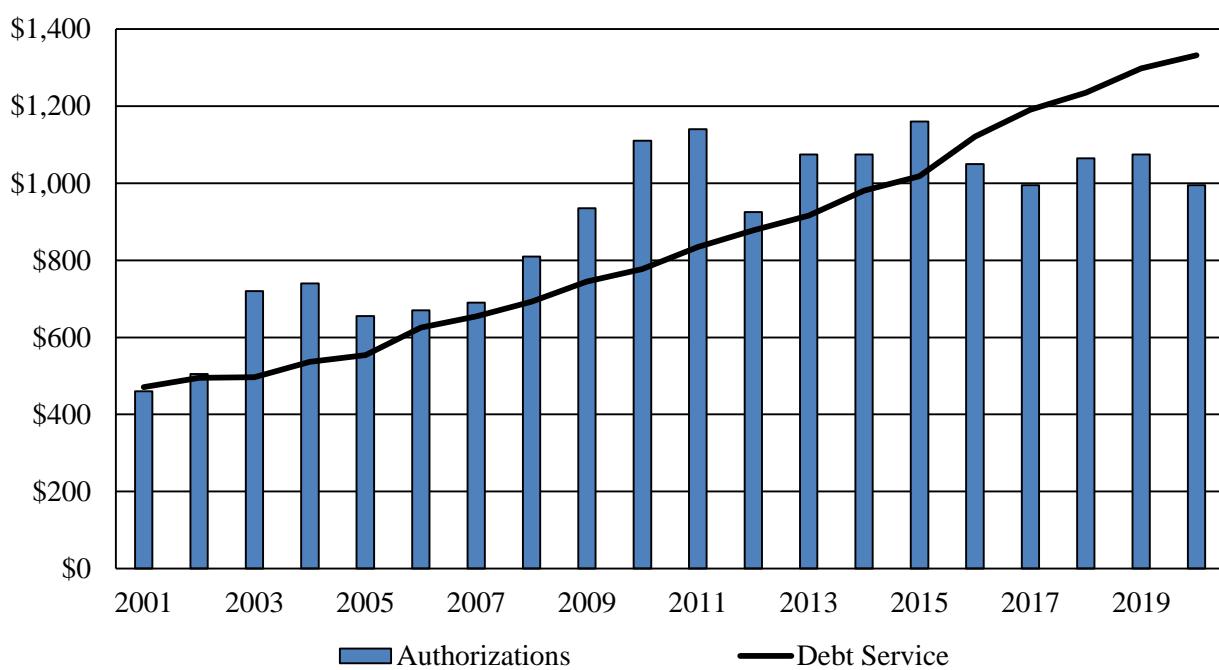
Debt Service Costs Influenced by Bond Authorization Policies

In the last 25 years, the State debt authorization policies 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 bond program expanded substantially from fiscal 2001 to 2011; it was a period in which the State increased authorizations in excess of what was previously planned in all but one year.
- From fiscal 2012 to 2016, the State managed debt service costs to the State's self-imposed limit, which is that debt service costs cannot exceed 8% of revenues. To stay within the limit, fiscal 2012 GO bond authorizations were reduced by \$215 million, from \$1,140 million to \$925 million. As the economy improved, authorizations were increased again.
- Since fiscal 2017, the Administration's policy has been to propose a \$995 million limit on GO bond authorizations. However, the General Assembly has not always concurred. For example, in fiscal 2019, the GO bond bill, passed by the General Assembly, authorized \$1,075 million in new GO bond authorizations. The Administration did not reduce spending by exercising its authority to line item veto any projects, so the amount authorized in fiscal 2019 was \$1,075 million.

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 \$1.332 billion in fiscal 2020. Over the same period, GO debt outstanding has increased from \$3.349 billion to \$9.832 billion.

Exhibit 1
Changes in General Obligation Bond Authorizations and Debt Service Costs
Fiscal 2001-2020
(\$ in Millions)



Note: Fiscal 2001 to 2018 debt service costs are actual costs, while fiscal 2019 and 2020 are projections consistent with the authorizations approved by the Capital Debt Affordability Committee.

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 by \$215 million in fiscal 2012, debt service costs continued to increase.

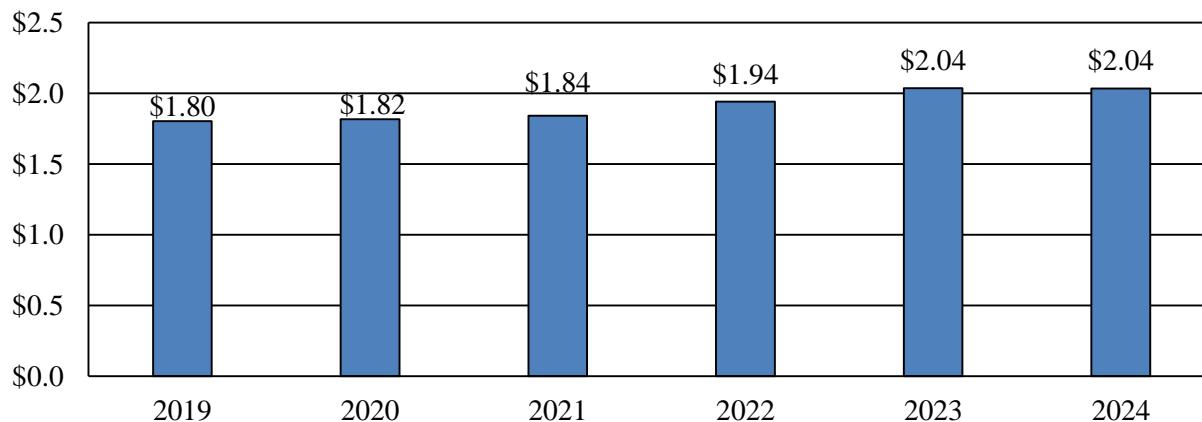
General Fund Support for Debt Service

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. Historically, it is common for the General Fund to support GO bond debt service costs to keep State property taxes low. For example, from the time that the State's affordability process began in fiscal 1979 until 2003, general funds were appropriated in each fiscal year. From fiscal 2003 to 2013, general funds were not required. However, general funds are now needed again.

Debt Service Cost Outlook

Exhibit 2 shows that total debt service costs are expected to increase from \$1.8 billion in fiscal 2019 to \$2.0 billion in fiscal 2024. This is an annual increase of 2.4%.

Exhibit 2
Combined Debt Service Costs
Fiscal 2019-2024
(**\$ in Billions**)

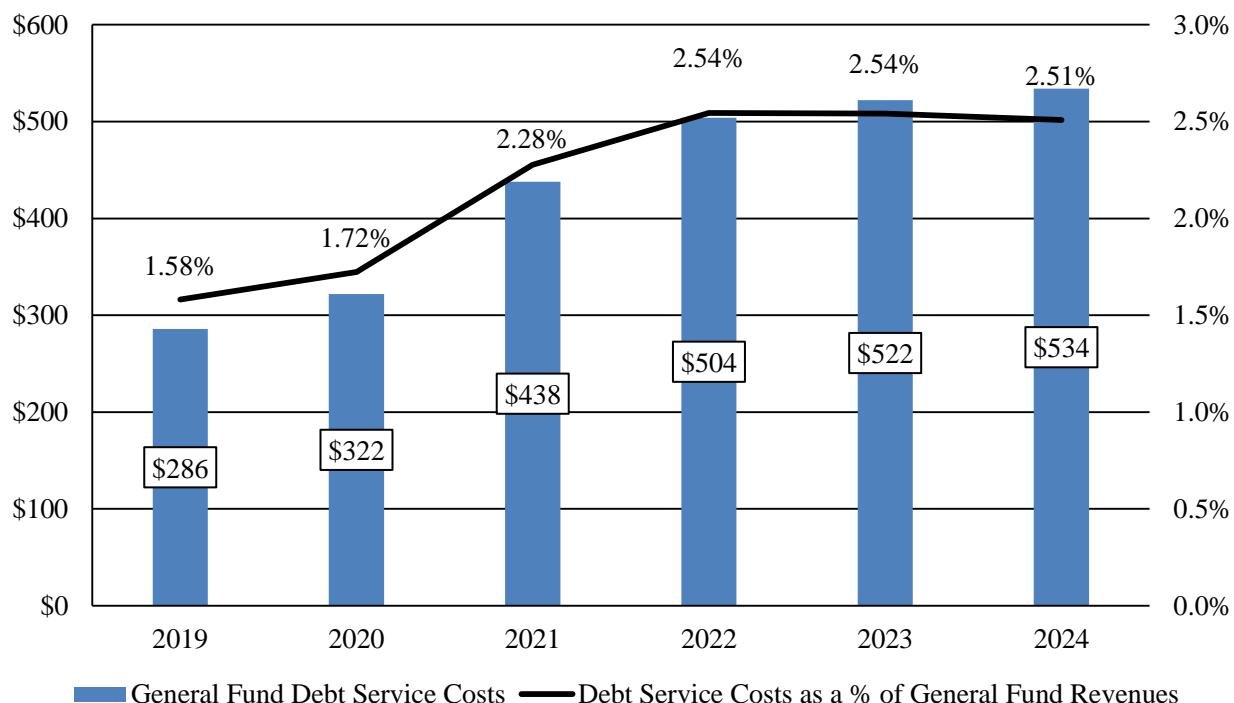


Notes: Total State debt service includes transportation, bay restoration, capital leases, and stadium authority debt. This assumes the Capital Debt Affordability Committee's \$995 million annual recommendation.

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

Exhibit 3 shows that general fund costs for debt service are 1.6% of general fund revenues beginning in fiscal 2019. General fund appropriations in fiscal 2019 and 2020 are exceptionally low because low interest rates create an environment in which GO bonds sell at a premium. Beginning in fiscal 2021, the forecast no longer assumes premiums, so the State will need to appropriate 2.5% of general funds to avoid increasing State property taxes above the current rate of \$0.112 per \$100 of assessable base.

Exhibit 3
General Fund Debt Service Costs
As a Percentage of General Fund Revenues
Fiscal 2019-2024
(\$ 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 2020. 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 2024. The Treasurer's Office estimates that total tax-supported outstanding debt will be \$14.1 billion at the end of fiscal 2020, while debt service will be \$1.8 billion in fiscal 2020.

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, certain 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 7.56%. Debt outstanding to personal income peaks in fiscal 2019 at 3.49% and declines steadily throughout the period. This decline is, in part, attributable to State debt's short amortization period. The Maryland constitution limits State debt maturities to 15 years. Consequently, State debt is retired quickly.

Exhibit 1
Affordability Ratios
Fiscal 2019-2024

<u>Year</u>	<u>Projected Debt Outstanding As a Percent of Personal Income</u>	<u>Projected Debt Service As a Percent of Revenues</u>
2019	3.49%	7.56%
2020	3.45%	7.38%
2021	3.39%	7.33%
2022	3.32%	7.44%
2023	3.21%	7.56%
2024	3.13%	7.32%

Source: State Treasurer's Office, September 2018

GO bonds support the State's capital program that supports local public school construction, higher education, State facilities, and other capital projects. CDAC recommended that fiscal 2020 GO bond authorizations be limited to \$995 million. Total GO debt is projected to be \$9.83 billion at the end of fiscal 2020. The State Treasurer's Office projects that GO bond debt service payments will total \$1.33 billion in fiscal 2020.

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 that 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 \$3.8 billion in fiscal 2020. Transportation bond debt service is projected to be \$355 million in fiscal 2020.

MDOT 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. These bonds are callable after 10 years so MDOT refinanced the bonds in fiscal 2018, reducing debt service costs in fiscal 2018 and 2019 by \$3 million. GARVEE debt will mature in fiscal 2020, and the final fiscal year debt service will be \$51 million. 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 2022, which is two years later than was projected a year ago. 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 2022. The department estimates that \$232 million in bonds will be outstanding at the end of fiscal 2020. Debt service costs are projected to be \$32 million in fiscal 2020.

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 \$162 million at the end of fiscal 2020. Capital lease payments are estimated to be \$26 million in fiscal 2020.

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 \$44 million at the end of fiscal 2020. Debt service payments are projected to be \$24 million in fiscal 2020. The Maryland Stadium Authority does not plan to issue any State-supported debt through fiscal 2020.

The University System of Maryland (USM), Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC) 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 2020, CDAC recommends \$34 million for academic facilities on USM campuses. No issuances are anticipated for MSU, SMCM, or BCCC.

Capital Budget

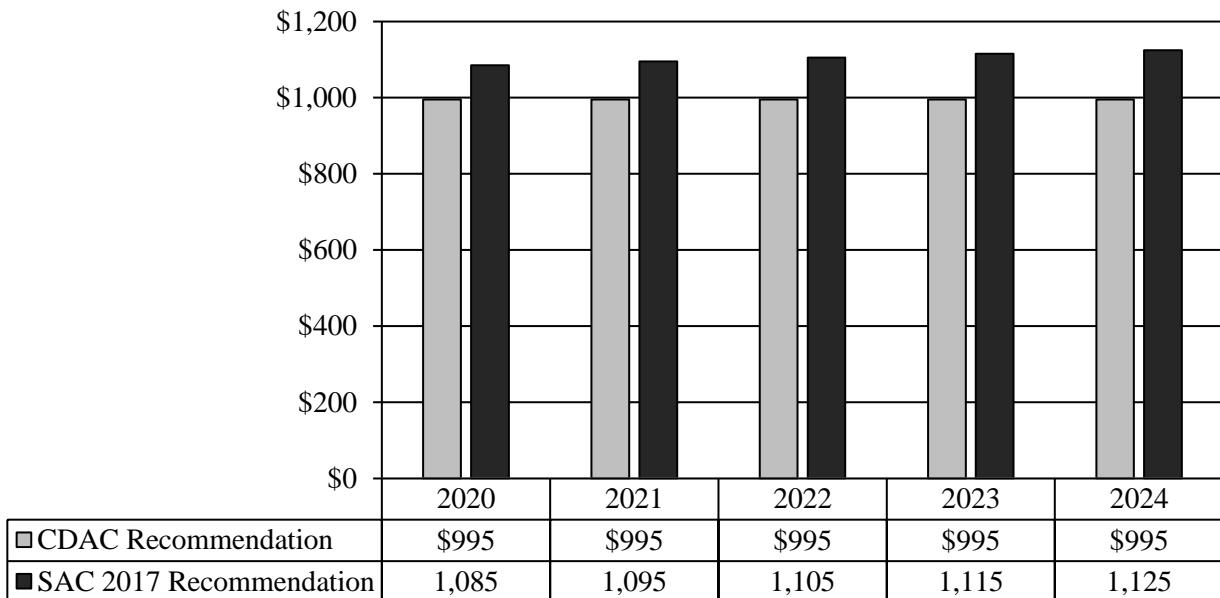
Capital Funding Requests

On September 26, 2018, the Capital Debt Affordability Committee (CDAC) recommended limiting proposed new general obligation (GO) bond authorization levels to \$995 million for the 2019 session. The CDAC's recommendation continues to eliminate annual inflationary increases that would otherwise increase future GO bond authorization levels to account for the impact of construction inflation on commodities and labor. This austerity limits the State's ability to address infrastructure needs of State facilities. With an improved general fund revenue forecast, some consideration may be given to using one-time revenues to support the capital program and to increase spending on State facilities.

The Capital Debt Affordability Committee (CDAC) voted to keep the amount of new general obligation (GO) bond authorizations for the 2019 session at \$995 million. The committee further recommended that the State limit for new GO bond authorizations remain at \$995 million annually through the five-year planning period.

Exhibit 1 illustrates recent CDAC recommended GO bond authorization levels and the level recommended by the 2017 Spending Affordability Committee (SAC). The SAC recommendation established a limit on new GO bond authorizations that increases by 1% on a year-over-year basis. This moderate growth rate limits increases in GO bond authorizations to less than projected State property tax revenue increases, which is the source of debt service payments on GO bonds. Adhering to the 2017 SAC recommendation in fiscal 2020 through 2024 would provide \$550 million more than the CDAC recommendation, which could be used to bolster capital infrastructure investment in State-owned facilities that has seen a declining share of capital funding compared to the grant and loan program and public school construction spending.

Exhibit 1
General Obligation Bond Authorization Levels
CDAC Compared to SAC Recommendations
Fiscal 2020-024
(*\$* in Millions)



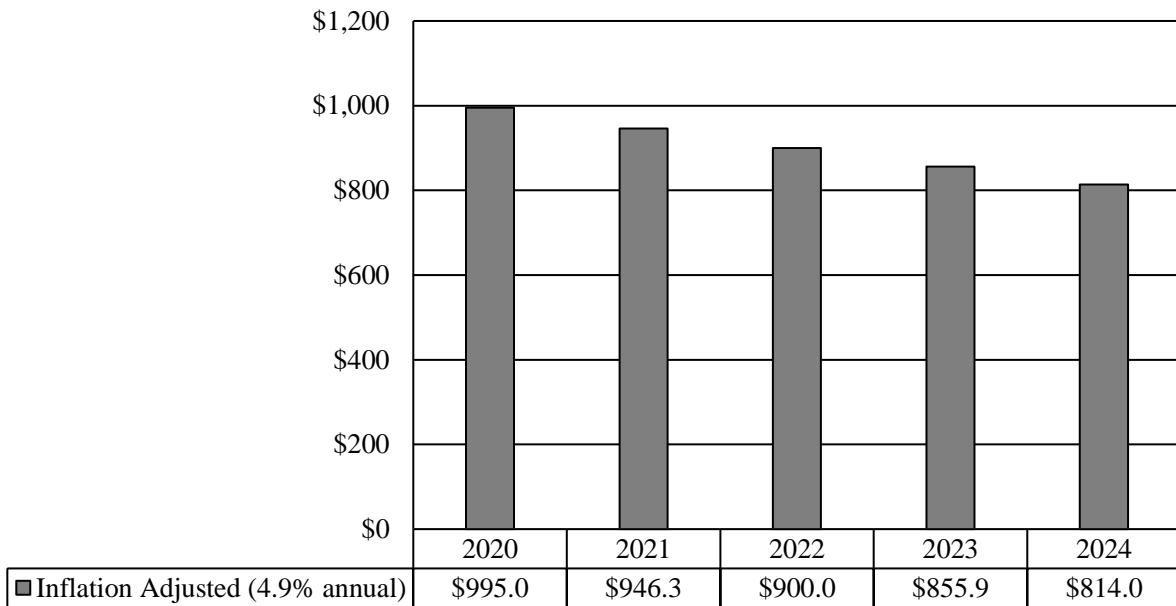
CDAC: Capital Debt Affordability Committee

SAC: Spending Affordability Committee

Source: *Capital Debt Affordability Committee Recommendation of GO Bond Authorizations*, September 2018; Spending Affordability Committee, October 2016

Exhibit 2 illustrates the impact that construction inflation, estimated at an average annual rate of 4.9%, would have on future authorization levels. Without the annual inflationary adjustment recommended by SAC, the State's spending power will erode relative to the effects of inflation. By fiscal 2024, the last year of the five-year planning period, the effective spending power of \$995 million is reduced to \$814 million. This makes it increasingly difficult for the State to keep pace with the demand for capital funding that annually exceeds available resources. Furthermore, for fiscal 2020, the variance between CDAC recommended GO bond levels and agency and program requests is \$575 million and is estimated to be \$3.97 billion through the five-year planning period.

Exhibit 2
CDAC Proposed New GO Bond Levels – Inflation Adjusted
Fiscal 2020-2024
(\$ in Millions)



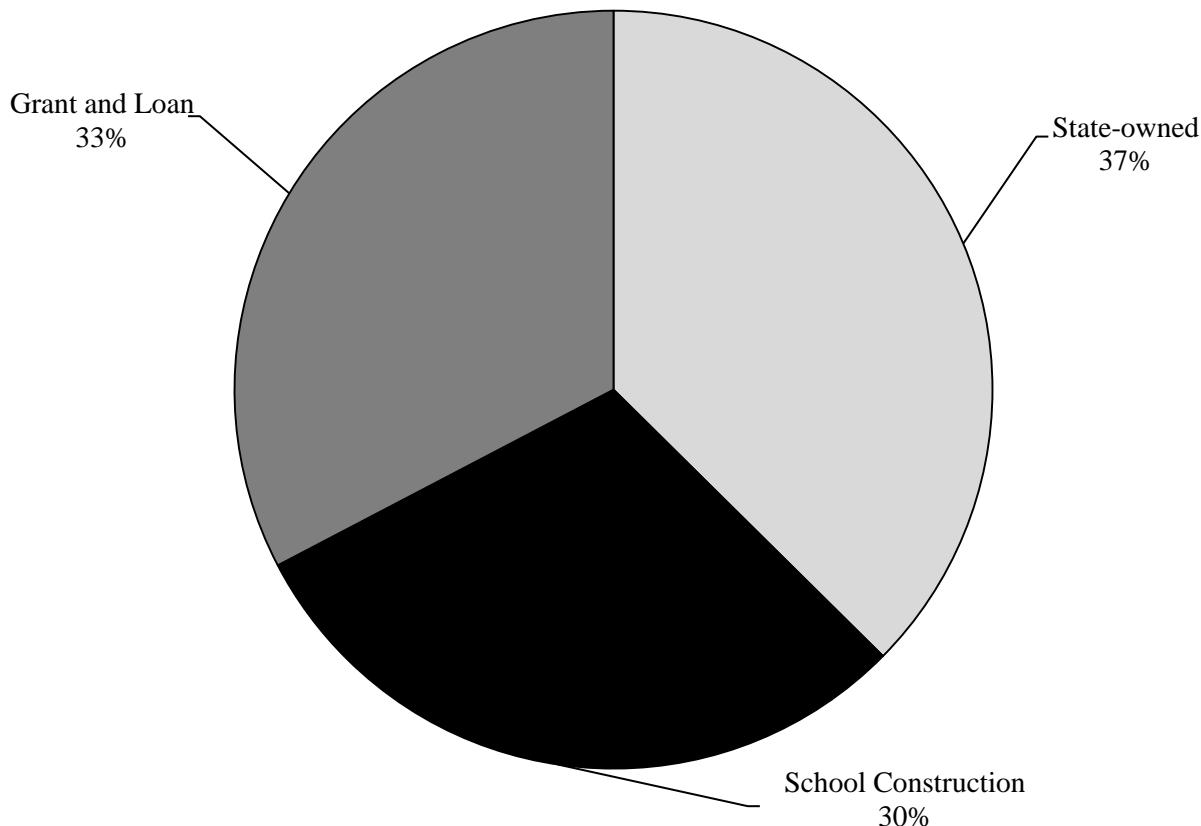
CDAC: Capital Debt Affordability Committee
GO: general obligation

Note: Department of Labor Producer Price Index for Components of Construction – the average annual construction inflation is 4.9% for the period covering January 2016 through August 2018.

Source: Department of Legislative Services

Exhibit 3 illustrates that the State has used 63% of the total GO bond allocation for grant and loan programs and public school construction leaving 37% for State-owned facilities for the five-year period covering fiscal 2015 through 2019. Of the State-owned portion, 82% has funded higher education facilities leaving only a small share to fund investments in juvenile, mental health, and public safety facilities among other State-owned needs, including an adequately funded facilities renewal program to protect State facilities investments already made. With the increasing demand for school construction funding, the five-year average was \$325 million compared to the \$400 million annual funding target expressed in Chapter 14 of 2018, the 21st Century School Facilities Act. It will be increasingly difficult to increase the level of investment in State-owned projects at the CDAC recommended annual GO bond funding level or without a return to the use of general fund pay-as-you-go funding to supplement the capital program.

Exhibit 3
**GO Bond Funding Shares for State-owned Projects, Public School
Construction, and Grant and Loan Programs**
Fiscal 2015-2019



GO: general obligation

Source: Department of Legislative Services

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 2016 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 2016 data, Maryland ranks twentieth and twenty-first, respectively, in total state and local government revenues and spending measured on a per capita basis and forty-fourth in both 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.

State and Local Tax Revenues Compared to Neighboring States

Exhibit 2 and **Exhibit 3** compare Maryland's State and local tax revenues in fiscal 2016 to other states in the region. Maryland ranks fifteenth among all states in overall state and local tax revenues as a percentage of personal income and tenth in overall tax revenues on a per capita basis. Maryland's reliance on the income tax is high (third on both a percentage of income basis and 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 nineteenth in property taxes, fourteenth in corporate income taxes, and twenty-seventh 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 2016.

Exhibit 1
Maryland State and Local Government
Revenues and Spending
Fiscal 2015-2016

	<u>Maryland Rank Percent of Total</u>	<u>Maryland Rank Percentage of Personal Income</u>	<u>Maryland Rank Per Capita</u>
Total Revenues	n/a	44	20
Total Spending	n/a	44	21
Revenues			
Taxes	4	15	10
Intergovernmental from			
Federal Government	31	38	26
Charges and Utilities ¹	47	49	47
Miscellaneous ²	45	49	37

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: 2016 Annual Survey State & Local Government Finances, U.S. Census Bureau (September 2018); Population from U.S. Census Bureau (December 2017); Personal Income Data from U.S. Bureau of Economic Analysis (September 2018)

Exhibit 2
Maryland State and Local Tax Revenues
2015-2016 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%	2.6%	0.7%	1.2%	3.7%	9.9%
Rank	48	20	4	50	2	25
District of Columbia						
Percent	4.7%	3.7%	1.1%	3.4%	1.4%	14.3%
Rank	7	5	1	26	4	2
Maryland						
Percent	2.7%	3.9%	0.3%	2.8%	0.7%	10.4%
Rank	32	3	19	41	23	15
New Jersey						
Percent	5.1%	2.4%	0.4%	2.4%	0.6%	11.0%
Rank	3	23	14	44	32	9
North Carolina						
Percent	2.3%	2.8%	0.2%	3.4%	0.6%	9.3%
Rank	39	11	30	28	34	30
Pennsylvania						
Percent	2.9%	2.6%	0.4%	3.2%	0.8%	10.0%
Rank	24	18	11	35	15	23
Virginia						
Percent	2.9%	2.7%	0.2%	2.2%	0.6%	8.6%
Rank	23	14	41	45	31	43
West Virginia						
Percent	2.5%	2.8%	0.2%	4.0%	1.2%	10.7%
Rank	35	13	36	16	7	12
United States						
Average	3.2%	2.4%	0.3%	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: 2016 Annual Survey of State & Local Government Finances, U.S. Census Bureau (September 2018); Population from U.S. Census Bureau (December 2017); Personal Income Data from U.S. Bureau of Economic Analysis (September 2018)

Exhibit 3
Maryland State and Local Tax Revenues
2015-2016 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	\$860	\$1,228	\$340	\$583	\$1,746	\$4,757
Rank	45	15	5	49	2	22
District of Columbia						
Amount	\$3,535	\$2,788	\$813	\$2,607	\$1,098	\$10,841
Rank	1	2	1	4	4	1
Maryland						
Amount	\$1,547	\$2,276	\$187	\$1,621	\$396	\$6,027
Rank	19	3	14	27	16	10
New Jersey						
Amount	\$3,127	\$1,488	\$248	\$1,489	\$357	\$6,709
Rank	2	9	10	34	22	4
North Carolina						
Amount	\$975	\$1,186	\$105	\$1,417	\$236	\$3,919
Rank	39	16	32	38	40	33
Pennsylvania						
Amount	\$1,477	\$1,323	\$228	\$1,614	\$416	\$5,058
Rank	23	12	12	28	14	17
Virginia						
Amount	\$1,545	\$1,454	\$89	\$1,155	\$316	\$4,560
Rank	20	11	36	45	28	24
West Virginia						
Amount	\$915	\$1,009	\$79	\$1,468	\$445	\$3,3917
Rank	43	29	40	35	12	34
United States Average	\$1,556	\$1,164	\$168	\$1,728	\$330	\$4,946

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: 2016 Annual Survey of State & Local Government Finances, U.S. Census Bureau (September 2018); Population from U.S. Census Bureau (December 2017); Personal Income Data from U.S. Bureau of Economic Analysis (September 2018)

Revenues and Taxes

Casino Gaming Revenue

There are currently six casinos in operation in Maryland. In fiscal 2018, revenues from video lottery terminals (VLT) and table games each increased by 18.2%. Comparatively, VLT and table game revenue also increased in Delaware and Pennsylvania. In contrast, revenues from VLTs and table games decreased in West Virginia.

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, 2018.

Exhibit 1 **VLTs and Table Games in Operation by Facility**

Facility	VLTs	Table Games
Allegany	657	17
Anne Arundel	3,969	202
Baltimore City	2,199	167
Cecil	822	22
Prince George's	3,137	198
Worcester	892	18
Total	11,676	624

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 in Maryland for fiscal 2012 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 2012-2020 Est.
(*\$* in Millions)

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Est. 2019</u>	<u>Est. 2020</u>
<u>VLTs</u>									
Allegany		\$2.8	\$35.3	\$38.0	\$41.3	\$45.1	\$46.5	\$47.6	\$48.5
Anne Arundel	\$28.5	431.1	419.0	391.8	408.8	371.9	369.5	386.2	392.0
Baltimore City				131.9	168.3	168.7	156.3	155.9	157.5
Cecil	118.1	76	72.1	66.1	65.7	63.1	64.9	66.3	67.4
Prince George's						177.5	345.3	362.8	370.0
Worcester	48	50.4	52	53.1	57.6	59.6	64.1	66.6	67.6
Total VLTs	\$194.5	\$560.3	\$578.4	\$681.0	\$741.7	\$885.9	\$1,046.7	\$1,085.4	\$1,103.0
<u>Table Games</u>									
Allegany		\$0.5	\$5.9	\$6.6	\$6.6	\$7.6	\$7.6	\$7.2	\$7.2
Anne Arundel		41.6	235.4	233.8	242.0	219.8	190.1	186.3	187.6
Baltimore City				104.1	142.1	135.3	110.8	107.2	108.0
Cecil		6	13.6	11.9	11.6	11.3	10.4	10.0	10.1
Prince George's						160.9	310.0	322.4	329.6
Worcester						0	3.3	7.5	7.8
Total Table Games		\$48.0	\$254.9	\$356.4	\$402.3	\$535.1	\$632.3	\$640.6	\$650.4
Total VLT and Table Games	\$194.5	\$608.3	\$833.3	\$1,037.4	\$1,144.0	\$1,420.9	\$1,679.0	\$1,726.0	\$1,753.4

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 2012-2020 Est.
(*\$ in Millions*)

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	Est. 2019	Est. 2020
VLTs									
Education Trust Fund	\$94.30	\$274.70	\$277.1	\$316.1	\$322.0	\$361.7	\$401.8	\$431.5	\$438.6
Lottery Operations Purse Dedication Account	3.9	11.2	11.6	11.9	7.8	9.3	10.5	10.9	11.0
Racetrack Renewal Account	13.6	39.1	38.9	46.0	50.1	54.6	61.2	63.5	64.5
Local Impact Grants	10.7	30.7	30.8	36.4	39.7	47.5	56.8	58.9	59.8
Business Investment	2.9	8.4	8.4	9.9	10.8	12.9	0.0	0.0	0.0
General Fund	0.0	0.0	0.0	0.0	0.0	0.0	15.3	0.0	0.0
Licensees	64.2	185.4	202.1	253.6	304.3	391.3	491.0	510.3	518.6
Total VLTs	\$194.5	\$560.3	\$578.4	\$681.0	\$741.7	\$885.9	\$1,046.7	\$1,085.4	\$1,103.0
Table Games									
Education Trust Fund		\$9.6	\$51.0	\$71.3	\$80.5	\$89.5	\$94.8	\$96.1	\$97.6
Local Impact Grants						17.6	31.6	32.0	32.5
Licensees		38.4	203.9	285.1	321.8	428.1	505.8	512.5	520.3
Total Table Games		\$48.0	\$254.9	\$356.4	\$402.3	\$535.1	\$632.3	\$640.6	\$650.4
Total VLT and Table Games	\$194.5	\$608.3	\$833.3	\$1,037.4	\$1,144.0	\$1,420.9	\$1,679.0	\$1,726.0	\$1,753.4
Education Trust Fund	\$94.3	\$284.3	\$328.1	\$387.4	\$402.5	\$451.2	\$496.7	\$527.6	\$536.1

VLT: video lottery terminal

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

Gaming in Surrounding States

Since the beginning of Maryland's gaming program in fiscal 2012, gaming revenues at Delaware Park Racetrack and Dover Downs Hotel and Casino have decreased overall by approximately 25% and 30%, respectively, while gaming revenues from the Hollywood Casino at Charles Town have decreased overall by over 40%. Gaming revenues from Philadelphia casinos in fiscal 2018 were slightly higher than revenues in fiscal 2012.

Delaware's fiscal 2018 VLT revenues increased by 2.1% from the prior year, while table game revenues increased by 5.2% from the prior year. West Virginia's fiscal 2018 VLT revenues decreased by 3.3%, and table game revenues declined by 9.8%. Pennsylvania's overall gaming revenues have fared better than in Delaware and West Virginia. Pennsylvania's VLT revenues remained similar to the prior year, increasing only 0.7%, but table game revenues increased by 3.3% in fiscal 2018. Only one of the three Philadelphia area casinos experienced a decrease in gaming revenues in fiscal 2018.

Revenues and Taxes

Status of Legalized Sports Betting

On May 14, 2018, the U.S. Supreme Court struck down the federal Professional Amateur Sports Protection Act allowing states to authorize sports betting. In June, casinos in Delaware became the first state outside of Nevada to offer sports betting. Currently, five states authorize sports betting, and Pennsylvania and Rhode Island are expected to launch sports betting before the end of 2018.

Legalized Sports Betting

The latest trend in state gaming legislation involves sports betting. A recent U.S. Supreme Court ruling struck down the federal ban on sports betting in most states. As a result, there has been a rush of legislative activity in states hoping to capture a new source of gaming tax revenue. Sports betting operations are now underway in five of those states, and several others are poised to follow suit in the coming months.

Background

The federal Professional Amateur Sports Protection Act (PASPA) made betting on sports illegal under federal law but exempted certain types of sports betting in states that authorized it before the PASPA or within a year after the PASPA became effective. As a result, Delaware, Montana, Nevada, and Oregon could offer betting on sporting events. Only Delaware and Nevada have offered sports betting; however, betting in Delaware was limited to a pro-football sports lottery, which consists of parlays and selected-off-the-board wagers, not single-game wagers.

New Jersey challenged the PASPA in the U.S. Supreme Court in *Murphy v. National Collegiate Athletic Association*, arguing that the PASPA violated the U.S. Constitution by “commandeering” the states into enforcing federal law. The U.S. Supreme Court heard oral arguments in December 2017 and ruled on May 14, 2018, that the PASPA is unconstitutional, leaving states free to authorize sports betting.

Post-PASPA Sports Betting Operations

Less than one month after the U.S. Supreme Court ruling in *Murphy*, Delaware became the first state outside of Nevada to offer single-game sports betting. On the heels of Delaware, New Jersey’s sports betting operations went live on June 14, 2018, and betting began in Mississippi and West Virginia coinciding with the start of the regular professional football season in September. **Exhibit 1** shows how these states have structured their sports betting operations and the revenues generated since going live. Sports betting states have experienced a dramatic increase

in betting handle since the start of the football season. In Delaware, for instance, the average daily handle in September was \$481,000 a day, up from \$276,000 a day during the preseason. The total amount of bets placed in New Jersey jumped from \$95 million in August to \$184 million in September.

Exhibit 1
Post-PASPA Sports Betting States and Revenues

<u>State</u>	<u>First Bet Placed</u>	<u>Tax Rate/Fees</u>	<u>Betting Site</u>	<u>Sportsbook Data (Launch Date through September 2018)</u>
Delaware	6/5/18	59.8% (includes a 9.8% share for race purses)	Racinos ¹	Handle – \$39,770,351 Revenue ² – \$5,196,751 State Share – \$2,598,376
Mississippi	8/1/18	12% (includes a 4% local share)	Casinos ³	Handle – \$38,038,899 Revenue – \$6,148,282 State Share – \$737,793.84
New Jersey	6/14/18	8.5% onsite betting 13% online betting	Casinos and racetracks	Handle – \$336,656,929 Revenue – \$40,449,676 State Share – \$4,146,443
West Virginia	8/30/18	10% \$100,000 application fee	Casinos and racetracks, online, and mobile	Handle ⁴ – \$3,363,404

PASPA: Professional Amateur Sports Protection Act

Note: Handle is the total amount of all wagers. Revenue (or gross gaming revenue) is the handle minus total win.

¹Parlay betting on National Football League games continues to be available through the Delaware Lottery.

²Vendor fees are subtracted from the handle before the distribution of the revenue.

³Casino patrons may place bets from their mobile devices when on casino property.

⁴Data from September 1 through 21 reported on industry website, Legal Sports Report. Official data from the West Virginia Lottery is not available currently.

Source: Department of Legislative Services

In the near future, both Pennsylvania and Rhode Island are expected to launch their sports betting operations before the close of 2018. The Pennsylvania law authorizes in-person, online, and mobile betting, taxed at a rate of 36%. Rhode Island plans to offer sports betting at two

locations, taxed at a rate of 51%. In New Mexico, a tribal group is now offering sports betting in that state, although the activity remains illegal under state law. Finally, Connecticut and New York are positioned to move forward once lawmakers and regulators make necessary implementation decisions.

Sports Betting Legislation

In 2018, 10 states, including Maryland, considered sports betting legislation that ultimately failed to pass during their respective legislative sessions. Legislation is actively pending in the District of Columbia, and pre-filed bills in Kentucky and Ohio will be considered in the upcoming 2019 legislative session. Lawmakers in Louisiana and Virginia recently announced plans to introduce bills in 2019 as well. According to a recent study by Eilers & Krejcik Gaming, 32 states are predicted to offer sports betting within five years of the *Murphy* decision.

As state lawmakers are debating the issue of sports betting in their respective states, a U.S. House Judiciary subcommittee recently heard arguments on the question of whether the federal government should establish a framework of sports betting rules. Senate Minority Leader Charles E. Schumer has pushed publicly for a federal sports betting framework, and Senator Orrin G. Hatch has called for federal legislation to replace the PASPA, although federal legislation has not been introduced since the PASPA was struck down.

Sports Betting in Maryland

In Maryland, legalized sports betting is considered an expansion of commercial gaming. Chapter 5 of the 2007 special session amended the Maryland Constitution so that after November 15, 2008, the General Assembly may only authorize additional forms or an expansion of commercial gaming if approved through a referendum by a majority of the voters in a general election. Legislation authorizing a referendum on sports betting was introduced in both houses during the 2018 session, but these bills failed to pass. Consequently, the deadline for inclusion of a sports betting referendum on the 2018 ballot expired. Maryland voters will not be able to consider the question until the 2020 general election, at the earliest. However, there is a question as to whether a sports betting operation run by the Maryland State Lottery and Gaming Control Agency, similar to what has been proposed in Rhode Island and the District of Columbia, could be implemented legislatively as a lottery game without running afoul of the referendum requirement.

Maryland Sports Betting Revenue Estimates

The Department of Legislative Services (DLS) notes that sports betting revenues in Nevada are approximately 2% of Nevada's total gaming revenues. Thus, if sports betting revenues in Maryland total 2% of Maryland's gaming revenues, gross revenues after payouts to bettors could increase by \$33.9 million in fiscal 2020. Assuming that the current table games tax rate of 20% is applied, the State share of gross revenues in fiscal 2020 would be \$6.8 million. However,

authorizing mobile sports betting could significantly increase revenues. Oxford Economics estimates that sports betting revenues would more than quadruple if sports betting became conveniently available at casinos, racetracks, lottery retailers, and online in Maryland. Likewise, Global Advisors estimates that sports betting revenues could increase tenfold. Estimates suggest that between 20% and 50% of sports wagering in Las Vegas occurs online. New Jersey reported \$184 million in total wagers for the month of September, 56% of which (\$104 million) was generated from online and mobile betting. Accordingly, DLS estimates that gross revenues could increase by \$67.9 million in fiscal 2020, totaling 4% of Maryland's gaming revenues, if sports betting is authorized both online and at Maryland casinos and racetracks.

Revenues and Taxes

Remote Sales Tax Collection – Impact of the *Wayfair* Supreme Court Decision

Until recently, Internet and mail-order retailers were only required to collect sales tax from out-of-state customers if the retailer maintained a physical presence in the customer's state. The U.S. Supreme Court recently upheld a South Dakota law requiring sellers with sales over \$100,000 or with more than 200 different transactions with residents in the state to collect sales taxes under the decision in *South Dakota v. Wayfair, Inc.* Effective October 1, 2018, regulations promulgated by the Comptroller require a similar threshold for the collection of sales tax by out-of-state vendors in Maryland.

The *Wayfair* Supreme Court Decision

Until recently, under a 1992 U.S. Supreme Court ruling in *Quill Corp. v. North Dakota*, Internet and mail-order retailers were only required to collect sales and use tax from out-of-state customers if the retailer maintained a physical presence in the customer's home state such as a store, office, or warehouse. Although these retailers were not required to collect the tax, consumers purchasing taxable tangible goods from businesses outside of Maryland were still responsible for remitting Maryland's use tax if the merchandise was used in Maryland. However, Maryland use tax compliance by individual consumers has traditionally been very low.

Over the last decade, a number of states enacted laws in an effort to require the sales tax to be collected and remitted for sales made by out-of-state sellers to their residents. In 2016, South Dakota passed legislation requiring certain online sellers to collect the state's sales tax. The law requires those sellers with sales of over \$100,000 or with more than 200 different transactions to residents in the state to collect taxes. South Dakota subsequently sued several companies in state court over their failure to comply with the state law. The South Dakota Supreme Court ruled in favor of the companies, but South Dakota appealed to the U.S. Supreme Court. In *South Dakota v. Wayfair, Inc.*, the U.S. Supreme Court overturned *Quill*'s physical presence rule. In its analysis of the South Dakota statute, the court observed that "[the] law at issue requires a merchant to collect the tax only if it does a considerable amount of business in the state; the law is not retroactive; and South Dakota is a party to the Streamlined Sales and Use Tax Agreement." The court noted that complex tax systems could have the effect of discriminating against interstate commerce but that the concern could be addressed through software available at reasonable cost.

Streamlined Sales and Use Tax Agreement

The primary objection to requiring remote sellers to collect sales taxes has been 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 2018, 24 states have enacted legislation conforming to the agreement. Although participating as an advisory state, Maryland is not a member to the agreement.

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, U.S. Congress is considering several 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.

No Regulation Without Representation Act

In contrast to the previously discussed measures, the No Regulation Without Representation Act (H.R. 2887) would prohibit a state from taxing or regulating a person's activity in interstate commerce unless the person is physically present in the state during the period in which the tax or regulation is imposed. The Act would also prohibit a state from imposing or assessing a sales, use, or similar tax on a person or imposing an obligation to collect or report any information with respect to those taxes unless the person is either a purchaser or a seller having a physical presence in the State. The Act specifies conditions satisfying these physical presence requirements and excludes certain activities and agreements that merely constitute *de minimis* physical presence.

Laws and Legislation at the State Level

A majority of states with a state sales tax 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 has hinged on the affiliates of the remote seller having a physical presence in an enacting state. In addition, a majority of states, such as South Dakota, have enacted legislation or implemented regulations establishing that remote sellers with certain minimum sales thresholds have an economic nexus with the states and must collect and remit sales taxes. Numerous states have adopted both affiliate and economic nexus standards. Many of these statutes and regulations have been adopted following the *Wayfair* decision.

States have also 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 addition, several states have pursued measures to require the collection of the sales and use tax by online marketplaces that host third-party sellers. These states have generally pursued two approaches: (1) requiring marketplaces to register and collect on behalf of sellers without exception, but allowing marketplaces the discretion to enter into agreements with sellers for the sellers to register; and (2) requiring marketplaces to collect and remit, but providing sellers the option to collect and provide proof of registration and remittance to the marketplace.

In Maryland

Effective October 1, 2018, regulations promulgated by the Office of the Comptroller require an out-of-state vendor who sells tangible personal property or taxable services for delivery in the State to collect and remit the sales and use tax on all taxable sales for use in the State if, during the previous calendar year or the current calendar year, the vendor (1) has gross revenue from the sale of tangible personal property or taxable services delivered in the State that exceeds \$100,000; or (2) sold tangible personal property or taxable services for delivery into the State in 200 or more separate transactions. Additional information regarding these regulations may be found in a [Tax Alert](#) issued by the Comptroller on September 18, 2018. The Comptroller estimates that the regulations increase general fund revenues by a significant amount, potentially between \$50 million and \$150 million annually, beginning October 1, 2018. The Department of Legislative Services (DLS) generally concurs with the assessment that general fund revenues increase by a potentially significant amount; however, DLS advises that the actual revenues collected, particularly in the short term, could be different than anticipated – depending on the actual number and amount of remote sales, the compliance of remote sellers, legislative and/or regulatory changes, and any subsequent litigation.

Revenues and Taxes

Evaluation of the Regional Institution Strategic Enterprise Zone Tax Credit

The Tax Credit Evaluation Act requires an evaluation of the Regional Institution Strategic Enterprise zone tax credit by July 1, 2019, and the Department of Legislative Services (DLS) evaluated the credit during the 2018 interim. DLS determined that the credit cannot be fully evaluated since the credit is still in the implementation phase; however, DLS identified several challenges facing the program and made recommendations to address these issues.

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 2018 interim, DLS evaluated the Regional Institution Strategic Enterprise (RISE) zone tax credit, as the evaluation committee is required to review this credit by July 1, 2019.

Regional Institution Strategic Enterprise Zone Tax Credit

Chapters 530 and 531 of 2014 established the RISE zone program. The General Assembly intended the RISE zone program to access institutional assets that have a strong and demonstrated history of commitment to economic development and revitalization in the communities in which they are located. Similar to the State Enterprise Zone Tax Credit Program that was established in the 1980s, the RISE zone program is intended to encourage economic growth and to increase employment in a targeted geographic area. While the State Enterprise Zone Tax Credit Program targets economically distressed areas and the long-term unemployed, the RISE zone program targets communities anchored around a qualified institution of higher education, nonprofit organization affiliated with a federal agency, or regional higher education center. A business within a RISE zone may qualify for tax credits and priority consideration for specified State financial assistance programs.

The RISE zone program is in its infancy. The University of Maryland, Baltimore Campus; the University of Maryland, College Park Campus; and the University of Maryland Baltimore County are qualified institutions with recently approved RISE zones. Salisbury University, Morgan State University, Montgomery College Germantown Campus, and Towson University are qualified institutions that are in the process of designating RISE zones. After a RISE zone is designated, property and income tax credits may be awarded to a new business in the zone or an existing business that makes a significant capital investment or expansion of its labor force. As of August, 2018, no companies have claimed tax credits under the RISE zone program.

The RISE zone program cannot be fully evaluated since the program is still in the early phase of implementation. However, pursuant to discussions with local government officials who administer the existing zones, DLS has identified several challenges facing the program. Most notably, the design and implementation of the program's incentives, which are very similar to those available under the State Enterprise Zone Tax Credit Program, may not be the most effective method of achieving the goals and objectives articulated by local zone administrators. In addition, given that the goals and objectives vary across zones, but the program incentives do not, the program may not provide adequate flexibility to achieve each zone's objectives. Given these challenges, the report recommends that the General Assembly may wish to alter the incentives to more effectively achieve the goals of the program.

Revenues and Taxes

Significant Revenue Measures during the 2015 through 2018 Legislative Term

A variety of significant revenue measures were enacted during the 2015 through 2018 legislative term, resulting in an estimated cumulative reduction of \$95.4 million in general and special fund revenues in 2020.

Revenue Summaries

A number of revenue measures were enacted during the 2015 through 2018 legislative term. While this paper focuses on these revenue actions, additional actions to alter spending levels were also taken during the four-year legislative term.

Exhibit 1 outlines the major revenue actions enacted in each session and their effect from fiscal 2016 through 2020.

Exhibit 1
Significant Revenue Measures
Fiscal 2016-2020
(\$ in Millions)

	<u>2016</u>	<u>2017</u>	<u>2018</u>	Est. <u>2019</u>	Est. <u>2020</u>	Five-year Cumulative <u>Totals</u>
2015 Session						
Recordable Instruments – Circuit Court Surcharge	\$15.9	\$15.9	\$15.9	\$15.9	\$15.9	\$79.4
Surcharge on Court Cases	5.2	5.2	5.2	5.2	5.2	25.9
Refundable Earned Income Credit – Nonresidents	3.8	3.9	3.9	4.0	4.1	19.7
Tax Amnesty	32.2	0.0	0.0	0.0	0.0	32.2
Income Tax Subtraction – Military Retirement	-2.7	-3.0	-2.9	-2.7	-3.1	-14.3
Certificate of Title for Rental Vehicles	-2.0	-2.1	-2.1	-2.1	-2.1	-10.4
Maryland Higher Education Commission – Reciprocal Agreements	-0.4	-0.5	-0.4	-0.4	-0.4	-2.1
<i>Subtotal 2015 Session</i>	<i>\$51.9</i>	<i>\$19.5</i>	<i>\$19.6</i>	<i>\$19.9</i>	<i>\$19.6</i>	<i>\$130.4</i>

	<u>2016</u>	<u>2017</u>	<u>2018</u>	Est. <u>2019</u>	Est. <u>2020</u>	Five-year Cumulative <u>Totals</u>
2016 Session						
Maryland Health Insurance Program Repeal – Hospital Assessments	\$0.0	-\$41.8	-\$42.6	-\$43.5	-\$44.3	-\$172.2
Maryland Small Business Retirement Savings Plan and Trust	0.0	0.0	0.0	0.0	-37.5	-37.5
Aerospace, Electronics, or Defense Contract Tax Credit	0.0	-7.5	-7.5	-7.5	-7.5	-30.0
Interest Rate – Tax Refunds and Deficiencies	0.0	-2.2	-5.6	-7.8	-10.1	-25.7
Student Loan Debt Tax Credit	0.0	0.0	-5.0	-5.0	-5.0	-15.0
Birth and Death Certificate Fees	0.0	-3.6	-3.6	-3.6	-3.6	-14.6
Heritage Structure Rehabilitation Tax Credit	0.0	0.0	-0.6	-1.7	-1.8	-4.1
Income Tax Subtraction – Law Enforcement Officers	0.0	-0.8	-0.8	-0.8	-0.9	-3.4
Income Tax Subtraction – College Savings Plan	0.0	-0.5	-0.5	-0.5	-0.5	-1.9
<i>Subtotal 2016 Session</i>	<i>\$0.0</i>	<i>-\$56.4</i>	<i>-\$66.2</i>	<i>-\$70.5</i>	<i>-\$111.2</i>	<i>-\$304.4</i>
2017 Session						
More Jobs for Marylanders Program	\$0.0	\$0.0	-\$0.6	-\$0.9	-\$30.9	-\$32.5
Maryland Transit Administration – Baltimore City Public School Students	0.0	0.0	0.0	-6.0	-6.0	-12.0
Income Tax Subtraction – Hometown Heroes	0.0	0.0	-3.7	-3.8	-3.9	-11.3
Income Tax Subtraction – Mortgage Debt Relief	0.0	0.0	-3.9	-3.9	0.0	-7.8
Research and Development Tax Credit	0.0	0.0	-2.4	-2.6	-2.8	-7.8
Electric Vehicle Tax Credit	0.0	0.0	-2.4	-2.4	-2.4	-7.2
Casino Operators – Carry Forward of Gaming Losses	0.0	0.0	-1.8	-1.8	-1.9	-5.5
Exempt Maryland Auto Insurance Fund from Insurance Premium Tax	0.0	0.0	-0.8	-1.6	-1.6	-4.0
Family Investment Plan – Child Support Pass Through	0.0	0.0	0.0	0.0	-3.8	-3.8
Employer Security Clearance Costs Tax Credit	0.0	0.0	0.0	-1.9	-1.9	-3.7

	<u>2016</u>	<u>2017</u>	<u>2018</u>	Est. <u>2019</u>	Est. <u>2020</u>	Five-year Cumulative <u>Totals</u>
Interest Rate – Tax Refunds and Deficiencies	0.0	0.0	-1.1	-1.1	-1.1	-3.2
Income Tax Subtraction – Discharged Student Loan Debt	0.0	0.0	-0.6	-0.6	-0.6	-1.7
Class F Vehicles Tax Credit	0.0	0.0	-0.5	-0.5	-0.5	-1.5
Energy Storage Systems Tax Credit	0.0	0.0	0.0	-0.8	-0.8	-1.5
Qualified Veteran Employees Tax Credit	0.0	0.0	-0.5	-0.5	-0.5	-1.5
Job Creation Tax Credit	0.0	0.0	0.0	-0.5	-0.8	-1.2
Independent Living Tax Credit	0.0	0.0	0.0	0.0	-1.0	-1.0
Hospital Assessments	0.0	0.0	25.0	15.0	5.0	45.0
Health Care Providers and Payers Assessment	0.0	0.0	5.4	5.6	5.8	16.8
Civil Case Surcharges	0.0	0.0	0.0	5.8	5.8	11.6
Broker-dealer Licenses	0.0	0.0	2.3	3.0	3.0	8.4
VLT Operations – Allegany and Ocean Downs	0.0	0.0	1.3	2.7	2.6	6.6
Oil Transferred into the State Fees	0.0	0.0	2.1	2.9	0.7	5.7
VLT Operations – Unclaimed Winnings	0.0	0.0	0.4	0.5	0.5	1.4
<i>Subtotal 2017 Session</i>	\$0.0	\$0.0	\$18.2	\$6.9	-\$36.8	-\$11.8

2018 Session

Income Tax – Standard Deduction Increase and Indexation	\$0.0	\$0.0	\$0.0	-\$56.6	-\$44.2	-\$100.8
Film Production Activity Tax Credit	0.0	0.0	0.0	-3.0	-11.0	-14.0
Income Tax Subtraction – Hometown Heroes and Military Retirement Income	0.0	0.0	0.0	-6.5	-6.7	-13.2
Earned Income Credit – Repeal of Minimum Age Requirement	0.0	0.0	0.0	-7.5	-5.2	-12.7
Small Business Tax Relief Tax Credit	0.0	0.0	0.0	-5.0	-5.0	-10.0
Student Loan Debt Tax Credit	0.0	0.0	0.0	-4.0	-4.0	-8.0
Corporate Income Tax – Single Sales Factor	0.0	0.0	0.0	-3.6	-4.0	-7.6
Cybersecurity Tax Credits	0.0	0.0	0.0	-2.0	-4.0	-6.0
One Maryland Tax Credit	0.0	0.0	0.0	-0.8	-2.5	-3.3
Heritage Structure Rehabilitation Tax Credit	0.0	0.0	0.0	-0.8	-1.3	-2.0
Office of Health Care Quality Fees	0.0	0.0	0.0	-1.0	-1.0	-2.0

	<u>2016</u>	<u>2017</u>	<u>2018</u>	Est. <u>2019</u>	Est. <u>2020</u>	Five-year Cumulative <u>Totals</u>
Income Tax Subtraction – Teacher Classroom Expenses	0.0	0.0	0.0	-0.9	-0.9	-1.8
Wineries and Vineyards Tax Credit	0.0	0.0	0.0	0.0	-0.5	-0.5
Health Insurance Provider Fee Assessment	0.0	0.0	0.0	280.8	84.2	365.0
Estate Tax Decoupling	0.0	0.0	0.0	0.0	38.6	38.6
Medical Marijuana Licenses	0.0	0.0	0.0	0.5	0.6	1.1
<i>Subtotal 2018 Session</i>	\$0.0	\$0.0	\$0.0	\$189.7	\$33.1	\$222.8
Grand Total	\$51.9	-\$37.0	-\$28.4	\$145.9	-\$95.4	\$37.0

VLT: video lottery terminal

Note: Estimates include the impact on both general and special fund revenues. For some provisions, estimates have been revised to reflect updated information and tax collection data.

Source: Department of Legislative Services

2015 Session

Revenue actions during the 2015 session were estimated to result in an overall revenue increase of \$51.9 million in fiscal 2016 and over \$130.4 million for the five-year period. Most of the revenue increase was related to court surcharges, which increased revenues by over \$21 million in fiscal 2016 and approximately \$105 million over the five-year period. Legislation requiring the Comptroller to implement a tax amnesty program generated one-time revenues of \$32.2 million.

2016 Session

During the 2016 session, legislation resulted in an overall revenue decrease of \$56.4 million in fiscal 2017 and an estimated total decrease of \$304.4 million over the five-year period. A majority of the total decrease reflects a reduction in hospital assessment revenue due to the repeal of the Maryland Health Insurance Program. Legislation that created, enhanced, or extended five individual and business tax preferences accounted for about one-fifth (\$54.4 million) of the total revenue decrease over the five-year period. The remaining revenue loss reflected legislative measures that lowered business and individual fees as well as a reduction in the interest rate assessed on tax refunds and deficiencies.

2017 Session

Revenue actions during the 2017 session were estimated to result in a minimal net overall impact, decreasing by a total of \$11.8 million for the five-year period in contrast to an increase of \$18.2 million in fiscal 2018. Legislative actions that decreased revenues led to a total five-year reduction of \$107.2 million; this was mostly offset by legislative actions that increased revenue by \$95.5 million over the same period. Legislation that created, enhanced, or extended 12 individual and business tax preferences accounted for about three-fourths (\$78.7 million) of the total revenue decrease over the five-year period. In addition, three-fourths of the total revenue increase over the five-year time period was due to increased assessments on hospital and health care payers and providers as well as surcharges on civil cases.

2018 Session

Revenue actions during the 2018 session are estimated to result in a net increase of \$222.8 million in fiscal 2019 and 2020. This net revenue impact includes legislative actions that increased revenues by \$404.7 million, which were partially offset by legislative actions that decreased revenues by a total of \$181.9 million. Revenue generated by imposing a calendar 2019 health insurance provider fee assessment accounted for about 90% of the increase. Legislation that enhanced the standard deduction that can be claimed under the State income tax accounted for a little more than one-half of the total revenue decrease. Most of the remaining revenue loss resulted from legislation related to nine individual and business tax preferences.

Personnel

State Workforce and Payroll

Since fiscal 2017, the total number of budgeted State positions has increased from 80,565 to 80,886. Declines in Executive Branch positions were partially offset by increases in higher education and judicial positions. From fiscal 2018 to 2019, personnel costs increase by 1.9%, primarily reflecting salary increases offset by decreases in fringe benefit growth. From fiscal 2008 to 2017, the average employee's salary increased at a rate of 2.0% annually. Higher growth in benefit costs results in the benefits' share increasing from 27.0% to 32.0% of total costs over this time period.

Fiscal 2019 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 2019 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 2019, outside of exempted provisions for hardship, manpower, statutes, block grants, new facilities, and/or emergencies (not including higher education institutions). To date, BPW has not created any additional positions in fiscal 2019.

Budget spending limits, position caps restricting growth, attrition, and abolitions prompted by budgetary constraints have decreased the nonhigher education Executive Branch workforce from 49,951 positions in fiscal 2017 to 49,336 in fiscal 2019, a reduction of 566 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. Meanwhile, higher education institutions add 856 positions from fiscal 2017 to 2019.

Exhibit 1
Regular Full-time Equivalent Position Changes
Fiscal 2017 Actual to Fiscal 2019 Legislative Appropriation

Department/Service Area	2018		2019	2017-2018 Change	2017-2019 Change
	2017 Actual	Working Approp.	Legislative Approp.*		
Largest State Agencies					
Public Safety and Correctional Services	10,954	10,554	10,454	-400	-500
Health	6,187	6,207	6,278	20	91
Human Services	6,224	6,220	6,120	-4	-104
Police and Fire Marshal	2,436	2,436	2,449	0	13
Juvenile Services	1,998	1,987	1,987	-11	-11
Subtotal	27,799	27,404	27,288	-395	-511
Transportation	9,108	9,058	9,058	-50	0
Other Executive					
Legal (Excluding Judiciary)	1,475	1,474	1,476	-1	1
Executive and Administrative Control	1,563	1,560	1,573	-3	11
Financial and Revenue Administration	2,102	2,099	2,097	-3	-5
Budget and Management and DoIT	581	567	567	-14	-14
Retirement	210	210	210	0	0
General Services	581	581	581	0	0
Natural Resources	1,315	1,333	1,340	18	26
Agriculture	356	355	352	-1	-4
Labor, Licensing, and Regulation	1,512	1,471	1,446	-41	-66
MSDE and Other Education	1,940	1,940	1,930	0	-10
Housing and Community Development	324	333	333	9	9
Business and Economic Development	193	193	192	0	-1
Environment	894	893	893	-1	-1
Subtotal	13,045	13,008	12,990	-37	-55
Executive Branch Subtotal	49,951	49,469	49,336	-482	-566
Higher Education	25,914	26,296	26,770	381	856
Judiciary	3,951	3,989	4,029	39	40
Legislature	749	749	751	0	2
Grand Total	80,565	80,503	80,886	-62	332

DoIT: Department of Information Technology

MSDE: Maryland State Department of Education

*Fiscal 2019 legislative appropriation has been adjusted to include positions created and abolished in higher education institutions using flex authority.

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

The budgeted expenditure for salaries totals \$5.5 billion in fiscal 2019, while other compensation adds another \$2.7 billion in costs. **Exhibit 2** shows that salaries increase by 2.5% in fiscal 2019. This reflects a 2% general salary increase effective January 1, 2019, and a 0.5% general salary increase effective April 1, 2019. The 2% general salary increase was included in the fiscal 2019 budget. The 0.5% increase is contingent on general fund revenues exceeding estimates by \$75 million in fiscal 2018, which has occurred. Deficiency funding will be necessary to provide the 0.5% salary increase in fiscal 2019. State employees will also receive a \$500 bonus that was contingent on revenues exceeding \$75 million. This will also require a fiscal 2019 deficiency appropriation but will not require any funding in fiscal 2020.

Exhibit 2
Regular Employee Compensation
Fiscal 2018 Working to 2019 Legislative Appropriation
(*\$* in Millions)

	<u>2018 Working Appropriation</u>	<u>2019 Legislative Appropriation¹</u>	<u>2018 to 2019 \$ Change</u>	<u>Percent Change</u>
Earnings				
Salary	\$5,413.3	\$5,546.2	\$132.9	2.46%
Other Earnings ²	441.1	493.8	52.7	11.95%
<i>Earnings Subtotal</i>	\$5,854.4	\$6,040.0	\$185.6	3.17%
Other Compensation				
Health ³	\$1,238.8	\$1,178.8	-\$60.0	-4.84%
Retirement/Pensions ⁴	927.1	960.0	32.9	3.55%
Salary-dependent Fringe ⁵	402.0	403.1	1.1	0.28%
Agency-related Fringe ⁶	111.8	115.7	4.0	3.54%
<i>Other Compensation Subtotal</i>	\$2,679.7	\$2,657.7	-\$22.0	-0.82%
Total Compensation	\$8,534.0	\$8,697.7	\$163.7	1.92%

¹ Appropriation has been adjusted to reflect a 2% general salary increase effective January 1, 2019, and a 0.5% general salary increase effective April 1, 2019.

² Overtime, additional assistance, and shift differentials.

³ Employee and retiree health insurance.

⁴ All pension/retirement systems.

⁵ Social Security and unemployment compensation.

⁶ 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

Salary-dependent benefits increased in fiscal 2019 due to the general salary increase. Without these increases, employee benefit costs actually decreased from fiscal 2018.

Health insurance costs decrease by 4.8%, as a result of a high fund balance in the health account. High fund balances have resulted from favorable trends in pharmacy rebates and claims costs, largely attributed to a new pharmacy benefits manager contract effective January 1, 2018.

Pension costs increase by 3.6% in fiscal 2019 as a result of salary increases but would have decreased by 0.5% had there not been salary increases. The modest decrease in pension contributions can be attributed to higher than projected rates of participation in the Reformed State Employee Pension Plan due to member turnover, average returns on investment closer to the assumed rate of return, and fewer general salary increases than had been projected.

Other salary and agency dependent fringe benefit costs increase by 3.5% in fiscal 2019, primarily as a result of increased workers' compensation funding to reflect recent trends.

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 generally increasing at a faster rate than salaries, accounting for 32.0% of the total cost share of an average employee in fiscal 2017 compared to 27.0% in fiscal 2008. From fiscal 2008 to 2017, salaries increased by 2.0%. The average employee salary increased from approximately \$47,490 in fiscal 2008 to \$56,695 in fiscal 2017; however, growth has not been continuous. During that time period, there have been five years with neither general salary increases nor increments and three years (fiscal 2009 through 2011) where furloughs were implemented that reduced paychecks.

During the same time frame, fringe benefits have increased by an annual rate of 5.0%, much higher than salary growth. Pension contributions are the primary driver of the increase with an annual growth of 10.9%. Health insurance costs, with an annual growth of 2.9%, are lower in fiscal 2017, reflecting a high fund balance and a decreased need for contributions in recent years. Growth of the State's share of the cost of benefits would have been greater, but several changes were implemented that mitigated this growth by increasing employees' share. Retirement contributions in the employees' and teachers' plans increased from 2% of salary in fiscal 2004 to 7% of salary.¹ State health insurance costs were mitigated by actions, such as increasing the employees' share of premium costs, increasing coinsurance costs, and increasing prescription drug deductibles.

¹ Employee contributions increased to 3% of salary in fiscal 2007, 4% in fiscal 2008, 5% in fiscal 2009, and 7% in fiscal 2012.

Exhibit 3
Change in Direct Salary and Benefit Costs for the Average Employee
Fiscal 2008 and 2017

	<u>2008</u>	<u>2017</u>	<u>Total Change</u>	<u>Annual Percent Change</u>
Salary	\$47,490	\$56,695	\$9,205	2.0%
Health Insurance Payments	7,933	10,275	2,342	2.9%
Pension Contributions	4,394	11,192	6,798	10.9%
Other Fringe Benefits	4,968	5,316	348	0.8%
Total	\$64,785	\$83,478	\$18,693	2.9%
Fringe Benefit Share of Total Cost		27%	32%	

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 2008 and 2017)

Personnel

State Employee and Retiree Health Plan

In response to rising health care costs, the State modified its plans by increasing the out-of-pocket cost share for employees. These changes have resulted in active State employees choosing primarily Exclusive Provider Organization plans that provide only in-network coverage at a lower premium cost. Favorable trends in medical and prescription drug costs have resulted in high fund balances, which mean contribution increases will not be needed in calendar 2019, despite continuation of State coverage for Medicare-eligible retirees' prescription drugs. Legislation transitioning prescription drug coverage for Medicare-eligible retirees was passed in 2011. A lawsuit challenging this transition was filed by retirees, and a federal judge recently granted a restraining order and temporary injunction delaying the transition pending a decision on the case.

Plan Offerings

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

EPO plans have the most members in calendar 2018 with 59,687 members, or 52.2% of plan membership. Migration to 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 and certain in-network costs.² EPO membership includes predominately active State employees (69% of membership), while PPO plan membership consists primarily of retirees (55% of membership). One reason active State employees may choose EPO plans is the attractiveness of lower premiums; the State's cost-share ratio for an EPO plan is 85/15, with the member paying 15% of the premium cost, while the cost-share ratio for a PPO plan is 80/20, reflecting the fact that EPO plans are less expensive due to the State not having to pay out-of-network claims. PPO plans may be more attractive to State retirees due to the flexibility of PPO plans for out-of-network services that EPO plans do not offer.

² POS plans were discontinued in fiscal 2015, except for the State Law Enforcement Officer Labor Alliance members.

Large Fund Balance and Projected Savings

The State closed fiscal 2018 with a \$125.9 million surplus in the health insurance account, primarily due to higher than expected prescription drug rebates and lower than anticipated medical and prescription drug costs. Medical cost trends have been favorable in recent years with slower growth in fiscal 2017 (2.8%) and 2018 (1.3%), in comparison to historical averages of 4%. Changes in out-of-pocket costs for certain medical claims, such as increasing emergency room copays from \$75 to \$150, appear to be having an impact on utilization, particularly for active State employees. The onboarding of a new pharmacy benefits manager (PBM) on January 1, 2018, has resulted in savings through reduced costs and enhanced rebates. In fiscal 2018, prescription drug costs (incorporating rebate revenue) closed \$18.9 million lower than projections. Additional savings are expected in calendar 2019 due to a change in the prescription drug formulary through the new PBM.

Transition of State Retiree Prescription Drug Coverage to Medicare Part D Delayed

During the 2011 legislative session, the General Assembly passed legislation that eliminated State prescription drug coverage for Medicare-eligible retirees in fiscal 2020 (Chapter 397) with the intent of reducing the State's significant financial liabilities associated with Other Post Employment Benefits (OPEB). At the time, the State's OPEB liability decreased from \$16.1 billion to \$9.7 billion.

In response to the federal action (Bipartisan Budget Act of 2018) that accelerated the closing of the Medicare Part D coverage gap (also known as the "donut hole") to January 1, 2019, the General Assembly passed legislation to realign the transition of retirees to Medicare Part D to the new date (Chapter 10 of 2018), with the additional clarification to continue coverage to non-Medicare-eligible spouses and dependents of Medicare-eligible retirees and requiring notification of the change to impacted retirees by July 1, 2018.

In September 2018, a lawsuit was filed in the Baltimore City Circuit Court to challenge the planned transition beginning in January 2019. In October 2018, a federal judge granted a temporary restraining order and preliminary injunction, delaying the transition to Medicare Part D pending a decision on the lawsuit. The Department of Budget and Management has informed Medicare-eligible retirees that State prescription drug coverage will continue as usual through, at a minimum, December 2019. In anticipation of the transition occurring on January 1, 2019, the fiscal 2019 Budget Bill included a reduction of \$47.3 million for State health insurance expenditures to reflect decreased State costs for Medicare-eligible prescription drug claims. The delay means that the State will continue to provide for these costs in fiscal 2019; however, due to the significant fund balance of the health insurance account, increases in contributions for State employees and retirees will not be required in calendar 2019.

Personnel

State Retirement and Pension System Investment Performance and Contribution Rates

The pension fund's fiscal 2018 return on investments was 8.06%, exceeding the assumed rate of return of 7.50%. The plan's funded status increased to 71.6%, compared to 70.9% at the end of fiscal 2017. 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 2018 Investment Performance

The State Retirement and Pension System's (SRPS) investment return for the fiscal year that ended on June 30, 2018, was 8.06%, exceeding the assumed rate of return of 7.50%. System assets grew to a market value of almost \$52 billion, as of June 30, 2018. The performance was driven primarily by the system's growth equity holdings, which returned 12.75% for the fiscal year, exceeding its benchmark by 0.79% (79 basis points). Within this asset class, private equity had another strong year with a return of 19.64%, outperforming its benchmark of 15.88%. Absolute return underperformed its benchmark by 1.89% (189 basis points), with a return of 3.26%.

Investment returns exceeded the assumed rate of investment return for the second year in a row, with returns exceeding the assumed rate of return in three of the last five years. The system as a whole outperformed its policy benchmark by 0.46% (46 basis points). Total system return for fiscal 2014 through 2018 is 7.15%, which is 0.43% (43 basis points) above the plan return benchmark for that period.

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

From fiscal 2017 to 2018, SRPS's funded status (the ratio of projected actuarial assets to projected actuarial liabilities) improved from 70.9% at the end of fiscal 2017 to 71.6% at the end of fiscal 2018 (these figures exclude funding for local governments that participate in the State plan). 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. The total State unfunded liability increased from \$18.854 billion to \$19.038 billion.

Fiscal 2020 Contribution Rates

Exhibit 1 shows that the employer contribution rate for the Teachers' Combined Systems (TCS) will increase from 16.16% in fiscal 2019 to 16.30% in fiscal 2020, and the contribution rate for the Employees' Combined Systems (ECS) will increase from 19.23% in fiscal 2019 to 20.22% in fiscal 2020. The aggregate contribution rate, including contributions for public safety employees and judges, increases from 18.15% in fiscal 2019 to 18.54% in fiscal 2020. Based on projected payroll growth and other factors, the SRPS actuary estimates that total employer pension contributions will increase from \$1.930 billion in fiscal 2019 to \$1.991 billion in fiscal 2020. The fiscal 2020 contribution rates are the actuarially determined contribution rates and reflect the Board of Trustees decision to lower the investment return assumption from 7.50% to 7.45%. The funding rates and contribution amounts are inclusive of the \$75 million supplemental contribution required by Chapter 489 of 2015.

Exhibit 1
State Pension Contributions
Fiscal 2019 and 2020
(\$ in Millions)

Plan	2019		2020	
	Rate	Contribution	Rate	Contribution
Teachers' Combined	16.16%	\$1,130.0	16.30%	\$1,166.5
Employees' Combined	19.23%	648.5	20.22%	670.2
State Police	79.41%	83.6	80.58%	84.7
Judges	44.53%	21.9	44.44%	22.1
Law Enforcement Officers	40.81%	45.7	42.40%	47.9
Aggregate	18.15%	\$1,929.6	18.54%	\$1,991.3

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

Source: Gabriel, Roeder, Smith, & Co., June 30, 2018 Actuarial Valuation for Fiscal Year 2020

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 and further reduction of the assumed rate of investment return exert upward pressure on the fiscal 2020 contribution rates. Increased membership under the reformed benefit structure exerts downward pressure on the rates. Chapter 489 eliminated the corridor funding method, which restricted the growth of contribution rates for TCS and ECS, 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 directs a portion of unspent general funds to the system as an additional supplemental payment in fiscal 2020. Since fiscal 2018 ended with an unappropriated fund balance totaling \$503.8 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 payments.

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 2020 is 4.38%, and the system's actuary projects the local school board normal cost share for fiscal 2020 to be \$288.6 million. The system's actuary projects the total State contribution to TCS will be \$877.8 million, which consists of \$24.8 million of the normal cost,³ \$802.2 million for unfunded liabilities, and \$50.8 million in supplemental contributions.

³ 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.

Education

State Education Aid and Maintenance of Effort

State aid for public schools is projected to increase by \$372 million in fiscal 2020. The increase includes \$125 million in Education Trust Fund supplemental funds as a result of the approval of the constitutional amendment by the voters in November 2018; by fiscal 2023, when the funds are fully phased in, an estimated \$540 million in supplemental funds will be available for education.

State Public Schools Aid Projected to Increase by \$372 Million

Public schools are expected to receive an estimated \$6.9 billion in fiscal 2020, representing a \$371.7 million (5.7%) 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 \$355.9 million (6.1%), as well as by retirement aid which is projected to increase by \$15.8 million (2.2%). The increase in direct aid is largely driven by a moderate expected rise in the per pupil foundation amount and enrollment increases as well as the first installment of the Education Trust Fund supplemental funding approved by voters at the November 2018 election. This does not include \$200 million in income tax revenues required to be deposited on a one-time basis in the Commission for Education and Excellence in Education special fund in fiscal 2019 to fund implementation of the commission's recommendations.

Foundation and Many 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 \$3.2 billion in fiscal 2020, an increase of \$98.7 million (3.2%) over fiscal 2019, as shown in **Exhibit 1**. The increase is attributable to statewide enrollment growth of an estimated 0.7% and a 2.5% inflationary increase in the per pupil foundation amount, from \$7,065 to \$7,244. The 2.5% increase in the per pupil foundation amount is equivalent to the increase in the Consumer Price Index for all urban consumers (commonly known as CPI-U) for the Washington-Arlington-Alexandria DC-VA-MD-WV (Washington statistical 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 2020, IPD is higher than the Washington CPI-U at 3.9%. Chapter 10 of 2018 charged the departments of Budget and Management, Education, and Legislative Services with determining the appropriate regional CPI-U measure to use for fiscal 2020, since the U.S. Bureau of Labor Statistics is no longer reporting data for the combined Washington-Baltimore Metropolitan Area used in statute in the

foundation formula and the student transportation formula. The departments jointly determined that the Washington CPI-U more closely tracks the previous combined Washington-Baltimore Metropolitan Area and is also less volatile than the new Baltimore-Columbia-Towson area CPI-U. The Commission on Innovation and Excellence in Education will recommend the permanent CPI-U measure to be used in the aid formulas. Although projected enrollment grows statewide, it varies by local school system, from an increase of 2.3% to a decline of 1.0%. Actual enrollment and wealth figures will not be available until January 2019.

Exhibit 1
Estimated State Aid for Education
Fiscal 2019 and 2020
(*\$* in Thousands)

<u>Program</u>	<u>2019</u>	<u>2020</u>	<u>\$ Change</u>	<u>% Change</u>
Foundation Program	\$3,056,189	\$3,154,879	\$98,689	3.2%
Education Trust Fund Supplemental Grants	\$0	\$125,000	\$125,000	n/a
Net Taxable Income Grant	62,524	62,713	189	0.3%
Tax Increment Financing Grant	535	668	133	24.8%
Geographic Cost of Education Index	141,574	146,315	4,742	3.3%
Supplemental Grant	46,620	46,620	0	0.0%
Foundation Special Grant	12,956	0	-12,956	-100.0%
Declining Enrollment Supplemental Grant	18,664	10,587	-8,076	-43.3%
Compensatory Education Program	1,308,336	1,375,531	67,194	5.1%
Special Education Program	290,813	299,994	9,181	3.2%
Limited English Proficiency	288,041	315,716	27,675	9.6%
Guaranteed Tax Base	48,170	46,963	-1,207	-2.5%
Student Transportation	282,585	302,830	20,245	7.2%
Nonpublic Special Education	123,500	125,970	2,470	2.0%
Prekindergarten Expansion	11,644	26,644	15,000	128.8%
Prekindergarten Supplemental Grant	16,039	23,865	7,826	48.8%
School Safety Grants	13,100	10,600	-2,500	-19.1%
Other Programs	82,305	84,611	2,307	2.8%
Direct Aid Subtotal	\$5,803,594	\$6,159,506	\$355,912	6.1%
Teachers' Retirement	\$732,921	\$748,739	\$15,818	2.2%
Grand Total	\$6,536,515	\$6,908,245	\$371,730	5.7%

Note: Other programs includes general and special funds supporting the SEED School, formulas for specific populations, infants and toddlers, innovative programs, food service, teacher development, and other programs.

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 formula programs in fiscal 2020. 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 increase in the per pupil foundation amount.

Chapter 258 of 2016 established grants, for fiscal 2018 and 2019, for school systems in counties that establish a tax increment financing (TIF) development district after May 1, 2016, and that qualify for State disparity grant funding. State education aid is calculated twice for eligible systems, once including the assessed value of property in a TIF district and once excluding the increase in the value of property in the TIF district, and a State grant provides the higher amount of State aid between the two calculations. Baltimore City Public Schools has received grants of approximately \$422,100 in fiscal 2018 and \$541,700 in fiscal 2019 due to the law, which was set to terminate on June 30, 2019. Chapter 387 of 2018 repealed the termination date of the Act.

An increase for prekindergarten expansion is projected in fiscal 2020 due to Chapter 361 of 2018 which sets mandatory State funding at \$26.6 million beginning in fiscal 2020. Therefore, prekindergarten expansion grants increase by \$15.0 million over fiscal 2019, an increase that is equivalent to the annual federal grant funding amount for the program, which terminates after fiscal 2019. Finally, a decrease of \$13.0 million is projected due to no funding being included in fiscal 2020 for the foundation special grant. This fiscal 2019 grant provided supplemental funding to some school systems to ensure all received at least an increase of \$100,000 in direct State aid, but as it was not required by statute it is not anticipated for the fiscal 2020 budget.

Education Funding from Commercial Gaming Revenues

The Bridge to Excellence in Public Schools Act (Chapter 288 of 2002) established funding formulas for direct State aid to public schools. Established during the 2007 special session, the Education Trust Fund is a nonlapsing, special fund to be used for continued funding of the Bridge to Excellence in Public Schools Act formulas and programs. The fund may also be used to support capital projects for public schools, community colleges, and public four-year institutions, as well as to expand public early childhood education programs in the State. A portion of the proceeds from video lottery terminals (VLTs) and table games is dedicated to the Education Trust Fund.

Chapter 357 of 2018, a proposed constitutional amendment approved by the voters at the 2018 general election, requires the Governor to provide supplemental State funding for public education through the use of commercial gaming revenues that are dedicated to public education in the State budget beginning in fiscal 2020. Supplemental funding must total at least \$125 million in fiscal 2020, \$250 million in fiscal 2021, and \$375 million in fiscal 2022. In all subsequent years, 100% of the gaming revenues dedicated to public education must be used for supplemental funding. This supplemental funding is in addition to the State funding provided through the Bridge to Excellence in Public Schools Act and is anticipated to be used to help fund the Commission on Innovation and Excellence in Education's recommendations. Beginning in fiscal 2020, the

Governor must identify in the annual State budget how the supplemental revenue is being used to supplement and not supplant spending on public schools. Exhibit 1, above, assumes the supplemental funding will be provided as direct aid to school systems in fiscal 2020, but it may also include school construction. Under the constitutional amendment, general fund expenditures benefiting public schools in the State are expected to increase by \$125 million in fiscal 2020 and by \$540 million in fiscal 2023. The amendment also repeals the constitutional provision specifying that capital projects at community colleges and public senior higher education institutions are among the purposes for which revenue from VLT facilities is raised.

State Retirement Costs Increase; Local Costs Virtually Flat

State retirement costs for public school teachers and other professional personnel will total an estimated \$748.7 million in fiscal 2020, representing a \$15.8 million (2.2%) 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 \$307.0 million in fiscal 2020 (nearly level with the fiscal 2019 local total): \$283.7 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 \$23.3 million toward State Retirement Agency (SRA) administrative costs, a portion of which will go toward SRA information technology upgrades. The normal cost for fiscal 2020 is 4.38% of salary base as compared to 4.41% in fiscal 2019; 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 November 2018, the Maryland State Department of Education has certified that the school appropriations of 23 counties have met the fiscal 2019 MOE requirement. In total, 16 counties exceeded MOE by 1.0% or more. Baltimore City MOE figures are pending as of November, 2018.

Eleven jurisdictions may be required to increase their MOE appropriations in fiscal 2020 as required by Chapter 6 of 2012. Preliminary estimates suggest that statewide per pupil local wealth will increase from fiscal 2019 to 2020. Actual wealth and enrollment figures pertaining to fiscal 2020 aid will be available in January 2019. 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 2019, eleven jurisdictions were required to increase their appropriations due to this provision, ranging from an increase of 0.3% to 1.5%.

Education

Commission on Innovation and Excellence in Education Nears Completion

The Commission on Innovation and Excellence in Education has continued its work during the 2018 interim. The commission formed four working groups to evaluate each of the preliminary recommendations made in January 2018 to provide greater specificity, a phase-in schedule, and assumptions for estimating the cost of the preliminary recommendations. The commission is in the process of finalizing its policy recommendations, developing cost estimates to implement the recommendations, and making funding decisions. The commission's final report is due December 31, 2018.

Commission's Work through 2018 Session

Chapters 701 and 702 of 2016 established the Commission on Innovation and Excellence in Education to, among other charges, (1) review the findings of a consultant's study on adequacy of education funding and its related studies and make recommendations on the funding formula; (2) review and make recommendations on expenditures of local education agencies; (3) review and make recommendations on innovative education delivery mechanisms and other strategies to prepare Maryland students for the 21st century workforce and global economy; and (4) review and make recommendations on expanding prekindergarten, including special education prekindergarten. The commission began meeting in September 2016 with former University System of Maryland Chancellor Dr. William "Brit" Kirwan appointed to serve as chair of the commission. It includes eight legislators and representatives of State and local boards of education, State and local superintendents, local governments, higher education, and numerous other stakeholders.

During 2016, the commission reviewed multiple reports including the *Cost of an Adequate Education* and related reports prepared by Augenblick, Palaich and Associates. However, the commission determined that before it could focus on funding, it must first determine what policies to recommend to make Maryland's education system world class. Thus, throughout 2017, the commission reviewed the *9 Building Blocks for World-Class Education Systems* and a gap analysis for Maryland prepared by the National Center on Education and the Economy where each building block represents a policy area that Maryland should pursue to achieve student outcomes that are comparable to those in top performing systems. The commission issued a report in January 2018 with preliminary policy recommendations (59 in total) with the building blocks grouped into five policy areas. In the report, the commission requested an additional year in order to fully respond to its charge and included a legislative proposal for the 2018 legislative session to advance the commission's preliminary policy recommendations.

Accordingly, Chapter 361 of 2018 extended the deadline for the commission to complete its work to December 31, 2018. It also established and altered several programs and mandated funding for them, consistent with many of the preliminary policy recommendations detailed in the January 2018 report, and established a special fund consisting of \$200 million in income tax revenue that must be deposited in the fund in fiscal 2019 for use in a future fiscal year. The commission's preliminary report and a link to the legislation, as well as all of the meeting materials and video of commission meetings, is available on the commission's website: <http://dls.maryland.gov/policy-areas/commission-on-innovation-and-excellence-in-education>.

Commission's Work in 2018 Interim

Beginning in April 2018, the commission divided into four working groups based on the following policy areas: (1) early childhood education; (2) high-quality teachers and leaders; (3) college and career readiness pathways; and (4) more resources for at-risk students. A fifth policy area related to governance and accountability is being evaluated by the full commission. Working with staff, consultants, and other experts, each working group developed further specificity into the assumptions, policy decisions, and implementation considerations necessary to cost out the fiscal impact of the preliminary recommendations. The commission and its working groups met multiple times throughout the spring and summer, with stakeholder involvement and participation at each working group meeting. Starting in September 2018, each working group presented their recommendations to the full commission and received feedback and comments from the other commission members and stakeholder groups. After another round of working group meetings to consider changes to their recommendations based on the feedback, the working groups presented their recommendations to the full commission for approval. The full commission will continue to work to develop cost estimates to implement the policy recommendations and then make funding and formula decisions based on the final policy recommendations and their estimated costs. The final reports of each working group can also be found on the commission's website.

Working Group 1: Early Childhood Education

Among other recommendations related to services for children ages 0-5 and their families, Working Group 1 recommended to expand high-quality, full-day prekindergarten through a voluntary, mixed-delivery system (public school- and community-based programs) at no cost for four-year-olds and three-year-olds from families with incomes up to 300% of the federal poverty level (FPL) (approximately \$75,000 for a family of four). For four-year-olds from families with incomes between 300-600% FPL (approximately \$75,000 to \$150,000 for a family of four), the group recommended that some public funding be provided to families to assist with the cost of prekindergarten based on a sliding scale. Families with incomes above 600% FPL (approximately \$150,000 for a family of four) will pay the full cost to attend a public prekindergarten program. The working group also made recommendations to increase the capacity and quality of existing prekindergarten programs, increase the number of early childhood educators and staff in the State,

and provide professional development incentives and tuition assistance for prospective teachers and staff.

Working Group 2: High Quality and Diverse Teachers and Leaders

In addition to recommendations to make teacher preparation programs more rigorous, raise licensing standards for new teachers, and rebrand the teaching profession as a more attractive career, Working Group 2 recommended to raise teacher pay to make it equitable with other highly trained professions with comparable education requirements. While teacher wages and salaries will continue to be collectively negotiated at the local level, the State will conduct periodic benchmarking of teacher salaries with other professions. Ultimately, most increases in teacher salaries will be tied to movement up a teacher career ladder. The career ladder will be based on performance and experience, including certification from the National Board for Teaching and Professional Standards, and there will be two tracks: a teacher leadership track and an administrative track. The State will provide uniform design parameters for the career ladder, including titles and criteria for moving up the ladder, and while local school districts will have flexibility to develop ladder pay scales and roles for teachers within the school, districts must remain within these parameters. The working group also recommended that the school day must be reorganized to allow teachers to spend less of the working day teaching classes and have more time to improve instruction and plan lessons, tutor students who are falling behind, and participate in collaborative professional learning. Other recommendations include expansion of teacher scholarships and loan forgiveness programs for students who teach, or agree to teach, in high-need schools.

Working Group 3: College and Career Readiness Pathways

Working Group 3 recommended that a tenth grade-level college and career readiness (CCR) standard be established that certifies that the student has the requisite literacy in English and mathematics needed to succeed in first-year credit-bearing courses in open enrollment postsecondary institutions in the State. Students who meet the CCR standard will be able to pursue (1) an Advanced Placement Diploma program, the International Baccalaureate Diploma program, or the Cambridge International Diploma program; (2) a dual enrollment program to earn college credits while in high school, with the possibility of earning an associate's degree along with or subsequent to high school graduation; (3) redesigned Career and Technical Education pathways that include workplace training and lead to industry-recognized credentials, including postsecondary certificates earned through dual enrollment; and (4) a combination of these options. These pathways will be aligned with high school graduation requirements, and the electives, extra-curricular activities, and full range of courses that are typically offered by a high school will still remain available to students regardless of the pathway that the student chooses. For students who do not meet the CCR standard by the end of tenth grade, the State and local school districts will develop eleventh and twelfth grade programs for these students to meet the CCR standard by twelfth grade, including programs with more project and program-based courses, summer

instruction following tenth grade, assignment of a teacher as the student's case manager, and priority access to an enhanced career counseling system.

Working Group 4: More Resources for At-risk Students

To ensure that at-risk students have both the academic supports and wraparound services to address their social, physical health, mental health, and family needs, Working Group 4 recommended to revise the funding formula weights for special education students and English learner students and to add a concentrated poverty formula to support intensive, coordinated services for students in schools that have a high concentration of student poverty. For these high poverty schools, funding in addition to the compensatory education formula would be available to provide a community schools coordinator and a health services practitioner at that school and services such as extended learning time, vision and dental services, behavioral health services, and family and community engagement. For special education students, the group recommended a stop-gap, placeholder weight until a special education study that was required by Chapter 361 of 2018 to evaluate national and international special education funding methodologies is completed in December 2019. For English learner students, the group recommended to include funding to allow for the provision of a family liaison and support services such as translation services, cultural competency training, family support and engagement, and referrals to resources outside the school.

Policy Area 5: Governance and Accountability

The full commission has been considering policies to ensure that the commission's final recommendations to transform Maryland's education system are implemented with fidelity and that new funds are spent effectively to improve student outcomes. In its preliminary report, the commission recommended a strong system of accountability and that a meaningful portion of new funds must be subject to the approval of specific plans to implement the commission's recommendations and must be subject to demonstrated progress toward greater student success. To that end, the commission is considering establishing an independent body to oversee and coordinate implementation of the commission's recommendations over the anticipated phase-in period of 10 years, with up to 25% of new funds subject to approval of initial plans and demonstrated progress during the implementation period. The commission's final report will include the final governance and accountability recommendations, as well as a potential implementation timeline for the recommendations under the other four policy areas.

Education

School Construction

The enactment of the 21st Century School Facilities Act in the 2018 session marked the end of several years of work to review and update the State's public school construction process and funding, including making the process more independent and transparent. The new Interagency Commission on School Construction has been appointed and is implementing the law, with several workgroups (including legislators) scheduled to report their recommendations in 2019. 2018 legislation also provided dedicated funding in fiscal 2019 through 2021 to improve heating and air conditioning systems, plumbing, and other systems in public schools. Finally, 9 schools have been completed under the Baltimore City School Construction and Revitalization Program, which is on track to complete 26 to 28 school projects by 2021, one year later than the original schedule.

21st Century School Facilities Act

Following the work of the 21st Century School Facilities Commission in 2016 and 2017 that culminated in a final report in January 2018, the General Assembly passed the 21st Century School Facilities Act to make comprehensive changes to the public school construction funding and approval process, including making the process more independent and transparent. The bill was vetoed by the Governor, but the General Assembly overrode the veto during the 2018 session, and the bill became law (Chapter 14 of 2018). Under the Act, the Interagency Committee on School Construction is renamed the Interagency Commission on School Construction (still referred to as IAC) and made an independent commission within the Maryland State Department of Education. IAC's membership is expanded from five to nine members, which includes four additional public members: two appointed by the Governor; and two appointed by the Presiding Officers (one each). The Board of Public Work's authority to grant final approval with respect to public school construction projects is transferred to IAC. The law required IAC to livestream its meetings to the public beginning no later than August 2018. IAC began livestreaming its meetings, with archived recordings available on its website, in May.

The law requires a statewide school facilities assessment to be conducted by July 1, 2019, and a workgroup (including legislators among the membership) to be established to review the assessment results and make recommendations by December 2019 on the use of the results in allocating school construction funding beginning no sooner than fiscal 2021. IAC issued a Request for Proposals to conduct the facilities assessment in November 2018, with responses due in December and a contractor to be selected shortly thereafter. The facilities assessment is expected to be complete by summer 2019. The law also creates a second workgroup (also includes legislators) to examine the educational specifications, space guidelines, and square footage allocations that determine eligibility for State funding for public school construction projects,

which must report its recommendations by July 1, 2019. The Educational Specifications Workgroup has been appointed and will hold several meetings prior to the 2019 legislative session.

The law expresses legislative intent that the State should provide at least \$400 million for school construction each year, which can be phased in over several years, with the annual goal to be recalculated following the initial school facility assessment and the findings of the Facilities Assessment Workgroup. The \$400 million goal is slightly more than the \$391.3 million that the General Assembly provided for school construction in fiscal 2019 and significantly more than the \$320 million preliminary school construction allocation for fiscal 2020 through 2023 submitted by the Governor in the 2018 *Capital Improvement Program*.

The law also created the School Safety Grant program, which is administered by IAC to provide \$10 million in annual grants to local school systems for security improvements beginning in fiscal 2019 (although \$10 million is mandated, the fiscal 2019 operating and capital budgets reserve a total of \$20 million for these grants). A revolving loan fund to provide loans to local governments to forward-fund the local share of school construction projects was also created in the law.

Finally, while the law generally maintains existing IAC review and oversight of educational specifications and schematic designs, it reduces State oversight of design and construction documents for specified types of public school construction projects and requires the Department of General Services, with IAC review and approval, to establish a multi-year certification process to permit school systems that meet the criteria to forego certain State review and approval. IAC reports that a draft independent certification process is being finalized, with approval possible by the end of the year.

Schools Facing Severe Facility Issues

Over the last year, many school systems have encountered facility issues with potential impacts on student health. Significantly, in January 2018, all public schools in Baltimore City were closed for one day due to heating outages that left students in unheated classrooms as a result of the extremely cold weather and aging facilities. Approximately 60 public school buildings were closed for more than one day due to lack of heating and related problems such as burst pipes. A total of 80 buildings were impacted by the extreme weather conditions. Baltimore City and other jurisdictions have also faced issues with adequate air conditioning during warmer parts of the school year and mold inside of facilities.

To help address this issue, for fiscal 2019, the capital budget included \$15 million for heating, ventilation and air conditioning improvement projects for Baltimore City Public Schools (BCPS). In addition, Chapter 561 of 2018 established the Healthy School Facility Fund within the IAC to provide grants to public schools to improve the health of school facilities. The Governor must appropriate \$30 million for the special fund in fiscal 2020 and 2021, which must be in addition to funds that would otherwise be appropriated for public schools. IAC must administer

the grant program and give priority in awarding grants to schools based on the severity of issues in the school. No jurisdiction may receive more than \$15 million in a given fiscal year, and the total amount of a grant is not required to cover the full cost of a project.

Baltimore City School Construction and Revitalization

Chapter 647 of 2013 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). The partners executed a Memorandum of Understanding (MOU) that established the specific roles and responsibilities of each party to implement the construction plan. The State is contributing \$20 million annually to support debt service on the bonds and BCPS/Baltimore City is contributing \$40 million annually until the outstanding debt is retired.

The program currently anticipates a total of 26 to 28 schools to be renovated or constructed. The specific projects that will be included in the initiative contain more elementary and middle schools and fewer high schools than originally proposed. To date, 9 schools have been completed; 5 are under construction; 7 are being designed; 1 is in procurement; 4 are awaiting approval by IAC; and 2 are in the feasibility study stage. The schedule has taken longer than originally anticipated, but the first 2 schools, Fort Worthington PreK-8 and Frederick Elementary, were completed in summer 2017 and opened for the 2017-2018 school year. An additional 7 schools opened to students in time for the start of the 2018-2019 school year. The program is currently anticipated to be completed by summer 2021, one year behind the original schedule.

A total of three bond issuances are planned by MSA to finance construction. The first \$320 million bond issuance was issued in April 2016. The bonds' par value and premium provide \$385 million for construction. In February 2017, MSA closed a bond sale issuing \$426 million. The sale generated a bond premium totaling \$70 million. MSA received approximately \$880 million in construction proceeds from the first two bond sales. MSA anticipates one more issuance with a par value of about \$200 million, potentially in spring 2019. That final issuance should increase annual debt service to \$60 million, as anticipated in the original legislation.

The opening of new schools will require an increased attention to maintenance. The MOU states that BCPS must include an annual increase over the prior year maintenance appropriation of \$3 million from fiscal 2015 through 2023 until the full agreed upon amount of approximately \$42.5 million is reached. The Baltimore City fiscal 2019 budget includes the required \$3 million increase. IAC also recommends that the efforts to increase maintenance be continuously measured. BCPS has implemented a new computerized maintenance management system utilizing initiative funding that will better track progress of the maintenance program.

Education

School Safety

In response to recent school shootings, including an incident in Southern Maryland, the General Assembly enacted comprehensive school safety legislation altering State oversight of school safety policies and requiring local school systems to implement new safety-related requirements and programs. The General Assembly also provided significant operating and capital funding for implementation grants to local school systems in the fiscal 2019 budget. Implementation of a number of provisions of the comprehensive school safety legislation began on September 1, 2018.

Following high-profile incidences of gun violence at high schools in Parkland, Florida, and St. Mary's County, Maryland, the General Assembly enacted comprehensive legislation to make schools in the State safer by restructuring the governance system for overseeing school safety policies and grants, enhancing the security of schools through building and staffing improvements, and ensuring access to mental health and other wraparound services for students who display behaviors of concern. The General Assembly also provided \$40.6 million in operating and capital funding in the fiscal 2019 operating and capital budgets, primarily to provide grants to local school systems for school safety related initiatives.

Maryland Safe to Learn Act of 2018

Senate Bill 1265 (Chapter 30), the Maryland Safe to Learn Act of 2018, was a bipartisan bill combining several provisions from separate pieces of legislation introduced by the Administration and members of both parties.

Governance Restructuring

The Act restructures the State level governance responsible for overseeing and ensuring school safety, along with monitoring implementation of the various provisions within the new legislation. It establishes a School Safety Subcabinet chaired by the State Superintendent of Schools and including five other State agency leaders, which serves as the governing board for the existing Maryland Center for School Safety (MCSS). The subcabinet is charged with multiple responsibilities, including collaborating to create a comprehensive, coordinated approach to school safety, fostering partnerships between the school and law enforcement communities, and administering grant funding. An advisory board with broad stakeholder representation is also created to assist the subcabinet. For administrative purposes, MCSS is reassigned from within the Department of State Police to an independent unit within the Maryland State Department of Education (MSDE).

School Safety Assessment Teams and Model Policy

By September 1, 2018, the subcabinet was required to develop a model policy for establishing one or more assessment teams in each local school system. The model policy guiding the formulation of local assessment teams must address the process for identifying, and/or intervening with, students or other individuals who may pose a threat to school safety, the composition and appropriate number of teams within a school system, and the associated training that should be provided. School systems are required to establish a local assessment team policy in accordance with the model policy by September 1, 2019. The local policies must also include a process for regular assessment and intervention, including diversion and de-escalation tactics, standards for timely response, and procedures for ensuring the proper referral to additional services, if needed.

School Safety Coordinators, Evaluations, Emergency Drills, and Plans

Each school system is required to designate a school safety coordinator, certified by MCSS, by September 1, 2018. This individual is to serve as a liaison between the local school system, local law enforcement, and MCSS. In addition, by June 15, 2019, and regularly thereafter, each local school system must conduct a safety evaluation of each school to identify and address any physical deficiencies and any patterns of safety concerns on school property or at school-sponsored events. By July 1, 2020, each local school system must update its school emergency plan to conform to MSDE guidelines regarding how schools will address behavioral threats and emergency events. In addition, the legislation authorizes MSDE to incorporate age-appropriate components of active shooter preparedness into its annual schedule of drills for each school.

School Resource Officers

The Safe to Learn Act includes several provisions pertaining to the training and use of School Resources Officers (SRO). The legislation defines an SRO as a law enforcement officer assigned to a public school in accordance with a Memorandum of Understanding between a local law enforcement agency and a local school system, or a Baltimore City School Police Officer. Under the law, MCSS was required to develop a specialized SRO training curriculum by September 1, 2018, and a model training program must be developed and approved by the Maryland Police Training and Standards Commission (MPTSC) by March 1, 2019. All SROs must have completed an approved SRO training program by September 1, 2019. Beginning with the 2018-2019 school year, the Act requires that each school system demonstrate that every public high school has either an assigned SRO or adequate law enforcement coverage. Beginning with the 2019-2020 school year, the requirement for an SRO or adequate law enforcement coverage extends to all public schools. MCSS is required to report on compliance with SRO coverage requirements by October 1 each year. By December 15, 2018, the center is required to develop guidelines to assist local school systems with identifying appropriate levels of SRO and/or law enforcement coverage for all schools.

Mental Health Coordinators, Services, and Responsibilities

By September 1, 2018, each local school system was required to appoint a mental health services coordinator to coordinate existing mental health services and referral procedures within the local school system. The coordinator is responsible for ensuring that referred students receive the necessary services, external funding for services is maximized, and plans for behavioral health and wraparound services are developed for those students who exhibit behaviors of concern. The Act requires the subcabinet to review the local plans for the delivery of services and identify gaps in the availability of services, reporting the findings to the General Assembly by December 1, 2018. In addition, the legislation directs the Commission on Innovation and Excellence in Education (Kirwan Commission) to include recommendations pertaining to broader school mental health and wraparound services as a component of its final report, due December 31, 2018.

Funding

The fiscal 2019 budget provides approximately \$40.6 million in funding to support school safety-related initiatives. A total of \$14.1 million is provided for school safety-related operating grants to local jurisdictions. This includes \$2.5 million to fund the safety evaluations required under the Act, along with \$10.6 million for various types of training, development of plans for delivery of mental health/wraparound services, and enhanced community outreach. The legislation creates the nonlapsing Safe Schools Fund to administer these grant funds and designates the subcabinet responsible for making grants from the fund. The budget also includes \$1 million in funding for grants to public and private schools and day care centers at risk of hate crimes; these funds can support operating or capital costs. Approximately \$23.5 million is allocated to support capital improvements to the safety and security of school facilities, including addressing any deficiencies identified through the required safety evaluations. Of the total capital funding provided in fiscal 2019, \$3.5 million is allocated to funding improvements at nonpublic schools. Capital grants for public schools are administered by the Interagency Commission on School Construction (IAC). To cover the enhanced responsibilities required under the Act, MCSS is also provided with \$3.0 million and 14 positions.

Although it is anticipated that school systems will complete the mandated safety assessments during fiscal 2019, funding requests to address operating or capital deficiencies may not be known in time to distribute the entire appropriation by the end of the fiscal year. A provision added to Chapter 10, the Budget Reconciliation and Financing Act of 2018, allows for any unexpended grant funds to also be spent in fiscal 2020.

Beyond fiscal 2019, legislation passed during the 2018 session requires that \$10 million be appropriated annually to the Safe Schools Fund to partially offset local costs for providing adequate SRO coverage. In addition, the 21st Century School Facilities Act (Chapter 14 of 2018) requires an annual \$10 million appropriation to fund school safety capital improvements. The Act also mandates that MCSS is provided \$2 million annually to support its operating costs.

Implementation

Since the legislation took effect on June 1, 2018, the School Safety Subcabinet has met on a monthly basis. To date, all implementation deadlines outlined in the legislation have been met. MCSS has reported that all jurisdictions have designated school safety and mental health services coordinators. A training curriculum for SROs and other school security employees was approved by MPTSC by the September 1 deadline, with MCSS indicating that related lesson plans and the model training program will be established by the March 1, 2019 deadline. It is anticipated that MCSS will offer training to all required personnel at no cost to the local jurisdictions. The model policy for behavioral threat assessments was approved by the subcabinet at the August 2018 meeting. After researching other policies nationwide, the Maryland policy relies heavily on similar policies established in Virginia.

On October 1, MCSS submitted its report regarding SRO coverage at all public high schools. The report indicated that the majority of public high schools in the State have an SRO assigned to the school during the academic day. In instances where adequate local law enforcement coverage is used to fulfill the requirement, jurisdictions primarily rely on the use of assigning roving law enforcement officers, deputies, and school police officers on a geographic basis to respond to calls for service at schools within a particular region. School systems are also encouraging law enforcement personnel to utilize school parking lots and Wi-Fi to write reports and complete other administrative tasks while maintaining a presence on school grounds. Other jurisdictions utilize overtime to fund sheriff's deputies, or structure patrol coverage for law enforcement officers or SRO supervisors to incorporate school-related calls for services. The MCSS guidelines to assist local school systems in determining adequate SRO or law enforcement coverage for all schools are anticipated in December 2018.

With regard to distribution of the funds appropriated in the fiscal 2019 budget, the subcabinet has approved the grant application for the \$1 million hate crimes grant. Applications for that grant are due December 15, 2018. The subcabinet determined that the \$10.6 million in operating grant funds would be distributed, with each jurisdiction receiving a minimum allocation of \$200,000, and the remainder would be allocated by enrollment. IAC is awarding the \$20.0 million in capital funding for public schools in two \$10 million installments. At its September 2018 meeting, the commission approved allocating \$5 million of the first installment based on enrollment and \$5 million based on school facility square footage. Local school systems must apply for funding for eligible projects, which are subject to local matching requirements based on the State-local cost share allocation that applies to other school construction projects.

Higher Education

College Affordability Programs

Two programs enacted in 2016, the Student Loan Debt Relief Tax Credit and the Save4College State Contribution Program, have high demand. The financial aid incentive program that rewards on-time college completion began in the 2018-2019 school year, and a report is expected in December. Maryland now has a Community College Promise Scholarship program that is set to begin in fiscal 2020.

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 an income tax credit for student loan debt, financial aid incentives to complete 30 credits per year, and a State match program for college savings.

Student Loan Debt Relief Tax Credit

The Student Loan Debt Relief Tax Credit established a refundable tax credit of up to \$5,000 for qualified student loans to Maryland residents beginning in tax year 2017. Qualifying taxpayers must have had at least \$20,000 in total undergraduate student loan debt and have a remaining balance of at least \$5,000, and recipients must use the credit within two years to pay down the student loan. The Maryland Higher Education Commission (MHEC) was initially authorized to approve \$5.0 million of tax credits annually. Chapter 382 of 2018 expanded the types of qualifying debt to include debt incurred for graduate school, and Chapter 419 of 2018 increased the total amount of credits that can be awarded to \$9.0 million annually.

In the first year of the program, tax year 2017, MHEC received 4,988 applications, of which 4,422 qualified for the program. MHEC awarded a tax credit of \$1,201 to each of 2,881 applicants who qualified for in-state tuition and a tax credit of \$1,000 to the other 1,541 applicants. For the second year of the program, MHEC received 10,113 applications, which is more than double the number of applications from the previous year. Approvals are expected by December 15, 2018.

State Financial Aid Programs Provide Incentives for On-time Graduation

The College Affordability Act encouraged students receiving aid through the Educational Excellence Awards (EEA), the State's largest need-based financial aid program, to stay on track for on-time graduation through financial aid incentives based on annual credit completion

requirements. Beginning in academic year 2018-2019 (fiscal 2019), a student receiving an EEA award in their third year of enrollment and thereafter must have successfully completed 30 credit hours in the prior academic year in order to receive the full amount of the grant.

EEA grant recipients who completed at least 24 credit hours but less than 30 hours in the prior academic year will have their award prorated, and those who do not complete 24 credits are ineligible for the EEA grant. Students whose award were prorated or were deemed ineligible for the EEA grant can regain eligibility in the fourth year if they met the credit completion requirement at the end of their third year. A report on the impact of the credit requirement on EEA awards is due December 15, 2018.

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. For applicants within certain income limitations, this program required the State to make a matching contribution of \$250 to a college savings investment account. For the first year of implementation in fiscal 2018, the Governor was required to appropriate at least \$5 million increasing to \$7 million in fiscal 2019 and \$10 million in fiscal 2020 and thereafter. For fiscal 2018, Maryland 529 received a total of 3,084 applications, of which 1,901 eligible applications were received resulting in \$475,250 in matching funds from the State. Due to the lower than expected interest in the program, Chapter 10 of 2018 reduced the minimum amount of funding that the Governor must provide for the State matching contributions to \$3 million annually. The State match was also raised from \$250 to \$500 for certain income ranges in an attempt to increase enrollment.

For the second year of the program, the Save4College Program received 14,393 applications, of which 13,381 were eligible to receive matching funds from the State. This total represents a 367% increase in the number of applications received and an increase of over 600% in the number of eligible applications when compared to the previous year. 11,925 applications are due to receive the \$500 match while 1,456 are due to receive the \$250 match; 1,012 applications were not eligible for a State match because they did not meet the required minimum contribution amount during the contribution window. The funds necessary from the State to meet these completed applications would total \$6.33 million, or \$3.33 million, over the minimum amount that the Governor must provide for the State matching contributions program for the current fiscal year.

Marketing strategies developed to reach low-incomes families across the State proved to be effective. Increased response from the lowest income category, joint filers who had taxable income of \$74,999 or less and single filers with \$49,999 or less, represented 41% of the total applications received, up from 21% in the prior year. Additionally, applications from Baltimore City reached 39%, a significant increase from 8% in the previous year, also indicating that the targeted market population was being reached. The Eastern Shore and Western counties

of Maryland remain a statistically insignificant source of applications received, potentially indicating a new area of focus for the upcoming marketing cycle.

Other elements of the Save4College Program also exceeded expectations. Online application completion has proven effective with 91% of applications submitted using the new online capability. Further, over 90% of the Tax Information Authorization Forms were completed, an improvement on the 84.3% rate of return in the prior year.

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. The program makes funding available to nonprofit organizations to provide guidance and services to assist low-income Maryland high school students to successfully make progress to complete a degree. These students prequalify for MHEC's Guaranteed Access grant which, when combined with the federal Pell grant, covers up to 100% of the cost of attendance. In fiscal 2018 the maximum award was \$18,400, and grants totaling \$4.7 million were distributed to nonprofit organizations serving eligible students in eight local jurisdictions. In fiscal 2019, \$4.7 million was provided to continue funding of the program. A report is required by December 2020 on the implementation of the program.

The Promise of Free Community College

The promise of free community college 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 October 2018, 238 programs exist in various forms across 44 states. One of the most studied has been Tennessee Promise, which launched in fall 2014 for students pursuing associate's degrees and workforce training. 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.

In 2018, Chapter 554 created a scholarship program in Maryland to provide tuition assistance to students who attend a community college in the State and meet specified eligibility criteria including an income limitation. The Maryland Community College Promise Scholarship Program is a last dollar award, applied to eligible recipients after all nonloan aid has been applied, not to exceed \$5,000 annually or actual tuition, whichever is less. The Promise Scholarship includes a service obligation of one year of work in the State per year of award. If the service obligation is not completed, the scholarship converts to a loan. A recipient can receive the award for a total of three years. To maintain the award, the recipient must complete 12 credits per

semester and earn a cumulative GPA of at least 2.5. The recipient must meet the designated income requirements for the program, remain eligible for in-state tuition, apply annually, and continue to make satisfactory academic progress as determined by the community college. The program starts in fiscal 2020, and the Governor is required to allocate at least \$15 million annually in the State budget.

In addition to the new Statewide program, several promise-like programs already existed in Allegany, Garrett, and Wicomico counties for attendance at community colleges. Additionally, in fall 2017, Somerset County 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 fall 2017. Finally, Baltimore City and Baltimore City Community College implemented a free community college program beginning in the fall 2018 semester. The Mayor's Scholars Program is available to any Baltimore City public school graduate, regardless of grade-point average or income level. The inaugural year produced 542 Baltimore City public school graduates who attended Baltimore City Community College for the fall 2018 semester.

Higher Education

Litigation Regarding Maryland's Historically Black Colleges and Universities Remains Unresolved

For the past 12 years, the State of Maryland has been a defendant in a lawsuit brought by a coalition representing former, current, and prospective students at Maryland's historically black colleges and universities alleging that policies of the State's higher education system are in violation of federal law. After a federal District Court found in part for the coalition, there has been no final decision in the case or with regard to a remedy and all proceedings have been stayed pending an appeal by both parties to the U.S. Court of Appeals for the Fourth Circuit.

Lawsuit Regarding Maryland's Historically Black Colleges and Universities Continues

The Coalition for Equity and Excellence in Maryland Higher Education, a group of former, current, and prospective students at Maryland's historically black colleges and universities (HBCU), filed suit in 2006 against the State and the Maryland Higher Education Commission (MHEC). This lawsuit alleged violations of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The lawsuit was initially filed in Baltimore City but was moved to the U.S. District Court. In 2013, the U.S. District Court found in favor of the coalition as to one of the issues raised and deferred judgment to allow for mediation or other proceedings to take place regarding a remedy. Attempts at mediation failed and were followed by a long process of discovery that led to a six-week bench trial. In 2017, neither party's proposed remedies were acceptable to the court, which then ordered appointment of a special master to develop a remedial plan. All proceedings with respect to the case or potential remedies have been stayed by the court as both parties have appealed to the U.S. Court of Appeals for the Fourth Circuit.

Policies Traceable to the *De Jure* Era of Segregation

The parties have never disputed that Maryland operated a *de jure* (as a matter of law) system of segregated public higher education before 1969, when the U.S. Department of Education's Office for Civil Rights found the State in violation of Title VI of the Civil Rights Act of 1964. In the coalition's lawsuit, three policies of the Maryland system of higher education allegedly traceable to the prior *de jure* system were at issue: (1) limited institutional missions; (2) operational funding deficiencies; and (3) unnecessary program duplication.

On October 7, 2013, the U.S. District Court issued a memorandum, which in its current form is not a final decision, of its findings of fact and conclusions of law. Although the court noted

that the institutional missions of HBCUs are linked to the *de jure* era, the court held that the coalition was unable to demonstrate that the State is responsible for limiting, perpetuating, or imposing missions on HBCUs.

The court rejected the coalition's allegation that operational funding deficiencies at HBCUs were entrenched in or a continuation of funding practices that were segregative and traceable from the *de jure* era. Maryland's current funding framework is structurally different than prior funding policies and practices. In fact, the court found that under Maryland's current funding system, HBCUs are not underfunded by the State, relative to traditionally white institutions (TWI), but rather, Maryland appropriates slightly more per full-time equivalent student at HBCUs than at TWIs. Further, the court found that Maryland's HBCUs are funded at or above their peer-based funding targets. While the court noted that HBCUs struggle financially because of factors such as lower tuition revenue, insufficient fundraising capacity, and difficulty in attaining external grants, the court found that these factors are outside of State control. The court held that additional funding, in excess of what the State has already provided HBCUs in enhancement funding, is not required. The court previously ruled in summary judgment that a coalition claim related to capital funding deficiencies was not proved and, therefore, that claim did not proceed to trial.

However, the court did find that the State failed to eliminate unnecessary program duplication for Maryland's HBCUs and that this policy was traceable to the *de jure* era.

Unnecessary Program Duplication

The court concluded that the coalition proved that unnecessary program duplication continues and is a policy traceable to prior *de jure* segregation. The court, applying the law established by the Supreme Court in *United States v. Fordice*, defined unnecessary duplication as the offering by two or more institutions of the same nonessential or noncore programs, nonbasic liberal arts and sciences course work at the bachelor's level, and all duplication at the master's level and above. The court cited MHEC's decision to approve a joint University of Baltimore (UB)/Towson University (TU) Masters of Business Administration (MBA) program, despite the objections of Morgan State University (MSU) in 2005, as an example of how the State failed to prevent additional unnecessary duplication. Of note, TU and UB did not renew the Memorandum of Understanding regarding the MBA program when it expired in October 2015, resulting in the program reverting back to only UB.

The court found that the State's "sound educational justification" for program duplication consisted of justifications for the approval of the MBA program at UB/TU rather than a thorough and thoughtful assessment and analysis of whether the same goals could be accomplished with less segregative results, such as offering MSU additional funding for its MBA program or establishing a program at another HBCU instead of a TWI. The court also found that, in addition to failing to disapprove new duplicative high-demand programs at TWIs within close proximity to HBCUs, MHEC also failed to analyze and eliminate existing high-demand programs that are duplicated at TWIs and HBCUs.

Determining a Remedy

The court deferred entry of judgment pending mediation or further proceedings to establish a remedy. The case was referred back for mediation with a suggested starting point that each HBCU “should develop programmatic niches of areas or areas of excellence in at least two high-demand clusters within the next three to four years.” However, mediation was unsuccessful.

In January and February 2017, a six-week hearing on remedies took place. Following oral argument, on November 8, 2017, the court found that neither party’s remedial plan was “practicable, educationally sound, and sufficient to address the segregative harms of program duplication at the [HBCUs].” The court decided instead to appoint a special master to develop a remedial plan in consultation with relevant actors. The court stated that the plan must incorporate elements of both parties’ remedial proposals and propose a set of new unique programs, or high-demand programs, or both, at each HBCU taking into account areas of strength, physical building capacity, and programmatic niches. The plan may not include program transfers or closings of institutions absent agreement from the impacted institutions of higher education. Finally, the plan must provide funding to HBCUs to be used to support student recruitment, financial aid, marketing, and related initiatives. The court will receive periodic reporting regarding implementation of the special master’s plan.

Status of the Litigation

Both the coalition and the State have appealed to the U.S. Court of Appeals for the Fourth Circuit regarding the District Court’s findings as to duplication and policies traceable to the *de jure* era, as well as the appointment of a special master. Further, the State filed a motion to stay all proceedings pending the Fourth Circuit decision on the appeal. This motion was granted by the court on February 6, 2018. Opening briefs on appeal were filed on May 21, 2018, and closing briefs were due on October 18, 2018. Oral arguments will be held on December 11, 2018.

On February 7, 2018, the Governor proposed a \$100 million settlement, which would supplement State appropriations to the HBCUs over a 10-year period. It is not known how the funds would be allocated among the institutions or if it would be used consistent with the judge’s order. According to the Governor’s office, these issues would have to be negotiated between the parties, resolved with the court, and included in the final settlement agreement. No action has occurred with respect to the plaintiffs and the proposed settlement.

Health and Health Insurance

Opioid Overdose Issues

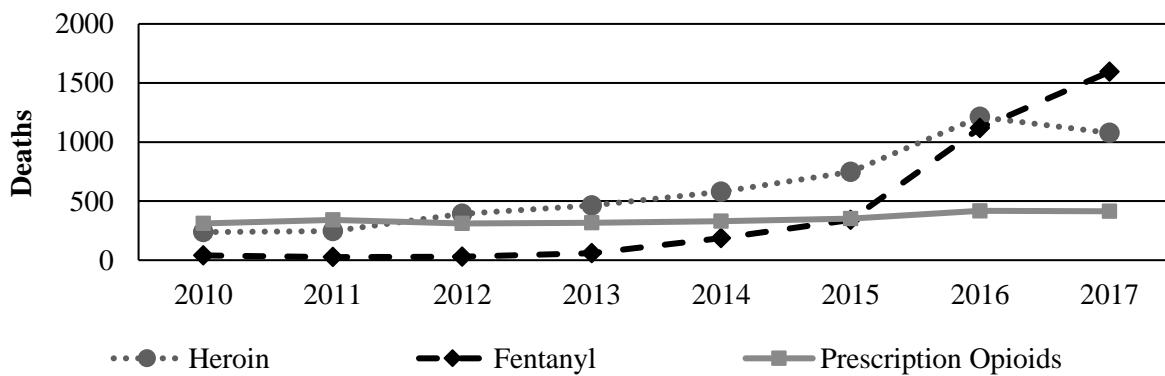
Rates of opioid use and overdose deaths continue to rise at an alarming rate both nationally and in Maryland. In 2017, there were 2,282 drug- and alcohol-related deaths in Maryland, of which 88% were opioid-related. Although deaths from heroin decreased for the first time since 2010, deaths from fentanyl in the State increased by 42% from 2016 to 2017. Several initiatives at the federal and State level have been implemented to address the opioid crisis through prevention, treatment, and enforcement.

The Opioid Crisis

According to the Centers for Disease Control and Prevention, 130 Americans die every day from opioid overdoses. Maryland has been one of the states hit the hardest by the epidemic, with 2017 marking the seventh year in a row that drug- and alcohol-related intoxication deaths increased in the State to an all-time high of 2,282. Of these deaths, 88% (2,009 deaths) were opioid-related.

As shown in **Exhibit 1**, the increase in intoxication deaths can be attributed to the prevalence of fentanyl overdoses. In 2017, heroin deaths decreased for the first time since 2010, falling by 11% (1,212 to 1,078). However, deaths from fentanyl continue to increase at a dramatic rate. In 2017, fentanyl contributed to 460 deaths, a 42% increase from 2016. The Office of the Chief Medical Examiner also attributed 60 overdose deaths in 2017 to carfentanil, an even more potent opioid. Carfentanil first appeared as a cause of death in April of 2017.

Exhibit 1
Total Drug-related Intoxication Deaths by Selected Substances in Maryland
Calendar 2010-2017

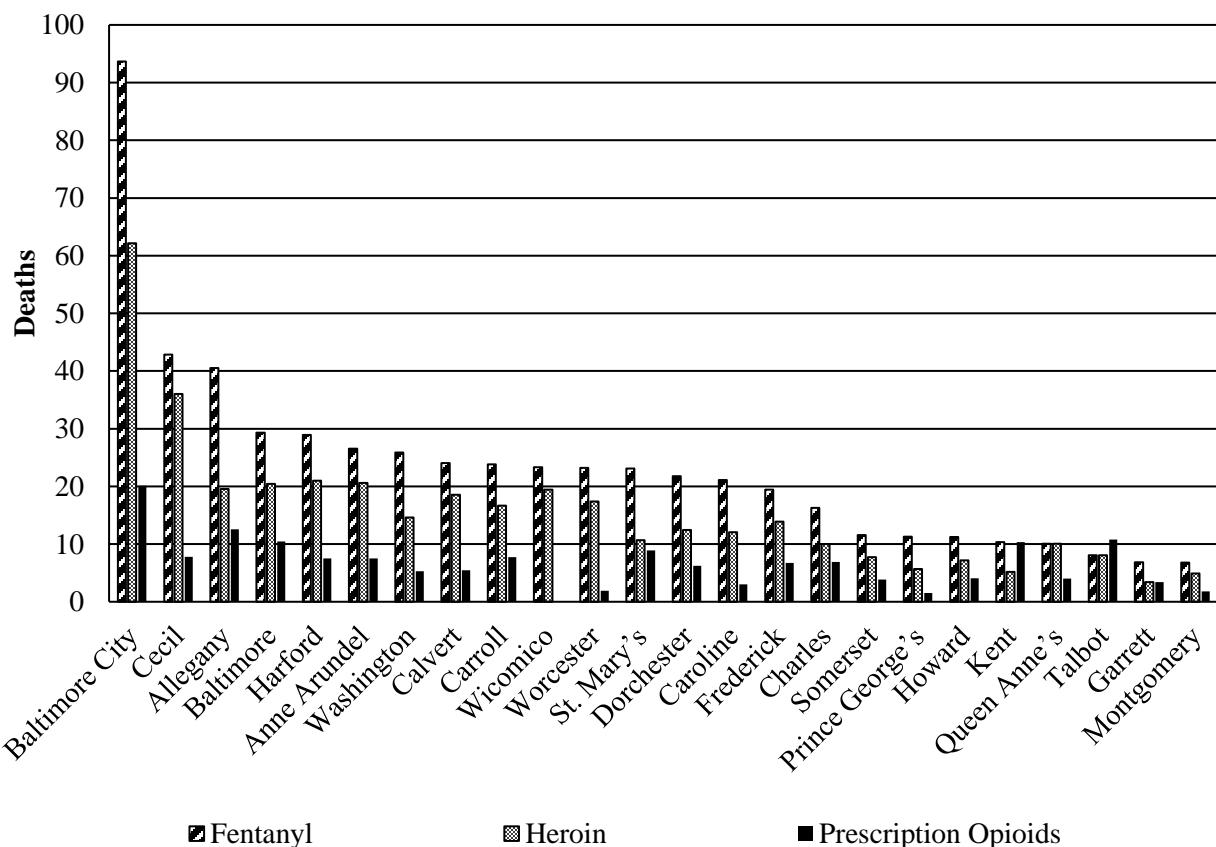


Source: Maryland Department of Health

Opioid-related deaths have not slowed down in Maryland in 2018. The first quarter report from the Maryland Department of Health (MDH) attributes 579 deaths to opioids, an over 20% increase from the 473 opioid-related overdose deaths during the same time period in 2017.

Exhibit 2 shows the per capita overdose rates for fentanyl, heroin, and prescription opioids by jurisdiction in 2017. Baltimore City experienced the highest per capita overdose death totals for prescription drugs (20 overdose deaths per 100,000 people), fentanyl (94 deaths per 100,000 people), and heroin (62 deaths per 100,000 people). Cecil County, the jurisdiction with the second highest overdose deaths for all three opioid types, experienced overdose rates of approximately half of the rates experienced in Baltimore City.

Exhibit 2
Per Capita Opioid Overdose Deaths Per 100,000
Calendar 2017



Source: Maryland Department of Health

Federal Actions to Address the Opioid Crisis

In October 2018, President Donald J. Trump signed the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act. The SUPPORT Act includes measures to increase the number of providers to address the crisis, as well as enforcement mechanisms to stem the flow of fentanyl from overseas packages. The SUPPORT Act also reauthorizes the State Targeted Response to the Opioid Crisis Grants from the 2016 21st Century Cures Act (CURES Act). In 2017, Maryland was awarded a \$20 million, two-year grant from the CURES Act that is currently in its second year. The funds from the CURES Act support the Maryland Opioid Rapid Response program. Additional funding in the SUPPORT Act is provided for research into new and nonaddictive painkillers and a grant program for “Comprehensive Opioid Recovery Centers.”

Maryland Actions to Address the Opioid Crisis

Legislative Response

During the 2018 session, the General Assembly of Maryland passed several acts to improve treatment, prevent further opioid addiction, and enforce the legal distribution and prescribing of opioids.

Several acts passed during the 2018 session specifically addressed the prescribing of opioids. Chapter 214 of 2018 requires that providers must complete a recognized continuing education course related to the prescribing or dispensing of controlled dangerous substances (CDS) as a qualification for an issuance or renewal of registration to dispense CDS. Chapter 216 of 2018 requires that patients be advised of the risks and benefits associated with opioids when prescribed an opioid. Chapter 211 of 2018 requires MDH to identify a method to establish a tip line for individuals to report suspicious prescribing or overprescribing of medication.

Legislation was also enacted in 2018 to expand treatment capacity in the State. Chapter 323 of 2018 requires the Secretary of Health to convene a workgroup to make findings and recommendations on the reimbursement of peer-recovery specialists. Chapter 487 of 2018 requires insurance carriers to ensure that all enrollees have access to local health departments, including their behavioral health services. Chapter 209 of 2018 establishes the Behavioral Health Crisis Response Grant Program and requires mandatory appropriations of \$3 million, \$4 million, and \$5 million in fiscal 2020, 2021, and 2020, respectively, for grants to local behavioral health authorities.

Enforcement measures include Chapter 593 of 2018, which requires registered distributors of CDS to report any suspicious order of a CDS to MDH and the Office of the Attorney General. In addition, Chapter 149 of 2018 authorizes emergency medical services providers to report the incident of an overdose to the State’s overdose detection mapping application program.

Executive Branch Response

Opioid Operational Command Center

Governor Lawrence J. Hogan, Jr.'s Administration has continued efforts to respond to the opioid epidemic through the Opioid Operational Command Center (OOCC). The Administration announced \$66 million in federal funding during fiscal 2019 and 2020 through the State opioid response grants to expand 24/7 crisis treatment services statewide, increase naloxone distribution to local jurisdictions, and expand medication-assisted treatment.

The OOCC also supports local opioid intervention teams (OIT) in all 24 local jurisdictions that will receive \$4 million in total funding for fiscal 2019. Projects funded through the OIT grants seek to expand naloxone access, increase public awareness, support education and training, and facilitate referrals and connections to treatment and recovery support services. The OOCC also launched the public awareness campaign *Before It's Too Late*, which aims to mobilize resources for prevention, treatment, and recovery.

Office of the Attorney General Actions

The Maryland Attorney General, Brian E. Frosh, has also pursued legal actions to combat the opioid crisis. In September 2018, the State filed a lawsuit against Insys Therapeutics, the manufacturer of a prescription fentanyl, Subsys, for unfair and deceptive practices. Attorney General Frosh has also prosecuted pill mill operators in the State under drug kingpin statutes.

Medicaid Reforms

In fiscal 2019, the Maryland Medicaid program began operating under the waiver to the Institutes for Mental Disease (IMD) exclusion. This waiver allows the State to receive federal reimbursements for the provision of residential treatment for up to two 30-day stays per year. The IMD exclusion will continue for fiscal 2020 and beyond, as it was included in the SUPPORT Act.

Prescription Drug Monitoring Program

Maryland's Prescription Drug Monitoring Program (PDMP) is designed to assist prescribers, dispensers, and public health professionals in the identification and prevention of prescription drug abuse and the identification and investigation of unlawful prescription drug diversion. In Maryland, prescribers must query PDMP regarding a patient's history of prescribed CDS before prescribing a monitored drug. For each monitored prescription drug dispensed, a dispenser must electronically submit data to PDMP. In July 2018, mandatory use of PDMP went into effect for prescribers and dispensers. In February 2018, the Office of Controlled Substances stopped providing new licenses or renewals for CDS to providers who were not registered with PDMP.

Health and Health Insurance

Medical Cannabis Commission and Public Health Impacts of Cannabis

Medical cannabis became available for certified patients in Maryland in December 2017. Since implementing the program, the Natalie M. LaPrade Medical Cannabis Commission has submitted required emergency regulations to address the representation of minority-led businesses among licensees and the use of pesticides on medical cannabis. As more states legalize marijuana, the public health impact of legalization is being evaluated at the state and national level.

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, providers, growers, dispensers, processors, testing laboratories, and caregivers. Medical cannabis may only be obtained from a grower or dispensary licensed by the commission.

Controversy Over Geographic, Racial, and Ethnic Diversity

In August 2016, the commission announced the award of 15 grower and 15 processor Stage One license pre-approvals. The commission announced the award of 102 dispensary Stage One license pre-approvals in December 2016. After the award announcements, significant controversy involved two main issues: the decision to include geographic diversity as a final factor in choosing the grower finalists and the absence of any minority-led grower among the 15 Stage One approved grower finalists. Several bills addressing this controversy were introduced, but failed, during the 2017 session.

Legislation to alter the commission and medical cannabis industry was again introduced in the 2018 session. Chapter 598 of 2018, an emergency bill, made a number of significant reforms including (1) requiring outreach to encourage participation in the medical cannabis industry by small, minority, and women business owners; (2) requiring the commission to promulgate emergency remedial regulations based on the results of a disparity study and delay reviewing, ranking, or evaluating license applications until the regulations are adopted; (3) establishing a new license cap for growers by raising the current statutory cap from 15 to 22 grower licenses; and (4) establishing a new license cap of 28 processors.

The disparity study evaluated in accordance with Chapter 598 concluded that there is a compelling interest to implement remedial measures to assist minorities and women seeking to

participate in the medical cannabis industry. Based on these findings, the commission submitted emergency regulations in October 2018. The regulations alter the application review process for obtaining a medical cannabis grower, processor, and dispensary license by implementing remedial measures to assist minorities and women in the medical cannabis industry. The regulations also alter the current weighted criteria used when ranking applicants for licenses to include certain race-neutral and race-conscious provisions, addressing the needs of women and minority-owned applicants.

Status of Medical Cannabis Implementation in Maryland

Medical cannabis became available for sale in the State in December 2017. As of October 2018, the commission has issued 14 final and 4 pre-approved grower licenses; 15 final and 3 pre-approved processor licenses; and 69 final and 33 pre-approved dispensary licenses. Additionally, the commission has registered three independent laboratories and approved one-year provisional registrations for two independent testing laboratories. The commission maintains a list of licensees on its website: <https://mmcc.maryland.gov/Pages/industry.aspx>. At its September 2018 meeting, the commission announced that there were more than 62,000 registered patients, 43,000 certified patients, 3,700 caregivers, and 1,000 certifying providers. Further, the commission reported that as of September, 27, 2018, there had been more than \$67.0 million in retail sales at medical cannabis dispensaries in the State.

Pesticide Use in the Cultivation of Medical Cannabis

Chapter 598 of 2018 required the Maryland Department of Agriculture (MDA), in consultation with the commission, to submit emergency regulations to allow the registration and use of crop protection agents in the cultivation of medical cannabis as part of an integrated pest management plan. Prior to this legislation, no pesticides were permitted for use on medical cannabis in the State. MDA issued the required emergency regulations, effective July 6, 2018, that permit the use of specified pesticides, or crop protection agents, in the cultivation of medical cannabis. The final version of the regulations became effective October 8, 2018.

Public Health Impacts of Using Cannabis

As the recreational and medical use of cannabis has gained momentum across the country, continued attention is being paid to the public health effects of using cannabis. With the support of a number of different federal, state, philanthropic, and nongovernmental organizations, the National Academies of Sciences, Engineering, and Medicine convened an *ad hoc*, expert committee to review the most recent studies and evidence regarding the health effects of using cannabis. The resulting 2017 report drew nearly 100 conclusions on the health impacts of marijuana. According to the report, cannabis is the most popular illicit drug in the United States, and 90% of users report their primary use was recreational, although 36% reported mixed medical and recreational use. The committee found that cannabis and cannabidiol are effective in treating

chronic pain, and chemotherapy-induced nausea and vomiting. The report noted that using cannabis prior to driving increases the risks of being involved in a motor vehicle accident. However, the report ultimately concluded that despite increased cannabis use, conclusive evidence regarding the short- and long-term health effects of cannabis use remain elusive.

The report included four main recommendations to expand and improve the quality of cannabis research efforts. The recommendations prioritize research approaches and objectives to (1) address current research gaps, highlighting the need for a national cannabis research agenda that includes clinical and observational research, health policy and health economics research, and public health and public safety research; (2) identify actionable strategies to improve research quality and promote the development of research standards and benchmarks; (3) highlight the potential for improvements in data collection efforts and the enhancement of surveillance capacity; and (4) propose strategies for addressing the current barriers to the advancement of the cannabis research agenda.

Public Health Impacts from Decriminalization and Legalization

According to the National Conference of State Legislatures, 22 states (including Maryland) and the District of Columbia have decriminalized small amounts of marijuana, and 10 states and the District of Columbia have legalized small amounts of marijuana for adult recreational use.

Colorado and Washington both legalized the recreational use of marijuana in 2012, and retail sales began in both states in 2014. These states begun collecting and publishing data that may be illustrative of the potential public health implications of legalization. Recent reports from Colorado and Washington 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.

At the national level, the National Institute on Drug Abuse reports that the percent of students reporting use of marijuana in the past year declined among grade 10 and remained unchanged among grades 8 and 12 compared to five years ago, despite changing marijuana laws.

Health and Health Insurance

Status of Health Care Reform and Maryland's Insurance Market

The individual market faced significant challenges in 2018. In response, legislation was enacted to stabilize the market through a federal State innovation waiver and establishment of a State reinsurance program that will take effect January 1, 2019. Federal repeal of the individual mandate penalty in 2017 led states to consider adopting state-based mandates. Legal challenges to the constitutionality of federal Patient Protection and Affordable Care Act have been filed while the Maryland Attorney General has filed suit to validate the Act.

The Impact of Health Care Reform on Coverage

Since passage of the federal Patient Protection and Affordable Care Act (ACA), the percentage of uninsured Marylanders declined from 11.3% in 2010 to 6.1% in 2017. The largest gains in coverage have occurred through the expansion of Medicaid, with 307,932 individuals enrolled under the expansion as of September 2018.

More than 128,200 individuals were enrolled in a qualified health plan through the Maryland Health Benefit Exchange (MHBE) as of September 30, 2018. 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 (86.2%) receive a federal advanced premium tax credit (APTC) to help pay their monthly premiums. APTC is available to individuals with incomes between 100% and 400% of federal poverty guidelines. For calendar 2018, the estimated value of APTC statewide is \$727.5 million. Just under half (48%) of MHBE enrollees are covered under cost-sharing reduction (CSR) plans, silver-level plans that offer reduced deductibles and copayments.

State Actions to Stabilize the Individual Health Insurance Market

In calendar 2018, individual health insurance markets across the country faced significant challenges, including high premium increases (in Maryland, an average approved rate increase of 33%), flat enrollment, a decline in participating carriers (only two carriers participate in Maryland), and loss of federal cost-sharing subsidy payments to carriers (Maryland carriers received \$65 million in CSR payments in calendar 2017). In response, emergency legislation was enacted to adopt measures to stabilize Maryland's individual market.

Section 1332 Waiver and State Reinsurance Program

Chapters 6 and 7 of 2018 required MHBE to submit an application for a State Innovation Waiver under Section 1332 of the ACA to establish a State reinsurance program and seek federal

pass-through funding. MHBE submitted the waiver application on May 31, 2018, and the federal government approved the waiver on August 22, 2018. The waiver runs for up to five years.

The State reinsurance program, which begins January 1, 2019, will provide reinsurance to carriers that offer individual health benefit plans in the State. Carriers that incur total annual claims costs on a per individual basis between a bottom attachment point (to be determined) and a cap of \$250,000, will be reimbursed 80% of those claims costs. Payments to insurance carriers will be made after the plan year ends and all costs have been recorded and reconciled.

Chapters 37 and 38 of 2018 established, for calendar 2019 only, a 2.75% assessment on specified health insurance carriers to recoup the aggregate amount of the health insurance provider fee that would have been assessed under the ACA for calendar 2019 but was temporarily suspended for that year by action at the federal level. The assessment must be used for the State reinsurance program. MHBE advises that total funding for the program is estimated at \$1.1 billion between calendar 2019 and calendar 2021, including \$365 million in State funds from the one-time assessment on health insurance carriers and, under the State's approved Section 1332 waiver, an estimated \$730 million in federal pass-through funds (federal funding that would have been provided to Maryland residents in the form of advanced premium tax credits in the absence of the reinsurance program). By calendar 2021, additional funding will be required to fully fund and continue the program.

Calendar 2019 Individual Market Rates

Prior to approval of the Section 1332 waiver, Maryland carriers requested rate increases for calendar 2019 averaging 30.2%. Following waiver approval, the average requested rate increase fell to 23.4%. Ultimately, the rates approved by the Maryland Insurance Administration, reflecting the anticipated impact of the State's reinsurance program, declined by an overall 13.2%. The rate reductions vary by metal levels. In 2019, young adult catastrophic plans sold in Maryland will likely be the most affordable in the nation.

The Individual Mandate: Federal Action and State Responses

A principal feature of the ACA was an individual mandate that requires individuals to have minimum essential health coverage, qualify for an exemption, or pay a penalty with their federal income tax return. In December 2017, the federal Tax Cut and Jobs Act of 2017 (TCJA) eliminated the tax penalty for failure to comply with the mandate effective tax year 2019. The Congressional Budget Office estimates that, nationally, elimination of the penalty will decrease health insurance by three to six million people between fiscal 2019 and 2021 and increase individual market premiums by 10%, while reducing federal spending by \$318 billion over 10 years.

In 2018, nine states, including Maryland and the District of Columbia, considered implementing their own state-based individual mandates to encourage younger, healthier

consumers to maintain coverage and preserve a broader risk pool. To date, New Jersey, Vermont, and the District of Columbia have enacted such mandates — joining Massachusetts, which implemented an individual mandate in 2007, prior to passage of the ACA.

Legal Challenges Regarding the Affordable Care Act

Texas v. United States

In *Texas v. United States*, 20 states filed suit in the United States District Court, Northern District of Texas in February 2018 arguing that the ACA (as amended by the TCJA, which eliminated the tax penalty of the individual mandate) is no longer constitutional because it is not supported by a tax penalty. The lawsuit asserts that the entire ACA is unlawful and requests that the Court enjoin its operation. The U.S. Department of Justice declined to defend the statute, leaving defense of the ACA to a group of 17 attorneys general, led by California Attorney General Xavier Becerra, who asserts that the mandate remains constitutional even in the absence of an individual mandate penalty and that, even without the individual mandate, the remainder of the ACA would stand.

According to a June 2018 Urban Institute report, should the ACA be invalidated, nationally the number of uninsured would increase by 50%, Medicaid enrollment would fall by 15.1 million through elimination of the ACA's Medicaid expansion (the assumption being that states will not be able to bear the full cost of coverage for the existing ACA Medicaid population, for example an estimated \$2.7 billion in Maryland in fiscal 2019), and the number of individuals with private nongroup insurance would decline by 25%. Those retaining private nongroup coverage would likely have policies that cover fewer benefits and require more out-of-pocket spending due to elimination of minimum benefit and actuarial value standards. These policies would be substantially less accessible to people with current or past health problems because of the elimination of guaranteed issue and modified community rating rules.

State of Maryland v. United States of America

In response to *Texas v. United States*, on September 13, 2018, Maryland Attorney General Brian E. Frosh filed a lawsuit in the U.S. District Court for the District of Maryland seeking a declaratory judgment that the ACA is constitutional and that Congress' decision to eliminate the individual mandate penalty does not invalidate any of the ACA's remaining provisions. The suit asserts that eliminating the ACA would cause immediate and long-term harm to Maryland, citing that Maryland received \$2.77 billion in federal funds in fiscal 2017 under the ACA, as well as \$65 million in public health funding between fiscal 2012 and 2016.

Health and Health Insurance

Containing Health Care Costs: Maryland's Total Cost of Care Model

In January 2014, Maryland replaced its historic Medicare waiver that governs hospital rate-setting with the Maryland All-payer Model Contract. Building on these changes, beginning January 1, 2019, the State will enter a new Total Cost of Care Model that is intended to progressively transform care delivery across the health care system with the objective of improving health and quality of care.

Maryland's All-payer Model Contract

Effective January 1, 2014, Maryland entered into a 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. Under the model contract, however, the State was not only required to 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 would be deemed successful if Maryland could meet cost and quality targets without inappropriately shifting costs to nonhospital settings and if there was a measurable improvement in quality of care. Generally, performance data indicates that implementation has been successful, and that the State will meet or exceed the requirements.

Development of a New Total Cost of Care Model

The All-payer Model Contract also called for Maryland to submit a proposal for a new model, no later than January 2017, that would limit, at a minimum, the Medicare beneficiary total cost of care growth rate. To prepare this proposal, the State worked with a variety of stakeholders representing consumers, hospitals, physicians, skilled nursing and post-acute care facilities, payers, experts, and State agencies. In December 2016, a progression plan was submitted to the Centers for Medicare and Medicaid Services (CMS) describing Maryland's proposal to accomplish the model's expanded systemwide goals. In early 2017, the federal government and State officials began negotiations for a new model to begin on January 1, 2019.

In July 2018, Maryland and CMS agreed to the terms of the new Total Cost of Care Model (TCOC). TCOC is designed to (1) improve population health; (2) improve outcomes for individuals; and (3) control growth of the total cost of care. To accomplish these goals, the model is designed to 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. Core requirements and expectations of the new model 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. These savings will build off of the ongoing work of Maryland stakeholders that began in 2014.
- 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.

Implementation of the Total Cost of Care Model

The Health Services Cost Review Commission (HSCRC) advises that a number of steps taken under the current All-payer Model Contract will assist in the transition to TCOC. First, at the request of the Secretary of Health, providers have convened a stakeholder innovation group (SIG) to discuss new waivers that the State should request from the Center for Medicare and Medicaid Innovation and new care redesign programs that should be developed. HSCRC has developed and received approval for a care redesign program for bundled payments for post-acute episodes of care. HSCRC continues to utilize SIG to vet both hospital and nonhospital programs.

Additionally, HSCRC is focused on the development and implementation of the Maryland Primary Care Program (MDPCP). MDPCP is a voluntary program open to all qualifying Maryland primary care providers that provide funding and support for the delivery of advanced primary care throughout the State. MDPCP allows primary care providers to play an increased role in prevention, management of chronic disease, and preventing unnecessary hospital utilization. The program is set to begin January 1, 2019, though significant work regarding participation agreements and data use agreements remains. Finally, HSCRC is actively developing population health metrics that will be used to assess both MDPCP and TCOC success.

Health and Health Insurance

Medicaid Population and Expenditure Trends

Slowing enrollment growth combined with a shift to service delivery through managed care and a calendar 2019 rate cut for managed care organizations have moderated estimated growth in Medicaid expenditures in fiscal 2020. General fund growth is driven by a reduction in federal matching support for the federal Affordable Care Act expansion population and the Maryland Children's Health Program and by available special fund revenue.

Federal Fund Participation Rates

Maryland's Medical Care 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 fiscal 2019 federal fund participation rate of 50.0% to 91.5% for Medicaid, depending on the eligibility category, and 79.4% for MCHP.

Fiscal 2019 Medicaid Budget Outlook

There is a projected general fund deficit of \$45.2 million for fiscal 2018 Medicaid expenses carried into fiscal 2019, primarily due to lower than budgeted attainment of special fund revenues. Rate Stabilization Fund revenue from the premium tax on managed care organizations (MCO) and health maintenance organizations was \$26.9 million below estimates, while Cigarette Restitution Fund revenue was \$20.0 million below estimates. An additional amount relates to higher than anticipated behavioral health costs (\$3.0 million) and MCHP enrollment (\$0.2 million).

Higher than anticipated expenditures for behavioral health and strong MCHP enrollment likely add an additional \$16.9 million in general fund deficiencies in fiscal 2019. However, the \$62.1 million combined fiscal 2018 and 2019 general fund deficiencies are expected to be offset by \$63.0 million in overfunding for somatic care due to favorable enrollment projections and an increase in the relative share of enrollees being served through MCOs rather than fee-for-service.

Fiscal 2020 Medicaid Budget Outlook

In fiscal 2020, Medicaid expenditures are estimated at almost \$11.5 billion, a \$15.0 million (0.1 %) decrease over the fiscal 2019 working appropriation that reflects an adjustment for the allocation of funding from the Rainy Day Fund to Medicaid to support various fiscal 2019 provider

rate increases. However, as shown in **Exhibit 1**, after adjusting for the deficiencies and overfunding anticipated in fiscal 2019 noted above, fiscal 2020 baseline growth is \$245.2 million (2.2%), with general fund growth of \$211.0 million (6.3%). Baseline growth over the Department of Legislative Services' estimate for fiscal 2019 will be the basis for this discussion.

Exhibit 1
Medicaid Expenditures – Baseline Estimates
Fiscal 2018-2020
(\$ in Millions)

Funds	2018 Actual	2019 DLS Estimate	2020 Baseline	2019-2020 \$ Change	2019-2020 % Change
General	\$3,239.2	\$3,354.0	\$3,565.1	\$211.0	6.3%
Special	918.9	933.2	897.5	-35.7	-3.8%
Federal	6,661.2	6,867.3	6,937.2	69.9	1.0%
Reimbursable	69.4	69.4	69.4	0.0	0.0%
Total	\$10,888.7	\$11,224.0	\$11,469.2	\$245.2	2.2%

DLS: Department of Legislative Services

Note: Fiscal 2018 actual and 2019 estimates attribute anticipated fiscal 2019 deficiency appropriations to the appropriate fiscal year. Data is for major provider payments only and includes Medicaid-funded behavioral health services.

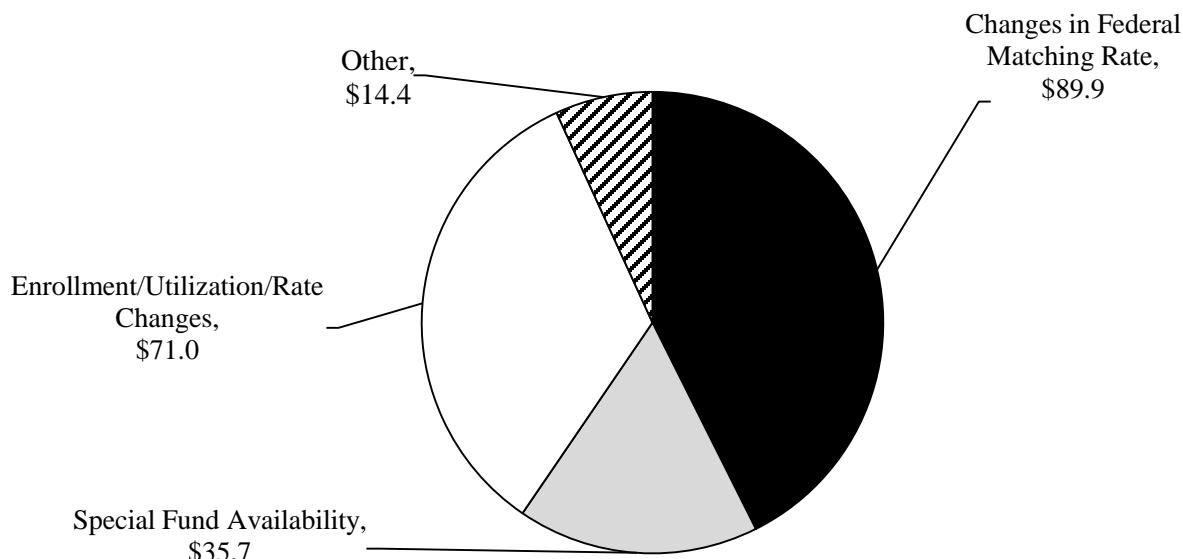
Source: Department of Legislative Services

Major drivers of general fund growth are displayed in **Exhibit 2**. As shown in the exhibit:

- The federal matching rate for the Affordable Care Act (ACA) expansion population falls from 93.5% to 91.5% in fiscal 2020, resulting in an increase of \$60.1 million in general funds.
- The federal matching rate for MCHP falls from 88.0% to 79.4% in fiscal 2020, resulting in an increase of \$29.8 million in general funds.
- Special fund availability declines, primarily as a result of the planned \$40 million reduction in the Medicaid deficit assessment.

- Enrollment growth is expected to be only 1.8% in fiscal 2019, slowing to 1.5% in fiscal 2020, with total enrollment for fiscal 2020 reaching just over 1.4 million.
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Exhibit 2
Major Drivers of General Fund Medicaid Spending
Fiscal 2019-2020
(*\$* in Millions)

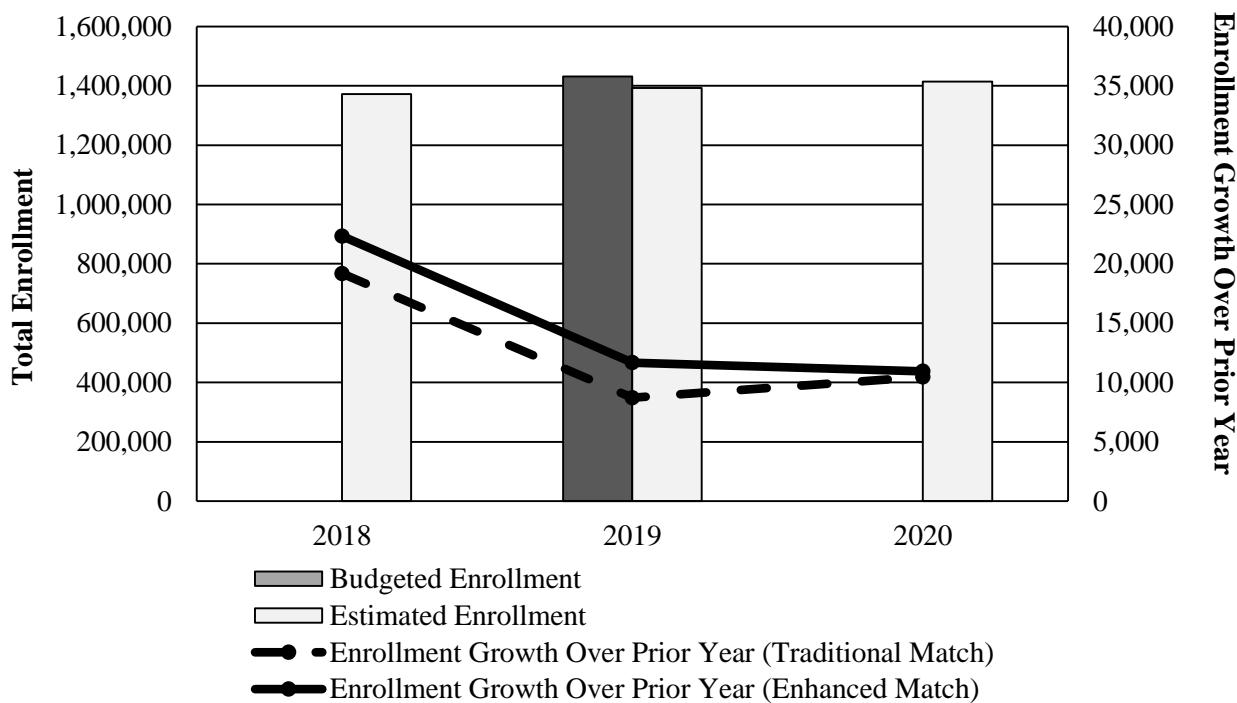


Source: Department of Legislative Services

Medicaid Enrollment and Per Capita Expenditure Trends

As shown in **Exhibit 3**, estimated fiscal 2019 Medicaid enrollment of 1.39 million is almost 39,000 enrollees below the fiscal 2019 budget estimate. Year-over-year enrollment growth is predominately in eligibility groups with an enhanced federal match. Additional data on enrollment and expenditure by eligibility category is provided in **Exhibit 4**. By fiscal 2020, enrollment is expected to reach 1.41 million, an increase of 1.5% over fiscal 2019. Service year per capita expenditures remain essentially flat from fiscal 2019 to 2020.

Exhibit 3
Medicaid Enrollment
Fiscal 2018-2020



Source: Department of Legislative Services

Exhibit 4
Enrollment and Service Year Per Capita Expenditures
Fiscal 2018-2020

	<u>2018 Actual</u>	<u>2019 DLS Estimate</u>	<u>2020 Baseline</u>	<u>2019-2020 % Change</u>
Enrollment by Category				
Medicaid	914,577	923,296	933,752	1.1%
MCHP	147,837	156,708	161,410	3.0%
ACA Medicaid Expansion	309,504	312,302	318,548	2.0%
Total	1,371,918	1,392,306	1,413,709	1.5%
Cost Per Enrollee				
Medicaid	\$8,210	\$8,408	\$8,491	1.0%
MCHP	2,048	2,085	2,073	-0.6%
ACA Medicaid Expansion	8,676	8,576	8,649	0.9%
Total	\$7,651	\$7,734	\$7,794	0.8%

ACA: federal Patient Protection and Affordable Care Act

DLS: Department of Legislative Services

MCHP: Maryland Children's Health Program

Note: Expenditures are based on the cost of providing services during that fiscal year rather than the year that the bills were paid. Cost estimates are based on provider reimbursements and expenditures excluding administrative costs in programs MQ0103, MQ0106, MQ0107, MQ0110, and MQ0111 only.

Source: Department of Legislative Services

Health and Health Insurance

Prescription Drug Affordability/Pharmaceutical Pricing

Growth in spending on prescription drugs is expected to outpace the average growth in total health spending from 2017 through 2022. Prescription drug expenditures are expected to exceed \$462 billion in 2022. In an effort to make prescription drugs more affordable, the federal government, Maryland, and other states have taken action to increase transparency in drug pricing and provide other mechanisms to reduce prescription drug prices.

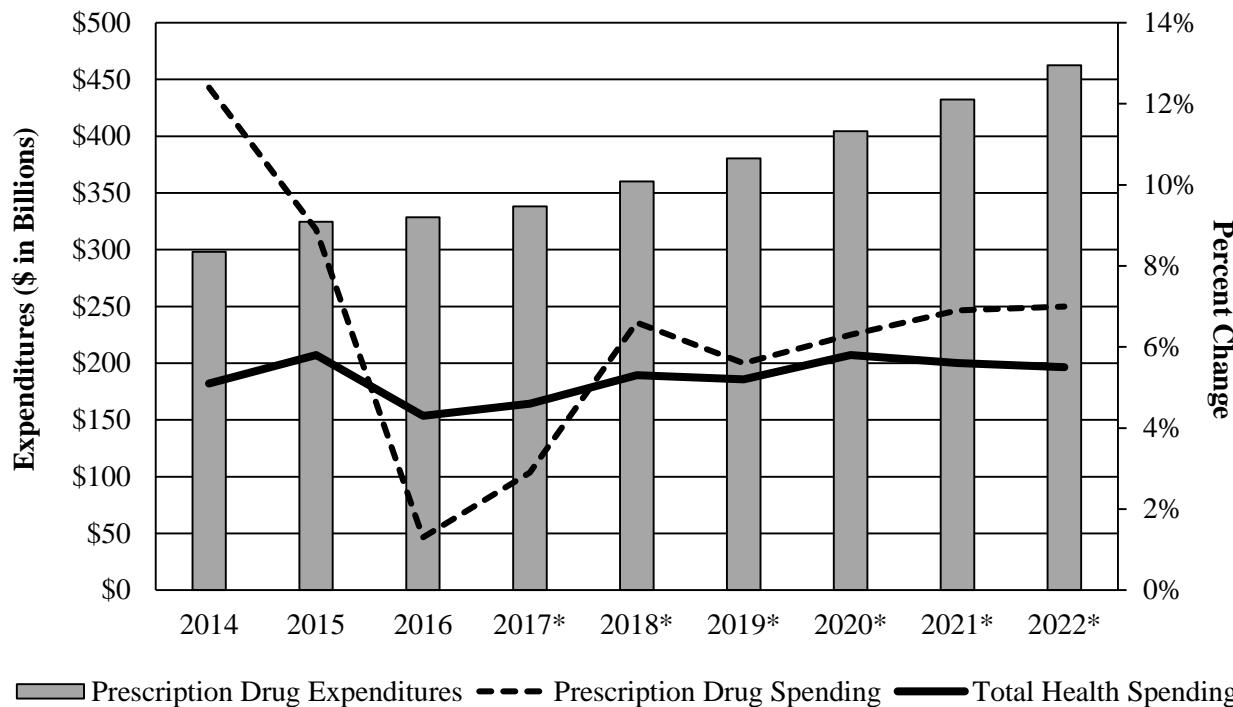
Concerns Regarding the Pricing and Affordability of Prescription Drugs

In recent years, 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 have raised questions about how drug prices are set in the marketplace. The trend continued in September 2018 when Nostrum Laboratories quadrupled the price of a generic antibiotic that has been on the market to treat bladder infections since 1953. These and other controversial cost increases have prompted action by the federal government, Maryland, and other states to increase transparency in drug pricing and provide other mechanisms to reduce prescription drug prices.

Rising Expenditures on Prescription Drugs

According to IQVIA Institute for Human Data Science, the United States spent \$453 billion on prescription drugs in 2017, an increase of \$3 billion over 2016 levels. Similarly, the U.S. Department of Health and Human Services estimates that spending on retail prescription drugs grew by 2.9% in 2017. **Exhibit 1** shows the total prescription drug expenditures compared to the rate of spending growth on retail prescription drugs and total health spending in the United States. The rate of prescription drug spending slowed 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, which prompted a shift by consumers to less expensive generic drugs. However, growth in spending on prescription drugs is expected to rise by an average of 5.9% from 2017 through 2022, outpacing the average 5.3% growth in total health spending during this time period. The growth in spending on prescription drugs is projected to accelerate from 2.9% in 2017 to an average of 6.6% for 2018 as prescription drug prices grow from 2.1% to 4.4%. Reasons for the growth include (1) a decrease in the availability of less expensive, generic drugs since fewer expensive, brand name drugs are losing their patents in 2018 than previous years; and (2) an anticipation of larger spending on expensive specialty drugs in the upcoming years. Prescription drug expenditures are expected to exceed \$462 billion in 2022.

Exhibit 1
**Actual and Projected Growth in Total Health Spending and Retail
 Prescription Drug Spending, United States**
2014-2022



*Growth for 2017 to 2022 is projected.

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

Maryland's Price Gouging and Transparency Legislation in Prior Years

Maryland was one of the first states to take action to prevent increasing drug prices. 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 prohibited 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. The legislation authorized the Attorney General to petition a circuit court to 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 defined 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, 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. The legislation went into effect on October 1, 2017; however, in April 2018, the U.S. Court of Appeals for the Fourth Circuit found the legislation unconstitutional. In July 2018, a federal appeals court refused a request from the Attorney General to reconsider the lawsuit and, in October 2018, the Attorney General petitioned the U.S. Supreme Court to consider the constitutionality of the legislation.

During the 2018 legislative session, the House of Delegates passed House Bill 1194 that would have established a Drug Cost Commission to determine how to make prescription drugs more affordable in Maryland. The commission’s charge would have included (1) reviewing, evaluating, and assessing the pharmaceutical distribution and payment system in the State; (2) assessing and collecting publicly available information from specified sources; and (3) comparing the prices for prescription drugs in the United States and in other countries. The legislation did not pass in the Senate.

Other State Actions to Address Prescription Drug Costs

Transparency Laws

Six states have passed prescription drug pricing transparency laws. Generally, these bills require drug manufacturers to report the reasons behind dramatic drug price increases that exceed 10% or more over a 12-month period or other specified period of time. Some states, like Nevada, limit reporting to specific medications like essential diabetes medicine. Other states, like Vermont and Connecticut, require reporting on a list of 10 to 15 drugs compiled by the state. California and Oregon require reporting on prescription drugs that cost more than \$40 per month or per course of treatment, or \$100 per month or per course treatment, respectively. Maine requires reporting on all prescription drugs; however, the details of the reporting requirements are to be determined by the Maine Health Data Organization. Common reporting requirements include (1) data about both brand-name and generic drugs; (2) drug prices and percentage increases over time; (3) production costs including manufacturing and marketing; (4) sales revenue and profit; and (5) amount spent on patient assistance programs.

California, a leader in drug pricing transparency, 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 over a two-year period. Effective January 1, 2019, manufacturers will be required to submit quarterly reports explaining the factors considered in making the increase, a list of increases over the previous five years, and other specified information. An additional reporting requirement effective as of January 1, 2019, will require manufacturers that introduce into the market a new drug that exceeds the Medicare Part D specialty drug threshold (\$670/month in 2017 and 2018) to notify the state at least three days before the launch and submit a report within 30 days thereafter describing the marketing and pricing plans used in the launch and other specified information. Information for the reporting requirements may be limited to that which is publicly available.

Importation Laws

Section 804 of the Federal Food, Drug, and Cosmetic Act permits a state to apply for federal certification of a wholesale importation program that demonstrates safety and cost savings. In May 2018, Vermont passed legislation establishing a wholesale importation program to import predetermined, high-cost drugs from Canada. To receive the federal certification, Vermont will need to submit a certification request to the federal government by July 2019 and establish a funding mechanism to pay for the program. Although Vermont will be the first to apply for certification, eight other states have also considered various importation proposals.

Federal Proposals to Address the High Cost of Prescription Drugs

In May 2018, the federal government released *American Patients First, The Trump Administration Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs*. The blueprint identified four challenges in the American drug market: (1) high list prices for drugs; (2) seniors and government programs overpaying for drugs due to lack of the latest negotiation tools; (3) high and rising out-of-pocket costs for consumers; and (4) foreign governments free-riding off of American investment in innovation. The blueprint also proposed to address the challenges through improved competition, better negotiation, incentives for lower list prices, and lowering out-of-pocket costs. Action taken by the federal government to implement the strategies identified in the blueprint include proposing a rule to require prescription drug manufacturers to post the wholesale acquisition cost for drugs covered in Medicare or Medicaid in direct-to-consumer television advertisements and soliciting comments on a rule to implement the *International Pricing Index Model* that aims to lower costs for physician-administered drugs by resetting Medicare payments based on international prices and introducing competition.

Health and Health Insurance

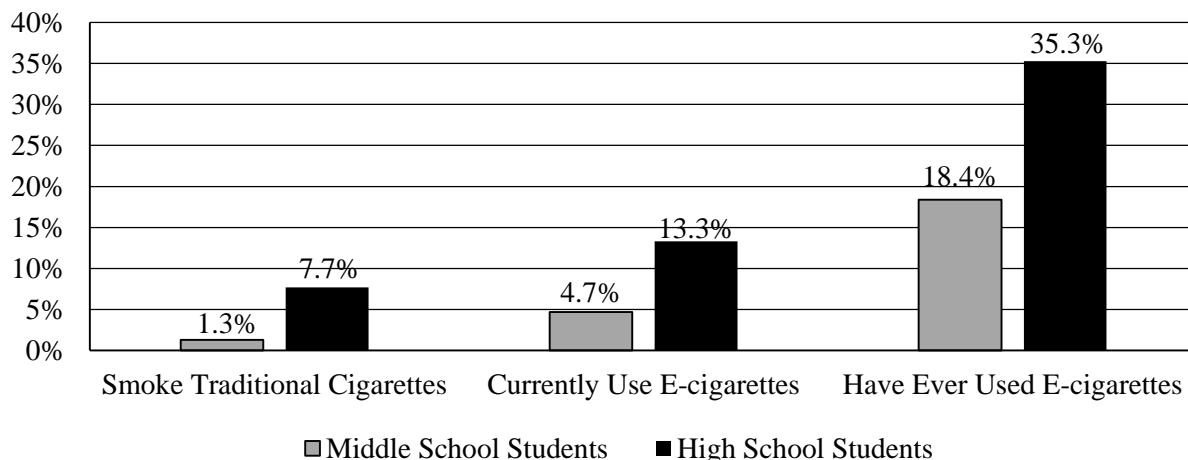
Electronic Cigarette Use among Youth

Electronic cigarette (e-cigarette) use among youth is of growing concern. E-cigarettes have been shown to increase the risk of youth using traditional tobacco. The U.S. Food and Drug Administration recently increased enforcement of e-cigarette sales and marketing to minors. The U.S. Surgeon General has suggested several actions to address youth e-cigarette use, some of which have been implemented in Maryland.

Electronic Cigarette Use among Youth of Growing Concern

Maryland has successfully reduced the proportion of youth that smoke traditional cigarettes. However, the use of electronic cigarettes (e-cigarettes) among youth is of growing concern. According to the U.S. Centers for Disease Control and Prevention, between calendar 2011 and 2018, e-cigarette use among high school students increased from 1.5% to 20.8%. Between calendar 2017 and 2018, e-cigarette use among high school students increased by 78%, with youth who use e-cigarettes using them more frequently and using flavored products more often than in calendar 2017. As shown in **Exhibit 1**, in calendar 2016, the most recent year State-level data is available, 4.7% of Maryland middle school students and 13.3% of Maryland high school students reported currently using e-cigarettes, while 18.4% and 35.3% reported having ever used e-cigarettes.

Exhibit 1
Percentage of Maryland Students Reporting Cigarette Use
Calendar 2016



Source: Department of Legislative Services

E-cigarettes are battery-operated devices that typically contain nicotine cartridges and other chemicals imitating flavors, such as chocolate, mint, or strawberry. According to the U.S. Food and Drug Administration (FDA), several e-cigarette devices resemble a USB flash drive, have high levels of nicotine, and create emissions that are hard to see – characteristics that make the products attractive to youth but make the devices difficult for parents and educators to recognize or detect.

In January 2018, the National Academies of Sciences, Engineering, and Medicine published a comprehensive consensus study report that compiled all available evidence on e-cigarettes. The report found substantial evidence that e-cigarette use increases the risk of youth ever using traditional cigarettes and moderate evidence that e-cigarette use increases the frequency of use of traditional cigarettes among youth who already smoke.

Regulation of Electronic Cigarettes in Maryland

Concurrent with the rise in use, the General Assembly has worked to limit youth access to e-cigarettes, established a licensing framework, and increased penalties for sales to youth. Chapter 714 of 2012 established a prohibition on the sale, distribution, or offer for sale to a minor of an electronic device that can be used to deliver nicotine to the individual inhaling from the device, including an e-cigarette. Chapter 425 of 2015 expanded the prohibition to include a component for an electronic device, or a product used to refill or resupply an electronic device.

Chapter 814 of 2017 established a licensing and regulatory framework for the manufacturing, wholesale distribution, and retail sale of electronic nicotine delivery systems (ENDS) – e-cigarettes, other similar devices, and their components. A person with a tobacco-related license is authorized to manufacture, distribute, or sell ENDS and does not need a separate ENDS license. Three ENDS licenses authorize the sale of ENDS to consumers under specified circumstances: manufacturer, retailer, and vape shop vendor.

Chapter 785 of 2018 established that the distribution of ENDS to minors is a misdemeanor subject to existing criminal penalties for the distribution of tobacco products to minors, established that the possession of ENDS by minors is a civil offense subject to existing civil procedures and dispositions for the possession of tobacco products by minors, and increased civil penalties for subsequent civil violations of distributing ENDS to minors.

Recent Federal Action Addresses Youth Access and Marketing

In calendar 2016, FDA finalized a rule extending its regulatory authority over tobacco products to include e-cigarettes. Accordingly, federal regulations prohibit retailers from selling e-cigarettes to minors and require retailers to check the photo identification of any individual younger than age 27 who attempts to purchase e-cigarettes. Retailers may not sell e-cigarettes in

vending machines or self-service displays (except in adult-only facilities) and may not give away free samples. The regulations also require manufacturers to receive marketing authorization from FDA.

In September 2018, FDA issued more than 1,300 warning letters and fines to e-cigarette retailers following a nationwide undercover operation to identify sales to minors. Warning letters were issued to 29 Maryland retailers, and 2 Maryland retailers were fined. FDA also issued letters to 5 manufacturers requesting plans for how they will address widespread youth access and use of their products. In November 2018, FDA announced that it will require that all flavored ENDS products, other than tobacco, mint, or menthol, be sold in age-restricted, in-person locations or, if sold online, be subject to heightened age verification practices. Furthermore, FDA will pursue removal from the market of ENDS products specifically marketed to and/or appealing to youth.

Strategies to Address Use of Electronic Cigarettes among Minors

In a 2016 report, the U.S. Surgeon General outlined the actions that federal, state, and local governments can take to address e-cigarette use among youth and young adults, including (1) incorporating e-cigarettes into smoke-free policies; (2) preventing youth access to e-cigarettes; (3) price and tax policies; (4) retail licensure; (5) regulation of e-cigarette marketing likely to attract youth; and (6) educational initiatives targeting youth and young adults. The U.S. Surgeon General's recommendations are modeled after evidence-based tobacco control strategies.

Maryland has taken action on at least two of these recommendations: (1) preventing youth access to e-cigarettes by establishing the distribution of ENDS to a minor is a misdemeanor; and (2) requiring retail licensure for the sale of ENDS. Some Maryland jurisdictions have incorporated e-cigarettes into smoke-free policies and implemented price and tax policies.

With respect to smoke-free policies, some states have banned e-cigarette use only in public buildings, while at least 10 states (including Delaware and the District of Columbia) prohibit the use of e-cigarettes in places where smoking is also prohibited. Virginia and West Virginia have e-cigarette restrictions limited only to schools. In Maryland, four jurisdictions (Baltimore City and Howard, Montgomery, and Prince George's counties) prohibit the use of e-cigarettes in nonhospitality workplaces, bars, and restaurants.

Some states and municipalities as well as one local jurisdiction have implemented price and tax policies by imposing excise taxes on e-cigarettes. In Maryland, e-cigarettes and their components are subject to the sales tax but statewide they are not subject to an excise tax as are cigarettes and other tobacco products. In 2015, Montgomery County imposed a 30% excise tax on the wholesale value of e-cigarettes. With the exception of Virginia, all of Maryland's neighboring states and the District of Columbia have imposed excise taxes on e-cigarettes (Delaware, \$0.05 per milliliter; District of Columbia, 60% of wholesale value; Pennsylvania, 40% of wholesale value; and West Virginia, \$0.075 per milliliter).

Human Services

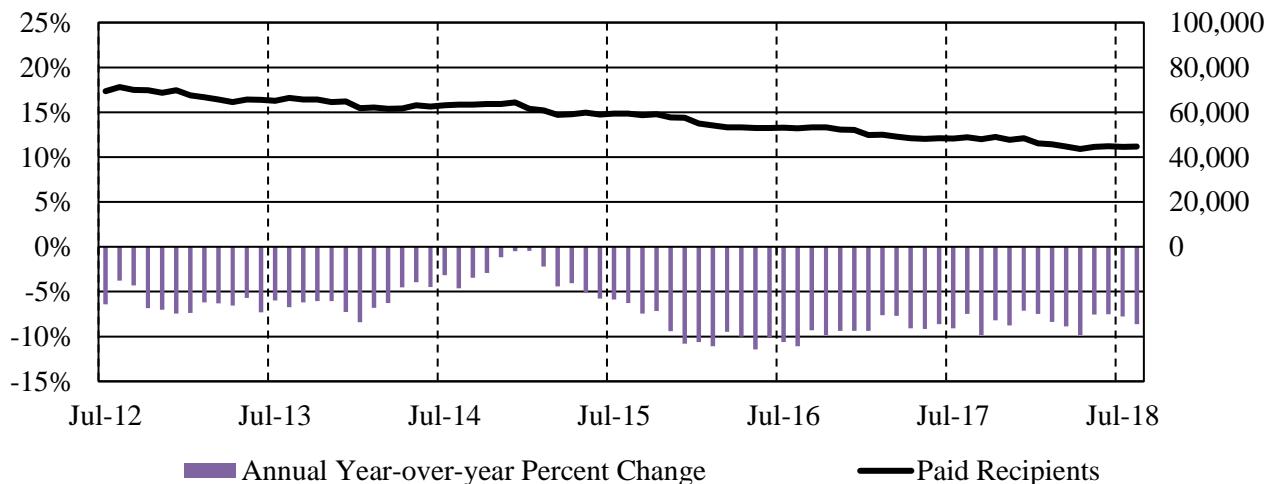
Public Assistance Caseload Trends

Enrollment in major public assistance programs, including Temporary Cash Assistance (TCA), the Food Supplement Program, and the Temporary Disability Assistance Program (TDAP) continues to decline, while the State supplemental benefit caseload has increased. In fiscal 2019, a TCA shortfall of \$4.2 million is anticipated; however, there are sufficient federal funds to cover it. A small shortfall is projected in the State supplemental benefit program, which is offset by a small surplus in TDAP.

Temporary Cash Assistance

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 (TANF) funds, and certain child support collections. As shown in **Exhibit 1**, the number of recipients has declined on a year-over-year basis in each month since calendar 2012. In April 2018, the number of recipients dipped below 44,000, surpassing the all-time low number of recipients (47,949) set in March 2007, and has since fluctuated between 44,000 and 45,000. The average monthly TCA caseload in fiscal 2018 (46,651) was the lowest in program history.

Exhibit 1
Temporary Cash Assistance Caseload
July 2012 through August 2018



Source: Department of Human Services; Department of Legislative Services

As shown in **Exhibit 2**, the Department of Legislative Services (DLS) projects average monthly enrollment to continue to decline through fiscal 2020. The fiscal 2019 average monthly grant is estimated at \$211.20, 4.9% higher than fiscal 2018. The Maryland Minimum Living Level (MLL) increased by 2.8% due to inflation beginning October 1, 2018. However, the maximum Supplemental Nutrition Assistance Program (SNAP) benefit increased by only 0.2%. To maintain the combination of TCA and SNAP benefits at the statutory level of 61% of the MLL, the Department of Human Services increased TCA benefits for a family of three by 4.7%. A smaller increase (1.5%) in average benefits is projected for fiscal 2020 to account for inflation in the MLL. DLS projects a TCA shortfall of \$4.2 million in fiscal 2019, primarily due to the higher average grant than was anticipated during budget development. However, there is sufficient TANF balance to cover this shortfall without the need for additional general funds.

Exhibit 2
Temporary Cash Assistance Enrollment and Funding Trends
Fiscal 2018-2020

	2018 Actual	2019 Approp.	2019 Estimate	2020 Estimate	% Change 2019-2020
Average Monthly Enrollment	46,651	43,196	43,619	42,965	-1.5%
Average Monthly Grant	\$201.41	\$203.09	\$211.20	\$214.37	1.5%
Budgeted Funds (\$ in Millions)					
General Funds	\$16.5	\$7.1	\$7.1	\$7.1	0.0%
Total Funds	\$112.8	\$106.4	\$110.5	\$110.5	0.0%
Estimated Shortfall				-\$4.2	

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

Source: Department of Human Services; Department of Legislative Services

Food Supplement Program and State Supplemental Benefit

SNAP, known in Maryland as the Food Supplement Program (FSP), helps low-income households to purchase food. Benefits are provided entirely with federal funds, with administrative costs shared between the State and federal government. 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 a benefit of at least \$30 per month. The State supplemental benefit is funded with general funds.

After peaking in October 2013 (800,022), the number of FSP recipients has generally declined. However, the number of recipients of the State supplemental benefit has generally increased since October 2016 (the first month of the benefit). As shown in **Exhibit 3**, DLS projects the number of State supplemental benefit recipients to continue to increase through fiscal 2020. Based on the current minimum SNAP benefit of \$15, the maximum State supplemental benefit is \$15. DLS anticipates the average benefit to remain at the fiscal 2018 level through fiscal 2020. In fiscal 2019, DLS projects a small shortfall in the program due to a substantially higher anticipated number of recipients.

Exhibit 3
State Supplemental Food Supplement Program Benefit
Enrollment and Funding Trends
Fiscal 2018-2020

	2018 Actual	2019 Approp.	2019 Estimate	2020 Estimate	% Change 2019-2020
Average Monthly Enrollment	19,506	18,366	21,261	21,580	1.5%
Average Monthly Grant	\$13.94	\$14.01	\$13.94	\$13.94	0.0%
Budgeted Funds (\$ in Millions)					
General Funds	\$3.3	\$3.3	\$3.6	\$3.6	1.5%
Estimated Shortfall			-\$0.3		

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

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 cash benefit for individuals with a short-term disability (at least 3 months but less than 12 months) or for individuals with a long-term disability while awaiting approval for federal disability benefits. TDAP enrollment has declined on a year-over-year basis since October 2015. In the first two months of fiscal 2019, the number of recipients has been below 13,000. As shown in **Exhibit 4**, DLS projects the number of recipients to continue to decline through fiscal 2020 but at a slower rate.

Exhibit 4
Temporary Disability Assistance Program Enrollment and Funding Trends
Fiscal 2018-2020

	2018 <u>Actual</u>	2019 <u>Approp.</u>	2019 <u>Estimate</u>	2020 <u>Estimate</u>	% Change <u>2019-2020</u>
Average Monthly Enrollment	13,844	12,754	12,598	12,283	-2.5%
Average Monthly Grant	\$182.63	\$192.64	\$192.73	\$212.73	10.4%
Budgeted Funds (\$ in Millions)					
General Funds	\$25.7	\$25.2	\$24.9	\$26.7	7.4%
Total Funds	\$30.3	\$29.5	\$29.1	\$31.4	7.6%
Estimated Surplus			\$0.4		

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

Source: Department of Legislative Services

The maximum TDAP benefit had remained unchanged at \$185 for a number of years but increased to \$195 in fiscal 2019. Chapter 408 of 2018 established a plan to increase the TDAP benefit to an amount equivalent to the maximum monthly allowable benefit for a one-person household receiving TCA by fiscal 2027. The increased benefits begin in fiscal 2020, with a maximum benefit of \$215. In subsequent years, the maximum benefit will be set at 74% of the monthly allowable TCA benefit for a one-person household in fiscal 2021, increasing annually until fiscal 2027. Traditionally, the average monthly benefit is slightly lower than the maximum grant level. As a result, DLS anticipates a fiscal 2020 average benefit slightly below \$215.

Due to a slightly lower anticipated average monthly caseload, DLS projects a small surplus in TDAP in fiscal 2019. This surplus is sufficient to offset the shortfall projected in the State supplemental FSP benefit program.

Human Services

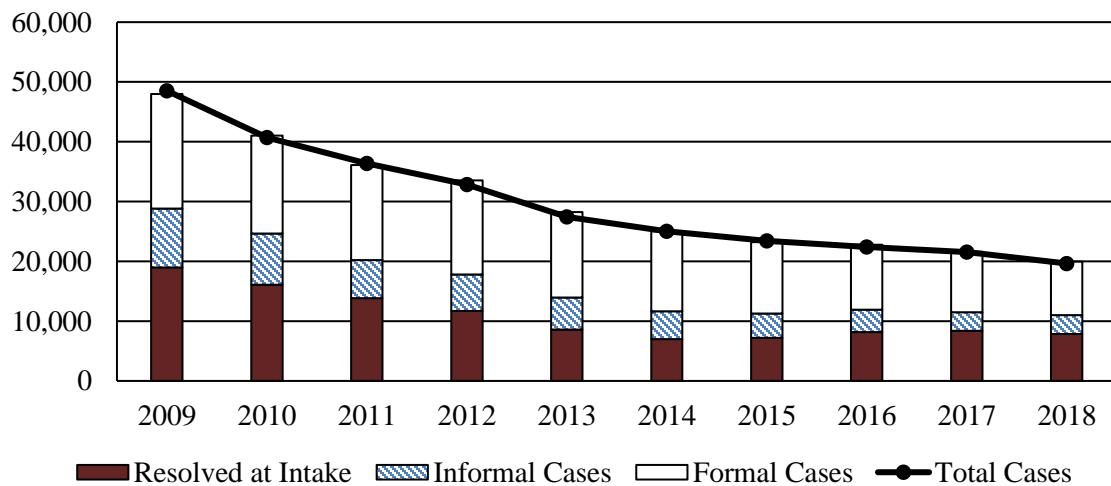
Department of Juvenile Services Caseload Trends

Complaints to the Department of Juvenile Services (DJS) continue to decline to record lows, with 40% of cases resolved at intake. The total average daily detention population increased in fiscal 2017 and 2018 due to growth in the number of detained youth awaiting action from the adult court system. Although the number of youth in out-of-home committed treatment has declined, the number of youth placed in out-of-state treatment programs has increased, in part, due to operating changes at two DJS facilities.

Record Lows for Juvenile Complaints

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

Exhibit 1
Juvenile Complaints and Complaint Dispositions
Fiscal 2009-2018



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.

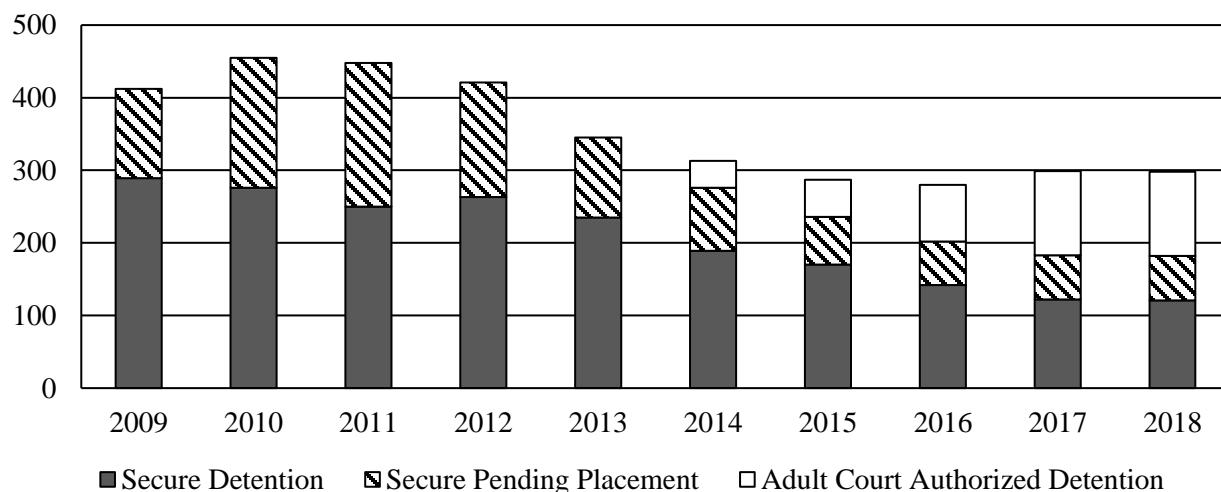
Source: Department of Juvenile Services; Department of Legislative Services

DJS received approximately 19,700 total complaints in fiscal 2018, reflecting a 9% reduction from the prior year and a more than 63% decrease over the past 15 years. Cases resolved at intake continued to account for an increasing portion of the department's total referrals (40%), in line with efforts to ensure that youth are not unnecessarily entering the juvenile justice system or being placed in secure detention. Cases requiring formal court intervention continue to make up the largest proportion of all referrals. Of the nearly 8,900 formal cases received by the department in fiscal 2018, approximately 26% received a probation disposition, and 10% were committed to DJS for treatment.

Increase in Detention Population

Fewer referrals, increased attention on eliminating unnecessary entry into the juvenile justice system, and reductions in the pending placement population (*i.e.*, youth adjudicated and placed in detention pending placement into a committed facility) have contributed to steady declines in both the detention and committed populations through fiscal 2016. However, as **Exhibit 2** illustrates, the total average daily detention population increased in fiscal 2017 and 2018 due to growth in the number of detained youth awaiting action from the adult court system. Legislation enacted in 2015 requires, in most cases, a court to 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.

Exhibit 2
Average Daily Detention Population Trends
Fiscal 2009-2018



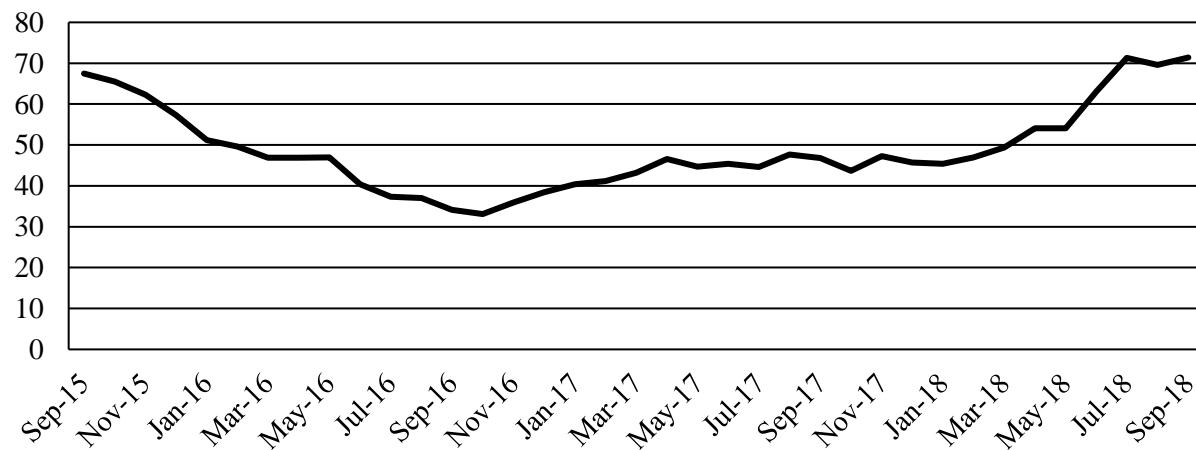
Source: Department of Juvenile Services; Department of Legislative Services

Between fiscal 2010 and 2016, the total juvenile detention average daily population (ADP) fell by more than 38% as referrals to DJS declined and more youth were diverted to alternative to detention programs. This decrease occurred despite DJS absorbing the adult court detention population previously described beginning in fiscal 2014 (under an agreement with Baltimore City prior to the passage of the 2015 legislation). With a more than 210% increase in the youth charged as adult detention population in the past four years, and the average length of stay periods nearly five times those of other detention populations, the adult court involved population has had enough impact to reverse the overall decline in the detention and committed populations. In fiscal 2017, the detention ADP increased nearly 7% and remained steady at 299 youth in fiscal 2018, of which approximately 40% are pending action from the adult court system.

Out-of-state Placement of Committed Youth

Consistent with the downward trends for referrals and youth placed in detention, the total number of youth in out-of-home committed placement has also declined. In fiscal 2018, an ADP of 412 youth were committed to DJS for out-of-home placement that reflects a nearly 56% decrease in the population over the past decade and a 14% reduction from fiscal 2017. However, as shown in **Exhibit 3**, the number of these youth placed out-of-state over the past two years has nearly doubled. This change is, in part, attributable to operating changes at two DJS-run facilities: the Savage Mountain Youth Center and the Victor Cullen Center.

Exhibit 3
Out-of-state Committed Average Daily Population
September 2015-September 2018



Source: Department of Legislative Services

DJS began a construction project at the Savage Mountain Youth Center in fiscal 2016 to improve operational aspects of the facility and construct a perimeter fence to allow the facility to be categorized as hardware secure. The conversion to the highest security level, once complete, will provide the department with an in-state alternative to the Victor Cullen Center. DJS began reducing the ADP at the Savage Mountain Youth Center at the end of fiscal 2016 and temporarily closed the facility to all youth in September 2017 to accommodate construction. The temporary change in operations has limited in-state bed space and required some youth to be placed in out-of-state programs. From October 2017 to April 2018, the out-of-state ADP increased from 44 to 54 youth.

In April 2018, a significant group disturbance occurred at the Victor Cullen Center requiring police intervention and resulting in several DJS staff requiring hospital transport and treatment. Immediately following the group disturbance, the department ejected several youth and halted new admissions in an effort to regain and maintain safety at the facility. Since then, new leadership has been established at the facility, and the department is in the process of retraining staff in program interventions that focus on developing positive relationships with youth, along with proper implementation of department policies and procedures to establish a more positive culture among youth and staff. Since April 2018, the quarterly ADP for the facility has been 15 or fewer youth. At the same time, the out-of-state committed population increased from 54 to 71 youth. DJS anticipates increasing the Victor Cullen Center's population in the near future that should result in a lower out-of-state population.

Human Services

Impact of the Opioid Epidemic on Foster Care

Between 2012 and 2016, the number of children in foster care rose significantly nationally and in Maryland. Research briefs released in 2018 by the U.S. Department of Health and Human Services found a correlation between the increased foster care caseload and drug overdose deaths and drug-related hospitalizations. Maryland has also experienced increases in the number of children entering the foster care system, although the increase has been limited to certain jurisdictions.

Background

In 2018, the U.S. Department of Health and Human Services (HHS) released a series of research briefs discussing the impact of substance use and the opioid epidemic on the child welfare system. The research briefs noted that after years of declines in the foster care caseload, the number of children entering foster care rose by 10% between 2012 and 2016 and that 36 states had increases in the foster care caseload during this timeframe. The increases in the foster care caseload occurred when drug overdose deaths were also increasing. Parental substance use is believed to be a primary cause of the foster care caseload increase. To test the relationship between substance use and foster care entries, HHS used drug overdose deaths and drug-related hospitalizations as proxies for substance use prevalence. The research estimated that:

- a 10% increase in the drug overdose death rate was correlated with a 4.4% increase in the foster care entry rate; and
- a 10% increase in the drug-related hospitalization rate correlated with a 2.9% increase in the foster care entry rate.

HHS also compared county rates of foster care entry and drug overdose deaths to the national averages. HHS found that, while in some areas above average drug overdose deaths occurred in areas with above average rates of foster care entry, not all jurisdictions with above average rates of drug overdose deaths had above average rates of foster care entry. The variations tended to occur regionally.

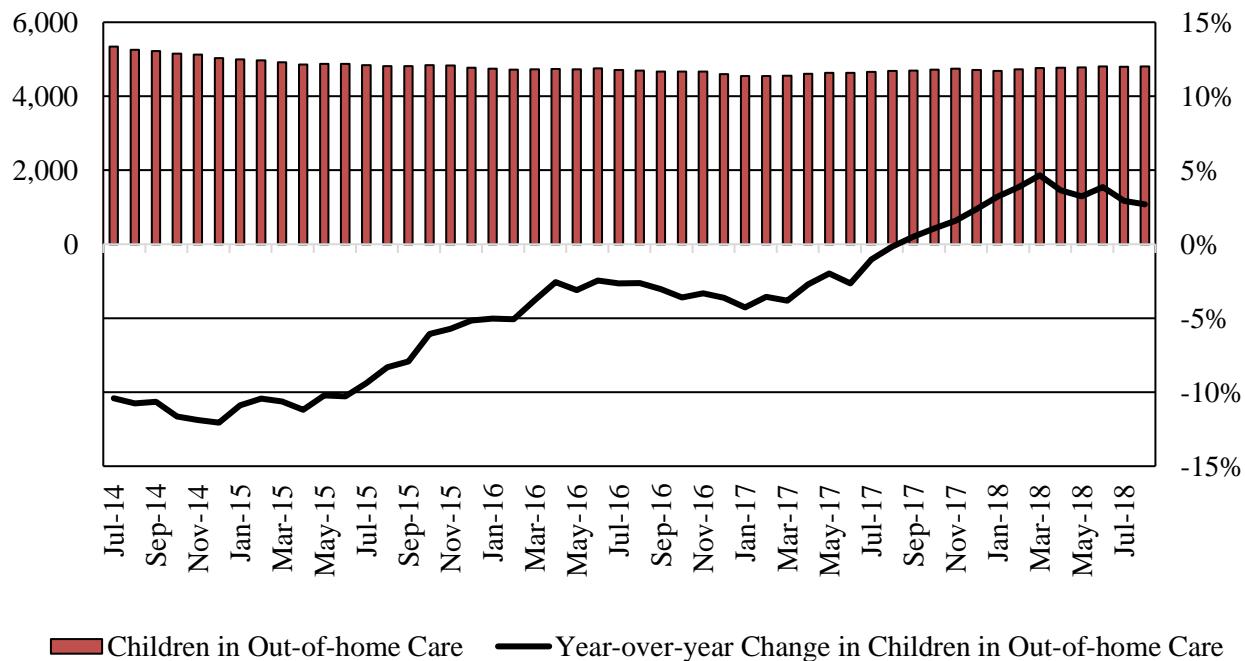
Through interviews, HHS found several challenges related to substance use in the child welfare system. The briefs cited multiple concerns including the lack of availability of substance use assessments and limited treatment options, including family-based treatment options and the mistrust and misunderstanding of medication-assisted treatment among child welfare professionals.

The briefs explained that the increased caseloads have resulted in high stress, burnout, and turnover among caseworkers and shortages in foster homes. The briefs also discussed safety issues for caseworkers, including threats of violence and contact with hazardous substances.

Impact in Maryland

Consistent with the national trends, Maryland has experienced increases in the number of children in out-of-home placements and the rate of removal into care. As shown in **Exhibit 1**, the number of children in out-of-home placements has generally increased since January 2017, and increased on a year-over-year basis since September 2017. The number of children in out-of-home placements in August 2018 (4,809) was 5.9% higher than in January 2017 (4,542).

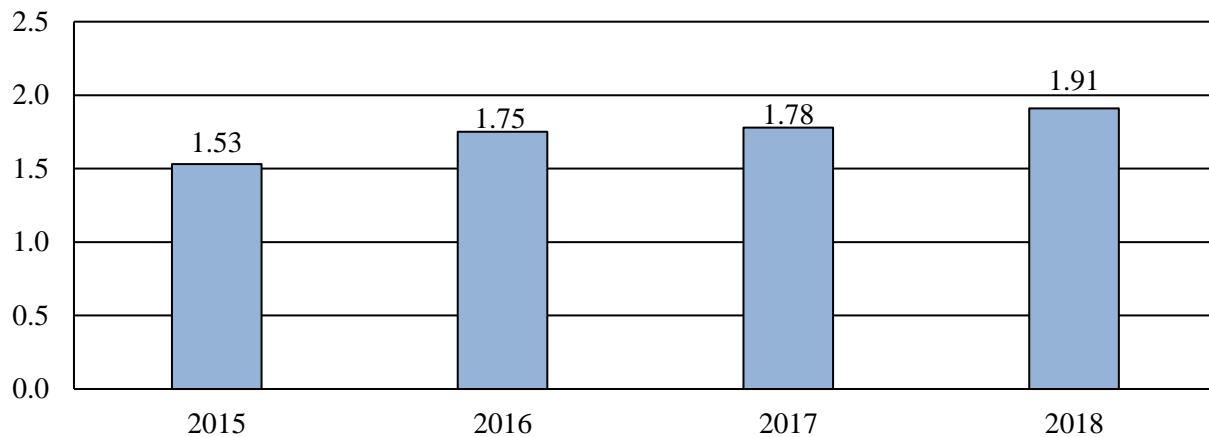
Exhibit 1
Children in Out-of-home Placements at the Beginning of the Month
July 2014-August 2018



Source: Department of Human Services; Department of Legislative Services

In addition, as shown in **Exhibit 2**, the statewide rate of removal into care per 1,000 children has increased in each of the last three years. In fiscal 2018, the rate of removal into care was 1.91, 27.3% higher than the goal of 1.50.

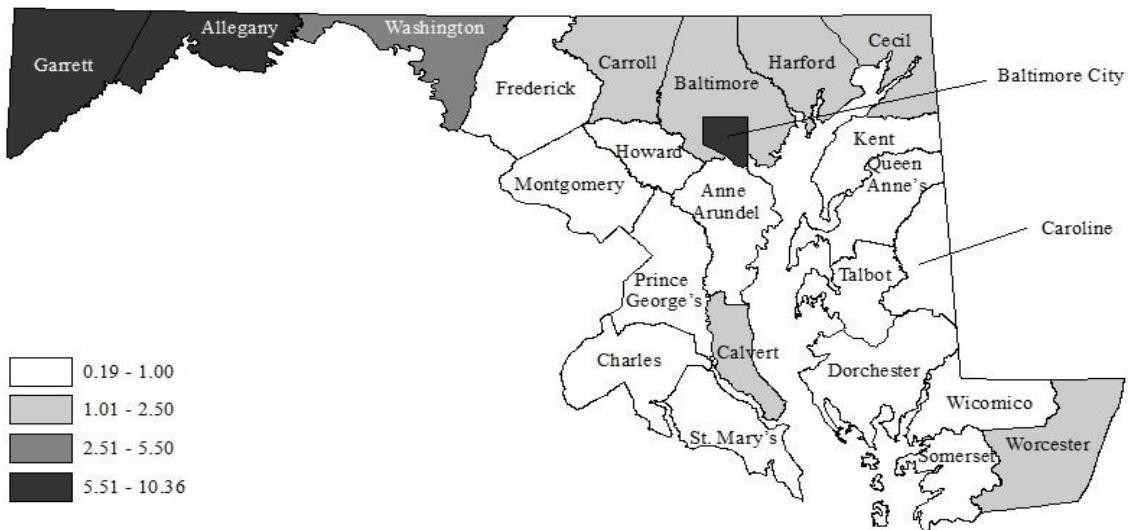
Exhibit 2
Rate of Removal into Care Per 1,000 Children
Fiscal 2015-2018



Source: Department of Human Services; Department of Legislative Services

Despite the overall statewide increase in the rate of removal into care, not all jurisdictions have experienced increases. Nine jurisdictions had a decrease in the rate of removal into care between fiscal 2015 and 2018. Only seven jurisdictions had a higher rate of removal than the goal in fiscal 2018. As shown in **Exhibit 3**, the highest rates of removal are concentrated in three jurisdictions (Allegany and Garrett counties and Baltimore City). These three jurisdictions had the highest rates of removal into care in each year between fiscal 2015 and 2018, and all three jurisdictions had a greater than 40% increase in the rate of removal into care between fiscal 2015 and 2018.

Exhibit 3
Rate of Removal into Care Per 1,000 Children by Jurisdiction
Fiscal 2018



Source: Department of Human Services; Department of Legislative Services

Conclusion

Maryland's child welfare system has experienced the effects of the opioid epidemic, although certain jurisdictions have been impacted to a greater degree. In Allegany County, a jurisdiction experiencing significant impacts, many of the national concerns related to the opioid epidemic are prevalent. Local case workers noted that family-based treatment would be valuable, but there are limited treatment options generally and family-based options in particular. The local case workers also expressed similar concerns about safety, including perceived and actual threats of violence.

The federal Families First Prevention Services Act includes provisions that could assist states in responding to the impact of the opioid epidemic on the child welfare system. The Act allows states to claim federal reimbursement for a child placed with a parent in a licensed residential family-based treatment facility for substance abuse for up to 12 months effective October 1, 2018. In addition, effective October 1, 2019, states will be able to receive federal reimbursement for up to 12 months of mental health services, substance abuse treatment, and in-home parenting training for families at risk of entry into the child welfare system. Previously, except as allowed with certain federal waivers, states were unable to use federal funds for prevention services.

Human Services

Federal Changes to Child Welfare Services

The 2018 federal Family First Prevention Services Act makes significant changes to the Title IV-E foster care program, including expanding allowable uses of funds and placing greater emphasis on prevention services, such as mental health and substance use.

Title IV-E Funding and Waiver

The Department of Human Services (DHS) administers the State's foster care program as authorized by Title IV-E of the federal Social Security Act. The program offers short-term care and supportive services to children in out-of-home placements until they can be safely returned home, placed permanently with adoptive families, or placed in other permanent arrangements. As part of the Title IV-E program, the State receives a 50% federal match for foster care activities including maintenance payments, adoption assistance, and child placement services. The fiscal 2019 budget includes \$32.7 million in federal funds from the Title IV-E program.

On September 30, 2014, DHS received approval for a Title IV-E waiver to expand family preservation and post-permanency services that allows the agency to spend federal funds for services beyond out-of-home placements, such as children transitioning from foster care, families receiving in-home services, and families with youth in care with a goal of reunification or guardianship. Waiver implementation began in fiscal 2016 and will end in federal fiscal 2019. Current waiver activities include a statewide trauma-informed assessment tool and evidence-based practices related to parenting models, parental substance use, child behavioral health, and adult behavioral health. The fiscal 2019 budget includes \$59.7 million for the Title IV-E waiver.

Federal Family First Prevention Services Act

On February 9, 2018, the federal Family First Prevention Services Act passed as part of the Bipartisan Budget Act of 2018, making significant changes to the Title IV-E program. Historically, Title IV-E funds (outside of a waiver) could be used only to fund foster care maintenance, administrative expenses, training, adoption assistance, and kinship guardianship assistance. The Act significantly expands the allowable uses of Title IV-E funds to include services that prevent foster care placements and promote family reunification with a focus on mental health and substance use treatment. The Act makes a number of changes with varying effective dates, as summarized in **Exhibit 1**.

Exhibit 1
Major Provisions of the Federal Family First Prevention Services Act

<u>Effective</u>	<u>Provision</u>
1/1/2018	Reinstates income tests for adoption assistance for children up to age two.
2/9/2018	Reauthorizes Title IV-B programs through federal fiscal 2021.
10/1/2018	Allows foster care payments for a child placed with a parent in a licensed residential family-based substance use treatment facility if specified services are provided. Removes time limit for a child in foster care to receive reunification services; allows 15 months of family reunification services. Modifies regional partnership grants to include programs for improving permanency outcomes for children and families affected by substance use.
4/1/2019	DHS must provide HHS with State foster family home licensing standards and indicate whether the State meets national model licensing standards.
10/1/2019	DHS may claim Title IV-E funds for up to one year for mental health/substance use and in-home parent skill-based programs for children at risk of entering foster care. Title IV-E payments for nonfoster family home settings (excluding QRTPs and other allowed settings) are limited to two weeks. QRTPs must have trauma-informed treatment models, on site registered nursing or clinical staff, outreach to the child's family, and other services. Requires criminal background checks on any adult working in child care institutions, such as group homes and shelters. Limits foster family homes to a maximum of six children, except under certain circumstances, including keeping parenting youth with their children. Allows Title IV-E funds to be used for kinship navigator programs.
10/1/2027	States must use an electronic interstate case processing system for out-of-state placements.

DHS: Department of Human Services

HHS: U.S. Department of Health and Human Services

QRTP: Qualified Residential Treatment Program

Note: States may receive delayed effective dates for some provisions due to necessary legislation or an approved request. States may request up to a two-year delay for certain licensing requirements; however, the effective date for claiming Title IV-E funds for foster care prevention would also be delayed.

Source: U.S. Department of Health and Human Services Administration for Children and Families

The Act aims to increase the use of family foster care homes and reduce the use of group care for children in placement and establishes program and licensing requirements for any Qualified Residential Treatment Program (Q RTP) that the State would use for foster placements. DHS indicates that new legislation is not necessary to comply with the provisions of the Act.

Impact on Maryland's Foster Care System

While DHS currently provides some prevention services with Title IV-E waiver funds, those funds expire after federal fiscal 2019. Thus, the Act allows DHS to continue to expand prevention services. However, the U.S. Department of Health and Human Services' Children's Bureau has not yet published guidance regarding which evidence-based programs and practices will be eligible for traditional Title IV-E funding effective October 1, 2019.

Ability to Place Children with Parent in Substance Use Treatment Facility

Under the Act, effective October 1, 2018, DHS has the ability to place children with a parent in a licensed substance use treatment facility using foster care payments, provided the facility offers certain family-support services. No children have been placed to date, but DHS reports that a policy will be released once approved by the Children's Bureau.

Trauma-informed Treatment Models for Qualified Residential Treatment Programs

The Act also establishes program and licensing requirements for any Q RTP that the State would use for foster placements. Effective October 1, 2019, Q RTPs must use a trauma-informed treatment model. DHS reports that there are currently 116 community-based residential programs, 71 of which use a trauma-informed treatment model. DHS also indicates that two new requirements for Q RTPs may be of particular concern: nursing staff or other clinical staff on site at all times and court approval of placements to receive reimbursement. DHS and the provider community are currently working to clarify the requirements in the Act and the program and service needs for children served.

Transportation

Overview of the Draft 2019-2024 *Consolidated Transportation Program*

The Maryland Department of Transportation's draft 2019-2024 *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 2019-2024 CTP totals \$16.0 billion, a \$1.2 billion increase from the 2018-2023 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 2018-2023 CTP to the draft 2019-2024 CTP by fund source.

Exhibit 1
Comparison of Six-year Capital Spending by Fund Source
Fiscal 2018-2024
(\$ in Millions)

	<u>2018-2023 CTP</u>	<u>Draft 2019-2024 CTP</u>	<u>Change</u>	<u>% Change</u>
Special Funds	\$7,949.0	\$8,529.1	\$580.1	7.3%
Federal Funds	5,707.5	5,660.7	-46.8	-0.8%
Other Funds ¹	1,158.9	1,062.1	-96.8	-8.4%
Undetermined ²	0	793.0	793.0	--
Total Funds	\$14,815.4	\$16,044.9	\$1,229.5	8.3%

CTP: *Consolidated Transportation Program*

¹Includes funds from customer and passenger facility charges and certain types of federal aid that do not pass through the Transportation Trust Fund.

²The Maryland Department of Transportation (MDOT) has requested general funds for the new mandated \$167 million annual capital grant to the Washington Metropolitan Area Transit Authority. To the extent that general funds are not available for this purpose, MDOT will need to make reductions to the planned capital program.

Note: Numbers may not sum due to rounding.

Source: Maryland Department of Transportation 2018-2023 CTP, draft 2019-2024 CTP

Total funding in the draft 2019-2024 CTP increases by \$1.2 billion (8.3%) from the 2018-2023 CTP. However, this includes \$925.6 million in special funds for transportation aid to local governments that did not flow through the capital program in the 2018-2023 CTP and \$835 million for the new mandated capital grant to WMATA, the funding source for \$793 million of which is uncertain. MDOT has requested \$793 million of general funds for this purpose but to the extent general funds are not available, MDOT will have to reduce the capital program to remain within the resources available from the Transportation Trust Fund. If the local aid and possible general funds are excluded, total funding in the draft 2019-2024 CTP would be \$489.1 million lower than in the 2018-2023 CTP. The reduction in other funds occurs primarily in the Maryland Transit Administration and is related to the Purple Line light rail project local contribution cash flow.

Exhibit 2 compares MDOT's total capital spending in each plan by mode. The largest changes by amount occur in WMATA (\$1.0 billion), State highways (\$414 million), and mass transit (-\$151.6 million). Not all of these changes, however, accurately reflect underlying trends.

Exhibit 2
Comparison of Six-year Capital Spending by Mode
Fiscal 2018-2024
(*\$* in Millions)

	2018-2023 CTP	Draft 2019-2024 CTP	Change	% Change
Secretary's Office	\$281.0	\$235.0	-\$46.0	-0.3%
WMATA	1,534.8	2,574.9	1,040.1	7.0%
State Highways	8,119.8	8,533.8	414.0	2.8%
Port	800.6	799.3	-1.3	-0.0%
Motor Vehicle	125.3	138.7	13.4	0.1%
Mass Transit	3,381.8	3,230.2	-151.6	-1.0%
Airport	572.1	533.0	-39.1	-0.3%
Total	\$14,815.4	\$16,044.9	\$1,229.5	8.3%

CTP: *Consolidated Transportation Program*

WMATA: Washington Metropolitan Area Transit Authority

Note: Numbers may not sum due to rounding.

Source: Maryland Department of Transportation 2018-2023 CTP, draft 2019-2024 CTP

Local aid, in the form of mandated capital grants, is included in the State highways line in the draft 2019-2024 CTP. If local aid is excluded, the State highways programmed spending decreases \$887.6 million (-6.0%) relative to the prior year CTP. The change in mass transit funding

is skewed by the decrease in funding for the Purple Line light rail project with construction completion expected in 2022. If the decrease in Purple Line spending is excluded, mass transit spending increases by over \$168 million relative to the prior year CTP level. This increase is largely due to increased funding for system preservation and Metro and light rail safety improvement projects.

Exhibit 3 compares MDOT's six-year capital spending in each plan by category. The largest change is the mandated capital grants for local governments required by Chapters 330 and 331 of 2018. Over the six-year program, these grants are estimated at \$1.3 billion representing over 8% of projected capital spending. If local aid is excluded, funding for the capital program would actually decline slightly in the draft 2019-2024 CTP. Increased funding for major projects (\$362.9 million) is more than offset by decreased funding for system preservation and minor projects.

Exhibit 3
Comparison of Six-year Capital Spending by Category
Fiscal 2018-2024
(\$ in Millions)

	2018-2023	Draft 2019-2024	Change	% Change
	CTP	CTP		
Major Projects	\$7,164.2	\$7,527.1	\$362.9	5.1%
System Preservation/Minor Projects	6,734.8	6,289.3	-445.5	-6.6%
Development and Evaluation Program	274.1	289.5	15.4	5.6%
Local Transportation Aid	0	1,301.7	1,301.7	--
Other	642.3	637.3	-5.0	-0.8%
Total	\$14,815.4	\$16,044.9	\$1,229.5	8.3%

CTP: *Consolidated Transportation Program*

Note: Numbers may not sum due to rounding.

Source: Maryland Department of Transportation 2018-2023 CTP, draft 2019-2024 CTP

Transportation

Status of Recent Transportation Initiatives

Over the past few years, several high-profile transportation initiatives related to mass transit, traffic congestion, high-speed transit, and freight have been proposed in the State. This paper provides a brief status update on selected initiatives.

Purple Line Light Rail

The Purple Line light rail project is a 16-mile light rail line that will extend from Bethesda in Montgomery County to New Carrollton in Prince George's County. It will provide a direct connection to the Metrorail Red, Green, and Orange lines at Bethesda, Silver Spring, College Park, and New Carrollton. The Purple Line will also connect to MARC, Amtrak, and local bus services. The Purple Line is under construction and is projected to open for revenue service in late 2022. Project information can be found on the web at: <https://www.purplelinemd.com/en/>.

I-495 and I-270 P3 Managed Lanes

Background

The I-495 and I-270 Public-Private Partnership (P3) Program, announced by the Governor in September 2017, is the largest of four projects collectively known as the Maryland Traffic Relief Plan (the other three comprising the MD 295 Managed Lanes, the Baltimore Area Traffic Relief Plan, and the statewide Smart Signals project). As envisioned by the State Highway Administration, the I-495 and I-270 P3 Program would reduce traffic congestion by adding two dynamic tolling lanes in each direction to the Maryland portion of the Washington Beltway and to I-270 from the Washington Beltway to Frederick, Maryland. As proposed, this \$7.6 billion project would be paid for entirely from toll revenue generated by the project and would be constructed and operated by a concessionaire(s) chosen through a P3 procurement.

Status

The Maryland Department of Transportation (MDOT) is currently conducting the I-495 and I-270 Managed Lanes Study, which will result in the development of an Environmental Impact Statement (EIS) as part of the National Environmental Policy Act (NEPA) process required for major projects for which federal funds will be used. This study will develop alternatives to reduce traffic congestion while minimizing and mitigating environmental impacts of the project.

Concurrent with development of the EIS, MDOT will be seeking proposals from the private sector to enter into a P3 agreement to design, build, finance, operate, and maintain the project. Information for this project can be found on the web at: <https://495-270-p3.com>.

Maglev

Background

Baltimore-Washington Rapid Rail (BWRR) is proposing to build and operate a superconducting magnetic levitation (maglev) system between Baltimore, Maryland, and Washington, DC, with an intermediate stop at the Baltimore-Washington Thurgood Marshall International Airport. In 2015, MDOT secured a \$27.8 million grant from the U.S. Department of Transportation (USDOT) to conduct planning activities for the maglev project. BWRR is providing the required 20% match towards the federal grant.

Status

The project team is proceeding with a NEPA review of BWRR's proposal. Having already considered and dismissed a number of alternatives, the project team is focused on two alignments in the Baltimore-Washington Parkway corridor. The project team expects to release the Alternatives Report, which will provide more detail on the two alignments, the ancillary facilities (like a maintenance facility), and the potential station locations in late 2018. Following the Alternatives Report, a draft EIS is scheduled to be released in 2019, with public hearings to follow. Information for this project can be found on the web at: <https://www.bwmaglev.info/>.

Loop and Hyperloop

Background

The Boring Company (TBC) is proposing to tunnel beneath 35 miles of highway between Washington, DC, and Baltimore City to begin the first stage of construction of the DC-to-Baltimore Loop project (Loop). The Loop is a high-speed underground transportation system that transports passengers on autonomous electric skates traveling at 125-150 miles per hour. Skates would be Tesla Model X vehicles with modified chassis to support additional capacity from 8 to 16 passengers. Design objectives would include maximizing the use and utility of existing public rights-of-way; minimizing environmental impacts, particularly community impacts; minimizing curves to optimize travel times, design speed, and passenger comfort; and designing for potential future expansion and conversion to Hyperloop. Loop and Hyperloop are different, with the major difference being that Hyperloop draws a vacuum inside the tube to eliminate air friction and allows for greater speeds of over 600 miles per hour.

The proposed Loop project would consist of the construction of a set of twin parallel 12-foot diameter tunnels approximately 14 feet apart and 35 miles in length between Washington, DC, and Baltimore City. The tunnels would be constructed at a minimum depth of approximately 30 feet below land surface and the vertical alignment would be adjusted to avoid impacts to piles, utilities, and environmentally sensitive features. Beginning at 55 New York Avenue NE in Washington, DC, the twin tunnels would run under U.S. Route 50 eastward to the junction of U.S. Route 50 and the Baltimore-Washington Parkway and continue north under National Park Service and MDOT rights-of-way in Anne Arundel, Baltimore, and Prince George's counties. The tunnels would end in Baltimore City near Oriole Park at Camden Yards.

Status

MDOT has committed to support TBC in the submission of an Environmental Assessment (EA) for approval by the Federal Highway Administration (FHWA) and the Federal Rail Administration (FRA), as well as a Finding of No Significant Impact, if deemed appropriate by FHWA and FRA after their review of EA public comments. MDOT is awaiting a detailed plan submission from TBC to determine the permit type(s) or real estate transactions that may be required. Information for this project can be found on the web at: <https://www.boringcompany.com/eastcoast/>.

Howard Street Tunnel Reconstruction

Background

Double-stack rail access to the Port of Baltimore has long been a priority for the State of Maryland. The primary obstacle to that goal is CSX's Howard Street Tunnel. Completed in 1895, the existing single-track freight tunnel is approximately 18 inches too short to allow double-stack intermodal trains to travel to and from the Port of Baltimore. Since 2015, MDOT has been working with CSX to develop and fund a cost-effective solution to expand the Howard Street Tunnel for double stack. In 2016, MDOT submitted a grant application, with CSX as a partner, to USDOT. That application had the State, CSX, and USDOT each contributing roughly one-third of the \$445 million cost of the project. However, that application was unsuccessful. In 2017, MDOT decided to resubmit another application under the Infrastructure for Rebuilding America (INFRA) program, but in late 2017, CSX withdrew its support for the project due to new leadership introducing a new operating model.

Status

MDOT has been meeting with CSX in hopes of resurrecting the project. While discussions have been somewhat productive, CSX has yet to commit to contribute the level of funding to which it had previously committed. MDOT is optimistic that by the time the next round of INFRA grant

applications are due (likely early 2019), an agreement with CSX can be made and an application will be submitted to USDOT for the remaining funding.

Business Regulation

Renewable Energy and Public Service Commission Initiatives

Although the Renewable Energy Portfolio Standard requirements were recently increased, there is discussion of increasing the goals further. The offshore wind development off the coast of Ocean City has been approved by the Public Service Commission; however, recent resistance has surfaced. The Public Service Commission is involved in a number of regulatory and related activities, while the Power Plant Research Program is conducting two relevant energy studies.

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. Through 2018, the RPS operates on a two-tiered system with corresponding renewable energy credits (REC) 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, includes only large hydroelectric sources. For the 2016 compliance year, the most recent year for which data are available, electricity suppliers retired approximately 9.1 million RECs at a cost of \$135.2 million. Of that amount, the Tier 1 nonsolar cost was \$88.2 million, the Tier 1 solar cost was \$45.6 million, and the Tier 2 cost was \$1.4 million. In 2019, the RPS requirements total 20.4% (18.45% nonsolar and 1.95% solar).

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

Offshore Wind

Chapter 3 of 2013 created a carve-out for energy derived from offshore wind in the State RPS. The amount of the carve-out 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 which may not exceed 2.5% of total retail electricity 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.

According to PSC's independent consultant, the net ratepayer impacts are 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 (in 2012 dollars) and 1.5% of the annual bills. These impacts will not occur until electricity is actually generated by the projects.

Ocean City officials and other stakeholders have 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 the tourism and fishing industries. The nearest wind farm to the beach, as approved by PSC, would be built 17 miles offshore, 5 miles farther east than developers had originally planned.

Solar Energy Grants

The Maryland Energy Administration provides financial assistance for a number of residential renewable energy technologies under the Residential Clean Energy Grant Program. Grant amounts vary by technology; are allocated on a first-come, first-served basis across technologies; and are subject to change in amount and existence based on funding availability. For solar photovoltaic systems with an installed capacity of 1 to 20 kilowatts, the grant is \$1,000 per project. Legislation was considered in 2018 to temporarily increase the grant amount for a residential solar photovoltaic system to \$1,500 or to \$2,000 if the system served low-income residents.

Public Service Commission Activities

PSC is involved in a number of regulatory and related activities. Under the umbrella of Public Conference 44, through which PSC has been considering 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. Nine rate cases have been filed in 2018 through October: six gas (including two infrastructure surcharges); two electric; and one water. In April 2018, PSC also approved, with conditions, the merger of Washington Gas with AltaGas, a Canadian energy company. Further, PSC continues to experience a significant number of requests for siting residential and commercial solar installations.

Power Plant Research Program

In addition to other duties, the Power Plant Research Program (PPRP) in the Department of Natural Resources reviews applications for Certificates of Convenience and Necessity for new generation and transmission facilities filed with PSC. Much of the recent application activity has been related to solar facilities.

PPRP is also in the process of conducting two studies required by recent legislation. Chapter 382 of 2017 requires PPRP to study regulatory reforms and market incentives that may be necessary or beneficial to increase the use of energy storage in the State. The energy storage report and recommendations are due to the General Assembly by December 1, 2018. Chapter 393 of 2017 requires PPRP to study the Maryland RPS, including a review of its history, implementation, potential to meet existing and future goals, and overall costs and benefits. PPRP solicited bids for a consultant to conduct the study and the winning bid was approved by the Board of Public Works in May 2018. PPRP must submit an interim report on the RPS to the Governor and the General Assembly by December 1, 2018, and a final report by December 1, 2019.

Business Regulation

Alcoholic Beverages Regulation

Efforts to expand the authority of craft brewers to brew and sell their product failed during the 2018 session. Proposals to loosen or entirely remove the production caps on breweries may be revisited during the 2019 session, along with proposals to expand selling opportunities for wineries and distilleries. In addition, a task force is examining whether the power to regulate the alcoholic beverages industry is appropriately placed in the Comptroller's Office versus another State agency and is required to report its findings and recommendations by December 1, 2018.

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 local jurisdictions (*i.e.*, the City of Annapolis, Baltimore City, and the 23 counties) license retailers to operate within their boundaries.

Powers of the Office of the Comptroller

The Office of the Comptroller, through its Field Enforcement Division, is tasked with alcoholic beverages laws involving manufacturers and distributors. The Comptroller’s Revenue Administration Division collects the alcoholic beverage tax, which is an excise tax imposed on beer, wine, and liquor that is paid by wholesalers and in some cases manufacturers and nonresident dealers. Revenue from the alcoholic beverage tax in fiscal 2019 is estimated to be more than \$31 million.

Reform on Tap Task Force

In 2017, the Comptroller established the Reform on Tap (RoT) Task Force to urge modernization of Maryland’s beer laws and promote economic growth across the State. At the conclusion of the task force, the Comptroller requested legislation that was introduced in the 2018 session (House Bill 518) that would have expanded the authority of breweries in many ways, including selling beer for off-premises consumption directly from the brewery; requiring a local licensing board to grant a brewery an on-site consumption permit if the applicant had a Class B or Class D beer license; allowing a brewery to sell an unlimited amount of its own beer for on-premises consumption; increasing the hours of sale for brewery taprooms; repealing the production

and on-premises consumption limits for micro-breweries; and repealing the production limit for Class 8 farm breweries. The bill received an unfavorable committee vote in the 2018 session.

Task Force on Alcohol Regulation, Enforcement, Safety, Public Health

Some legislators believed that the RoT Task Force and the Comptroller's bill neglected to take into account the dangers to public health and safety posed by excessive drinking. As a consequence, they introduced legislation to create the Task Force to Study State Alcohol Regulation, Enforcement, Safety, and Public Health. Created by Chapter 25 of 2018, the task force was charged with examining whether the Office of the Comptroller, which now regulates the State alcoholic beverages industry and enforces State alcoholic beverages laws, is the most appropriate agency to ensure the safety and welfare of the residents of Maryland, or whether those regulatory and enforcement duties should be assigned to another State agency or one created specifically to carry out those tasks.

In conducting its examination, the task force is also required to review (1) Maryland alcohol laws in light of recent changes regarding alcohol production, distribution, and sale; (2) the public health impact of alcohol in Maryland; (3) the economic development and employment impact of alcohol in Maryland; and (4) the enforcement at the State and local level of alcohol regulation and laws, regulatory systems in other states, and the methods by which State and local enforcement agencies interact.

Surrounding states regulate alcoholic beverages differently than regulated in Maryland. In Maryland, the Comptroller, an elected official, issues manufacturing and wholesaling licenses, and local jurisdictions issue retail licenses. In Delaware, the Alcoholic Beverage Control Commissioner, who is appointed by the State Department of Safety and Homeland Security, issues all licenses. In Pennsylvania, the Liquor Control Board, which is appointed by the Governor, issues licenses, with liquor sold in state-run liquor stores. In the District of Columbia, the Alcoholic Beverages Control Board, which is appointed by the Mayor with City Council approval, issues all licenses.

Meeting several times during the fall, the task force is required to report its findings and recommendations to the General Assembly by December 1, 2018, regarding what additional policies should be implemented and the method for implementing the policies, with regard to (1) alcohol laws in the State and (2) legislative proposals that would expand the availability of alcohol to the public.

Anticipated Wineries and Distilleries Legislation

Several issues from the 2018 session may be revisited. These include:

- for wineries, establishing an auxiliary winery permit to allow wineries to sell their product at stand-alone shops they operate at locations away from the wineries and nonprofit wine festival permits; and
- for distilleries, allowing:
 - a Class 1 distillery or Class 9 limited distillery to sell its product at more farmers' markets and other events;
 - a Class 1 distillery to sell mixed drinks for on-premises consumption by using annually up to 7,750 gallons of liquor that the distillery produces;
 - a Class 1 distillery to be granted an on-site consumption permit by a local licensing board; and
 - a Class 9 limited distillery to be granted an on-premises and off-premises consumption permit by a local licensing board that does not issue a Class D beer, wine, and liquor license.

Business Regulation

Minimum Wage Compensation

The State minimum wage rate increased to \$10.10 in July 2018, reaching full adjustment after a series of five increases. Although legislation to further increase the State minimum wage rate has not passed in recent legislative sessions, many states and local jurisdictions around the country have passed legislation to increase or alter various aspects of their respective wage standards.

State Minimum Wage Rate Recently Increased in Maryland

The Maryland Minimum Wage Act of 2014 increased the State's minimum wage rate from \$7.25 per hour in January 2015 to \$10.10 per hour in July 2018, through five increments. Legislation to further increase the State minimum wage rate and make other changes to the Maryland Wage and Hour Law has been proposed but has not passed in each of the sessions since the General Assembly passed the 2014 legislation.

Local Minimum Wage Standards in Maryland

Charter counties have the authority to establish a local minimum wage rate under the Express Powers Act. Currently, 11 counties exercise charter home rule: Anne Arundel, Baltimore, Cecil, Dorchester, Frederick, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico. Additionally, Baltimore City has police power, so it can establish and enforce a local minimum wage rate. Counties that exercise commission or code home rule have not been delegated the police power that charter counties and Baltimore City have, and therefore do not have the legal authority to establish a local minimum wage.

Montgomery and Prince George's counties have local minimum wage laws that reflect rates higher than the State's minimum wage rate. In Montgomery County, the minimum wage rate is \$12.00 per hour for employers with 50 or fewer employees and \$12.25 per hour for employers with 51 or more employees. In Prince George's County, the minimum wage rate is \$11.50 per hour. All other jurisdictions in Maryland follow the State minimum wage rate.

Trends in Other Jurisdictions

Congress last increased the federal minimum wage rate in 2009, making this period of time one of the longest since the federal Fair Labor Standards Act's enactment in 1938 without a change in the federal minimum wage rate. In the absence of federal action, some states and local

jurisdictions have undertaken efforts to increase their respective minimum wage rates above the federal minimum wage rate of \$7.25 per hour. Several jurisdictions have enacted legislation to increase their wage rates as high as \$15.00 per hour in future years, while others have indexed the rates to increase based on inflationary change or enacted legislation to prevent local jurisdictions from enacting wage rates that exceed the applicable state or federal standard.

Exhibit 1 shows the states that have minimum wage rates that exceeded the federal minimum wage rate as of November 2018. Out of these 30 jurisdictions (29 states and the District of Columbia), 11 have scheduled additional increases to go into effect on or before January 1, 2019. One state, New York, will see an increase effective December 31, 2018 (\$11.10); the remaining 10 states will see increases effective January 1, 2019: Missouri (\$8.60); Delaware (\$8.75); Arkansas (\$9.25); Rhode Island (\$10.50); Arizona and Maine (\$11.00); Colorado (\$11.10); and California, Massachusetts, and Washington (\$12.00).

Exhibit 1
States with Higher than Federal Minimum Wage
As of November 2018

<u>State</u>	<u>Rate</u>	<u>State</u>	<u>Rate</u>
District of Columbia	\$13.25	Minnesota	\$9.65
Washington*	11.50	Michigan	9.25
California*	11.00	Nebraska	9.00
Massachusetts*	11.00	South Dakota	8.85
Oregon	10.75	West Virginia	8.75
Arizona*	10.50	New Jersey	8.60
Vermont	10.50	Arkansas*	8.50
New York*	10.40	Montana	8.30
Colorado*	10.20	Ohio	8.30
Connecticut	10.10	Delaware*	8.25
Hawaii	10.10	Florida	8.25
Rhode Island*	10.10	Illinois	8.25
Maryland	10.10	Nevada	8.25
Maine*	10.00	Missouri*	7.85
Alaska	9.84	New Mexico	7.50

* Denotes that an increase in the minimum wage rate shown is scheduled on or before January 1, 2019.

Source: U.S. Department of Labor, National Conference of State Legislatures, Department of Legislative Services

“Fight for \$15” Legislation

In November 2012, a group of workers in the fast food industry in New York City walked off their jobs in strike for higher wages and other improvements to their employment standards. Since that time, groups of workers have continued to strike around the world as part of a broader campaign to increase the minimum wage to \$15.00 per hour in various workplaces. The movement is now known as the “Fight for \$15,” which has motivated federal, state, and local legislation. As of November 2018, three states, the District of Columbia, Montgomery County, and a number of cities and counties have enacted laws which will raise their respective minimum wage rates to \$15.00 per hour within the next few years.

In California, the minimum wage rate will reach \$15.00 on January 1, 2022, after a series of four increases. In Massachusetts, the minimum wage rate rises to \$15.00 on January 1, 2023, after five increases. In New York, the minimum wage rate will increase from \$11.80 to \$12.50 on December 31, 2020, after which point the minimum wage rate will be indexed to adjust for inflationary change up to \$15.00. In the District of Columbia, the minimum wage rate will reach the \$15.00 level on July 1, 2020, after two increases. In Montgomery County, employers with at least 51 employees are required to pay a minimum wage of \$15.00 per hour effective July 1, 2021; mid-sized employers are required to pay a minimum wage rate of \$15.00 per hour effective July 1, 2023; and employers with fewer than 11 employees are required to pay a minimum wage of \$15.00 per hour effective July 1, 2024. According to research conducted by the Labor Center at UC Berkeley, as of June 2018, 23 cities and counties have enacted minimum wage laws that will reflect a wage rate of \$15.00 within the next few years. Those cities and counties include 19 jurisdictions in California, and 1 jurisdiction in Arizona, Maryland, Minnesota, and Washington, respectively.

Indexing

According to the National Conference of State Legislatures, as of July 2018, 17 states, the District of Columbia, Montgomery County, and a number of local jurisdictions indexed their respective minimum wage rates to account for inflationary change. Some jurisdictions have indexed their respective minimum wage rates for years, while others have required indexing to take effect in future years. Sixteen states allow for increases due to inflationary change, while one state, Missouri, allows for increases or decreases.

Preemption of Local Laws

A growing number of states have enacted laws to preempt local jurisdictions from establishing local minimum wage rates that exceed the applicable state minimum wage rate. According to research conducted by several organizations, half of all states have some preemption language relating to minimum wage standards. As of January 2018, 25 states preempted local minimum wage laws in some form.

Business Regulation

Small Wireless Facilities and Implementation of the Fifth Generation Data Network

Implementation of the fifth generation of wireless data networks has begun. The Federal Communications Commission recently adopted new rules relating to the installation and maintenance of small wireless facilities, including limiting local control of the permitting and siting process. Legislative actions in Maryland and other states have been proposed to address conflicts between local governments and the wireless industry.

What Are Small Wireless Facilities and Why Are They Needed?

As demand for high speed Internet access has increased in recent years, wireless providers developed and recently began the implementation of the fifth generation of wireless data networks, which is commonly known as 5G. Wireless providers and other proponents of this new technology claim that download speeds on the 5G network may meet or exceed the speeds that consumers experience on their wired home networks. Furthermore, they claim that these connection speeds may facilitate the adoption of new technologies, such as self-driving cars.

In order to fully implement the 5G network, wireless providers are building and maintaining “small wireless facilities,” instead of using the more traditional and much larger cellular towers that maintain the current 4G network. Small wireless facilities include antennas and poles of various sizes and heights. Compared to cellular towers, small wireless facilities cover and provide wireless services to a much smaller area, meaning that a large number of facilities must be built throughout the country in order to maintain the 5G data network. The Cellular Telecommunications Industry Association estimates that hundreds of thousands of facilities are likely necessary. Many small wireless facilities are being built on publicly owned land and utility poles, and doing so requires the permission of cities, towns, counties, and other local governments, which generally involves paying for and acquiring permits for each installation.

Federal Communications Commission Proposes Rules to Address Conflicts with Local Governments

The general lack of a regulatory framework at the state level for the installation and maintenance of these facilities, in many instances, has led to conflict between the wireless industry and local governments. One such conflict is over the use of public rights-of-way and publicly owned property and equipment. The wireless industry has argued that it should have access to local rights-of-way and locally owned equipment as the infrastructure is already in place for the siting of small wireless facilities. Local governments, on the other hand, have argued the need to have systems in place to allow for uniformity in siting, design, permitting, and maintenance of these wireless facilities. Local jurisdictions typically have this jurisdiction over other users of local rights-of-way, including telecommunications companies and cable television providers.

In response to these conflicts and to hasten the implementation of the 5G data network, the Federal Communications Commission (FCC) recently adopted new rules relating to the installation and maintenance of small wireless facilities. Among other things, the rules limit the amount of money that a local government may charge for installing 5G equipment on government property in publicly owned rights-of-way and require local governments to take action on applications to do so within 60 or 90 days, depending on certain circumstances. Specifically, a local government may charge no more than \$100 for each application to install a small cell facility and an annual fee of no more than \$270 for each facility. This cap on the fees that may be charged by a local government has been particularly controversial, and many cities and other local governments question whether the commission has the authority to establish such requirements. As a result of the adoption of these new rules, a number of cities, including Portland, Oregon and Seattle, Washington, are filing suit against the FCC.

Legislative Actions to Address Conflicts

During Maryland's 2018 legislative session, Senate Bill 1188 and House Bill 1767 were proposed to address the conflict between wireless carriers and local governments in Maryland. The bills would have established procedures and guidelines for the installation and maintenance of small wireless facilities. Among other things, the bills would have expressly authorized local governments to establish rules related to the design, concealment, repair, and replacement of poles used for facilities, expressly authorized local governments to impose a reasonable and nondiscriminatory fee for the use of local government wireless support structures in certain circumstances, and prohibited local governments from charging a fee or regulating the placement of a facility that is co-located on, or adjacent to, an existing wireless support structure or pole.

Several other states, including Colorado, Delaware, Florida, Indiana, Iowa, Kansas, Minnesota, North Carolina, Ohio, Rhode Island, Texas, and Virginia, have enacted legislation limiting local control of the permitting and siting process for small wireless facilities. There are similar components shared in the legislation of these states, including expedited application processing, limited or capped fees for applications and for the use of rights-of-way, presumed application approvals and limitations on denying applications, and limitations or prohibitions on zoning for new equipment, including poles.

Rural Jurisdictions and 5G Potential

The expansion of broadband services in rural jurisdictions where populations, and customers, are less dense has not occurred in many of these areas both in Maryland and throughout the country. Some advocates claim that the implementation of the 5G data network presents an opportunity to bring internet with broadband speeds to rural areas, while others claim the same obstacles (population density and lack of customers) are likely to result in rural areas being left behind.

Business Regulation

Opportunity Zones

A new federal program created by the Tax Cut and Jobs Act called the Opportunity Zones Program creates an incentive for private-sector investment in designated economically distressed communities by allowing investors to defer and reduce their capital gains tax liabilities. The Department of Housing and Community Development intends to target the resources of several department grant and loan programs in opportunity zones to enhance the private-sector investment with public resources and take advantage of the new federal program.

Designation and Benefits of Opportunity Zones

The federal Tax Cut and Jobs Act created the Opportunity Zones Program to encourage investment in economically distressed communities. The program is designed to encourage private-sector investment and spur economic development and job creation in designated economically distressed communities called opportunity zones.

Maryland, like other states, designated its own opportunity zones by choosing 25% of the census tracts that are eligible low-income communities under the New Market Tax Credit Program, subject to the approval of the U.S. Secretary of the Treasury. The eligible tracts have poverty rates of at least 20%; or in a rural tract, have a median family income below 80% of the statewide median family income; or in a metropolitan area, the median family income for the tract does not exceed 80% of the statewide or metropolitan area median family income, whichever is larger. A map of Maryland's opportunity zones can be found at: <https://dhcd.maryland.gov/Pages/OpportunityZones.aspx>. Maryland has designated opportunity zones in every county in the State, with a concentration of the opportunity zones in Baltimore City and Prince George's County.

Opportunity zones are intended to encourage economic development by providing tax benefits to investors. The program allows for realized capital gains – such as the profit from selling stock – to be invested in a Qualified Opportunity Fund, which in turn invests in an opportunity zone. To qualify, 70% of the fund's assets must be in the opportunity zone. The capital gains tax on the capital gain can then be deferred until the end of 2026. If the investment is held for 7 years, 15% of the capital gain can be excluded from tax, and the appreciation of the gain can be excluded if the investment is held for 10 years.

Maryland Department of Housing and Community Development Focus on Opportunity Zones

While the Opportunity Zones Program is a federal program, the Department of Housing and Community Development (DHCD) intends to focus State-funded economic development and affordable housing program resources in opportunity zones to attract a larger share of the private capital expected to be invested in Opportunity Funds nationwide and to enhance the impact of those investments and incentivize further private-sector investment within the designated opportunity zones. The department indicates that resources from its Strategic Demolition and Smart Growth Impact Fund, Community Legacy, Neighborhood Business Works, and Rental Housing Works will be substantially focused in opportunity zones. These DHCD programs would provide gap financing for projects that receive Opportunity Fund investment, or for other projects within an opportunity zone to enhance and target the overall level of public and private investment within the opportunity zone.

DHCD intends to seek additional State funding for programs that support opportunity zones to accelerate projects already in the works and to take advantage of the private-sector incentives of the new program. The department has advised that, in order to compete nationally and attract the increased level of private investment anticipated in opportunity zones, additional State investment in partnership with private-sector investment should be made. Moreover, since the Opportunity Zones Program is structured such that incremental benefits decrease over time, especially after 2019 and again after 2021, the need for immediate State participation in the program is needed.

Public Safety

Baltimore City Police Department

The Baltimore City Police Department continues to be shrouded in controversy, and as the city implements reforms as a result of the consent decree between the city and the U.S. Department of Justice, violent crime in Baltimore continues to surge. At the same time, the Commission to Restore Trust in Policing, created during the 2018 legislative session, has begun its work to review, investigate, and make recommendations relating to the Baltimore City Police Department.

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 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.

Mr. Kenneth Thompson, a Baltimore-based attorney, was appointed by the court 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.

During the first half of 2018, the monitoring team:

- prepared a detailed first-year monitoring plan;
- reviewed and provided technical assistance on draft policy revisions;
- audited equipment in BPD transport vehicles;
- performed preliminary diagnostic reviews of internal investigations files, stop/search/arrest data, and BPD's response to the shooting of Detective Sean Suiter;
- developed a plan for measuring BPD compliance with consent decree requirements;
- met with community stakeholders;
- hired and engaged a team of neighborhood liaisons;
- established a website, email address, phone number, and office hours; and
- engaged in various activities with law enforcement officers, including holding focus groups, participating in ride alongs, and visiting district stations.

Based on these activities, the monitoring team stated in its first semiannual report dated July 18, 2018, that although BPD and city leadership have shown a genuine commitment to broad

institutional reform, much work remains to be done to bring BPD into full compliance with the consent decree.

Gun Trace Task Force

The Gun Trace Task Force was created in 2007 as an elite unit within the BPD intended to pursue violent criminals and persons illegally possessing and using guns. In 2017, eight of the nine members of the task force were charged with crimes including racketeering, robbery, extortion, overtime pay fraud, and filing false paperwork. The officers allegedly pocketed hundreds of thousands of dollars discovered while searching the homes and cars of criminals and some innocent civilians. All eight members who were indicted either pled guilty or were convicted of several federal charges.

Commission to Restore Trust in Policing

Chapter 753 of 2018 established the Commission to Restore Trust in Policing to review, investigate, and make recommendations relating to BPD. The Joint Audit Committee is required to review the Baltimore Police Department's audit reports issued by the Baltimore City Comptroller, beginning with the 2018 audit, as well as the audit process and procedures and submit findings and recommendations to the General Assembly.

The commission is authorized to:

- conduct hearings;
- administer oaths and affirmations;
- issue process to compel the attendance of witnesses and the production of evidence; and
- require a person to testify and produce evidence.

The commission held its first meeting on October 16, 2018, and plans to hold several additional meetings prior to the start of the 2019 session. The commission must submit a preliminary report of its initial findings, conclusions, and recommendations to the Governor and the General Assembly by December 31, 2018. A final report is due by December 31, 2019.

Public Safety

Firearms – Mental Health Illness and Criminal Records

Maryland law prohibits possession of firearms by individuals with certain criminal records and mental health disorders; however, recent events have increased interest in furthering restrictions on firearm access by individuals who either have been criminally charged or have mental health disorders.

Background

Recently, the purchase and possession of firearms in Maryland by individuals with criminal histories or serious mental illnesses has raised concerns. On June 28, 2018, Jarrod Ramos, a resident of Laurel, entered the offices of the Capital Gazette newspaper in Annapolis with a shotgun, killing 5 employees and wounding 2 others. On August 26, 2018, David Katz, a resident of Baltimore, used a handgun to open fire at a video game tournament in Jacksonville, Florida, killing 2 individuals and wounding 10 others. Less than one month later, on September 20, 2018, Snochia Mosely, a resident of Baltimore County, used a handgun to open fire at the Rite Aid distribution center in Aberdeen, killing 3 co-workers and wounding 3 others. Ramos, Katz, and Mosely all legally purchased the firearms used to shoot their victims in Maryland, and each is reported to have either had previous contact with the criminal justice system or shown signs of having a mental health disorder.

Regulating Possession of Firearms

Both federal and State law govern the acquisition and transfer of regulated firearms, rifles, and shotguns. Generally, under State law, a person is prohibited from possessing a regulated firearm or a rifle or shotgun if the person:

- has been convicted of a disqualifying crime;
- has been convicted of a violation classified as a crime under common law and received a term of imprisonment of more than two years;
- is a fugitive from justice;
- is a habitual drunkard;

- is addicted to a controlled dangerous substance or is a habitual user;
- suffers from a mental disorder and has a history of violent behavior against self or another;
- has been found incompetent to stand trial;
- has been found not criminally responsible;
- has been voluntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders;
- has been involuntarily admitted, for any period of time, to a facility that provides treatment or other services for mental disorders;
- is under the protection of a guardian of the person or property of a disabled person appointed by a court under certain circumstances not solely related to a physical disability;
- is a respondent against whom a current non *ex parte* civil protective order has been entered or order for protection has been issued and is in effect; or
- if the person is under the age of 30 at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

A disqualifying crime includes any crime that is (1) a crime of violence; (2) a violation classified as a felony in the State; or (3) a violation classified as a misdemeanor in the State that carries a statutory penalty of more than two years. For purposes relating to a person's eligibility to possess a firearm, a conviction for a disqualifying crime includes (1) most cases in which a person receives probation before judgment for a crime of violence and (2) a case in which a person receives probation before judgment in a domestically related crime.

Mental Health Required Reporting

A court is required to promptly report identifying information to the Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS), through an approved secure portal, about a person who the court (1) determines to be not criminally responsible; (2) finds to be incompetent to stand trial; or (3) finds to be in need of the protection of a guardian under circumstances not solely related to a physical disability. Similarly, public and private clinics, hospitals, and other institutions that provide treatment or services for mental disorders are required to report information to NICS about a person who has been (1) voluntarily admitted for 30 consecutive days or more or (2) involuntarily committed for any period of time. Except for

mental health information reported to NICS, law enforcement agencies generally do not have access to mental health records due to health record confidentiality laws.

Extreme Risk Protection Orders

Chapter 250 of 2018 established an “extreme risk protective order” (ERPO) and set forth a process by which a petitioner may seek a court order to prevent a respondent from possessing or purchasing a firearm for a limited period of time, based on a determination that the respondent poses a danger of causing personal injury to self or others by possessing a firearm. A petition for an ERPO may be made by any of the following individuals:

- a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage or family therapist, or health officer or designee of a health officer who has examined the individual;
- a law enforcement officer;
- the spouse of a respondent;
- a cohabitant of a respondent;
- a person related to a respondent by blood, marriage, or adoption;
- an individual who has a child in common with a respondent;
- a current dating or intimate partner of a respondent; or
- a current or former legal guardian of a respondent.

The length of time that an ERPO is effective depends on the nature and stage of the petition. In situations where an ERPO petition is filed when the court is not in business, a District Court Commissioner may issue an interim ERPO. An interim ERPO is generally effective until the earlier of the temporary ERPO hearing or the end of the second business day the Office of the District Court Clerk is open following the issuance of the interim order. Otherwise, after a hearing on a petition, whether ex parte or otherwise, a judge may enter a temporary ERPO to prohibit the respondent from possessing a firearm. A temporary ERPO is generally effective for not more than seven days after service of the order. The judge may extend the temporary order as needed, not to exceed six months, to effectuate service of the order where necessary to provide protection or for other good cause. Subject to certain exceptions, a final ERPO hearing must be held no later than

seven days after the temporary ERPO is served on the respondent. All relief granted in a final ERPO is effective for the period stated in the order, not to exceed one year.

Required Transfer or Surrender of Firearms in Domestically Related Cases

Chapter 251 of 2018 requires a court to provide a defendant who is convicted of or pleads guilty to a domestically related disqualifying crime notice that the defendant is prohibited from owning or possessing a regulated firearm, rifle, or shotgun and is ordered to transfer all regulated firearms, rifles, or shotguns in the defendant's possession. On conviction or a plea of guilty, a court must order the defendant to transfer, either personally or through a representative, all regulated firearms, rifles, and shotguns owned by or in the possession of the defendant to a State or local law enforcement agency or a federally licensed firearms dealer. The transfer must be made within two business days after conviction and the law enforcement agency or federally licensed firearms dealer that accepts the transfer is required to provide written proof of the transfer to the defendant or the defendant's representative. A court may issue a search warrant for the removal of any regulated firearms, rifles, or shotguns owned or possessed by the person on application by the State's Attorney or a law enforcement official based on probable cause to believe that the defendant has failed to surrender one or more regulated firearms, rifles, or shotguns.

Public Safety

State Correctional System Update

Statewide, the correctional and supervision populations continue to decline and changes resulting from implementation of the Justice Reinvestment Act are expected to reduce inmate population totals even further. At the same time, the Department of Public Safety and Correctional Services continues to have high vacancy rates, particularly among correctional officers. As a result, overtime spending remains high.

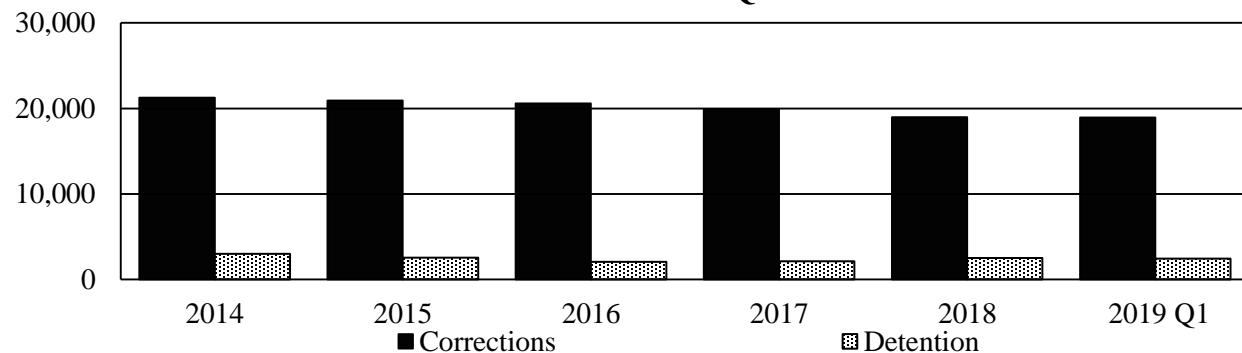
Background

The Department of Public Safety and Correctional Services (DPSCS) is a principal department of State government, responsible for operating 22 State correctional facilities and 3 detention facilities in Baltimore City, whose combined average daily population is approximately 21,300. In addition, the department supervises offenders on parole and probation. In fiscal 2019, DPSCS has a budget of nearly \$1.4 billion and approximately 10,400 employees, which accounts for 13.0% of the total State workforce and 6.9% of all general fund expenditures.

Population Trends

Overall, 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 2014. The number of incarcerated offenders in the State is now under 19,000 for the first time since the 1990s and has declined slightly in the first quarter of fiscal 2019.

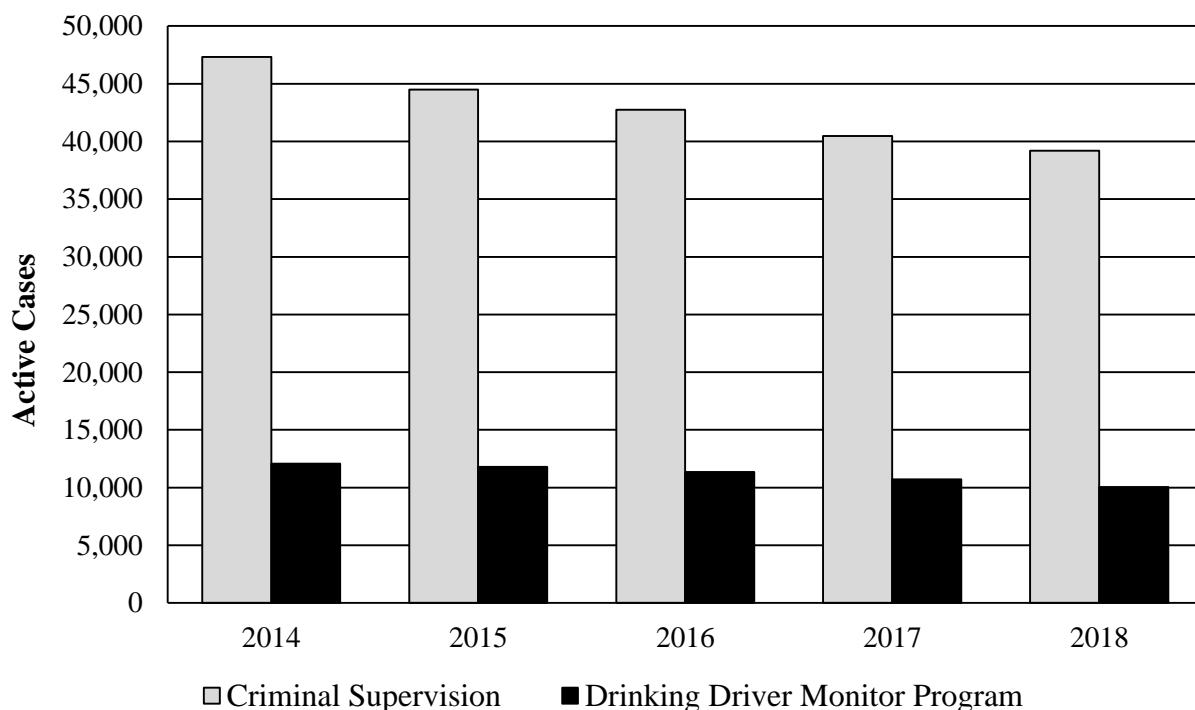
Exhibit 1
Average Daily Population
Fiscal 2014-2019 Q1



Source: Department of Public Safety and Correctional Services

Exhibit 2 depicts the total number of active cases under community supervision, which includes criminal supervision (parole, probation, and mandatory release cases) and cases under the Drinking Driver Monitor Program (DDMP). Since fiscal 2014, cases under criminal supervision have fallen by over 17%, while DDMP cases have remained relatively stable. Overall, the Division of Parole and Probation supervised 39,194 criminal cases and 10,036 DDMP cases in fiscal 2018.

Exhibit 2
Community Supervision Active Cases
Fiscal 2014-2018



Source: Department of Public Safety and Correctional Services

Capital Plan and Facility Openings and Closures

As the number of offenders declines, DPSCS continues to close older facilities. Pursuant to the 2016 *Duvall v. Hogan* agreement, a class-action suit on behalf of detainees in the Baltimore City Detention Center, multiple facilities in Baltimore City have been shut down. Overall, the majority of offenders in the Baltimore City Detention Center were relocated to the Baltimore Central Booking and Intake Center, the Metropolitan Transition Center, and some State facilities – mainly the Jessup Correctional Institution.

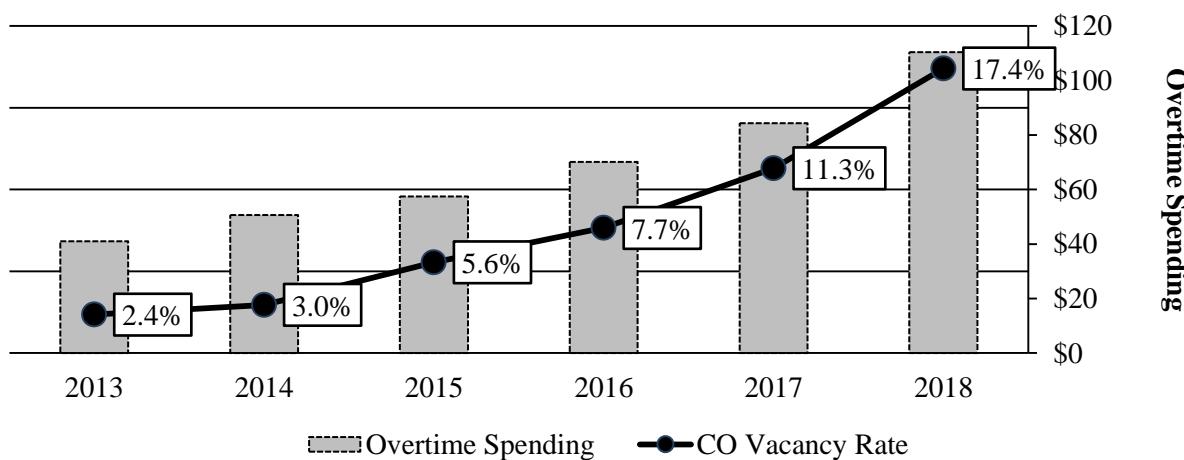
The fiscal 2019 capital budget includes funding to continue demolition of the antiquated facilities within the Baltimore City Correctional Complex. While no commitment has been made regarding a replacement facility, plans for a therapeutic drug treatment center for the site have been submitted.

Correctional Officer Recruitment and Retention

Vacancies in DPSCS positions continue to increase, mainly among correctional officers. While several factors such as more stringent polygraph testing requirements and strict drug use standards have had a negative effect on the number of new officers hired, research has shown that a high State employment rate has led potential candidates away from correctional officer positions in Maryland and across the country.

As a result of increased vacancies, DPSCS continues to incur significant overtime costs to cover staffing shortfalls. **Exhibit 3** shows current correctional officer vacancy rates and the associated increases in overtime spending for the department. Overtime spending is over \$110 million for fiscal 2018. To improve recruitment, DPSCS continues to offer correctional officers a \$2,000 bonus upon completion of the training academy and \$3,000 after completing a one-year probationary period. Existing employees can 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)



CO: Correctional Officer
Source: Department of Public Safety and Correctional Services Budget Data

Criminal Law

Bail Reform/Pretrial Services

Court Rules requiring judges to consider a defendant's ability to pay when setting bail have resulted in a reduction in the use of cash bail. At the same time, local governments continue to establish, expand, and improve pretrial services across the State.

Maryland Developments

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 nonfinancial 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.

Under the Rules, when deciding whether a defendant should be released and, if so, the conditions of release, a judicial officer must consider the recommendation of any pretrial services program that has performed a risk assessment of the defendant in accordance with a validated risk assessment tool and is willing to provide an acceptable level of supervision over the defendant during the period of release.

Maryland Judiciary Pretrial Summit

In May 2018, the Maryland Judiciary, with support from the National Center for State Courts, the State Justice Institute, and the Pretrial Justice Institute, hosted a pretrial justice summit for stakeholders throughout the State to discuss relevant issues in establishing and operating a pretrial services program. Approximately 200 individuals attended the summit, including judges, State's Attorneys, public defenders, wardens, and members of law enforcement. National, state, and local experts presented and facilitated discussions on topics such as best practices for pretrial services programs, addressing substance abuse and mental health needs in the pretrial population, supervision of criminal defendants awaiting trial, and risk assessments.

Pretrial Services Program Grant Fund

Maryland does not have a statewide pretrial services program. Chapter 771 of 2018 established the Pretrial Services Program Grant Fund to provide grants to eligible counties to establish pretrial services programs or to improve existing pretrial services programs to comply with specified requirements. The Governor's Office of Crime Control and Prevention (GOCCP) must administer the fund. The fiscal 2019 budget includes \$1.0 million in general funds for GOCCP to provide grants, technical assistance, and other support to local governments for the establishment, expansion, and improvement of pretrial services agencies.

A pretrial services program established or improved using a grant from the fund must (1) use a validated, evidence-based, race-neutral risk scoring instrument that is consistent with the Maryland Rules to make pretrial release-related recommendations to a judicial officer; (2) apply best practices shown to be effective in other jurisdictions; and (3) incorporate multiple levels of supervision based on defendant risk scores with features that include cellular telephone reminders of a defendant's hearing date; drug and alcohol testing; global positioning satellite monitoring, if applicable; and substance abuse, mental health, or mediation referrals, if approved by the judicial officer and available in the eligible county.

The submission deadline for grant applications was July 27, 2018. GOCCP received grant applications from 12 counties. While GOCCP has yet to award or disperse any grant funds, the office anticipates doing so later this year. Chapter 771 terminates June 30, 2023.

As shown in **Exhibit 1**, 15 jurisdictions in the State currently have a pretrial services program. The programs vary in scope and services offered. Not all of the programs utilize validated risk assessment tools.

Exhibit 1
Jurisdictions with Pretrial Services Programs

**Jurisdictions with
Pretrial Services**

Anne Arundel County
Baltimore City*
Baltimore County
Calvert County
Carroll County
Dorchester County
Frederick County
Harford County
Kent County
Montgomery County
Prince George's County
St. Mary's County
Talbot County
Wicomico County
Worcester County

**Jurisdictions without
Pretrial Services**

Allegany County
Caroline County
Cecil County
Charles County
Garrett County
Howard County
Queen Anne's County
Somerset County
Washington County

*Operated by the Maryland Department of Public Safety and Correctional Services
Source: Department of Legislative Services

Impact of New Rules on Pretrial Release Dispositions

As previously mentioned, the new Rules emphasize reduced reliance on financial conditions in pretrial release determinations. As shown in **Exhibit 2**, this new approach has had a significant impact on pretrial dispositions. Comparing data from the third quarter of 2016 with partial data from the third quarter of 2018, the percentage of defendants released after an initial appearance increased from 47.1% to 55.7%, the percentage of defendants held without bail increased from 8.9% to 25.0%, and the percentage of defendants assigned bail decreased from 41.8% to 18.0%.

Exhibit 2
Pretrial Dispositions
July 2016 to August 2018

	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%
Oct. – Dec. 2017	31,809	18,116	57.0%	6,286	19.8%	6,918	21.7%
Jan. – Mar. 2018	32,076	18,143	56.6%	6,256	19.5%	7,204	22.5%
Apr. – Jun. 2018	33,024	18,481	56.0%	6,308	19.1%	7,774	23.5%
Jul. – Aug. 2018*	23,457	13,062	55.7%	4,218	18.0%	5,860	25.0%

¹ Includes arrestees released due to lack of probable cause.

² Includes fugitives held without bail.

*September 2018 data is not available at this time.

Source: Maryland Judiciary

California’s Elimination of Cash Bail

States and cities nationwide are reviewing their reliance on bail and detention in the pretrial justice system. New Jersey and Alaska are among the states that have recently engaged in significant reforms of their pretrial systems, and prominent national organizations, including the American Bar Association, have advocated for bail reform. However, the most notable recent development in bail reform is California’s elimination of cash bail. On August 28, 2018, Governor Jerry Brown signed Chapter 244 into law. Chapter 244, which takes effect October 2019,

requires defendants to be assessed on their likelihood to appear in court and their risk to public safety, not on their ability to meet financial conditions of release. Courts are prohibited from imposing monetary conditions of release and from requiring defendants to pay for any nonmonetary conditions of release.

Low-risk defendants who are not subject to specified exclusions are released on personal recognizance and with the least restrictive nonmonetary conditions that will reasonably assure the individual's appearance in court and public safety. Low-risk defendants who are statutorily excluded are detained until arraignment unless a court pre-arraignment review is available. Medium-risk defendants must be detained or released according to local court rules, and a person released under local court rules must be released on personal recognizance or supervised own recognizance release prior to arraignment without court review and under the least restrictive nonmonetary conditions. Local court rules may expand the list of offenses or factors under Chapter 244 that make a medium-risk defendant ineligible for release by Pretrial Assessment Services prior to arraignment, but local court rules may not completely exclude Pretrial Assessment Services from releasing any medium-risk defendants. Medium-risk defendants who are excluded from release by Pretrial Assessment Services under Chapter 244 or local court rule are detained until arraignment unless a court pre-arraignment review is available. High-risk defendants must be detained until arraignment.

Proponents of Chapter 244 argue that the legislation removes financial ability as a deciding factor in pretrial release decisions. Opponents, including organizations that actively supported and advocated for the original version of the bill, argue that the final version of the legislation allows for excessive judicial discretion and expressed concerns about potential disparities that may occur with use of algorithms in risk assessment tools. Efforts are underway to place repeal of the legislation as a statewide referendum on the November 2020 general election ballot.

Criminal Law

Failure to Report Child Abuse

In recent years, there have been multiple high profile cases of child abuse in the State as well as nationally. Although Maryland mandates the reporting of suspected child abuse, the State continues to be in the minority of states that have no criminal penalties for failure to do so.

Background

According to numerous studies, approximately 25% of children have experienced abuse or neglect during their lifetimes. According to the Child Welfare Information Gateway (CWIG), every state and the District of Columbia have laws that identify people, generally those in certain professions, who are required to report suspected incidences of child abuse and neglect. Despite such requirements, reports have emerged of cases in local school systems in Maryland where teachers and administrators failed to report allegations of abuse committed by teachers and school volunteers. National media attention surrounding individuals who failed to report suspected abuse committed by, among others, numerous Catholic priests and Dr. Larry Nassar, the former USA Gymnastics Team Doctor, has also brought increased focus to issues surrounding the mandatory reporting of suspected child abuse and neglect and the appropriate penalties for those who fail to do so.

Child Abuse in Maryland

Maryland law defines “abuse” as the physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed by (1) a parent; (2) a household or family member; (3) a person who has permanent or temporary care or custody of the child; (4) a person who has responsibility for supervision of the child; or (5) a person who, because of the person’s position or occupation, exercises authority over the child. “Abuse” also includes sexual abuse of a child, whether physical injuries are sustained or not, but does not include the physical injury of a child by accidental means.

In Maryland, all educators and human service workers (*e.g.*, teachers, counselors, social workers, caseworkers, and parole or probation officers), health care practitioners, and police officers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, must notify the local department of social services or the appropriate law enforcement agency. State law also requires all citizens, regardless of profession, to report suspected abuse or neglect. However, the reporting requirements for a citizen

are less stringent than the reporting requirements for covered professionals. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse or neglect through privileged communications, as specified in statute. Individuals who in good faith make or participate in making a report of abuse or neglect or participate in an investigation or resulting judicial proceeding are immune from civil liability or criminal penalties.

Statutory provisions set forth a process by which individuals must report suspected child abuse and neglect, and local departments of social services and law enforcement agencies must take specified action upon receiving such reports. The Department of Human Services advises that of the reports investigated in fiscal 2018, 5,308 resulted in an indicated finding (credible evidence which has not been satisfactorily refuted) of child abuse, neglect, and mental injury. In addition, 10,757 reports were ruled out and 3,598 reports were unsubstantiated (insufficient evidence to support a finding of “ruled out” or “indicated”). Of the reports for which an indicated finding was made, 733 were for physical abuse, 1,204 were for sexual abuse, 3,365 were for neglect, and 6 were for mental injury.

Failure to Report Child Abuse in Maryland

State law does not criminalize the failure of an individual to report suspected abuse or neglect. The licensing boards for some professional workers who are mandated to report child abuse and neglect (nurses, doctors, and social workers are examples) are authorized to discipline workers for failing to report. Pursuant to Chapters 374 and 375 of 2016, if an agency is participating in a child abuse or neglect investigation and has substantial grounds to believe that a worker has knowingly failed to make a required report of suspected abuse or neglect, it must file a complaint with the worker’s licensing board, law enforcement agency, county board of education, or other agency, institution, or licensed facility, as appropriate, at which the worker is employed.

Failure to Report Penalties in Other States

According to CWIG, 48 states and the District of Columbia impose penalties on mandatory reporters who knowingly or willfully fail to report suspected child abuse or neglect. The only other state that does not impose a penalty, in addition to Maryland, is Wyoming. In approximately 40 of the 48 states that impose penalties, the penalty specified is a misdemeanor. In Arizona and Minnesota, misdemeanors are upgraded to felonies for failure to report more serious situations, while in Connecticut, Illinois, and Kentucky, second or subsequent violations are classified as felonies. A mandated reporter who fails to report can face jail terms ranging from 30 days to five years and/or fines ranging from \$300 to \$10,000.

Legislative Activity

Legislation to criminalize the failure to report suspected child abuse and neglect in Maryland has been introduced in almost every session since 2012. Most recently, Senate Bill 132 and House Bill 500 of 2018 would have made it a misdemeanor for a worker to knowingly fail to provide a required notice or make a required report of suspected child abuse or neglect if the worker (1) had actual knowledge of the abuse or neglect or (2) witnessed the act of the abuse or neglect. A violator would have been subject to a maximum penalty of up to six months imprisonment and/or a \$1,000 fine. The bills would have applied only to a failure to report child abuse that occurred during the time the child is a minor. Legislation considered in other sessions would have criminalized the failure of any person (not just individuals who are required to report in a professional capacity) who knowingly failed to provide a required notice or make a required report of suspected child abuse or neglect.

Criminal Law

Drunk and Drugged Driving

Drunk and drugged driving may be addressed by bills to (1) increase criminal penalties for homicide by motor vehicle while under the influence of, or impaired by, alcohol and/or drugs; (2) require ignition interlock devices for all first-time drunk driving offenders; and (3) increase testing for drugged driving.

Homicide by Motor Vehicle While Under the Influence of, or Impaired by, Alcohol and/or Drugs

Under current law, manslaughter by vehicle is a felony punishable by imprisonment for 10 years and/or a fine of \$5,000. The current penalties for homicide by motor vehicle while under the influence of, or impaired by, alcohol and/or drugs (set forth in **Exhibit 1**) are substantially less.

Exhibit 1
Current Penalties for Homicide by Motor Vehicle While Under the Influence of, or Impaired by Alcohol and/or Drugs

<u>Criminal Law Article</u>	<u>First Offense Penalty</u>	<u>Subsequent Offense Penalty</u>
§ 2-503 Homicide by Motor Vehicle While Under the Influence of Alcohol or Under the Influence of Alcohol <i>Per Se</i>	Felony; 5 years and/or a fine of \$5,000	Felony; 10 years, and/or a fine of \$10,000
§ 2-504 Homicide by Motor Vehicle While Impaired by Alcohol	Felony; 3 years, and/or a fine of \$5,000	Felony; 5 years, and/or a fine of \$10,000
§ 2-505 Homicide by Motor Vehicle While Impaired by Drugs	Felony; 3 years, and/or a fine of \$5,000	Felony; 5 years, and/or a fine of \$10,000
§ 2-506 Homicide by Motor Vehicle While Impaired by a Controlled Dangerous Substance	Felony; 3 years, and/or a fine of \$5,000	Felony; 5 years, and/or a fine of \$10,000

Legislation to increase the criminal penalties for the offenses set forth in Exhibit 1 is likely to be reintroduced in the upcoming session.

Mandatory Ignition Interlock for First-time Drunk Driving Offenders

Ignition interlocks, which are devices that measure a driver's blood alcohol concentration (BAC) and prevent a vehicle from starting if the BAC exceeds a certain level, may effectively reduce the number of subsequent drunk driving offenses. In fact, the National Highway Traffic Safety Administration (NHTSA) in its Model Guideline for State Ignition Interlock Programs recommends requiring ignition interlocks as a prerequisite to license reinstatement for all drunk driving offenders, including first-time offenders.

Chapter 512 of 2016, the Drunk Driving Reduction Act ("Noah's Law"), expanded participation in Maryland's Ignition Interlock System Program (IISP) by requiring mandatory participation for all individuals convicted of drunk driving. Despite this comprehensive legislation, a large portion of drunk driving offenders – those offenders who receive a probation before judgment (PBJ) disposition – are not required to participate in the IISP. Currently, a majority of first-time offenders in Maryland receive a PBJ disposition for a drunk driving offense.

Legislation to mandate participation in the IISP by a driver who receives a PBJ disposition for drunk driving may be introduced in the upcoming session.

Testing for Drugged Driving

Marijuana Testing Research: A very small number of studies have looked at the impairing effects of marijuana use on driving-related skills. One of these studies shows that marijuana has the potential to impair critical abilities necessary for safe driving: reaction time, road tracking, cognitive performance, target recognition, and attention maintenance. However, these potential impairments have not been shown to have any correlation with measured cannabis (THC) levels. Additionally, while THC can be detected in the blood long after ingestion, the acute psychoactive effects of marijuana ingestion last for mere hours, not days or weeks. In fact, very low THC levels may persist in the blood for more than six hours from a single administration. Even less is known about these effects due in part to the typical differences in research methods, tasks, subjects, and dosing that are used. All of these variables make testing for marijuana impaired driving particularly difficult.

Available Drug Detection and Testing Methods: NHTSA considers Standardized Field Sobriety Tests (SFST) to be the foundation for all impaired driving detection training. The first evidence of drug use is typically obtained roadside by the investigating law enforcement officer who is trained to detect drug impairment. The next step is toxicological testing, which has several limitations. First, the use of laboratory testing can be both time consuming and expensive.

Furthermore, while these toxicological tests can confirm the presence of a drug, that does not necessarily indicate driver impairment at the time the specimen was collected. Additionally, the amount of a drug or metabolite in the blood does not necessarily correspond to the amount of impairment. Finally, the collection of a blood sample has been ruled by the U.S. Supreme Court to be an invasive procedure that requires either permission or a search warrant and the availability of a nurse or licensed phlebotomist to collect the sample. Nevertheless, blood testing is considered the “gold standard” for toxicological testing for the presence of drugs in impaired driving cases.

Detections and Testing Methods Still in Development: Recent advances in testing technology have resulted in companies offering oral fluid drug screening devices that could be used by law enforcement to provide a preliminary indication of whether a laboratory test is likely to yield a positive result for THC or another drug. There are two models: the Alere DDS2 and the Dräger Drug Test 5000. Both are designed to test for cannabis (THC), amphetamines, methamphetamines, benzodiazepines, opiates, cocaine, and methadone using different levels of nanograms per milliliter (mg/ml). However, the accuracy and reliability of these devices has not yet been clearly established nor is there enough known in order to develop *per se* impairment cut-off levels because the level of mg/ml does not necessarily correlate with observations of impairment.

Legislation to require further study of drug detection and testing for drivers may be introduced in the upcoming session.

Criminal Law

Three-dimensional-printed Firearms

Commercially available three-dimensional (3D) printers are capable of producing functional 3D-printed firearms, including an almost fully printed, plastic handgun. A preliminary injunction currently prevents computer-aided-design (CAD) files for firearm plans from being uploaded to the Internet, but the CAD files may be emailed, mailed, securely transmitted, or otherwise published in the United States.

Background

In recent years, three-dimensional (3D) printing, also known as additive manufacturing, has modernized some aspects of firearm production with commercially available 3D printers for home use being capable of printing firearms. 3D printing is a process that uses computer-aided-design (CAD) files to direct a 3D printer to deposit a material, like plastic, layer-by-layer, to create a 3D solid object of virtually any shape. The functionality of 3D-printed firearms varies depending on the quality of plastic used, the calibration and quality of the 3D printer, and post-printing assembly.

One of the first almost completely 3D-printed plastic handguns is known as the Liberator. The Liberator requires some post-printing assembly and is capable of firing a single shot. The only nonprinted components of the Liberator are the firing pin – a standard metal nail – and a six-ounce piece of steel. The six-ounces of steel makes the Liberator detectable to a metal detector, as required under the federal Undetectable Firearms Act. Although federal and State laws generally regulate the acquisition and possession of regulated firearms, rifles, and shotguns, 3D-printed firearms, such as the Liberator, do not have serial numbers and, as a result, are virtually untraceable.

Federal and State Laws

The federal Undetectable Firearms Act makes it illegal to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that is not as detectable by walk-through metal detector as a security exemplar containing 3.7 ounces of steel, or any firearm with major components that do not generate an accurate image before standard airport imaging technology. The federal prohibition was first enacted in 1988 and was renewed for 10 years in December 2013.

Generally, State law prohibits a person from manufacturing for distribution or sale a handgun that is not included on the handgun roster in the State. However, law enforcement may not be aware of handguns manufactured within a person's home for personal use until the handgun is used or transferred.

Legal Battle with Defense Distributed

The Liberator was designed and released by Defense Distributed, an online, open-source organization that develops digital schematics of firearms used in 3D printing and other automated firearm production. In 2012, Defense Distributed launched a website to publicly host firearm files available for public download for free or for a nominal donation. On May 6, 2013, Defense Distributed released the Liberator's plans online. Defense Distributed alleges that plans for the Liberator were downloaded over 100,000 times in two days before the Department of State demanded that Defense Distributed remove from the Internet the Liberator's plans along with the plans of nine other 3D-printable firearms components.

International Traffic in Arms Regulation

The Department of State, Bureau of Political Military Affairs, Office of Defense Trade Control Compliance, Enforcement Division (DTCC/END) is responsible for compliance with and civil enforcement of the federal Arms Enforcement Export Control Act (AECA) and the AECA's implementing regulations, the International Traffic in Arms Regulations (ITAR). The AECA and the ITAR impose certain requirements and restrictions on the transfer of, and access to, controlled information as designated under federal law. The DTCC/END claimed that Defense Distributed may have violated ITAR by uploading the firearm CAD files to the Internet and allowing the files to be downloaded internationally. DTCC/END imposed a preliminary injunction against Defense Distributed while it reviewed the files. Defense Distributed complied and removed the offending files. However, the removal of the files did not have an effect on the copies of the files downloaded before the preliminary injunction was imposed.

In 2015, Defense Distributed filed a lawsuit against the Department of State seeking a preliminary injunction to allow Defense Distributed to publish firearm CAD files online. The lawsuit alleged that the prepublication approval requirement violated certain rights under the U.S. Constitution, including the right to free speech under the First Amendment, the right to keep and bear arms under the Second Amendment, and due process rights under the Fifth Amendment. Initial court rulings held in favor of the Department of State and denied the preliminary injunction, concluding that the public interest in national security outweighed Defense Distributed's interest in protecting its constitutional rights.

While litigation was pending, the federal government reversed its stance on the distribution of CAD files for 3D-printed firearms, and on June 29, 2018, the Department of State and Defense Distributed reached a settlement agreement. In the settlement, the Department of State agreed

(1) to publish a notice of proposed rulemaking and final rule revising the U.S. Munitions List (USML) to allow the distribution of CAD files for the automated production of 3D-printed firearms; (2) to announce a temporary modification of USML to allow such distribution while the final rule was in development; and (3) to issue a letter to Defense Distributed advising that the CAD files are approved for public release and unlimited distribution. The settlement agreement was released on July 10, 2018. Defense Distributed announced that it would release the CAD files online on August 1, 2018.

State Response

On July 30, 2018, the Attorney Generals of eight states, including Maryland, and the District of Columbia filed a lawsuit to block Defense Distributed's plans to release the CAD files. The following day, a federal judge in Seattle granted the states a temporary restraining order. Although Defense Distributed had released the files for four days before the temporary restraining order was granted, Defense Distributed complied with the order and removed the files from its site.

On August 27, 2018, the federal judge granted the states a preliminary injunction against the June 29, 2018, settlement agreement. In its ruling, the court acknowledged that the defendants have a First Amendment right to disseminate the CAD files, but held that the states are likely to suffer irreparable harm if the CAD files are uploaded to the Internet. The court also clarified that, although the files cannot be uploaded to the Internet, they may be emailed, mailed, securely transmitted, or otherwise published in the United States. Defense Distributed announced that it will continue to challenge the order.

Pending Federal Legislation

Although 3D printing has received the most media attention, computer-numerical-controlled (CNC) milling is also revolutionizing the way firearms are produced at home. The Ghost Gunner 2 is a CNC mill sold with the cut codes to significantly create components of a firearm. The Ghost Gunner 2 is sold online by Defense Distributed for \$2,000. Like a 3D-printed firearm, a CNC milled component does not have a serial number. A CNC milled lower receiver is made of metal and is therefore more durable than a plastic 3D-printed component. Like traditionally handmade components, CNC milled components require post-milling assembly in order to produce a firearm capable of firing a bullet.

Legislation currently pending in Congress seeks to address the issue of 3D-printed and CNC milled firearms. The 3D Printed Gun Safety Act of 2018 would make it unlawful for any person to intentionally publish over the Internet digital instructions in the form of CAD files or other code that can automatically program a 3D printer or similar device to produce a firearm or complete a firearm from an unfinished frame or receiver. The Untraceable Firearms Act of 2018 would make it unlawful for any person to manufacture, sell, offer to sell, transfer, purchase, or

receive a “ghost gun,” which is a firearm, including a frame or receiver, that lacks a unique serial number. The Untraceable Firearms Act of 2018 would also update the Undetectable Firearms Act by requiring every firearm to have at least one main component that is made of metal.

Courts and Civil Proceedings

Sexual Harassment in the Workplace

Recent events have highlighted the prevalence of sexual harassment in workplaces and raised questions about the adequacy of existing anti-harassment laws and policies. During the 2019 legislative session, the General Assembly will likely consider proposals to strengthen civil legal remedies for victims of sexual harassment as well as recommendations by the Maryland Workplace Harassment Commission to address workplace harassment within State government.

Introduction

In fiscal year 2017, the U.S. Equal Employment Opportunity Commission (EEOC), the body responsible for enforcing federal prohibitions on employment discrimination, received a total of 6,718 sexual harassment charges, including 129 charges originating in Maryland. During the same period, the Maryland Commission on Civil Rights (MCCR), which enforces State antidiscrimination laws, received 208 complaints of sex-based employment discrimination. It is likely that these numbers reflect only a fraction of the total problem. According to one EEOC report, only about 10% of workers who experience sexual harassment make a formal complaint.

Over the past year, the #timesup and #MeToo movements have called attention to the prevalence of sexual harassment in workplaces and raised questions about the adequacy of current antidiscrimination laws. As a result, state legislatures have begun examining laws and harassment policies and considering proposals to strengthen protections for workers in both the public and private sectors.

Legal Prohibitions on Sexual Harassment

Sexual harassment falls under the broader umbrella of State and federal workplace antidiscrimination laws. In general, these laws prohibit employers from discriminating against employees or job applicants on the basis of certain protected characteristics, including race, religion, national origin, and sex. These laws also establish procedures for the investigation and resolution of complaints against employers and provide legal remedies for victims of discriminatory employment practices.

At the federal level, Title VII of the Civil Rights Act of 1964 prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of the individual's sex. At the State level, § 20-606 of the

State Government Article contains a nearly identical prohibition. Sexual harassment is considered a violation of this prohibition. However, not all sexual conduct in the workplace rises to the level of sexual harassment. According to EEOC regulations, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment only when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Strengthening Legal Remedies for Victims of Sexual Harassment

Advocacy groups, such as the National Women's Law Center, argue that the existing legal framework is inadequate to protect workers from sexual harassment. They point to gaps in workplace antidiscrimination laws regarding, among other things, the kinds of workers who are protected, who can be held liable for harassing behavior, and the remedies available to victims of harassment.

Protecting Employees of Small Businesses

Title VII and most state workplace antidiscrimination laws apply only to businesses with 15 or more employees. This leaves employees of smaller businesses and organizations without legal recourse if they experience harassment. Only a handful of jurisdictions, including Alaska, Colorado, the District of Columbia, Hawaii, Maine, Michigan, Minnesota, Montana, New Jersey, North Dakota, Oklahoma, Oregon, South Dakota, Vermont, and Wisconsin, have workplace antidiscrimination laws that apply to all employers, regardless of size.

Protecting Nontraditional Workers

Workplace antidiscrimination statutes generally do not apply to nontraditional categories of workers, such as independent contractors, freelancers, and unpaid interns. Maryland has already taken steps to address this issue, passing a law in 2015 that provides limited remedies to interns who experience sexual harassment or other forms of workplace discrimination. California has gone even further, expanding its antidiscrimination statutes to cover any person "providing service pursuant to a contract."

Holding Harassers Accountable

Workplace antidiscrimination laws place the onus of preventing sexual harassment on employers. This means that employers may be held liable for harassment committed by their employees, particularly when those employees exercise a supervisory role over others. However, victims generally lack the ability under these laws to sue their harassers directly. This means that, although a harasser may be fired or otherwise disciplined by an employer, the harasser is generally

not personally or financially liable to his or her victims. This is not true in all jurisdictions, however. For example, in Howard, Montgomery, and Prince George's counties, a person who is subjected to a discriminatory act prohibited by the county code may bring a civil action directly against the person who committed the alleged discriminatory act.

Compensating Victims

In general, a victim of sexual harassment who prevails in a legal action against his or her employer has the right to recover monetary damages. However, these damages are often subject to certain statutory limits. Under Title VII, the limits vary depending on the size of the employer:

- for employers with 15-100 employees, the limit is \$50,000;
- for employers with 101-200 employees, the limit is \$100,000;
- for employers with 201-500 employees, the limit is \$200,000; and
- for employers with more than 500 employees, the limit is \$300,000.

Workplace antidiscrimination laws in many states, including Maryland, include damage caps identical to those under federal law. Some states have higher limits, however, while California, Hawaii, Massachusetts, New Jersey, Ohio, Oregon, and West Virginia have no limits at all.

Increasing Transparency of Sexual Harassment Claims

The lack of transparency surrounding the out-of-court settlement of sexual harassment claims can hinder efforts to track incidents of harassment and hold harassers accountable. In 2018, the General Assembly passed several bills aimed at addressing this issue.

Chapters 738 and 739 addressed the use of mandatory arbitration and nondisclosure clauses in employment contracts. The acts established that, except as prohibited by federal law, a provision in an employment contract, policy, or agreement that waives any substantive or procedural right or remedy to a claim that accrues in the future of sexual harassment or retaliation for reporting or asserting a right or remedy based on sexual harassment is null and void as being against the public policy of the State.

Chapter 525 made several changes related to anti-harassment procedures, policies, and training applicable to State government. Among other things, the Act required the Joint Committee on Legislative Ethics to provide a copy of any sexual harassment complaint made against a member of the General Assembly along with a notice of the committee's action on the complaint to the Human Resources Manager of the Department of Legislative Services.

Addressing Sexual Harassment in State Government

Addressing sexual harassment in the context of State government presents its own unique challenges and opportunities. In January 2018, the President of the Senate and the Speaker of the House created the Workplace Harassment Commission to review State workplace harassment policies (including sexual harassment policies), solicit input from policy experts, and make recommendations to the Legislative Policy Committee. At five meetings held between February and September, the commission considered many of the issues described above as well as strategies for strengthening training requirements in the Legislative Branch and data collection across State agencies, improving workplace culture, and achieving an appropriate balance between confidentiality and transparency during the investigation of workplace harassment complaints.

The commission released its final recommendations on November 15, 2018. They include:

- Improving employee awareness by posting signage around the legislative complex with information on where to report workplace harassment.
- Reviewing alcohol policies for the legislative complex and restricting the location of district offices in order to promote a more professional work environment.
- Conducting regular climate surveys of legislators and staff to assess the incidence, prevalence, and other characteristics of workplace harassment.
- Clarifying and promoting the rights of victims, including developing a list of potential victims' advocates that will be made available to all legislators and staff.
- Strengthening training requirements and considering opportunities for combined trainings across the legislative, executive, and judicial branches of government.
- Mandating the compilation and sharing of annual training compliance reports from the appropriate entities within each branch of State government.
- Combining and updating the anti-harassment policies of the General Assembly and the Department of Legislative Services (DLS) to clarify provisions related to confidentiality, strengthen prohibitions on retaliation, and address workplace bullying.
- Reviewing procedures for independent investigations of workplace harassment complaints and compiling a list of qualified independent investigators.
- Providing additional funding for enhanced training requirements and investigatory procedures to MCCR, DLS, and the State Ethics Commission.

Courts and Civil Proceedings

Abolishment of Contested Elections for Circuit Court Judges

Circuit court judges are the only judges in the State who are subject to contested elections to remain in office following appointment by the Governor. Numerous attempts have been made to abolish contested elections and substitute retention elections, which is the process used for appellate court judges.

Judicial Nominating Commissions

To assist in the selection process for judges at all levels, each Maryland governor since 1970 has issued an executive order creating judicial nominating commissions to recommend candidates for appointment. The nominating commissions review applications from interested attorneys, interview candidates, and consider recommendations from citizens and various bar associations. The commissions must submit to the Governor a list of candidates who are deemed to be legally and professionally most fully qualified for judicial office, and the Governor must make the appointment from the list.

The Judicial Selection and Retention Process

Most judges within the State are appointed and retained through a hybrid process. At all four court levels (the Court of Appeals, the Court of Special Appeals, circuit courts, and the District Court), the Governor appoints a qualified member of the Maryland Bar in the case of a vacancy or the creation of a new judgeship.

For both the Court of Appeals and the Court of Special Appeals, these appointments must be confirmed by the Maryland Senate, and the judge holds the office until the next general election following the expiration of 1 year from the date of the occurrence of the vacancy, at which the incumbent judge's name is placed on the ballot without opposition, and citizens vote for or against the retention of the appellate court judge for a 10-year term.

For the District Court, judges are appointed by the Governor and serve 10-year terms on confirmation by the Senate. At the end of the term, a District Court judge is required to be reappointed by the Governor, with the Senate's consent.

Circuit court judges are also appointed by the Governor, but, in contrast to the other judges in the State, circuit court judges must stand for election for a 15-year term at the first general election following the expiration of 1 year after the occurrence of a vacancy. Circuit court

judges may face a contested election in which any member of the Maryland Bar who meets the minimum constitutional requirements may challenge an incumbent judge by filing as a candidate. Thus, circuit court judges are the only judges in the State who may face a contested election. It is also only at the circuit court level that an individual may become a judge without a gubernatorial appointment and without being screened and recommended by a judicial nominating commission.

Recent Legislative Activity

Since 2002, numerous bills have proposed an amendment to the Maryland Constitution to abolish contested elections for circuit court judges. Most of the bills have proposed that vacancies in circuit court judgeships be filled in the same manner as vacancies on the Court of Appeals or the Court of Special Appeals, including gubernatorial appointment and Senate confirmation, followed by approval or rejection via retention election by the voters. Many of the bills have also proposed decreasing the term of office for circuit court judges from 15 to 10 years. The most recently introduced bills were House Bill 513 of 2018, which would have made the procedures to fill vacancies on the circuit court identical to that of the appellate courts, and House Bill 607 of 2018, which would have selected circuit court judges through gubernatorial appointment subject to confirmation by the Senate. Under House Bill 607, a circuit court judge who was confirmed by the Senate by a vote of less than 80% of all members would have been subject to approval or rejection via a contested election at the next general election following the expiration of 1 year from the date the judge took office, while those circuit court judges who were approved by more than 80% of all members of the Senate would serve a full 15-year term or until the age of 70, whichever came first. Both House Bill 513 and House Bill 607 received unfavorable reports from the House Judiciary Committee.

Other States

The process of judicial selection and retention in Maryland is similar to the methods that many other states use to fill judicial vacancies. According to the National Center for State Courts, judges at all levels are initially selected through either partisan or nonpartisan elections in 23 states, while 11 states other than Maryland hold elections only for some judges. Seventeen states enlist a judicial nominating commission for the selection of some or all judges. Regarding the retention or continuance of judges in office, at least some judges must stand for reelection in 39 states. Of these states, in 20 states, all judges are subject to reelection, while in 9 states only some judges face contested elections and the remainder stand in retention elections. Nine states exclusively use retention elections for all judges, while 9 states exclusively reappoint judges. Several states select and retain judges through legislative election and reelection and several states do not have a retention method because judges serve until the age of mandatory retirement or receive a lifetime tenure on selection.

Limitations on Judicial Elections

Opponents of judicial elections generally argue that an independent Judiciary is essential to maintaining public trust in the judicial system, and that such trust is eroded when judges who face contested elections are thrust into the role of politicians and must solicit campaign funds, which often come from the attorneys who appear before the court. Opponents also argue that attorneys who challenge the incumbent judges may not have been subjected to the same screening process as the sitting judges.

However, others contend that the issues with judicial elections are predominantly in states in which members of the appellate courts are subject to election or judges run as partisan candidates. Furthermore, the use of judicial nominating commissions also has been criticized in some states, as opponents argue that the power to select judges should not be transferred to commissions that are typically made up of political appointees. Proponents of judicial elections argue that, as with other elected offices, any individual who wishes to become a judge and otherwise meets basic criteria should have an opportunity to campaign and be elected by the voters.

The U.S. Supreme Court addressed one of the issues potentially arising from judicial elections. In *Williams-Yulee v. Florida Bar*, No. 13-1499, 575 U.S. (2015), a Florida attorney sued the Florida State Bar Association when she was reprimanded and fined for signing her name to a fundraising letter in violation of a rule prohibiting judicial candidates from personally soliciting contributions. The Florida Supreme Court upheld the recommended sanctions, in part noting that the personal solicitation of campaign funds raises an appearance of impropriety and may result in the public questioning the judge's impartiality. In an opinion authored by Chief Justice Roberts, the U.S. Supreme Court affirmed the ruling and stated that a state's compelling interest in maintaining public trust in judicial integrity withstood the strict scrutiny required of any measure limiting free speech protected under the First Amendment. Accordingly, the U.S. Supreme Court held that states may prohibit judicial candidates from personally soliciting funds for their election campaigns.

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 may jeopardize funding for the Chesapeake Bay Program and enforcement by the U.S. Environmental Protection Agency. In order to meet the requirements of the Chesapeake Bay Total Maximum Daily Load (TMDL), the State will have to accelerate the pace of nitrogen reductions. Further, nutrient and sediment loads from the Conowingo Dam and the implementation of the State's nutrient trading policy may affect Maryland's progress in achieving its goals under the TMDL.

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 meet water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by calendar 2025. Measures to meet at least a 60% reduction of pollution were required to be in place by calendar 2017.

Phase III Watershed Implementation Plan

As part of the 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. Each bay jurisdiction submitted a Phase I WIP in calendar 2010 that details how the jurisdiction plans to achieve its pollution reduction goals under the TMDL and a Phase II WIP in calendar 2012 that establishes more detailed strategies to achieve the TMDL on a geographically smaller scale. A Phase III WIP must be submitted to EPA in draft form by April 2019 and in final form by August 2019 to ensure that all practices are in place by calendar 2025.

2017 Midpoint Assessment

The TMDL required an assessment to review progress toward meeting the 2017 goal of having practices in place to achieve 60% of the necessary nutrient and sediment load reductions

compared to 2009 levels. This 2017 midpoint assessment found that the bay jurisdictions exceeded the 60% goal for reducing phosphorus and sediment but did not achieve the goal for reducing nitrogen. Going forward, an additional 48.4 million pounds of nitrogen needs to be reduced by the bay jurisdictions by 2025 in order to reach the TMDL. This means that more than twice as much nitrogen needs to be reduced in the next eight years as was reduced in the previous eight years.

Pennsylvania and Maryland bear the responsibility for the majority of the nitrogen reductions in order to meet the TMDL. Pennsylvania is responsible for approximately 70.6% of the remaining nitrogen reductions, which will require reductions of 34.1 million pounds, or 6.3 times its reductions between 2009 and 2017; and Maryland is responsible for 17.4% of the remaining nitrogen reductions, which will require 2.5 times its reductions between 2009 and 2017.

Chesapeake Bay Program Funding and Enforcement Authority

The Chesapeake Bay Program directs Chesapeake Bay restoration and operates as a partnership between federal and state agencies, local governments, nonprofit organizations, and academic institutions. President Donald J. Trump's federal fiscal 2019 budget request reduced funding for the Chesapeake Bay Program by 90% to \$7.3 million, which is a significant reduction in funding available for bay water quality monitoring and coordination activities between the bay jurisdictions. On July 19, 2018, the U. S. House of Representatives passed an appropriations bill to fully fund the Chesapeake Bay Program but also 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 the TMDL. On August 1, 2018, the Senate adopted a spending package that fully funds the Chesapeake Bay Program without restriction. Although these two spending bills were never reconciled, on September 28, 2018, Congress passed the federal fiscal 2019 budget continuing resolution, which maintains funding for the Chesapeake Bay Program at the federal fiscal 2018 level through December 7, 2018.

Conowingo Dam

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 Conowingo Dam, owned by Exelon Corporation, has reached an end state in terms of sediment storage capacity. The Conowingo Dam officially has its own target of 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus under a separate WIP to be managed by a third party contracted for this purpose. Decisions are still being made about how the nitrogen, phosphorus, and sediment loads from the Conowingo Dam will be distributed between bay jurisdictions and when the reductions need to occur. Agreement has been reached on the concept of pooling resources in areas determined to have the most impact on the Chesapeake Bay as determined by a financial strategy to be developed by the third-party awardee. The financial strategy will be crucial because bay jurisdictions, particularly

Pennsylvania, are already struggling to meet nitrogen reduction goals and the reductions credited to the Conowingo Dam WIP will not be available to Pennsylvania for meeting its own WIP. The final Conowingo Dam WIP is planned to be posted on the Chesapeake Bay Program's website in June 2019.

In addition, the Conowingo 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. FERC cannot act on an application for licensing unless a Clean Water Act – Section 401 water quality certification – is issued by the Maryland Department of the Environment (MDE). MDE issued the water quality certification with special conditions on April 27, 2018, which requires Exelon annually to reduce 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus. Exelon has filed an administrative appeal with MDE and lawsuits in federal and State court alleging that the water quality certification imposes on it the sole responsibility to remove from the Susquehanna River pollutants that Exelon did not introduce into the river but that flow through the Conowingo Dam. On October 11, 2018, a Baltimore circuit court judge rejected one of Exelon's lawsuits on the basis that Exelon had not yet exhausted its options under the State administrative appeals process. The other actions are still pending.

Nutrient Trading and Aligning for Growth

Maryland's Nutrient Trading Program is a public marketplace for the buying and selling of nutrient (nitrogen and phosphorous) credits. The purpose of the program ranges from being able to offset new or increased discharges to establishing economic incentives for reductions from all sources within a watershed and achieving greater environmental benefits than through existing regulatory programs. 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. In terms of meeting the TMDL, the State is still working on its Aligning for Growth policy. One of the major challenges has been addressing stormwater and septic loads from new development. 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 regulations went into effect on July 16, 2018. The success of nutrient trading will be determined by transparency and accountability of the trades and both the supply and demand for the trades.

Policy Implications

A number of challenges lie ahead for Maryland and the other bay jurisdictions including the need to accelerate the reduction of nitrogen loads. Congress appears willing to fund the Chesapeake Bay Program, but they have also made attempts to limit EPA's enforcement authority over the program. While Maryland appears to have a tentative plan in place for the Conowingo Dam nutrient load reductions, the extent to which Exelon Corporation will be required to reduce

the additional loads through the Conowingo Dam WIP is still unknown. Nutrient trading may provide short-term relief for achieving stormwater permit requirements but may need to be addressed further in light of population growth that may be served by the wastewater sector.

Environment and Natural Resources

Oyster Restoration

The oyster management and restoration plan developed by the Department of Natural Resources in 2009 continues to guide oyster harvesting and restoration activities in Maryland. Concerns about the implementation of sanctuaries and tributary restoration projects have led to further study on oyster management and the commitment of additional resources for oyster propagation and restoration.

Background

Large connected oyster populations provide a number of environmental benefits to the Chesapeake Bay ecosystem. These benefits include the establishment of reef habitat for finfish, shellfish, blue crabs, and other marine life, the improvement of water quality through shellfish filter feeding, reduced sedimentation, carbon storage, and increased shellfish propagation. In response to the oyster population in the bay languishing at 1% of historic populations and decreased suitable oyster habitat, the Department of Natural Resources (DNR) unveiled a new management and restoration plan for oysters and the State's oyster industry in December 2009. The plan increased the State's network of oyster sanctuaries from 9% to 24% of the bay's remaining quality oyster habitat, established oyster aquaculture leasing opportunities and related financial assistance programs, and maintained 76% of the bay's remaining quality oyster habitat for commercial harvest. DNR's oyster restoration activities also included the construction of artificial oyster reefs and increased production of juvenile oysters. DNR committed to undertake a review of the plan every five years.

Recent Management Actions

DNR Five-year Review of Oyster Management Plan

In July 2016, DNR completed the first five-year review of the effectiveness of the locations of oyster sanctuaries, public shellfish fishery areas (PSFAs), and oyster aquaculture areas. Oyster sanctuaries are areas where the wild harvest of oysters is prohibited, PSFAs are areas where shellfish may be harvested for commercial purposes, and oyster aquaculture is the commercial rearing of oysters for sale, which often occurs in leased areas. An oyster sanctuary is generally established or maintained in concert with restoration projects to enhance native oyster populations. The review found that many sanctuaries show progress in oyster restoration, including increased biomass and reproductive capacity, while other sanctuaries show little or no progress. In the review, DNR considered adjustments to the boundaries of the current management areas. DNR

placed the sanctuaries and PSFAs into “tiers,” reflecting the oyster productivity of the areas and intending to allow for a fair distribution of the most productive oyster areas by allowing for trading of sanctuaries and PSFAs within equivalent tiers.

Tributary-scale Oyster Restoration Sanctuary Projects

The 2014 Chesapeake Bay Agreement, which establishes goals and outcomes for the restoration of the entire Chesapeake Bay, its tributaries, and the lands that surround them, includes a goal of restoring large connected native oyster habitat and populations in sanctuaries in 10 bay tributaries (five sanctuaries each in Maryland and Virginia) by 2025. The five Maryland sanctuaries will be located in Harris Creek, the Tred Avon River, the Little Choptank River, the Upper St. Mary’s River, and the Manokin River. The reef construction and oyster seeding for the 351-acre Harris Creek Sanctuary was completed in 2015 and the sanctuary is currently undergoing monitoring and evaluation. As of July 2018, reef construction and oyster seeding was completed on 81 of 147 planned acres in the Tred Avon River Sanctuary and 284 of 440 planned acres in the Little Choptank River Sanctuary. For the Upper St. Mary’s River Sanctuary and the Manokin River Sanctuary, tributary restoration plans are being prepared.

Implementation Concerns

Over recent years, various stakeholders have raised concerns about oyster sanctuaries and the implementation of tributary restoration projects. Among the concerns are that (1) too much of the quality oyster habitat is being used for sanctuaries and aquaculture; (2) juvenile oysters are not migrating out of the sanctuaries to the rest of the bay in amounts that were anticipated; (3) new oyster reefs, especially reefs made using materials other than native shell, constitute a boating hazard and a hindrance to other commercial fisheries; (4) rotational harvests in sanctuaries, which could lead to healthier bars by clearing silt and sediment, reducing disease, and aiding the migration of juvenile oysters (as well as supporting the commercial oyster fishery), are prohibited; and (5) the distribution of shell and juvenile oysters for planting among the PSFAs, sanctuaries, and aquaculture is not equitable.

Recent Developments

Subsequent Legislation

Chapter 703 of 2016 required DNR, in consultation with the University of Maryland Center for Environmental Science (UMCES), to conduct an oyster stock assessment under specified parameters, subject to peer review. Based on this assessment, DNR, through a public process in collaboration with the oyster industry, conservation organizations, and other concerned stakeholders, must identify management strategies to address the maintenance of a sustainable oyster population and fishery. DNR is required to complete a final report by December 1, 2018,

on the study and any proposed or implemented oyster management strategies. In addition, Chapter 27 of 2017 prohibited DNR from taking any action to reduce or alter the boundaries of oyster sanctuaries established under the 2009 plan until it has completed the final report.

OysterFutures

In May 2018, the OysterFutures research pilot program, an oyster management stakeholder group supported by the National Science Foundation and UMCES, issued a report to DNR that included recommendations on oyster management and restoration in the Choptank and Little Choptank rivers. In particular, the program evaluated opening portions of sanctuaries, where no restoration activities have occurred or are planned, to hand tonging on a rotational basis (with oyster planting during closed seasons) and specifically recommended establishing a rotational harvest in the Middle Choptank Sanctuary. The recommendations also addressed enforcement, the establishment of a limited entry fishery, oyster shell resources for planting, areas for planting juvenile oysters, and oyster related fees and taxes.

Additional State Funding

In July 2018, DNR partnered with the Maryland Department of Transportation on a four-year agreement to provide \$2 million annually for oyster propagation and replenishment activities, including dedicated funding for equipment, labor, material, supervision, and support. At least \$925,000 annually will support the PSFAs, with DNR coordinating with watermen on projects including the establishment of oyster seed areas, monitoring, sampling, seed and shell planting, surveying, and transplanting.

Policy Implications

Since the development of DNR's oyster management and restoration plan, the General Assembly has continued to review the progress of the plan, as well as regulatory and policy changes made to the plan. The General Assembly will continue its oversight of oyster management and restoration during the 2019 session, especially in light of the 2018 DNR report on oyster management strategies, the OysterFutures recommendations, and the additional State funding for oyster propagation and restoration.

Environment and Natural Resources

Environmental Enforcement

A May 2018 audit report conducted by the Office of Legislative Audits and recent data on the number of enforcement actions taken by the Maryland Department of the Environment (MDE) have raised concerns about the level of enforcement conducted. While it is difficult to draw conclusions from MDE's enforcement and compliance data, MDE's efforts in this area warrant continued scrutiny.

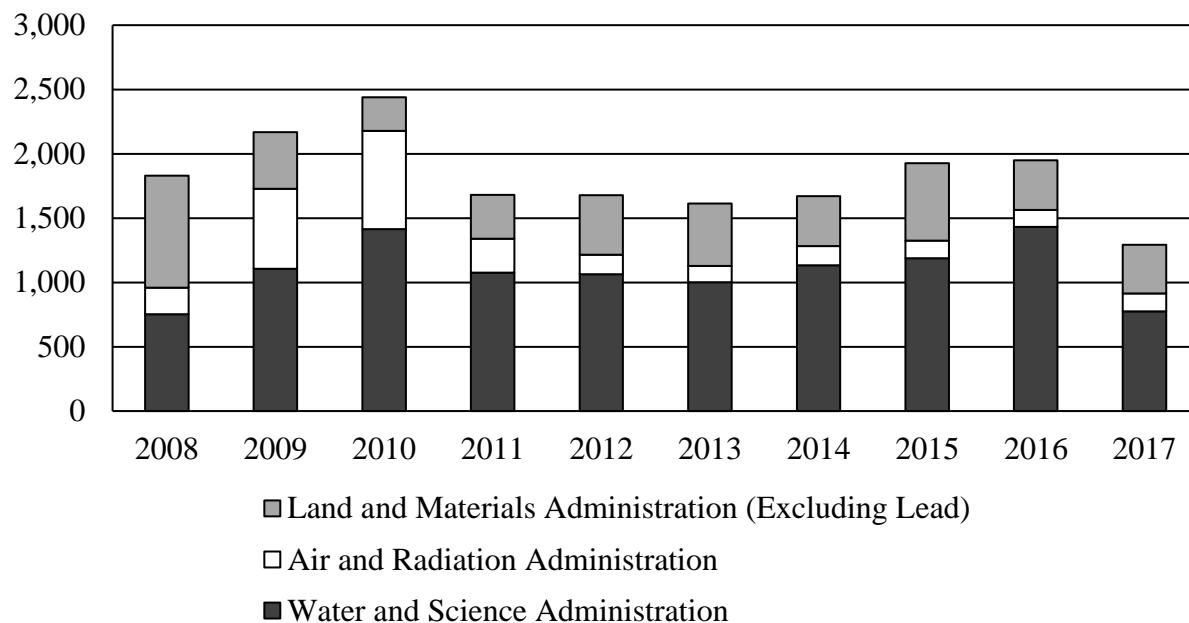
Recent Audit Report Raises Concern about Enforcement

A May 2018 audit report conducted by the Office of Legislative Audits (OLA) raised issues relating to enforcement within certain Maryland Department of the Environment (MDE) programs. First, with respect to MDE's Lead Poisoning Prevention Program, OLA found that MDE did not establish a sufficient process to ensure that owners of affected lead paint properties had required inspection certificates. Second, with respect to MDE's Erosion and Sediment Control Program, OLA found that inspections of certain construction sites were not performed as required by State regulations and that MDE lacked a formal plan for inspecting all sites. MDE's response to the audit findings can be found in the OLA [audit report](#).

Enforcement and Compliance Data

Based on information provided in MDE's most recent *Annual Enforcement and Compliance Report*, MDE took 8,249 enforcement actions in fiscal 2017, a 44% decrease from the 14,829 enforcement actions that it took in fiscal 2016 but significantly higher than the 10-year average of 4,910. This is largely due to a recent increase in enforcement activity in the Lead Poisoning Prevention Program. Excluding lead-related actions, the number of enforcement actions taken by MDE in fiscal 2018 was the lowest in a decade, as shown in **Exhibit 1**.

Exhibit 1
MDE Enforcement Actions by Administration (Excluding Lead)
Fiscal 2008-2017



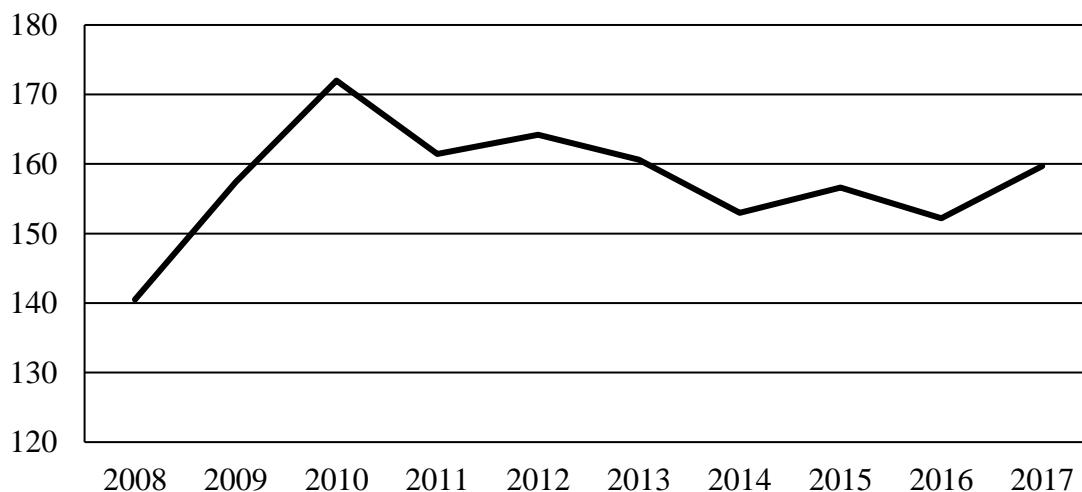
MDE: Maryland Department of the Environment

Source: Department of Legislative Services

Of particular concern is the low number of enforcement actions taken by the Water and Science Administration in fiscal 2017; while the number of enforcement actions taken by this administration increased from fiscal 2013 to 2016, the number of actions taken in fiscal 2017 decreased by 46% from the prior year and was the lowest since fiscal 2008. In the Air and Radiation Administration, the number of enforcement actions increased from fiscal 2008 through 2010 but has since decreased substantially. In the Land and Materials Administration, while the number of enforcement actions taken (excluding lead) has varied from year to year, the number of actions taken in fiscal 2017 was lower than the 10-year average and the lowest since fiscal 2011.

A recent analysis of staffing shortages conducted by the Department of Legislative Services found that MDE was one of several agencies that was chronically understaffed. **Exhibit 2** shows the number of inspectors employed by MDE from fiscal 2008 through 2017. As shown in the exhibit, the number of inspectors peaked in fiscal 2010, generally declined through 2016, and then increased in fiscal 2017. Despite the increase in fiscal 2017, however, there was a decrease in the number of enforcement actions taken in that year, as noted above.

Exhibit 2
Inspectors in the Maryland Department of the Environment
Fiscal 2008-2017



Source: Department of Legislative Services

MDE indicates that the recent decline in the number of enforcement actions that it has taken reflects an increased effort to work with violators and prevent minor infractions from becoming more serious. Also, while the number of enforcement actions has declined, the number of inspections, audits, and spot checks that MDE has conducted has increased in certain programs. For example, in the Water and Science Administration, the number of inspections, audits, and spot checks increased by 92% from fiscal 2016 to 2017; however, the number of sites inspected by that administration in fiscal 2017 was about 36% lower than the number of sites inspected in fiscal 2008.

Implications

While it is difficult to draw conclusions from MDE's enforcement and compliance data, MDE's efforts in this area warrant continued scrutiny. The legislature should continue to monitor the level of MDE's enforcement staff, the number of inspections conducted, the number of sites inspected, and the number of enforcement actions taken by MDE. Without proper enforcement, efforts to meet the State's environmental goals are at risk. Particular emphasis should be placed on monitoring enforcement activity within the Water and Science Administration, given the tremendous resources and efforts being taken to restore the health of the Chesapeake Bay.

State Government

Cybersecurity of Election Systems

Cybersecurity of election systems continues to be an issue. Federal officials, as well as cybersecurity experts and advocacy groups, have made numerous recommendations to address the issue. In Maryland, various steps have and will be taken to continue to strengthen the security of the State's elections system, including the enactment of legislation to address post-election audits and other security concerns, an investigation into Russian ownership of an elections contractor, and the use of federal funds to identify and mitigate vulnerabilities and conduct cybersecurity training.

Introduction

The cybersecurity of state election systems continues to be a major concern of state and federal officials following the Russian government's attacks on state election systems during the 2016 election. While there have been no new public reports of major intrusions or attempted intrusions into state election systems since then, federal officials and cybersecurity experts warn that Russia and potentially other nations and actors remain a serious threat to the integrity of the election system in the United States and are likely to target future elections. Federal officials and cybersecurity experts are urging states to adopt a variety of measures to safeguard their systems, most prominently paper ballots and hand count audits of paper ballots to ensure that the electronically tabulated vote totals are accurate. Congress provided \$380 million in funding for states to improve election cybersecurity.

Maryland's online voter registration system was unsuccessfully probed by the Russians in 2016. In the 2018 session, the General Assembly passed legislation to strengthen election cybersecurity, including thorough hand count audits of paper ballots. In July 2018, a Russian investor with ties to Russian President Vladimir Putin was revealed to have a significant ownership interest in the contractor that manages state election systems, but there was no indication that the integrity of these systems had been compromised. The State Board of Elections (SBE) also made plans to spend Maryland's \$7.1 million share of federal election security funding on such activities as upgrading equipment and software and increasing cybersecurity training.

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. This campaign included spreading misinformation on social media, releasing damaging information obtained by hacking U.S. candidates and political parties, and attempting to penetrate state election systems. The

U.S. Department of Homeland Security (DHS) 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 may have compromised election systems in several other states. While no new efforts to tamper with state election systems were publicly reported ahead of the 2018 elections, Russia has continued cyber activities intended to disrupt the political process. Russians attempted to hack into the computer systems of three congressional campaigns. Russian hackers also created several fake websites designed to look like the websites of legitimate U.S. political organizations with the apparent purpose of downloading malware onto the computers of people who were tricked into visiting the sites. Facebook reported in July 2018 that it had shut down a coordinated effort, linked to Russia, to spread political disinformation on its platform through 32 fake accounts.

National Efforts to Protect Election Systems

DHS designated state election systems as “critical infrastructure” in January 2017, which allows for improved communication between state and federal officials and expedites federal assistance to states that want help securing their systems. DHS also dispatched cyber experts to help states secure their election systems and deployed network security sensors on most state election infrastructure. The Secretary of Homeland Security, Kirstjen M. Nielsen, has made election security one of her highest priorities and called on all states to implement voting systems with a “physical paper trail and effective audits so that Americans can be confident that – no matter what – their vote is counted and counted correctly.”

Congress has also shown concern for election security. The Consolidated Appropriation Act of 2018 provided \$380 million in grants to states to bolster election security. Legislation to improve election security is pending in both houses of Congress but has not advanced out of committee to date. The Senate Intelligence Committee issued a report recommending various election security measures, including paper ballots, audits, and banning voting machines with WiFi capability. A House Intelligence Committee report also recommended paper records of votes, among other measures such as better communication between federal and state officials regarding security threats. An Election Security Task Force established by U.S. House Democrats issued a report that recommended increased federal funding for election security, paper ballots, and risk-limiting audits. Risk-limiting audits involve hand counting a statistically determined sample of paper ballots to confirm whether the electronically tabulated election results are correct.

Cybersecurity experts and advocacy groups have similarly made recommendations for improving the cybersecurity of state election systems. The National Academies of Sciences, Engineering, and Medicine issued a comprehensive report on election security that called for paper ballots to be implemented nationwide no later than 2020, a ban on the transmission of voted ballots over the Internet or any network connected to the Internet, risk-limiting audits, and backups for electronic poll books, among numerous other measures. The Brennan Center for Justice recommends limiting or eliminating the connectivity of electronic poll books to wireless networks

whenever possible and conducting risk-limiting audits. The Center for American Progress issued a report that graded all 50 states on their election security practices. The report gave Maryland a “B” grade, crediting the state for using paper ballots, prohibiting transmission of voted ballots over the Internet, and good cybersecurity practices for its voter registration system, among other things. However, the report faulted Maryland for conducting post-election audits by electronic retabulation of ballots rather than manual hand count of ballots. The report recommended that Maryland conduct risk-limiting audits and make the audit results binding on the election outcome so that the preliminary results of an election can be reversed if an error is detected.

Developments in Maryland

Russian hackers tried to penetrate Maryland’s online voter registration system in August 2016, but the system was not breached. Following the attack, SBE requested cybersecurity assistance from DHS and continues to collaborate with federal officials to protect the State’s election systems. SBE takes various steps to secure its systems from cyberattacks, including requiring two levels of user authentication to access the voter registration database and not connecting the voting system to the Internet.

In 2018, legislation was enacted to strengthen post-election audits by requiring both an electronic audit of all ballots after each election and a hand count audit of 2% of precinct votes and 1% of early, absentee, and provisional votes after each general election. In addition, other enacted legislation (1) required that the General Assembly and other State officials be notified of election security incidents; (2) increased authentication requirements for individuals requesting a blank absentee ballot through the Internet; and (3) required backup copies of the election register in polling places in case the electronic poll books do not function properly in an election.

The Federal Bureau of Investigation informed SBE in July 2018 that a Russian investor close to Russian President Putin has an ownership stake in the contractor that owns the servers for the state’s voter registration, candidacy, election management, online ballot delivery, and election night results’ systems. The Maryland Attorney General is investigating whether the State can withdraw from the contract with the vendor, ByteGrid. DHS provided SBE with technical assistance to evaluate the security of its networks. SBE conducted internal audits and reviewed its practices to ensure the integrity of the systems managed by ByteGrid. Maryland’s U.S. senators requested that the federal Committee on Foreign Investment in the United States review the transaction by which the Russian investor obtained a stake in ByteGrid. The committee has the power to reverse a foreign investment that threatens national security. There is no indication that any of the systems operated by ByteGrid have been compromised.

SBE plans to spend Maryland’s allocation of \$7.1 million in federal election security funds under the Consolidated Appropriation Act of 2018 primarily on identifying and mitigating vulnerabilities and cybersecurity training. Specific activities include upgrading equipment and

software, hiring an information security expert, implementing two-factor authentication on workstations, and conducting tabletop exercises.

State Government

Preparation of Primary Election Ballots

Changes to federal and State election laws have had a significant impact on the ability of the State Board of Elections to timely prepare the primary election ballot. The changes were highlighted during the 2018 primary election due to the disqualification or death of candidates and the ensuing court cases regarding attempts to remove from or change candidates' names on the ballot.

Introduction

Two important changes to federal and State election laws since the enactment of the comprehensive revision of the election law in 1998 have had a significant impact on the ability of the State Board of Elections (SBE) to timely prepare the primary election ballot. The changes include a federal deadline for transmission of overseas absentee ballots and the State's change from touchscreen voting machines to paper ballots. These changes were highlighted during the 2018 primary election as SBE received several requests to remove from or change candidates' names on the ballot following the disqualification or death of candidates after the statutory deadlines for changes had passed. When the requests were denied, parties filed suit seeking to require SBE to make the desired changes, which were ultimately denied.

Federal and State Election Laws Impacting Primary Ballot Preparation Timeline

Federal Deadline for Transmission of Overseas Absentee Ballots

The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) established protections for uniformed service members and any U.S. citizen residing outside the country to register and vote absentee in elections for federal offices. The provisions of UOCAVA were expanded in 2009 by the passage of the Military and Overseas Voter Empowerment Act (MOVE Act). In relevant part, the MOVE Act requires states to transmit validly requested absentee ballots to UOCAVA voters *no later than 45 days before a federal election*. Unless granted a waiver by the Department of Defense, this is a hard deadline by which ballots must be prepared before the primary election.

State's Change to Paper Ballots

Chapter 548 of 2007 required SBE to certify a voter-verifiable paper record voting system to replace the touchscreen voting system. Chapter 548 was completely implemented beginning with the 2016 election. The change, while providing additional security, has added time, fiscal, and resource complications to the preparation of the primary ballot. There are different technical, design, formatting, and printing specifications for each type of ballot, including paper, absentee, audio, and specimen. A single change to one ballot style has a ripple effect across each part of the ballot preparation process. In order to be read correctly by the voting system, each ballot to be cast at a polling place must be formatted, aligned, and printed precisely on special paper. The ballot paper is required to meet voting system technical specifications and can only be purchased from a small number of paper mills in the country. SBE reports that it takes approximately three weeks to print the required number of ballots and related materials, and almost 11,000,000 total pages were printed during the 2018 primary election.

Court Challenges

Disqualification of Candidate

Before the primary election candidate filing deadline, Senator Nathaniel Oaks timely filed a certificate of candidacy for his State Senate seat and for a position on his party's central committee. After the deadlines for candidacy withdrawal and required name removal from the ballot had passed, Senator Oaks pled guilty to two felonies in federal court and resigned his Senate seat. Since service of a prison sentence for those offenses and not the guilty plea would disqualify him from holding office, he remained a qualified candidate, and SBE included his name on the certified primary election ballot in accordance with State law.

As a result, three individuals (including two opponents for the central committee position) filed suit requesting that Mr. Oaks name be removed from the ballot. The circuit court initially declined to grant the request on the basis that Mr. Oaks' potential disqualification was legally speculative and not yet certain. However, the court later granted the request and ordered SBE to remove his name from the ballot after Mr. Oaks cancelled his voter registration, which disqualified him from State office. SBE appealed to the Court of Appeals.

Death of Candidate for Governor

Baltimore County Executive Kevin Kamenetz and former Montgomery County Council member Valerie Ervin timely filed a certificate of candidacy for the primary election for a Governor and Lieutenant Governor ticket. SBE included their names on the certified primary election ballot in accordance with the requirements of State law. Unfortunately, two days before the deadline to distribute absentee ballots to military and overseas voters, Mr. Kamenetz died unexpectedly.

As allowed by law, Ms. Ervin timely designated herself as the successor candidate for Governor and designated a successor candidate for Lieutenant Governor. Ms. Ervin requested that SBE alter the ballot to reflect those changes. SBE rejected the request reasoning that (1) there was insufficient time to reprint ballots; (2) reprinting ballots would be cost prohibitive; and (3) military and overseas absentee ballots had already been mailed. Ms. Ervin filed suit to force reprinting of the Democratic primary ballots.

The Court Decisions

In the Oaks case, *Lamone v. Lewin*, the Court of Appeals issued a *per curiam* order vacating the order to reprint the primary ballots and remanded the case to the circuit court with direction to dismiss the complaint. The Court of Appeals found that the State has an important regulatory interest in establishing reasonable nondiscriminatory rules to conduct orderly, efficient, and fair elections. The General Assembly has charged SBE under § 2-102(a) of the Election Law Article with the duty to “manage and supervise elections in the State and ensure compliance with the requirements of the [Election Law Article] and any applicable federal law...” These rules must provide sufficient time to design, format, certify, print, and deliver all of the ballots used during an election (paper, absentee, audio, and specimen) and test and secure voting systems equipment. In order to accomplish these tasks, there must be finality to the contents of the ballot. The relevant deadlines are set forth in **Exhibit 1**.

Exhibit 1 Primary Election Deadlines in Gubernatorial Election Year

<u>Deadline</u>	<u>Timing</u>	<u>Citation</u>
Candidate filing	Last Tuesday in February before primary election	EL, § 5-303(a)(1)
Candidacy withdrawal	2 days after filing deadline	EL, § 5-502(a)
Death or disqualification of candidate; required removal of candidate name from ballot	10 days after filing deadline	EL, § 5-504(b)
Certification of ballots	55 days before primary election	EL, § 9-207(a)(1)
Public display of ballots on website	Beginning within 24 hours after certification of ballot	EL, § 9-207(c)
Delivery of military and overseas voter absentee ballots	At least 45 days before primary election (unless federal waiver is granted)	52 U.S.C. § 20302(a)(8)
Early voting	Begins second Thursday before a primary election (10 days)	EL, § 10-301.1(d)(1)
Primary election date	Last Tuesday in June	EL, § 8-201

Source: Department of Legislative Services

Additionally, the court found that the “plain language of the statute, read in context, and confirmed by its legislative history” shows that the provisions in the Election Law Article concerning ballot content are mandatory and that SBE has no discretion to deviate from those directives. Further, the directives were constitutional as the State has an important regulatory interest in conducting efficient and fair elections, and the relevant provisions were applied to Mr. Oaks’ name on the ballot in a reasonable and nondiscriminatory manner.

In light of this decision and the fact that similar arguments were raised in *Ervin v. Lamone*, the circuit court denied Ms. Ervin’s request for injunctive relief.

Conclusion

The two recent changes to federal and State law – the military and overseas voter absentee ballot deadline of 45 days before the primary election and the change to paper ballots – have had a significant impact on the State’s primary election ballot preparation timeline. These changes have increased the cost and complexity of ballot preparation while decreasing the amount of time available to complete the required tasks. A review and update of the existing statutory timeline for primary ballot preparation may occur during the 2019 session to determine how SBE can continue to fulfill its duty to conduct orderly, efficient, and fair elections in Maryland in light of these changes and the issues raised in the court cases discussed above.

State Government

Redistricting of the Sixth Congressional District

A three-judge panel of the U.S. District Court for the District of Maryland in *Benisek v. Lamone* ruled that the State's 2011 congressional redistricting plan violates the First Amendment to the U.S. Constitution. As a result, the court (1) entered a judgment permanently enjoining the State from using the plan after the 2018 congressional election and (2) ordered the State to adopt and submit to the court a new plan that redraws the Congressional Sixth District's lines in a manner that renders them constitutional. The Office of the Attorney General has appealed the court decision to the U.S. Supreme Court.

Overview

On November 7, 2018, a three-judge panel of the U.S. District Court for the District of Maryland in *Benisek v. Lamone* ruled that the State's 2011 congressional redistricting plan violates the First Amendment to the U.S. Constitution by burdening both the plaintiffs' representational rights and associational rights based on their party affiliation and voting history. As a result, the court (1) entered a judgment permanently enjoining the State from using the plan after the 2018 congressional election and (2) ordered the State to adopt and submit to the court a new plan that redraws the Congressional Sixth District's lines in a manner that renders them constitutional.

Court's Order

In conjunction with issuing its opinion, the court issued an order prohibiting the State from using the 2011 redistricting plan after the 2018 election and requiring:

- the submission by the State before March 27, 2019, at 5:00 p.m. of a new plan that redraws the Sixth Congressional District;
- the application of traditional criteria for redistricting (*e.g.*, geographic contiguity, compactness, regard for natural boundaries and boundaries of political subdivisions, regard for geographic and other communities of interest) when drawing the new plan; and
- the drawing of the new plan without considering how citizens are registered to vote or have voted in the past or to what political party they belong.

Additionally, the court urges the use of a neutral commission in making the plan. The State must get the court's approval before implementing the new plan. Once the new plan is submitted, the plaintiffs have 30 days to object. The court can then accept the plan, modify it based on the plaintiff's objections, or reject it.

If the court rejects the plan, a redistricting commission (made up of a specified U.S. magistrate, one individual designated by the State who is not a State or federal employee, and one individual designated by the plaintiffs who is not a State or federal employee) will create one. The commission would be required to retain a professional map-drawer to assist it, and the State would be required to pay for all costs. Each party must name the designees by January 7, 2019, or the court will make its own appointment. If the commission is tasked with creating the plan, the plan must be submitted to the court by July 8, 2019.

On November 15, 2018, the Office of the Attorney General informed the District Court that it is appealing the decision to the U.S. Supreme Court and asked the District Court to stay its decision while the appeal is pending.

Local Government

State Aid to Local Governments

State aid to local governments is projected to total \$8.1 billion in fiscal 2020, representing a \$422.3 million, or 5.5%, increase over the prior year. As in prior fiscal years, most of the State aid in fiscal 2020 goes to public schools.

Local governments are projected to receive \$8.1 billion in State aid in fiscal 2020, representing a \$422.3 million, or 5.5%, increase over the prior fiscal year. Most of the State aid in fiscal 2020, as in prior fiscal years, is targeted to public schools, while funding for counties and municipalities will account for 8.5% of total State aid. Public schools will receive \$6.9 billion in fiscal 2020, 85.5% of total State aid. Counties and municipalities will receive \$690.2 million, community colleges will receive \$341.2 million, libraries will receive \$83.6 million, and local health departments will receive \$52.8 million. In terms of year-over-year funding enhancements, State aid for public schools will increase by \$371.7 million (5.7%), library aid will increase by \$2.7 million (3.3%), community college aid will increase by \$18.8 million (5.8%), and local health department grants will increase by \$1.4 million (2.8%). Also, county and municipal governments will realize an estimated \$27.7 million increase in State aid, or 4.2% over fiscal 2019. **Exhibit 1** shows the change in State aid by governmental entity for fiscal 2020. **Exhibit 2** shows the change in State aid by major programs.

Exhibit 1
State Aid to Local Governments
Fiscal 2019-2020
(\$ in Millions)

<u>Governmental Entity</u>	<u>2019</u>	<u>2020</u>	<u>\$ Change</u>	<u>% Change</u>
Public Schools	\$6,536.5	\$6,908.2	\$371.7	5.7%
County/Municipal	662.5	690.2	27.7	4.2%
Community Colleges	322.4	341.2	18.8	5.8%
Libraries	81.0	83.6	2.7	3.3%
Local Health Departments	51.4	52.8	1.4	2.8%
Total	\$7,653.7	\$8,076.0	\$422.3	5.5%

Source: Department of Legislative Services

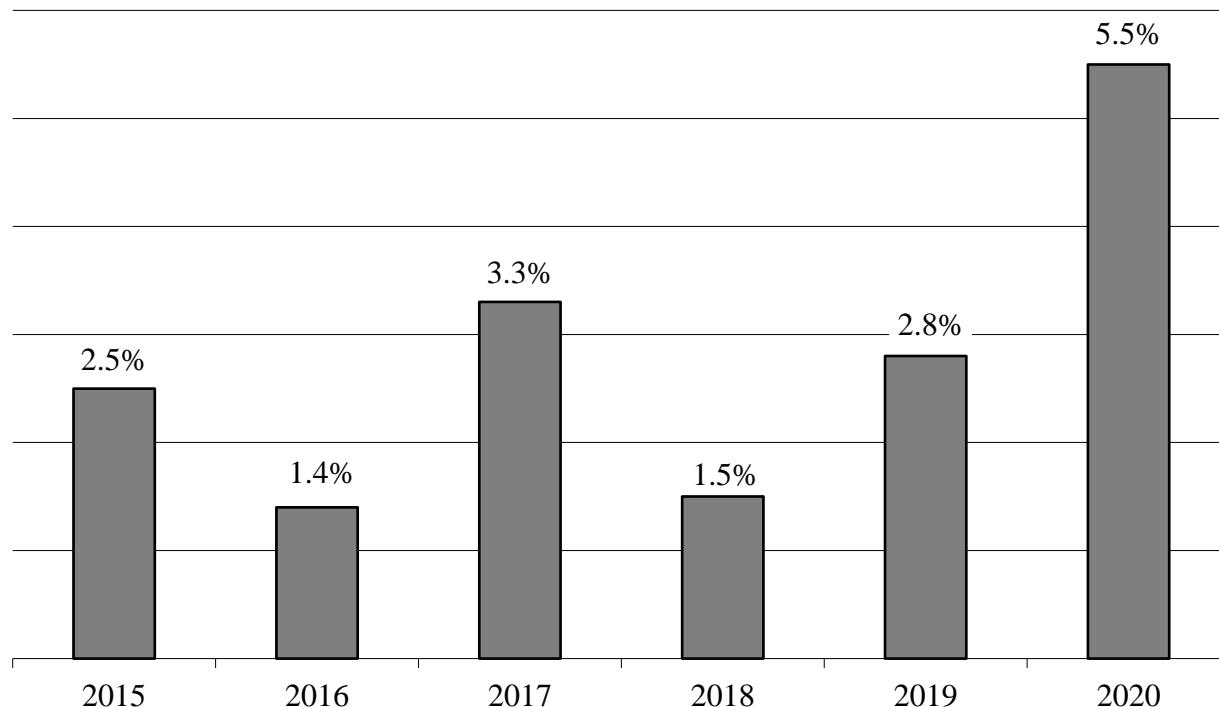
Exhibit 2
State Aid by Major Programs
Fiscal 2018-2020
State Funds
(*\$* in Millions)

	<u>2018</u>	<u>2019</u>	<u>Baseline 2020</u>	<u>\$ Change 2019-2020</u>	<u>% Change 2019-2020</u>
Public Schools					
Foundation Program	\$3,005.3	\$3,056.2	\$3,154.9	\$98.7	3.2%
Supplemental Grant	46.6	46.6	46.6	0.0	0.0%
Geographic Cost Index	139.1	141.6	146.3	4.7	3.3%
Net Taxable Income Education Grants	49.2	62.5	62.7	0.2	0.3%
Tax Increment Financing Education Grants	0.4	0.5	0.7	0.1	24.8%
Declining Enrollment Grants	17.2	18.7	10.6	-8.1	-43.3%
Foundation – Special Grants	0.0	13.0	125.0	112.0	864.8%
Compensatory Aid	1,305.5	1,308.3	1,375.5	67.2	5.1%
Student Transportation	276.3	282.6	302.8	20.2	7.2%
Special Education – Formula Aid	284.9	290.8	300.0	9.2	3.2%
Special Education – Nonpublic Placements	123.6	123.5	126.0	2.5	2.0%
Limited English Proficiency Grants	248.7	288.0	315.7	27.7	9.6%
Guaranteed Tax Base	50.3	48.2	47.0	-1.2	-2.5%
Head Start/Pre-kindergarten	20.7	29.5	53.5	24.0	81.5%
Other Education Programs	65.1	93.6	92.2	-1.4	-1.5%
<i>Subtotal Direct Aid</i>	\$5,633.0	\$5,803.6	\$6,159.5	\$355.9	6.1%
Retirement Payments	\$734.5	\$732.9	\$748.7	\$15.8	2.2%
Total Public School Aid	\$6,367.5	\$6,536.5	\$6,908.2	\$371.7	5.7%
Libraries					
Library Aid Formula	\$40.7	\$41.9	\$43.2	\$1.3	3.1%
State Library Network	17.7	18.4	19.1	0.7	3.9%
<i>Subtotal Direct Aid</i>	\$58.4	\$60.3	\$62.3	\$2.0	3.3%
Retirement Payments	\$20.3	\$20.6	\$21.3	\$0.7	3.3%
Total Library Aid	\$78.7	\$81.0	\$83.6	\$2.7	3.3%
Community Colleges					
Community College Formula	\$235.2	\$240.4	\$258.6	\$18.1	7.5%
Other Programs	37.9	37.9	36.9	-1.0	-2.6%
<i>Subtotal Direct Aid</i>	\$273.1	\$278.3	\$295.4	\$17.1	6.2%
Retirement Payments	\$44.6	\$44.1	\$45.7	\$1.7	3.8%
Total Community College Aid	\$317.7	\$322.4	\$341.2	\$18.8	5.8%
Local Health Grants					
Total County/Municipal Aid	\$51.1	\$51.4	\$52.8	\$1.4	2.8%
Transportation	\$219.9	\$242.1	\$256.1	\$14.0	5.8%
Public Safety	131.6	132.7	133.3	0.6	0.5%
Disparity Grant	138.8	140.8	147.8	7.0	5.0%
Gaming Impact Grants	85.9	87.2	92.3	5.1	5.8%
Teacher Retirement Supplemental Grant	27.7	27.7	27.7	0.0	0.0%
Other Grants	29.5	32.0	32.9	0.9	2.8%
Total County/Municipal Aid	\$633.4	\$662.5	\$690.2	\$27.7	4.2%
Total State Aid	\$7,448.4	\$7,653.7	\$8,076.0	\$422.3	5.5%

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 5.5%, or \$422.3 million, in fiscal 2020 is above the range of annual growth exhibited in recent fiscal years. This is largely due to \$125.0 million in additional funding assumed under Chapter 357 of 2018, a proposed constitutional amendment that would require supplemental State funding for public education through the use of commercial gaming revenues beginning in fiscal 2020 and relatively high inflation for public school aid formula funding. The increase reflects a \$404.1 million (5.9%) increase in direct aid to local governments as well as a \$18.2 million (2.3%) increase in State retirement aid for local government employees. Most of the net growth is accounted for by an estimated \$355.9 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 \$98.7 million (3.2%). The increase is attributable to the rise in the per pupil foundation amount from \$7,065 to \$7,244 (2.5%) and an estimated 0.7% increase in full-time equivalent students. The compensatory aid program is expected to increase by \$67.2 million (5.1%). 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 to the increase in the per pupil foundation amount.

Exhibit 3
Annual Change in State Aid to Local Governments
Fiscal 2015-2020



Source: Department of Legislative Services

Approximately 8.5% 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 \$690.2 million in fiscal 2020, an increase of \$27.7 million above the prior fiscal year. The major State aid programs assisting county and municipal governments include disparity grants, teacher retirement supplemental grants, police aid, gaming impact grants, and local voting system grants.

State retirement costs for public school teachers, librarians, and community college faculty total \$815.8 million in fiscal 2020. The projected \$18.2 million (2.3%) increase over fiscal 2019 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 \$307.0 million in fiscal 2020 for teacher retirement, \$283.7 million for the local share of pension contributions, and \$23.3 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 \$1.0 million 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 many county governments in Maryland. In the 12 counties in which State aid is not the largest revenue source, it is either the second or third leading revenue source. In Anne Arundel, Baltimore, Calvert, Carroll, Garrett, Harford, Kent, Queen Anne's, and Worcester counties, State aid is the second largest revenue source after property taxes, whereas in Howard, Montgomery, and Talbot 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 16.2% of total revenues in Worcester County but reaches 52.1% in Caroline County. This difference is due to the fact that a large portion of 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.

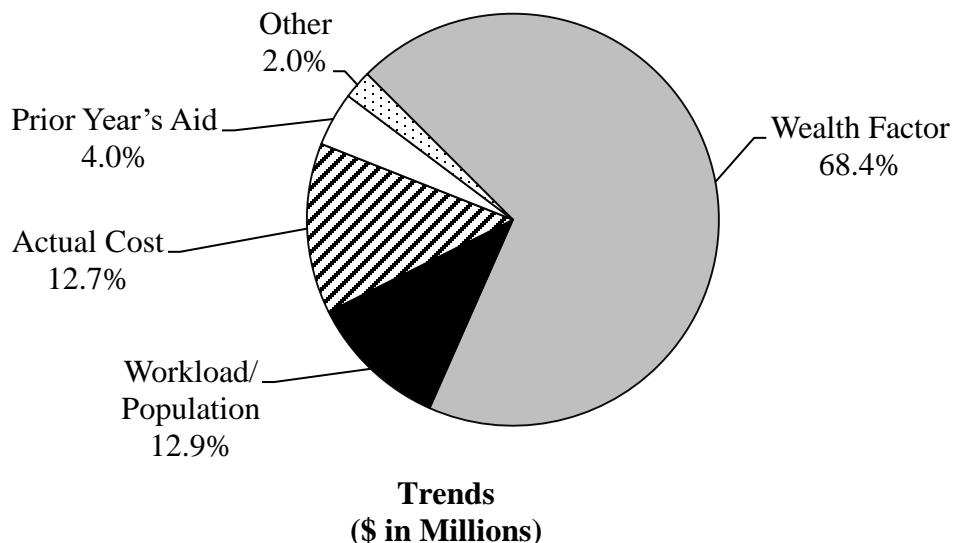
State aid is the fourth largest revenue source for municipalities, accounting for 7.3% of revenues. The reliance on State aid varies across the State, ranging from below 4% of total revenues for municipalities in Montgomery, Talbot, Washington, and Worcester counties to over 20% for municipalities in Cecil, Kent, and St. Mary's counties. 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 approximately 100 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 2019. Most of these programs also base State aid on a workload measure, such as school enrollment or population. As a point of comparison, in fiscal 2000, approximately 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 2019



	Fiscal 2000	% of Total	Fiscal 2019	% of Total
Wealth Factor	\$1,935.5	56.1%	\$5,237.3	68.4%
Workload/Population	697.0	20.2%	988.0	12.9%
Actual Cost	513.4	14.9%	969.5	12.7%
Prior Year's Aid	146.1	4.2%	303.1	4.0%
Other	158.3	4.6%	155.8	2.0%
Total	\$3,450.3	100.0%	\$7,653.7	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 affluent jurisdictions and more education aid per pupil to the less affluent

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 affluent jurisdictions is higher than 50%, and the State’s share for the more affluent 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 2019 and the student population with the greatest needs. As a result, Baltimore City received the second highest direct State education aid per student at \$11,444. Somerset County, with the third lowest wealth per pupil in the State and a student population with relatively high needs (third highest), received the highest per pupil direct State education aid amount at \$12,006. Talbot and Worcester counties, which have the highest wealth per pupil figures in fiscal 2019, received the two lowest levels of direct State education aid per pupil, at \$3,245 and \$3,148, respectively.

Exhibit 2
Local Needs and Wealth and Direct State Aid Per Pupil
Fiscal 2019

Targeted Student Index		Local Wealth Per Pupil		Direct Education Aid Per Pupil	
1	Baltimore City	110.4%	24	Caroline	\$285,553
2	Prince George's	92.7%	23	Wicomico	290,096
3	Somerset	92.1%	22	Somerset	299,995
4	Dorchester	80.3%	21	Allegany	311,141
5	Wicomico	76.6%	20	Baltimore City	356,648
6	Allegany	72.3%	19	Washington	361,300
7	Kent	70.2%	18	Dorchester	363,407
8	Caroline	69.5%	17	Cecil	412,290
9	Baltimore	63.7%	16	Charles	413,436
10	Talbot	62.8%	15	Prince George's	417,971
11	Montgomery	61.9%	14	St. Mary's	455,895
12	Washington	61.4%	13	Frederick	462,192
13	Cecil	59.2%	12	Harford	494,902
14	Worcester	56.8%	11	Calvert	508,365
15	Garrett	55.5%	10	Carroll	511,298
16	Charles	49.8%	9	Baltimore	518,552
17	Anne Arundel	48.2%	8	Howard	599,275
18	Harford	44.8%	7	Queen Anne's	621,736
19	St. Mary's	43.8%	6	Garrett	639,670
20	Frederick	43.3%	5	Anne Arundel	662,949
21	Queen Anne's	39.4%	4	Montgomery	759,941
22	Howard	36.7%	3	Kent	864,560
23	Carroll	32.1%	2	Talbot	1,023,238
24	Calvert	30.0%	1	Worcester	1,185,306
Statewide		64.5%		\$538,872	\$6,742

Note: 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 represent the primary local revenue source for most counties. Overall, county governments are projecting a modest increase in local tax revenues in fiscal 2019. 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.

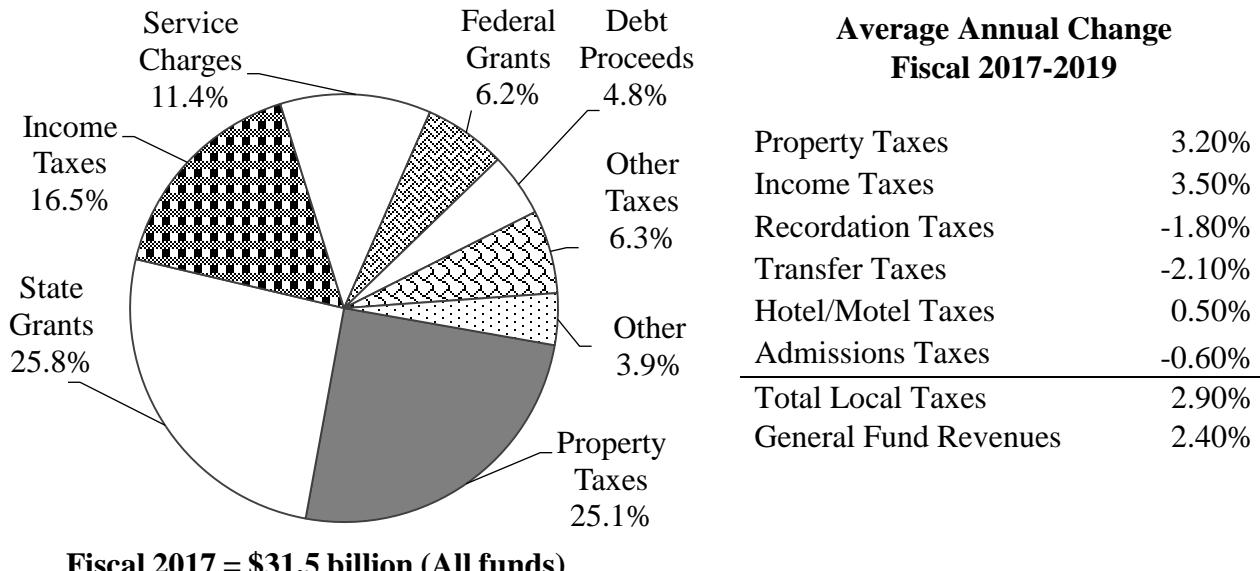
General fund revenues for county governments are projected to total \$15.8 billion in fiscal 2019. As shown in **Exhibit 1**, this represents a 2.4% average annual increase over the amount of general fund revenues collected in fiscal 2017. The projected growth in general fund revenues is below the estimated growth in local tax revenues, which includes both general and special fund revenues. The average annual increase in local tax revenues is projected at 2.9% in fiscal 2019. In total, local governments are projected to collect \$15.7 billion in local tax revenues, a \$857.3 million increase since fiscal 2017. **Exhibit 2** shows the growth in local tax revenues in fiscal 2017 through 2019.

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 \$5.6 billion in local income tax revenues in fiscal 2019, a \$373.5 million increase since fiscal 2017. This represents an average annual increase of 3.5% over the two-year period. Property tax collections are expected to increase by \$520.2 million over the two-year period, representing an average annual increase of 3.2%. Local property tax collections will total \$8.5 billion in fiscal 2019. 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.

Two other local revenue sources significantly affected by fluctuations in the housing market are recordation and transfer taxes. At the height of the real estate market in fiscal 2006, local governments collected over \$1.2 billion in recordation and transfer taxes. However, by fiscal 2011, county revenues from these sources had declined to \$511.8 million. In fiscal 2019, local governments are projecting to collect \$945.4 million in recordation and transfer taxes. This represents a \$37.8 million decrease over the amount collected in fiscal 2017 and illustrates that, while recordation and transfer tax collections have rebounded since the Great Recession, they have begun to plateau in recent years.

More detailed depictions of projected county government revenues and the growth in local tax revenues in fiscal 2019 are provided in **Exhibit 3** and **Exhibit 4**.

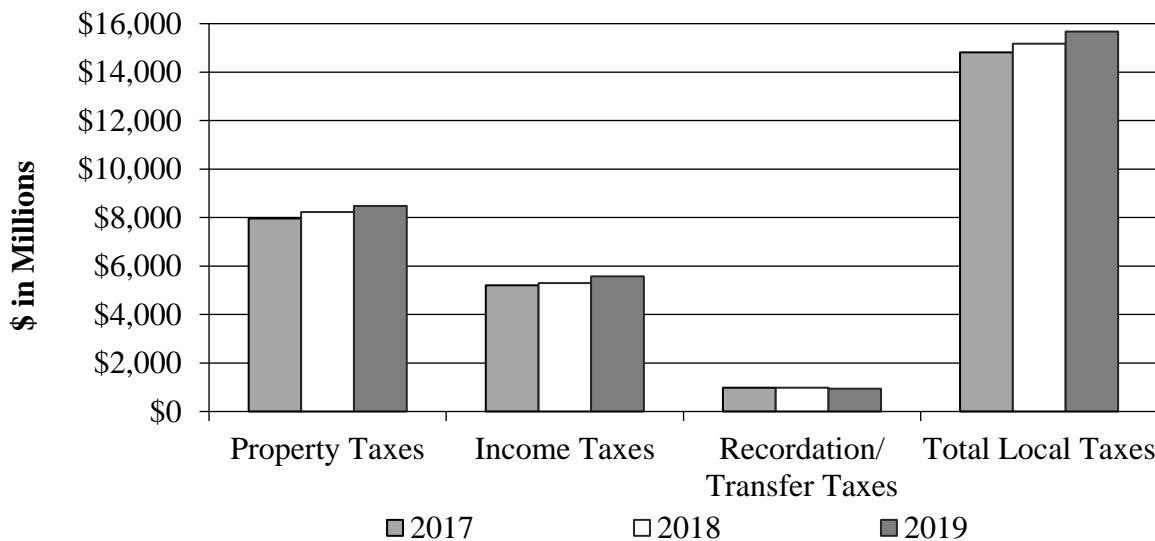
Exhibit 1
Sources of Revenue for Counties and Baltimore City



Fiscal 2017 = \$31.5 billion (All funds)

Source: Department of Legislative Services, county budgets

Exhibit 2
Local Tax Revenue Inches Upwards
Fiscal 2017-2019



Source: Department of Legislative Services; county budgets

Exhibit 3
County Government Revenues – Fiscal 2019

County	Property Tax	Income Tax	Recordation Tax	Transfer Tax	Hotel/Motel Tax	Admissions/ Amusement Tax	Other Local Taxes	Total Local Taxes	Total GF Revenues
Allegany	\$42,818,643	\$26,149,213	\$1,400,000	\$475,000	\$1,150,000	\$240,000	\$62,000	\$72,294,856	\$88,589,227
Anne Arundel	746,256,700	517,958,000	50,000,000	52,000,000	13,947,000	6,035,200	18,001,000	1,404,197,900	1,531,381,000
Baltimore City	887,009,100	353,644,000	37,365,700	39,379,300	34,926,100	8,583,800	93,317,092	1,454,225,092	1,837,715,584
Baltimore	978,298,099	773,525,650	34,340,000	72,720,000	10,762,000	6,500,000	23,108,400	1,899,254,149	2,072,234,009
Calvert	184,793,847	90,700,000	6,936,000	0	750,000	30,000	120,000	283,329,847	296,298,998
Caroline	25,719,095	13,900,000	1,800,000	912,176	43,643	0	70,000	42,444,914	47,536,212
Carroll	212,754,383	161,002,901	14,900,000	0	417,570	350,000	16,800	389,441,654	387,595,179
Cecil	116,596,848	62,572,542	5,424,200	1,674,200	204,000	135,000	0	186,606,790	194,131,861
Charles	238,842,800	127,940,000	12,761,000	5,678,000	1,324,000	860,000	0	387,405,800	393,738,600
Dorchester	30,009,836	12,309,054	1,914,632	781,519	347,000	500	230,000	45,592,541	52,294,789
Frederick	316,778,390	217,363,700	35,241,827	0	2,346,000	0	0	571,729,917	579,367,288
Garrett	48,951,753	11,950,000	1,750,000	1,760,000	2,400,000	875,000	162,750	67,849,503	78,157,588
Harford	305,725,000	226,700,000	14,933,700	17,200,000	2,350,000	550,000	0	567,458,700	557,661,055
Howard	700,835,322	454,296,364	22,968,000	28,000,000	5,350,000	2,500,000	633,180	1,214,582,866	1,117,365,063
Kent	30,940,168	12,986,400	1,025,000	630,000	84,000	18,000	0	45,683,568	47,367,518
Montgomery	1,808,404,338	1,585,159,299	141,091,000	109,765,000	22,235,992	3,579,210	250,359,220	3,920,594,059	3,473,825,801
Prince George's	1,242,174,000	595,201,700	52,643,800	126,719,600	11,300,000	17,468,100	100,233,200	2,145,740,400	2,024,707,700
Queen Anne's	67,688,149	51,536,447	5,527,551	2,252,880	614,865	170,000	1,653,000	129,442,892	136,329,479
St. Mary's	110,363,772	92,904,332	6,300,000	4,947,244	1,150,000	150,000	1,310,000	217,125,348	226,897,831
Somerset	16,256,486	7,120,648	500,000	0	61,000	15,000	0	23,953,134	39,561,181
Talbot	41,176,250	25,600,000	5,500,000	3,600,000	1,250,000	16,000	55,000	77,197,250	83,263,750
Washington	126,448,250	84,000,000	6,500,000	2,400,000	2,100,000	255,000	550,000	222,253,250	229,639,310
Wicomico	65,096,508	52,500,000	3,478,000	0	1,298,125	168,000	360,000	122,900,633	140,880,478
Worcester	135,821,065	23,000,000	6,500,000	3,750,000	15,100,400	500,000	1,275,000	185,946,465	186,096,196
Total	\$8,479,758,802	\$5,580,020,250	\$470,800,410	\$474,644,919	\$131,511,695	\$48,998,810	\$491,516,642	\$15,677,251,528	\$15,822,635,697

Note: Property tax revenues for Charles and Howard counties include special fire district tax. Property tax revenues for Montgomery County include special fire, mass transit, and recreation district taxes.

Source: Department of Legislative Services, county budgets

Exhibit 4
Total Local Taxes for Fiscal 2017-2019

County	2017	2018	2019	2017-2018		2018-2019		Average Annual Difference
				\$ Difference	% Difference	\$ Difference	% Difference	
Allegany	\$72,087,504	\$70,981,072	\$72,294,856	-\$1,106,432	-1.5%	\$1,313,784	1.9%	0.1%
Anne Arundel	1,343,907,601	1,374,987,000	1,404,197,900	31,079,399	2.3%	29,210,900	2.1%	2.2%
Baltimore City	1,409,436,790	1,442,599,252	1,454,225,092	33,162,462	2.4%	11,625,840	0.8%	1.6%
Baltimore	1,769,829,152	1,793,784,541	1,899,254,149	23,955,389	1.4%	105,469,608	5.9%	3.6%
Calvert	235,950,124	269,227,103	283,329,847	33,276,979	14.1%	14,102,744	5.2%	9.6%
Caroline	41,189,865	41,025,096	42,444,914	-164,769	-0.4%	1,419,818	3.5%	1.5%
Carroll	365,752,120	380,727,190	389,441,654	14,975,070	4.1%	8,714,464	2.3%	3.2%
Cecil	170,596,232	180,502,475	186,606,790	9,906,243	5.8%	6,104,315	3.4%	4.6%
Charles	367,158,540	373,700,900	387,405,800	6,542,360	1.8%	13,704,900	3.7%	2.7%
Dorchester	45,757,804	45,311,227	45,592,541	-446,577	-1.0%	281,314	0.6%	-0.2%
Frederick	534,718,653	544,337,723	571,729,917	9,619,070	1.8%	27,392,194	5.0%	3.4%
Garrett	66,174,590	67,108,126	67,849,503	933,536	1.4%	741,377	1.1%	1.3%
Harford	541,098,498	550,846,500	567,458,700	9,748,002	1.8%	16,612,200	3.0%	2.4%
Howard	1,154,398,852	1,185,594,214	1,214,582,866	31,195,362	2.7%	28,988,652	2.4%	2.6%
Kent	44,784,231	44,914,211	45,683,568	129,980	0.3%	769,357	1.7%	1.0%
Montgomery	3,737,313,642	3,774,136,131	3,920,594,059	36,822,489	1.0%	146,457,928	3.9%	2.4%
Prince George's	1,969,756,409	2,080,624,500	2,145,740,400	110,868,091	5.6%	65,115,900	3.1%	4.4%
Queen Anne's	123,339,465	124,561,361	129,442,892	1,221,896	1.0%	4,881,531	3.9%	2.4%
St. Mary's	210,034,010	214,368,202	217,125,348	4,334,192	2.1%	2,757,146	1.3%	1.7%
Somerset	23,314,793	23,081,272	23,953,134	-233,521	-1.0%	871,862	3.8%	1.4%
Talbot	77,399,021	75,941,397	77,197,250	-1,457,624	-1.9%	1,255,853	1.7%	-0.1%
Washington	213,630,653	217,007,410	222,253,250	3,376,757	1.6%	5,245,840	2.4%	2.0%
Wicomico	119,430,811	117,256,000	122,900,633	-2,174,811	-1.8%	5,644,633	4.8%	1.4%
Worcester	182,894,621	181,063,458	185,946,465	-1,831,163	-1.0%	4,883,007	2.7%	0.8%
Total	\$14,819,953,981	\$15,173,686,361	\$15,677,251,528	\$353,732,380	2.4%	\$503,565,167	3.3%	2.9%

Source: Department of Legislative Services, county budgets

Local Government

Local Government Tax Actions

Two county governments raised the local property tax rate in order to balance their budgets and enhance funding to public schools, with one county increasing the rate above the charter limit. However, five county governments reduced property tax rates.

Local Government Tax Rates

More local jurisdictions chose to decrease local tax rates in fiscal 2019 than chose to increase them. As shown in **Exhibit 1**, seven counties changed their local property tax rates, with five counties decreasing their rates and two counties increasing them. The rate increase in Talbot County exceeded the county's charter limit. In addition, Caroline County increased its income tax rate to the maximum allowed by State law. No county altered its recordation, transfer, admissions and amusement, or hotel rental tax rates. A comparison of local tax rates for fiscal 2018 and 2019 is provided in **Exhibit 2**.

Exhibit 1
Counties Changing Local Tax Rates
Fiscal 2017-2019

	<u>Fiscal 2017</u>		<u>Fiscal 2018</u>		<u>Fiscal 2019</u>	
	▲	▼	▲	▼	▲	▼
Real Property	4	2	2	6	2	5
Local Income	2	0	1	0	1	0
Recordation	1	0	0	0	0	0
Transfer	0	0	0	0	0	0
Admissions/Amusement	0	0	0	0	0	0
Hotel Rental	1	0	1	0	0	0

Note: ▲ represents a tax rate increase and ▼ represents a tax rate decrease.

Source: 2018 Local Government Budget and Tax Rate Survey; Department of Legislative Services; Maryland Association of Counties

Exhibit 2
Local Tax Rates – Fiscal 2018 and 2019

County	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel Rental	
	FY 2018	FY 2019	CY 2018	CY 2019	FY 2018	FY 2019	FY 2018	FY 2019	FY 2018	FY 2019	FY 2018	FY 2019
Allegany	\$0.976	\$0.975	3.05%	3.05%	\$3.50	\$3.50	0.5%	0.5%	7.5%	7.5%	8.0%	8.0%
Anne Arundel	0.907	0.902	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	0.937	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%	3.20%	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	1.041	1.041	3.00%	3.00%	4.10	4.10	0.5%	0.5%	6.0%	6.0%	6.0%	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	0.974	1.000	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	0.9899	2.65%	2.65%	3.50	3.50	1.0%	1.0%	6.0%	6.0%	6.0%	6.0%
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	1.013	0.993	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	0.848	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	0.571	0.606	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	0.940	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%

Note: 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: 2018 Local Government Budget and Tax Rate Survey; Department of Legislative Services; Maryland Association of Counties

Property Tax

For fiscal 2019, five counties (Allegany, Anne Arundel, Calvert, Garrett, and Montgomery) decreased their real property tax rates. Dorchester and Talbot counties increased their real property tax rates. Real property tax rates range from \$0.606 per \$100 of assessed value in Talbot County to \$2.248 in Baltimore City.

Local Income Tax

Caroline County was the only jurisdiction to change its local income tax rate for calendar 2019, increasing the rate from 2.73% to 3.2%. Local income tax rates range from 1.75% in Worcester County to 3.2% in Baltimore City and Caroline, Howard, Montgomery, Prince George's, Queen Anne's, Somerset, and Wicomico counties.

Recordation Tax

No county altered its recordation tax rate for fiscal 2019. 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 2019. 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 2019. 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

No county altered its hotel rental tax rate for fiscal 2019. 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 CPI; however, this limitation does not apply to new construction. In addition, the limitation may be overridden by a unanimous vote of all 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. This authority was adopted at the 2012 regular session to ensure that counties have the fiscal ability to meet new education 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. In fiscal 2019, Talbot County's property tax rate exceeded the charter limit by \$0.025, with the additional revenue attributable to the rate increase above the tax cap appropriated to 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 2019, with 20 counties and 18 boards of education providing cost-of-living adjustments and 17 counties and 23 boards providing step/merit increases.

All 23 counties and Baltimore City are providing some type of salary enhancements in fiscal 2019, either in the form of a cost-of-living adjustment (COLA), general salary increase (GSI), step/merit increase, or combination of enhancements. In a few instances, the salary enhancements are limited to certain groups of employees. More specifically, 20 counties are providing their employees with a COLA or GSI in fiscal 2019, compared to 17 in fiscal 2018. Seventeen counties are providing step or merit increases in fiscal 2019, compared to 15 in fiscal 2018. Similarly, all local boards of education are providing salary enhancements to their employees. Eighteen boards of education are providing COLAs or GSIs for their employees in fiscal 2019, compared to 15 boards that did so in fiscal 2018. Additionally, 23 boards of education are providing step or merit increases in fiscal 2019, the same number as in fiscal 2018. For comparison purposes, the State will award a 2.5% COLA to its employees in fiscal 2019, and no salary enhancements of any kind were awarded in fiscal 2018. **Exhibit 1** compares local salary actions in fiscal 2018 and 2019, while **Exhibit 2** and **Exhibit 3** show specific local salary actions for fiscal 2019.

Exhibit 1
State and Local Government Salary Actions
Fiscal 2018 and 2019

Salary Action	County Government		Public Schools	
	2018	2019	2018	2019
COLA/GSI	17	20	15	18
Step/Merit Increases	15	17	23	23
State Government		CPI-Urban Consumers¹		
2018		2018	2019	
COLA Amount	0.0%		2.2%	2.5%
Step/Merit Increases	No		No	

COLA: cost-of-living adjustment

CPI: Consumer Price Index

GSI: general salary increase

¹The Consumer Price Index for 2018 and 2019 is an average of the forecast taken from Moody's Analytics and IHS, Inc.

Source: Department of Legislative Services

Exhibit 2
County Government Salary Actions in Fiscal 2019

County	COLA/GSI	Step/Merit	Additional Comments
Allegany	2.0%	No	Sheriff deputies did not receive a COLA.
Anne Arundel	2.0%	Yes	Most county employees received a 2% COLA. The COLA awarded to police officers varied due to a new salary scale. Certain employees in the Sheriff's Office and Fire Department were placed on a new salary scale.
Baltimore City	2.0%	No	Fraternal Order of Police (FOP) Unit I and II are still in negotiations.
Baltimore	3.0%	Yes	COLA effective January 2019.
Calvert	1.22%	Yes	County employees continuously employed since July 2012 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	1.75%	Yes	County Government employees with at least five years of service received a merit-based salary increase of \$100 per year of service up to \$1,500. Sheriff's Office employees with at least five years of service received a step increase.
Carroll	1.5%	Yes	County Government, Circuit Court, and State's Attorney employees were awarded a 1.5% COLA. Law enforcement officers and executive officers received a 10.3% COLA. Detention center officers received a 7% COLA while executive detention center officers received a 10.3% COLA. Civilian personnel from the Sheriff's Office received a 3% to 6.6% COLA while executive civilian personnel received a 10.3% COLA. County Government and Circuit Court employees received a Service or Longevity increment of 2%. State's Attorneys employees received merit-based increases ranging from 0% to 2.5%. Law enforcement officers received a step increase of 2% while executive law enforcement received executive step increases ranging from 3% to 4.4%. Detention officers received a step increase of 2% whereas executive detention officers received executive step increases ranging from 3% to 4.4%. Civilian personnel from the Sheriff's Office received step increases of 1.5% to 2% while executive civilian personnel received step increases ranging from 3% to 4.4%.
Cecil	Varies	Yes	Employees received different COLAs based on the results of a salary study.
Charles	1.0%	Yes	
Dorchester	0.0%	Yes	County employees received step increases of 2.5%.
Frederick	0.0%	Yes	County employees received a merit-based salary increase of 3.5% of the midpoint for their grade. Firefighters receive a step increase on January 1, 2019. Law enforcement and detention center employees received a merit-based increase of approximately 4.5% of step 1.

County	COLA/GSI	Step/Merit	Additional Comments
Garrett	2.0%	No	
Harford	2.0%	Yes	Cabinet-level employees received a 2.13% COLA. Employees grades MG4 and below were awarded a \$2,000 flat rate merit-based increase. Cabinet-level employees were not awarded a merit-based increase.
Howard	2.0%	Yes	County employees receive a general salary increase of 2% effective January 2019. Fire and Rescue bargaining unit members receive a 1% COLA effective January 2019 and another 1% COLA effective June 2019.
Kent	1.5%	Yes	
Montgomery	2.0%	Yes	
Prince George's	2.0%	Yes	2% COLA effective January 2019. Police Civilian Employees Association and civilian Deputy Sheriffs Association employees receive a 1.75% COLA effective January 2019. Correctional Officers, civilian Correctional Officers Associations, and civilian employees with the International Association of Fire Fighters 1619 are still in negotiations. Police officers with the FOP 89 did not receive a COLA. Most county employees receive a 3.5% merit increase. Police officers with the FOP 89 receive a merit based on rank and years of service.
Queen Anne's	2.0%	No	
St. Mary's	0.0%	Yes	Merit-based salary increases of 2.5% awarded to county employees. Sworn county employees and correction center employees received a merit-based salary increase ranging from 1.9% to 5.4%.
Somerset	3.5%	No	
Talbot	0.0%	Yes	
Washington	1.5%	No	
Wicomico	2.0%	No	Police officers received a 1% to 5% COLA as part of their bargaining agreement.
Worcester	1.0%	Yes	
Total Jurisdictions			
Granting Increases	20	17	

COLA: cost-of-living adjustment

FOP: Fraternal Order of Police

GSI: general salary increase

Source: Department of Legislative Services

Exhibit 3
Board of Education Salary Actions in Fiscal 2019

School System	COLA/GSI	Step/Merit	Additional Comments
Allegany	1.0%	Yes	
Anne Arundel	2.19%	Yes	Teachers Association of Anne Arundel County received a 2.1941% COLA. School administrators received a 1% COLA. American Federation of State, County, and Municipal Employees (AFSCME) received a 2.4% COLA. Nonrepresented employees without an applicable step structure received a 2% COLA. Secretaries and Assistants Association of Anne Arundel County are still in negotiations.
Baltimore City	1.0%	Yes	COLAs effective January 2019. FOP, City Union of Baltimore and Local 44 employee unions are still in negotiations. Merit-based salary increases for teachers and administrators based on evaluation ratings and professional development courses. Paraprofessionals received merit increases based on their evaluation rating and are eligible for a stipend depending on their longevity (15 years: at least 0.486%, 20 years: at least 0.972%, 25 years: at least 1.459%).
Baltimore	3.0%	Yes	COLAs effective January 2019.
Calvert	1.0%	Yes	School employees received step increases plus additional steps as outlined in their negotiated agreement.
Caroline	1.0%	Yes	School administrators and support services personnel received a 2% COLA. Teachers received a 1% COLA.
Carroll	2.0%	Yes	
Cecil	2.0%	Yes	
Charles	2.75%	Yes	Unit I and II employees employed since June 30, 2010, and who are still active received a one pay level increase. AFSCME employees employed since December 31, 2009, and who are still active received a one pay level increase.
Dorchester	0.0%	Yes	Teachers, school administrators, support staff, and noncertified employees received a step increase. Teachers, support staff, and non-certified employees above the top step received a \$500 stipend/bonus. School administrators above the top step received a \$750 stipend/bonus.
Frederick	5.04%	No	School system in the process of revising salary scales for all three bargaining units. Teachers are in year 3 of a 4-year transition. Support staff are in year 2 of a 2-year transition. Teachers were not awarded merit-based or step increase. School administrators received a 3.25% merit increase. Support staff received a 1.8% merit increase if they were hired before July 2013. Support staff at the top of the scale received an \$800 stipend.

School System	COLA/GSI	Step/Merit	Additional Comments
Garrett	1.0%	Yes	Teachers, school administrators, and support staff received a 1% COLA. Head custodians and cafeteria managers received a 2.5% COLA.
Harford	2.0%	Yes	
Howard	0.0%	Yes	
Kent	1.0%	Yes	Teachers and administrators receive COLAs in May 2019. Other employees receive COLAs in January 2019. School administrators received a step merit increase in July and receive an additional step in January. Teachers and other employees received a step merit increase.
Montgomery	0.0%	Yes	School administrators received a 2% GSI. Teachers did not receive a GSI. Administrators received a merit step. Teachers received a step and can receive an additional step on January 5, 2019, if they are eligible for the FY2012 make-up step. Support personnel received a merit step increase and an additional step was awarded July 1, 2018, to those eligible for the FY2012 make-up step. Teachers and support personnel not eligible for the FY2012 make-up step received a \$900 stipend.
Prince George's	0.0%	Yes	School administrators received a 2% COLA. Service Employees International Union Local 400 employees are still in negotiations. Teachers did not receive a COLA.
Queen Anne's	1.0%	Yes	Teachers received a 1% COLA effective May 2019. School administrators did not receive a COLA.
St. Mary's	0.0%	Yes	
Somerset	1.0%	Yes	
Talbot	1.0%	Yes	
Washington	0.0%	Yes	Support staff received a 0.5% COLA.
Wicomico	1.0%	Yes	"Classifieds" bargaining unit employees received a 1.5% COLA.
Worcester	1.0%	Yes	Support personnel received a 1.5% COLA.
Total Jurisdictions			
Granting Increases	18	23	

AFSCME: American Federation of State, County, and Municipal Employees

COLA: cost-of-living adjustment

FOP: Fraternal Order of Police

GSI: general salary increase

Local Government

9-1-1 Modernization

As analog landline communication is phased out, Maryland has begun to move to a next generation 9-1-1 system. The Commission to Advance Next Generation 9-1-1 Across Maryland was established in 2018 to study and make recommendations regarding next generation 9-1-1. Additionally, funding has been authorized to implement a statewide text-to-9-1-1 system.

Introduction

The legacy 9-1-1 model, which is based on a landline phone system, consists of local public safety access points (PSAP) 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 networks, presenting a challenge as to how to process and obtain accurate caller location and phone number information.

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.

Status of Next Generation 9-1-1 Implementation in Maryland

The Emergency Number Systems Board (ENSB) participated in a Request for Proposals (RFP) process initiated by Fairfax County, Virginia, for the National Capital Region to obtain an Emergency Services IP network (ESInet) and Next Generation Core Services (NGCS). This process helped ENSB gain the knowledge needed to develop a series of RFP requirements for NG 9-1-1 services for Maryland. Through a multi-county project request and a contract managed by Frederick County, ENSB was able to obtain expert consulting services for NG 9-1-1 procurement. The consultant is responsible for (1) general NG 9-1-1 program management; (2) a readiness assessment and RFP strategy; (3) analyzing county geographic systems data for readiness; (4) the implementation of the procurement plan and implementation strategy; and (5) providing grant writing assistance. The Department of Public Safety and Correctional Services (DPSCS) advised in its June 30, 2018 report required by the 2017 *Joint Chairmen’s Report* that the consultant has completed a geographic information systems readiness assessment and has made recommendations to each local subdivision regarding NG 9-1-1 readiness and improvement. While

a procurement strategy has not been finalized, the consultant is currently drafting RFP requirements; however, the consultant also is working with the Baltimore Metropolitan Council's procurement consortium to determine whether an existing competitively bid contract could be used to procure the needed services, rather than issuing an RFP for the State.

Additionally, six counties (Calvert, Charles, Frederick, Montgomery, Prince George's, and St. Mary's) have contracted to obtain an ESInet and NGCS through the master contract awarded by Fairfax County. DPSCS anticipates that five of the six counties will "go live" with NG 9-1-1 services by the end of fiscal 2019. DPSCS estimates that the remaining PSAPs in the State will migrate to NG 9-1-1 in approximately 18 months. Funding will be provided by ENSB for the nonrecurring costs associated with the new system, while recurring costs will continue to be covered by each county.

Commission to Advance Next Generation 9-1-1 Across Maryland

Chapters 301 and 302 of 2018 established the Commission to Advance Next Generation 9-1-1 Across Maryland. The commission is required to study and make recommendations regarding specified issues related to NG 9-1-1 emergency communication services, including (1) the implementation, management, operation, and ongoing development of a next generation system; (2) the costs required to plan, test, implement, manage, and operate a next generation system; and (3) best practices, policies, and procedures for public safety telecommunicators. The commission must submit a preliminary report to the Governor and the General Assembly by December 1, 2018, and a final report by December 1, 2019, on the implementation, management, operation, financing, and procurement of a NG 9-1-1 system.

Statewide Text-to-9-1-1 System

In February 2018, the Board of Public Works authorized \$2.4 million in funding to implement a statewide text-to-9-1-1 system that will allow users to use their cell phone's short message service to send text messages to 9-1-1. The service will be compatible with NG 9-1-1 protocols but will not support multimedia messaging such as photos or video. In 2015, Frederick County participated in a national pilot program that offered text-to-9-1-1 services to Verizon Wireless customers in the county. Frederick County advises that it receives an average of 30 texts to 9-1-1 on a monthly basis.

Local Government

2019 Legislative Agenda – Maryland Municipal League

The Maryland Municipal League (MML) adopted as its sole legislative priority for the 2019 session the ongoing effort regarding personal wireless facility siting approval. Additionally, MML adopted three strategic initiatives related to State preemption of local government authority, revenue streams, and development of annexed land.

Personal Wireless Facility Siting Approval

The Federal Communications Commission (FCC) is responsible for managing the radio frequency (RF) 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 include 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.”

Federal law preserves state and local government authority over decisions regarding the placement, construction, and modification of personal wireless 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 law also prohibits state and local decisions based directly or indirectly on the environmental effects of 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 as well as failed legislation from 2018 that would have preempted local authority on the issues of siting and aesthetics of personal wireless facilities, the sole legislative priority that the Maryland Municipal League (MML) has adopted for the 2019 legislative session is a continuation of a legislative priority from 2018. The priority 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.

Strategic Initiatives

In addition to its one legislative priority, MML has adopted three strategic initiatives for the 2019 legislative session. Unlike legislative priorities, which usually take the form of legislation introduced by a member of the General Assembly, strategic initiatives may be pursued through other avenues. The first strategic initiative is to oppose any new State preemption of existing local government authority. The second strategic initiative is to explore new revenue streams for municipalities while protecting municipal highway user revenue funds, which most municipalities rely on to maintain and improve public roads within their corporate limits. The third strategic initiative is to examine any possible modifications of § 4-416(b) of the Local Government Article, which prohibits a municipality from allowing development of annexed land for land uses and densities that are substantially different from that permitted under the zoning classification of the county for five years following the annexation, unless expressly permitted by the county.

Local Government

2019 Legislative Agenda – Maryland Association of Counties

The Maryland Association of Counties has four legislative priorities for the 2019 session, one of which is an ongoing effort from the prior year. New priorities include a continuing State commitment to education, prioritizing public health needs, and repealing the judicial doctrine of “implied preemption.” The ongoing priority is to implement Next Generation 9-1-1.

Continuing State Commitment to Education

The Maryland Association of Counties (MACo) maintains that Maryland’s commitment to prekindergarten and K-12 education must continue to meet the needs of a diverse student body and prepare Maryland’s children for a global economy.

Specifically, MACo points to recent recommendations from the Commission on Innovation and Excellence in Education concerning major shifts in the relative role of State and local funding in each of Maryland’s 24 jurisdictions. Similarly, the recommendations of the 21st Century School Facilities Commission call for an increased annual State contribution for capital projects and require ongoing study of school construction project funding and priorities.

Accordingly, MACo supports a partnership approach to meeting the education and facility needs of Maryland’s students that fairly balances State responsibilities with local obligations and seeks equitable and efficient solutions to meet current expenses and future goals.

Prioritizing Public Health Needs

MACo maintains that local health departments are the State’s frontline for public health services and education. MACo explains that over the years dramatic and lasting funding reductions, as well as threatened cost shifts, have endangered the capacity of local governments to provide these crucial services and have forced them to do more with dramatically fewer resources.

Further, MACo points out that these funding reductions have been exacerbated by the opioid epidemic that continues to plague the State, as well as other parts of the country. The deadliness of the opioids that have permeated communities throughout the State makes it even more critical that local health departments and associated treatment services – beds, facilities, and providers – are available to meet residents’ vital and growing needs.

As a result, MACo advocates for the State prioritizing public health needs in light of the current opioid epidemic and other health crises in the future by reviving local health department funding and targeting drug treatment services funding to address demand where it is needed the most.

Repealing Judicial Doctrine of Implied Preemption

Generally, State preemption of local law may occur in any of three ways: the General Assembly may expressly preempt local law by State statute; local law may be preempted to the extent that it directly conflicts with State law; or the General Assembly may impliedly preempt local law by occupation of an entire field of regulation so that no room is left for supplementary local regulation.

With regard to the last form of preemption, Maryland courts have determined that State law impliedly preempts local law when a local law deals with an area in which the General Assembly has acted with such force that an intent by the State to occupy the entire field must be inferred. For example, the courts have ruled that local ordinances are impliedly preempted by the State in the areas of cigarette vending machines, campaign finance regulation, and education.

Pointing to more recent court decisions that invalidated local pesticide oversight and energy facility siting without any State law explicitly prohibiting the local ordinances, MACo asserts that this inconsistent but growing theory of State preemption over local actions should cease. Instead, MACo supports legislation that states that preemption should not take place in the courts by mere interpretation, but rather in the open and accessible lawmaking process, where all stakeholders may be heard on the merits of their arguments.

Implementing Next Generation 9-1-1

MACo continues to maintain that Maryland's 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. Next Generation 9-1-1 (NG911) will provide the capability for these new technologies to interface with the 9-1-1 network and improve wireless caller locations, accommodate incoming text/video, and manage crisis-driven call overflows.

Accordingly, MACo advocates for moving Maryland to NG911 service. Specifically, MACo seeks to update State laws, as well as the 9-1-1 financing system, including the funding structure and purposes of the 9-1-1 trust fund, to provide the flexibility and resources needed for this next important step in public safety for every area of Maryland.